BLOGS

All About Covid-19 for CLAT: Patent Waiver for Vaccines

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Introduction

The unprecedented COVID-19 Pandemic presented a range of diverse legal conundrums. Many issues of right to health, migrant rights and human right violations came to light. Another important legal issue was that of patent waiver related to vaccines.

In that context, important deliberations took place at the global level. This makes the topic important for upcoming exams that test legal aptitude and legal GK, including the CLAT examination.

Initiation

India and South Africa were the first countries to send a communication on the patent waiver on COVID Vaccines on 2 October 2020 [i], which was later sponsored by many WTO Members. U.S.A. being a major player, when it supported the temporary suspension of IP protection for the vaccines, the movement gained huge momentum.

Regulating Institution: World Trade Organization

World Trade Organization is an international/global forum that regulates trade between and among countries—primarily based on signed agreements. One of the important agreements from among these is the Trade-Related Aspects of Intellectual Property Rights, commonly known as ‘the TRIPS Agreement’.

It regulates intellectual property rights arrangement globally, including patents.

Against Patent Waiver/Pro Patent Protection

1. Patent Waiver will disincentivize the pharmaceutical companies to continue to engage in vaccine development.

2. Compulsory licensing serves the need in case of emergencies. According to the WTO, compulsory licensing “is when a government allows someone else to produce a patented product or process without the consent of the patent owner or plans to use the patent-protected invention itself. It is one of the flexibilities in the field of patent protection included in the WTO’s agreement on intellectual property”[ii].
3. It is argued that “voluntary commitments from industry, developed world governments, and large NGOs as a more effective means of addressing the problem”[iii].

Pro Patent Waiver/Against Patent Protection

1. Equity Considerations:

When the Pandemic was raging, and even today, global recovery remained the main aim of health programs. This required equity in vaccination across all countries.

It is said, “the price of these vaccines, combined with export restrictions and the inability of LMICs to manufacture their own vaccines at a lower price and without fear of litigation from patent holders, are among the main reason why vaccines are not reaching the world’s most vulnerable communities”[iv].

Waiver of patents would remove this roadblock and will take us a step closer to the global aim of recovery.

1. Compulsory Licensing is inefficient:

Compulsory licenses are generally employed at the domestic level, because they efficiently work at the level. Moreover, this process is considered expensive and inefficient at the global level.[v]

Conclusion: Private Gain v. Public Health

There can be no doubt that there is a global disparity in different countries’ ability to procure and distribute vaccines. The intersection of public health considerations and trade regulations/developments present new challenges and need the members of the global community to set new long-term goals.

There is a need to increase the capacity of the low-to-middle-income countries to produce vaccines, among other health products, in a sustainable and comprehensive manner. The claim of those asking for patent waiver is simply that they be allowed to develop and make accessible

vaccines, without the threat of litigation from the pharmaceutical industry.

Other Reading Material:

1. On G7 Leaders: available at https://www.oxfam.org/en/press-releases/more-million-covid-deaths-4-months-g7-leaders-failed-break-vaccine-monopolies
2. Intellectual property waiver for covid-19 vaccines will advance global health equity: available at https://www.bmj.com/content/374/bmj.n1837.full
3. The TRIPS Agreement, available at https://www.wto.org/english/docs_e/legal_e/27-trips.pdf
4. A simplified discussion is available here: https://www.cfr.org/in-brief/debate-over-patent-waiver-covid-19-vaccines-what-know

References:

[i] WTO, Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19, Communication from India and South Africa, WTO Doc. IP/C/W/669, 2 October 2020

[ii] Available at https://www.wto.org/english/tratop_e/trips_e/public_health_faq_e.htm

[iii] Innovating Beyond Patent Waivers, available at https://www.brookings.edu/blog/up-front/2021/08/31/innovation-beyond-patent-waivers-achieving-global-vaccination-goals-through-public-private-partnerships/ [accessed 0.03.2022]

[iv] *ibid*

[v] *ibid*

Find more study material for CLAT here.

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