

# Indian Patent Law and WTO-Affecting Health Issues, Trades and Economics

Dr.Anju Gahlot

**Abstract**—The main object of Indian patent law is to encourage scientific research, new technology, and industrial progress. Indian patent law 1970, amended in 1999, 2002 and 2005. two kinds of patents in India - product patents and process patents. . In India mostly generic medicine produced. These medicines cheaper than other countries. That is because in India we do not have product patent. The absence of a product patent has enabled any number of Indian pharmaceutical companies to manufacture antacid tablets with the same properties by different processes, processes which are both cheaper and, may be, better. . India is known as a medical mecca for patients of Africa south and south East Asia and world's largest producer of generic medicines. In April 2013 Supreme Court refuses to Novartis Company for patent. If India gave these patents the medicine for blood cancer, become more costly. If generic versions of medicine not produce, India suffers from huge economic loss and loss of health too. In India people were not so much aware of patent, judge are not qualified in patent matters. Last ten years so many Indian pharmaceutical companies over taken by MNC's like Dabour, Ranbaxy and etc. Now they are working under these MNC's .now they did not produced generic medicine due to this common people, Indian medical trade and economics effected.in concluding remark i want to say that right to health is a fundamental right and if we do some amendments in Indian patent law, state policies and awareness in society about patent we can achieve the object of article 7and8 of trips agreement and the goal of healthy world.

**Keywords**—Indian patent Law, health Issues, medical tourism, effecting treads- economics.

## I. INTRODUCTION

IN the words of Mark a Lemley, "As intellectual property continues to expand its domain, proposals exist to extend its reach to the artefacts of traditional knowledge, songs, tribal art work, medicines, know-how that are part of what is sometimes referred to as traditional and sometimes referred to as indigenous knowledge."<sup>[1]</sup>

Since time to immemorial, India has possessed a rich traditional knowledge of ways and means practiced to treat diseases afflicting people.<sup>[2]</sup> From Acharya Charak and Sushrut to Patanjali<sup>[3]</sup> India blessed a unique treasure of knowledge in the field of health care in the name of Ayurveda and yoga. Present time in India importance of yoga and Ayurveda is part of life. In Indian constitution right to health is a fundamental right.<sup>[4]</sup> In India Right to health is an individual right imbedded in the right to life which requires the

protection of the physical, mental integrity and dignity of the individuals, the Indian constitution embarks on the state. The duty to safe guard the right to life of every person preservation of human life being of paramount importance. The obligation on the state to ensure the creation and the sustain of condition congenial to good health is cast by the constitutional directive contained in Articles 39(e)(f),42 and 47 in part iv of Indian constitution. In the case of Consumer education resource centre V/s Union of India<sup>[5]</sup>. It was held that the right to health is essential for human existence and is there for and integral part of the right to life.

Marijn Dekkers, chief executive officer of Bayer shocked advocates of affordable health care by candidly stating that "we did not develop this medicine for Indians we develop it for western patients who can afford it. He was referring to a new cancer drug develop by his company. The question is: if drugs are developed only for those who can afford them but not for those who need them, is not it unethical? It is after all, violation of the right to health enshrined in WTO's constitution which states that the highest attainable standard of health is a fundamental right of every human being. We are the putting price on life.<sup>[6]</sup> In these days, after Novartis case<sup>[7]</sup> right to health and Indian Patent Act is a burning issue and Some questions is arise that is Indian patent Law is sufficient to protect right to health of Indians or amendment is require in Indian patent law, MNCs drugs patent in India is beneficial for Indian treads and economics?

A patent is an exclusionary and monopoly right granted by a state to a person or group of persons to exploit and benefit from the invention patented by him or them, for a particular period. Main object of Indian patent Law is to encourage scientific research, new technology, and industrial progress and development. India enacted a patent act in 1970, the Act was, amended in 1999,2002 and 2005. It is universal truth that globalization and the expansion of international trade has further implicated intellectual property as patent, copyright, trademarks, geographical indications and related areas of the law are used as strategic tools to supplement myriad political as well as policy goals<sup>8</sup>. According to Indian Patent Law, Patents are of two kinds - product patents and process patents. In India, Any product, to be patentable, needs the triple qualities of (a) novelty (previously unknown to the public) (b) non-obviousness (containing sufficient innovativeness to merit protection) and (c) industrial applicability for usefulness. The

Dr.Anju Gahlot is with the Assistant Professor, Department of Law, University of Rajasthan, Jaipur, India.

grant and enforcement of patents are governed by national laws, and also by international treaties, where those treaties have been given effect in national laws. Patents are granted by national or regional patent offices. Patent Law is territorial in nature. There is a trend towards global harmonization of patent laws, with the World Trade Organisation (WTO) being particularly active in this area. The TRIPs Agreement has been largely successful in providing a forum for nations to agree on an aligned set of patent law. One of the little known but important aspects of the TRIPs (Trade-Related Aspects of Intellectual Property) Agreement that was part of the World Trade Organization treaty that went into effect on January 1, 1995, was that many developing countries would create and enforce modern intellectual property laws by January 1, 2005. So, an important milestone in IP is coming up within the week. Article 27 (2)[9] gives scope for saving our patent law from corporate claws. In Article 27(2) mentioned that- "Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by domestic law. In India mostly generic medicine produced. These medicines cheaper than other countries. Generic producer in India have brought down the price of life saving drugs used to treat diseases like HIV, TB and Cancer by as such as 90%. Today, most antiretroviral medicines purchased by the US's global AIDS programme come from India and more than 80 % of HIV drugs that medicines sans frontiers, UNICEF and Clinton foundation use are generic from India. UNAIDS executive director Michel Sidibe best summed up India's 'human' role in global healthcare when he said: "Millions will die if India cannot produce new HIV/AIDS medicines in the future-it is a matter of life and death." India is largest producer of affordable medicines and world's largest producer of generic drugs. The Indian pharma industry accounts for 20% of the world's pharma industry in value terms and constitutes a significant 80 % in volume terms. In these days Indian pharma company overtaken by MNC's "When a Indian company merge with MNCs then cost of medicine reached automatically high, Like Ranbaxy and Dabour. Now they are working under these MNCs. Now they did not produced generic medicine because they are under the control of these MNCs. With that Indian tread affects and economics too because cheap Indian medicine is borrowed frequently by the world by the result of this our economy get stronger and due to this Indian treads also get enhanced.

In April 2013 Supreme Court refuses to Novartis Company for patent. If India gave these patent, the medicine for blood cancer, become more costly. If generic versions of medicine not produce in India then we suffer from huge economic loss and loss of health too.

In India there are so many Ayurvedic and herbal medicine

which is not patented yet like medicine made from Tulasi, curd, gold rust and lemon juice boiled with specific temperature for the particular time, this medicine made for cancer and another one is for diabetes it's made from dried fenugreek, juice of Butea monosperma and powder of amla mix and boiled in specific temperature. There are so many more, these medicines are the part of day today life, if these types of herbal medicines patented by MNC's then situation is totally change. India is a medical Mecca for patients from Africa, south and south east Asia and middle East. In India trend of medical Tourism is in boom. India is a favourite destination for Medical tourism. In fact, in the plan of medical tourism, vulnerability commences at the very first step of searching for a suitable and affordable hospital/doctor for the desired treatment which is all available in India[11]- Medical tourism implies travelling of people to another country for the purpose of medical treatment due to affordability and better medical care though; some experts prefer to call it 'medical travel'[12] Indian tourism contribute a lot in Indian national income and so many Indian trades depends on medical tourism of India. If cheaper medicines are not produced then income reduces and trades and economics get losses.

## II. CONCLUSION

Affordable health care is possible today. India's contribution to affordable healthcare goes much beyond being a pharmacy to the world. India's research engine is now driving a new model of invention that focuses on quality and affordability[13]. If we do, Humanisation of TRIPS Agreements and other international trade agreements especially with respect to essential medicines and primacy of protection of public health over commercial interests in such agreements and develop Some alternative methods of worldwide sharing of research and costs of drugs and some other drugs will include in the essential drug list like AIDS drugs (except AZT for the prevention of mother-to child infection) and certain new antibiotics HIV and tuberculosis[14]. Amendment in Article 31(f) of the TRIPS Agreement which restricts export of medicines manufactured under compulsory license and results in deprivation of the poor countries of the medicines. Right to health is a fundamental right and if we do some amendments in Indian patent law, The Drugs and Cosmetics Act, 1940, 1955-Drugs (Price Control) Order, 1955-The Indian Penal Code, 1860, The Pharmacy Act, 1948, The Industries (Development and Regulation) Act, 1951, The Factories Act, 1948 and state policies and awareness in society about India patent Law, we can achieve the object of Article 7and8 of TRIPS agreement and the goal of healthy world and wealthy economics.

## REFERENCES

- [1] Mark A.Lemley, The modern Lanham Act and the Death of Common Sense,108 Yale L.J. 1687 (1999)
- [2] <http://www.tkdl.res.in/tkdl/langdefault/common/Abouttkdl.asp/GL=Eng>

- [3] Acharya charak was master of Ayurveda, Sushrut was known as father of surgery and patanjali was yoga guru.
- [4] Article 21 of constitution of India
- [5] (1995 ) 3 SCC 42
- [6] Kiran Majumdar show- fight medical Apartheid, The Times of India, Jaipur may,30, 2014
- [7] MNCs drug patent case(Indian Supreme Court April-2013 Cases
- [8] Mayank Baranwal-Panorama Of Traditional Knowledge In The Intellectual Property Rights Regime
- [9] TRIPS Agreement
- [10] Generic medicine- It is a copy of branded medicine containing exact active ingredients. Generic medicines are substantially cheaper than branded ones as there are no costs related to research and development
- [11] Dr.Kailash Jeengar-Medical Tourism: Double Victimisation of Foreign Patients in the Absence of an Option of Forum Shopping
- [12] Laurence Vick, "Medical Tourism: Legal Issues" 4 (Michelmore), hereinafter Laurence Vick, available at: <http://www.michelmore.com/~michelmore01/docs/medical-tourism.pdf> (Visited on Oct. 12, 2013)
- [13] Kiran Majumdar show- fight medical Apartheid, The Times of India, Jaipur may,30, 2014
- [14] Dr.Om Prakash Siravi-Introducing the Human Right to Medicine and the Challenges Before the International Community, Jodhpur national Law university Jounal-Dec,2013..