Addressing the Vaccine Shortage

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Why in news?

The massive vaccine shortage in the country has mooted the idea of compulsory licencing.

What is the current situation?

- The second wave of the COVID-19 pandemic has claimed large number of lives and the precious lives of the citizens are dependent on the vaccine manufactures.
- According to government data till April 26,2021, only 13.5 crore vaccine doses (9% of the Indian population) were administered and it is reported that the country is likely to face a vaccine shortage.
- Now the Supreme Court has highlighted the unconstitutionality of the new COVID vaccine policy- allowing vaccine manufacturers to fix prices which can lead to discrimination and vaccine inequity.
- It has directed the Centre to consider invoke compulsory licencing of drugs and vaccines under the Patents Act, 1970.

What is Compulsory Licencing?

- Compulsory Licensing (CL) allows governments to license third parties (other than the patent holders) to produce and market a patented product or process without the consent of patent owners.
- It is regulated under the **Indian Patent Act, 1970**.
- The application for compulsory license can be made any time after 3 years from date of sealing of a patent.
- The following conditions should be fulfilled by the applicant:
    - Reasonable requirements of public have not been satisfied;
    - Patented invention is not available to public at a reasonably affordable price;
    - Patented inventions are not carried out in India.
- According to **Section 92 of the Act**, CL can also be issued suo motu by the Controller of Patents.

- But this should be based on the notification issued by the centre if there is a case of either a national emergency or extreme urgency or for public non-commercial use.

What can the centre do now?

- The centre can address the present drug and vaccine shortage through its immense powers it has under the patents law.
- If it declares national emergency or extreme urgency, then willing company to manufacture the COVID vaccine can make an application to the Controller General of Patents.
- This secures a compulsory licence and the licence-holder can then go ahead and use the patented technology to manufacture the vaccine or the drugs.
- Large number of players in the market will lower the financial burden on the government and ensures dynamism in the COVID drugs and vaccines market.
- Also, this will ensure that the drug or vaccine gets cheaper and supplied adequately to meet the growing demand.
- However there is a concern of potential litigation due to which other manufacturers are unwilling to seek compulsory licences.

How can this issue be addressed?

- Such concerns has to be alleviated by the Centre due to the gravity of the current situation.
- The patent holders can be adequately compensated by fixing a reasonable licence fee.
- The right to life of the people should be of prime importance over any commercial interests of the companies.
- Even the Russian and Hungarian governments have issued compulsory licences for remdesivir and made it available for cheaper prices to the public.

What can we infer from this?

- COVID-19 has disproportionately high impacts on the poorest and most marginalised and leaving patients to the fluctuations of the market where Big Pharma determines the prices is arbitrary.
- To reduce the numbers of cases and deaths, it is necessary that even the poorest of the poor have access to treatment (including access to oxygenated beds, ICU & ventilators) and free vaccines.

- Even the Supreme Court has said that Centre should procure all vaccines and negotiate the price with the vaccine manufacturers.
- Therefore, it is incumbent on the Central Government to ensure that the vaccines are available to all free of cost following the universal immunisation policy.
- This can be achieved by the compulsory licensing clause of Indian Patent law.

Source: The Indian Express

