Wrong Patent Regime

What is the issue?

Despite the ongoing COVID-19 crises, intellectual property rules is been a barrier for right to access healthcare.

What is patent?

- A patent is a conferral by the state of an exclusive right to make, use and sell an inventive product or process.
- Patent laws are usually justified on three distinct grounds:

1. People have natural and moral right to claim control over their inventions;
2. Exclusive licenses promote invention and benefit society;
3. Individuals must be allowed to benefit from the fruits of their labour and merit;

How does patent rules function in India?

- There is a constant tension in offering exclusive rights over medicines and state's obligation of ensuring in equal access to basic healthcare.
- The colonial-era law which allowed for pharmaceutical patents was changed when committee chaired by **N. Rajagopala Ayyangar** in 1959 objected it on ethical grounds.
- It found that foreign corporations used patents to suppress competition from Indian entities and thus medicines were priced at high rates.
- **Patents Act, 1970** was enacted subsequently that removed the monopolies over pharmaceutical drugs, with protections offered only over claims to processes.

- This change in rule allowed generic manufacturers in India to grow and as a result life-saving drugs was available at affordable prices.
- This was affected when negotiations begun to create WTO which would give a binding set of rules governing intellectual property.
- It was also said that countries which fail to subscribe to the common laws of WTO will be barred in global trading circuit.
- But with the advent of the **TRIPS agreement** in 1995 this concern was addressed and it was only after this Indian companies began to

manufacture generic versions of medicines at low prices.

What is the problem now?

- Last year, India and South Africa requested WTO to temporarily suspend the rules under the 1995 TRIPS agreement.
- A waiver was sought to the extent that the protections offered by TRIPS impinged on the containment and treatment of COVID-19.
- If waiver was allowed, countries will be in a position to facilitate a free exchange of know-how and technology surrounding the production of vaccines.
- But a small group of states — the U.S., the European Union, the U.K. and Canada among them —blocked the move.

Why these countries objected?

- These nations put forward two arguments for their objections which have been refuted time and again.
- One, that unless corporations are rewarded for their inventions, they would be unable to recoup amounts invested by them in research and development.
- Two, that without the right to monopolise production there will be no incentive to innovate.

- Recently, it has been reported that in U.S. Moderna vaccine was produced from the basic research conducted by the federal government agency and other publicly funded universities.
- Similarly, public money accounted for more than 97% of the funding towards the development of the Oxford/AstraZeneca vaccine.
- Therefore, the claim that a removal of patents would somehow invade on a company's ability to recoup costs is simply untrue.
- The second objection — the idea that patents are the only means available to promote innovation — has become a dogma.

What are the alternatives proposed?

- Under the current system, poor are unfortunate enough to have the disease and are forced to pay the price.
- Therefore a system that replaces patents with prizes will be more efficient and more equitable.

- So various economists are proposing a prize fund for medical research in place of patents.

- This ensures incentives for research will flow from public funds while the biases associated with monopolies are removed.
- The pandemic has demonstrated how immoral the existing world order is which should not be allowed to persist.
- If nation states are to act as a force of good, they must attend to the demands of global justice.

Source: The Hindu

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