

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS WITH SPECIAL REFERENCE TO THE PATENTS ACT, 1970

Shruti*

ABSTRACT

With the growing importance of intellectual property in trade and commerce across the globe, a need to protect and enforce intellectual property rights at the international level was strongly felt. These needs marked the arrival of an agreement i.e., the Trade-Related Aspects of Intellectual Property Rights Agreement, among the member nations at the international level. The overall objective of the Agreement is to protect and enforce intellectual property rights. This goes without saying that any person who infringes the intellectual property rights of a person who has an exclusive right over the invention can be made liable to pay damages or other penalties. Moreover, the Agreement contains details as to the manner in which the intellectual property rights can be defended, including requirements for gathering evidence. In the Indian context, TRIPS Agreement and its compliance witnessed a mixed impact on innovation. On one hand, it encouraged the inventors to use their creativity and come up with innovative inventions and ideas. On the other hand, it made it difficult for the local manufacturers particularly in the field of medicine to produce generic drugs at affordable prices to meet the local needs of the people.

Journal of Legal Research and Juridical Sciences

TRIPS AGREEMENT: INTRODUCTION

Trade-Related Aspects of Intellectual Property Rights (Hereinafter referred to as “TRIPS”) Agreement came into force on January 1, 1995, establishing the World Trade Organisation as part of the agreement¹. To get a comprehensive idea about the goals or objectives of the TRIPS agreement, reference can be made to the Preamble of the Agreement which states the following to be the general goals of the said Agreement: promotion of adequate and effective protection of intellectual property rights followed by reduction of impediments to international trade, ensuring that the methods and procedures that exist for the enforcement of intellectual property rights do not end up becoming hurdles to legitimate trade. The objectives of the TRIPS Agreement as laid down in the preamble shall be read with Article 7 of the

*ST. XAVIER UNIVERSITY, KOLKATA.

¹ Agreement on Trade - Related Aspects of Intellectual Property Rights [1995]

Agreement which states that *“The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.”*

The TRIPS Agreement not lays down the minimum standards for the availability, scope and use of certain forms of intellectual property such as patents, copyright, geographical indications and so on but it also lays down permissible exceptions and limitations in order to balance intellectual property rights with that the interests of public health and economic development. Here, reference can be made to Article 8 of the Agreement which states that *“Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.”* It is pertinent to point out here that the TRIPS Agreement only lays down the minimum standard and therefore, member countries are at liberty to provide higher standards for the protection of intellectual property rights in their country.

When the countries signed the TRIPS Agreement, it basically means that they are compatible and are looking forward to bringing changes in their national legislations relating to patents, copyrights and so on, such that their national legislations are in consonance with the TRIPS Agreement signed by them. Before the TRIPS Agreement, developing countries like India were flexible in relation to legislation such as patent laws. However, after mandatory minimum standards for intellectual property protection were laid down by the TRIPS Agreement, it led to significant challenges in India which has robust pharmaceutical industries and an enormous population in need of affordable medicines.

IMPACT OF TRIPS AGREEMENT IN LIGHT OF THE PATENTS ACT

The TRIPS Agreement entailed a mixed impact on innovation in the country. The minimum standard for protection of intellectual property rights as laid down by the TRIPS Agreement incentivized investment in the field of research and development by inventors. The fact that the inventions will be protected for a certain period of time and that their hard work will be

recognized by providing the inventors with an exclusive right over their creation inculcated a sense of assurance and relief in the inventors.

The Patents Act, 1970 contained several provisions which enabled India to produce affordable medicines in order to meet the requirements of a large section of the population. However, after the TRIPS Agreement came into force, the patent laws in India were amended to be in line with the minimum standards laid down by the agreement. This resulted in the removal of several provisions from the Patents Act, by virtue of which not only generic medicines were produced in the country but also cheaper drugs were imported from other countries.

The major impact of the TRIPS Agreement can be seen in the area of accessibility to medicines in India. The removal of Section 3(d) from the Patents Act made it easier to obtain patents on new forms of known substances by making minor modifications to the existing drugs. This resulted in a spike in the prices of the drugs, making them unaffordable to a larger chunk of the population². Moreover, the amendment in the Patents Act restricted the scope of issuance of compulsory licences by the government. Issuing a compulsory licence by the government was crucial in the sense that it allowed the government to grant a licence to manufacture a patented drug without taking the consent of the patent holder. The purpose behind issuing compulsory licence was to tackle health emergencies. If only certain pharmaceutical companies produce a drug that is in great demand by the public owing to a health emergency, then the government could grant the licence to other pharmaceutical companies to produce the same medicine without taking permission from the patent holder in order to meet the needs of the public. It is true that the TRIPS Agreement allows issuing a compulsory licence in certain circumstances but the scope of issuing the same has been drastically narrowed. The scope to issue compulsory licence was further narrowed after the landmark case of *Novartis A.G. v Union of India*³ in which the Apex Court was restrictive in its approach to interpreting Section 3(d) of the Patents Act making it difficult for the pharmaceutical companies to manufacture drugs by making minor modifications in the already existing patented drugs.

² Mayank Rai, 'The Impact Of The TRIPS Agreement On Indian IP Laws And Their Implementation' <<https://www.legalserviceindia.com/legal/article-10867-the-impact-of-the-trips-agreement-on-indian-ip-laws-and-their-implementation.html>> accessed 15 June 2023

³ *Novartis A.G. v Union of India* [2013] 13 SCR 148

During the COVID-19 pandemic, TRIPS Agreement was in the news as South Africa and India had presented a proposal before the World Trade Organisation in October 2020 regarding waiving off the TRIPS Agreement for COVID Vaccines and drugs during the pandemic so that the necessary drugs and vaccines to cure the virus can be made available globally. If only a few pharmaceutical companies are patent holders to manufacture drugs and vaccines to cure COVID-19, most people all around the globe, particularly people from developing countries, would be deprived of curing themselves of the said virus due to the non-availability of such drugs or vaccines. Even if the vaccines are made available by importing them from Western countries, the same would be available only at an unaffordable price. However, the proposal witnessed protests from the pharmaceutical giants on the ground that the developing countries lacked the ability to manufacture the drugs and vaccines on a large scale so as to satisfy the needs of a large population as produced by the pharmaceutical giants of the Western countries. It is true that unless the inventors are rewarded for their inventions by providing them exclusive rights over the same, they will not be able to recover the investments made by them in the field of research and development. Moreover, the incentive to invent will take a serious hit if the inventions are not protected. The concerns raised by the pharmaceutical companies are valid as waving the TRIPS Agreement would serve no purpose if the developing countries are not backed by technological assistance in manufacturing medicines. Lack of technology would render the waiver useless as even for starting the process of producing vaccines such as mRNA vaccines, sophisticated manufacturing equipment is required followed by raw materials in order to be able to initiate the process of manufacturing vaccines for the general public on a large scale.

COMMENTS

Although India has successfully implemented TRIPS Agreement in respect of any intellectual property matters such as patents, trademarks, copyrights and so on. but there is always scope for improvement. India needs to enhance its IP infrastructure which can be done by establishing IP courts and introducing courses related to Intellectual property rights in the curriculum of law so that the number of qualified IP Judges and lawyers can be increased. Not only law students but also the general public should be made aware of the IP laws. To achieve this, workshops and seminars whether online or offline could be arranged. Moreover, the government should incentivize investment in research and development which will facilitate the creation of new technologies, commodities and services that will contribute to

the Indian economy. Prudence is required to be exercised when striking a balance between the protection of intellectual property rights and protecting the public interest. IP laws are not to be implemented in such a manner as to make their existence detrimental to the public. The legislature must frame legislation allowing the government to issue compulsory licences in the event of health emergencies. Furthermore, in order to strengthen the ties with other countries in relation to IP issues, India should actively participate in international platforms such as WIPO and WTO. However, the key thing to keep in mind is that any change made in relation to the IP laws should be made only after taking into account the unique needs of society.

CONCLUSION

There is no dispute that TRIPS Agreement is by far the most comprehensive mechanism at the international level to protect intellectual property rights. The Agreement, in essence, is the manifestation of the erstwhile IPR conventions but with modern concepts. As far as the implementation of the TRIPS Agreement in India is concerned, it can be said that it has been a complicated and dynamic process. While there have been obstacles and complaints, India has made tremendous progress in enhancing its intellectual property system and TRIPS compliance. However, improvements have to be brought about in the present IPR regime in India to strengthen the system and to ensure compliance with the TRIPS Agreement of which it is a member. In order to satisfy the basic needs of the world's largest democracy, India will have to strike a balance between national needs and international obligations while promoting development, innovation and public interest.