



Impact of trips agreement on developing country India

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Abstract

In the present world, intellectual property has gained international importance because of international treaties like TRIPS Agreement that has been signed by both developed and developing countries. The national barriers with respect to IPR have crossed and reached to the international level at the same time intellectual property has also become controversial and debatable issue at the international level. The socio economic scenarios of developed and developing countries are quite different. So there are many provisions in the TRIPS agreement which suit to the socio economic scenario of developed countries, however it does not suit to the developing countries. The implementation of TRIPS agreement is dominated by the developed countries; they impose those provisions of TRIPS agreement in a very strict manner which suit to the economic benefits of developed countries thus the developing countries tend to suffer at the hands of developed countries. This paper thus attempts to understand how TRIPS provisions are affecting the growth and development of developing nation like India.

Keywords: TRIPS, IPR, developing nation

1. Introduction

This article deals with the importance given to the international treaties like TRIPS Agreement that has been signed by both developed and developing countries. The national barriers with respect to IPR have crossed and reached to the international level at the same time intellectual property has also become controversial and debatable issue at the international level. The socio economic scenarios of developed and developing countries are quite different. Of all the World Trade Organization (WTO) negotiations, the Trade-related Aspects for Intellectual Property Rights (TRIPS) Agreement is without doubt the most contentious of its development-related impacts. The agreement allows all WTO Member States to set minimum standards for legal protection and compliance of a number of different types of intellectual property. Most developing countries claim that the TRIPS agreement that came into force in 1995 is unbalanced in that it benefits developed countries and transnational corporations and, at the same time, is unhelpful to their own interests or even detrimental. Furthermore, concerns have been raised about the steps to ensure that developing countries accept higher levels of security of intellectual property than the WTO needs, even before they have decided how best to enforce the TRIPS agreement in ways that facilitate economic development and alleviate poverty.

1.1 The Development of Trips

The rights covered by TRIPS include copyright and related rights; trademarks; geographical indications; industrial designs; patents; layout-designs of integrated circuits; protection of undisclosed information (trade secrets); and control of anti-competitive practices in contractual licenses. The levels of security and compliance expected by WTO member states are very high in that they are basically those only recently reached by developed countries themselves. In this sense, TRIPS is a synthesis of three developments in international IPR law, the origins of which date back to the

end of the 19th century but which have become particularly evident in the last two decades.

The first pattern reflected in TRIPS was to expand the scope of subject matter that can be covered, and to reduce or eliminate 'exceptions.' Common examples of this, some of which are mandated by TRIPS, include expanding the scope of copyright to computer programs that are now regarded as literary works, and applying patent protection to plants, animals, micro-organisms, DNA sequences, and pharmaceuticals.

The second trend is to add new forms of rights to the global IPR system, such as rights of plant breeders, and rights to integrated circuit layout designs (which TRIPS expressly requires).

The third is the gradual international standardization of the basic IPR features. For example, patent regulations increasingly offer protection from the date of application for a period of 20 years. Until recently there was wide variation in timescales between countries. In addition, patent applications must now be subjected to literature reviews and tests in almost all countries in order to ensure that what they represent is genuinely new, innovative and relevant to industry. Therefore, patent rights are now granted almost exclusively to the first claimant rather than to the first inventor (except in the United States where the reverse is the case).

1.2 Intellectual Property and Development

It is unclear the precise nature of the connection between IPRs and economic development. The main question is not whether or not IPRs can continue to develop economically. Most governments actually agree that they can and do. History suggests that well-functioning IPR systems have made a significant contribution to and continue to make a significant contribution to the industrial revolutions that took place in Europe, North America and Japan in the 19th century, as demonstrated, for example, by the rapid growth of the modern pharmaceutical industry. More controversial

is the extent to which IPR systems should be allowed as they were prior to TRIPS to vary according to the levels of development and technological self-sufficiency that individual developing countries have reached. The issue here is whether a relatively stringent IPR regime (as embodied by TRIPS) will best encourage economic growth in all countries, or whether a more flexible one may be more appropriate for some of them.

Developed countries and business associations, whose members benefit directly from effective IPR regimes, tend to adopt the first position. Critics argue that strong IPR regulation would allow developing countries to attract more investment as foreign firms are unwilling to invest in a country where their innovations could be replicated with little compensation and thus gain better access to new technologies brought from outside. As a result of the benefits provided by the IPR program to inventors and innovators, developing countries would also be inspired to produce more inventions on their own.

But many governments in developing countries are concerned that the legal standards imposed by TRIPS, especially for patents, may at present simply be too high for their countries. We worry, for example, that expanding IPR rights to advanced industrial fields such as biotechnology and information and communications technology will only favor foreign businesses as their domestic firms lack the ability to innovate in this field.

1.3 Trips and Its Impact on globalization

Under the aforementioned heading, the researcher wanted to show the relationship between the two, i.e. TRIPS And GLOBALISATION, as we can see that trade between the countries has increased to date and the new path is opening day by day to promote easy trade at international level in such a long time as the numerous agreements such as GATT, TRIPS, Madrid and the Paris Convention come into the picture.

Globalization is the new buzzword that has dominated the world with the end of the cold war and the break-up of the former Soviet Union and the global trend toward the rolling ball since the nineties of the last century. State boundaries with increased reliance on the market economy and renewed trust in private capital and resources, a cycle of structural adjustment driven by World Bank and other international organizations' studies and influences, have begun in many developing countries. Globalization has also given developing countries new opportunities. Greater access to developed country markets and technology transfer aims to improve productivity and a higher standard of living. Yet globalization has also created new problems such as growing inequality across and within nations, financial market instability, and degradation of the climate. Another negative aspect of globalization is that there is still a large majority of developing countries out of the mainstream yet globalization has also created new problems such as increasing inequality across and within countries, financial market instability, and degradation of the climate. Another negative aspect of globalization is that the vast majority of developing countries are still out of the loop.

ONE-THIRD lacks access to essential drugs from the world's population. More than half of the population in the poorest parts of Africa and Asia have no access to essential drugs. Most successful solutions in developing countries are

and have been out of reach of people for many years. The situation may even get worse in the near future due to globalization and new international trade rules, hence the need for new approaches to secure and further the basic human right to access health care.

There may be different causes for lack of availability of vital drugs, including logistical supply and storage issues, poor quality, excessive drug selection, unnecessary prescribing and use, inadequate manufacturing, insufficient drug research and development (R&D) and prohibitive costs.

1.4 Trips and national treatment that each member must accord with other nationals

Each Member shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property,

Article 4 of trips agreement deals with most favored national treatment that is if any member country gives any advantage, privilege or immunity to any of the nationals of any other country then it shall accord the same advantage and privileges to all the other member countries. Thus this provision emphasizes on equal treatment of member countries without any discrimination. Exempted from this obligation is any advantage, favors, privilege or immunity accorded by a Member: ^[1]

- Deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;
- Granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of National treatment but of the treatment accorded in another country;
- In respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;
- Deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute ^[2] an arbitrary or unjustifiable discrimination against nationals of other Members ^[3].

1.5 Legislative framework of IPR laws in India

Intellectual Property Rights (I.P.R.) is the legal rights governing the use of creations of the human minds. Intellectual property refers to creation of mind, i.e., inventions, industrial designs for article, literary and artistic work, symbols, etc., used in commerce.

The term "Intellectual Property" has been used for almost more than one hundred and fifty years, which refers to the general area of law that includes copyrights, patents, designs and trade mark and the related rights. The intellectual property law regulates the creation, use and exploitation of mental or creative labour. There are number of forms and

¹ <http://www4.law.cornell.edu/uscode/35/>

² www.worldtradelaw.net/uragreements/tripsagreement

³ http://www.wto.org/english/tratop-e/com_e/ecom_e.html,

important differences between the various forms of intellectual property. The single factor that they are in common is that they establish property protection over intangible things such as ideas, inventions, signs and information^[4].

Intellectual property is divided into two categories: industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source: and Copyright, which includes literary and artistic works such as novels, poems, plays, films and musical works, etc. According to the TRIPS Agreement, the intellectual property has been classified into—Patents, Industrial Designs, Trade Marks, Copyright, Geographical Indications, Layout Designs of Integrated Circuits, Protection of Undisclosed Information / Trade Secrets. Different IP Right varies in the protection they provide.

Following are the Acts included in the intellectual property regime.

1. The Trade Marks Act, 1999
2. The Patents Act, 1970
3. The Copyright Act, 1957
4. The Designs Act, 2000
5. The Geographical Indications of Goods (Registration and Protection) Act, 1999
6. The Protection of Plant Varieties and Farmers Rights Act, 2001
7. The Semiconductor Integrated Circuits Layout Design Act, 2000

Justification for Intellectual Property

The question is why legal protection is provided to intellectual property? The general justification for the protection of intellectual property rights is that the intellectual property induces or encourages desirable behavior. For example, patent system is sometime justified on the basis that it provides inventor with an incentive to disclose valuable technical information to the public, which would have otherwise remain secret. Similarly the trade mark system is justified because it encourages traders to manufacture and sell high quality products. It prevents third parties from becoming unjustly enriched by “reaping where they have not sown” and it also encourages them to provide information to the public about those attributes. The ethical and moral arguments justify intellectual property rights because the law recognizes an author’s natural rights over the product of their labor.

1.6 criticisms and controversies of trips agreement

TRIPS agreement has many broad brush provisions. Many provisions in the TRIPS agreement are very vague and broad. These provisions are susceptible to different interpretations. At times controversy arises because of such broad provisions. Some of the examples of broad brush provisions present in the TRIPS agreement are Article 27 of TRIPS agreement about subject matter of patent. Article 27 of TRIPS agreement states as to what is patentable but the provision is very broad and subject to different interpretations. Some of the provisions in TRIPS are also inconsistent to each other, for example Article 27.2 of TRIPS agreement excludes patentability of all life forms

however Article 27.3 allows patentability of micro organisms. The micro organisms are also living creature hence these should also be excluded from patentability^[5].

TRIPS agreement is frozen in time. The GATT / WTO agreement on trade related aspects of intellectual property (TRIPS) concluded on April 15th 1994 and entered into force on Jan. 1, 1995. The provision of the TRIPS agreement has been framed in 90’s so some of the provisions of TRIPS have become obsolete and needs review and amendment. Since TRIPS has been framed in late 90’s so many of the provisions of TRISP do not suit to the socio-economic scenario of present situation.

TRIPS agreement fails to cope-up with new and changing technologies. TRIPS agreement sets only minimum standards and thus it establishes only a floor and not a ceiling for IPR Protection. The main objective and principle of TRIPS agreement is to set only minimum standards required for the protection of IPR. Moreover the minimum standards which it emphasizes does not suit to the socio-economic scenario of each member country, so the member countries need to carefully draft their own legislative frame work for better protection of intellectual property. The TRIPS agreement needs to be reviewed and amended with the changing world.

The implementation of TRIPS agreement is mainly dominated by the lobby of developed countries they pressurize the implementation of that interpretation of the provisions of TRIPS agreement which suit to the developed country’s economic benefits. Developing countries are suffered at the hands of developed countries.

The proper role of IPRs in light of a globalizing economy remains contested. “The difficulty stems from divergent concepts of property and ownership. Different legal principles exist from country to country, stemming from the particular social, political and ideological experiences of each, Prior to the TRIPS Agreement, IPRs protection ranged from totally open regimes that did not protect private IPRs to highly protectionist regimes in which both products and processes could be protected while views both for and against extensive IPRs protection, as evidenced by the TRIPS agreement are strong, there is little concrete evidence that it is the only incentive for innovation or that it will lead to socio-economic and technological development. Ultimately, the TRIPS Agreement is the type of global protection of IPRs that developed countries have been seeking. “However, the TRIPS Agreement simultaneously narrows the developing countries’ access to technology, discouraging the rapid diffusion of new technology needed for economic growth.

Major Findings

- The provisions of TRIPS Agreement are very broad and vague; many provisions are inconsistent to each other.
- There are some provisions in TRIPS Agreement which are more favorable to developed countries as compared to developing countries like there are provisions of additional protections in respect of geographical indications for wines and spirit whereas the additional protections are not available to products of developing countries.

⁴ G.B Reddy, Intellectual property law, Gogia Law Agency, Hyderabad, at p. 197

⁵ Helfer Laurance R., Regime shifting the TRIPS Agreement and New Dynamics of International Intellectual Property Law Making, Journal of International Law, 29(1), 2004, at p. 42

- There are some provisions of TRIPS Agreement which have become obsolete with changing world and technology.
 - There are many provisions in a TRIPS Agreement which do not suit to the socio-economic scenario of developing countries.
 - There are some provisions in a TRIPS Agreement which strike at the heart of the fundamental rights of the citizens of India.
 - India has framed extensive legislative framework of IPR Laws in India but still it has not completely complied with all the provisions of the TRIPS Agreement.
 - The implementation of the TRIPS Agreement is dominated by the lobby of developed countries; developing countries are suffering at the hands of the developed countries.
5. <http://www.judis.nic.in/>
 6. <http://www.hcbombayatgoa.nic.in/>
 7. <http://www.dpahuja.com/welcome.asp>
 8. <http://www.wto.org/english/trat> -on this website resercher got the detail about WTO, GATT,Paris and Madrid as well as TRIPS agreement.
 9. ¹ <http://www4.law.cornell.edu/uscode/35/>, visited on 02/02/2011
 10. ¹ www.worldtradelaw.net/uragreements/tripsagreement
 11. ¹http://www.wto.org/english/tratope/com_e/ecom_e.ht ml

Conclusion

The present day scenario, the concept of intellectual property has assumed recognition and importance. IPR has crossed national barriers and the issue has universal dimension. It is now unanimously agreed that the issue of IPR shall be governed by an international code. Of late it has been recognized by community that science and technology need to be used for constructive and purpose and these development need to be linked to the social and welfare of the masses.

In order to govern the issue pertaining to intellectual property, number of laws enacted but Indian experience with IP has not been satisfactory. The legal regime of IP in India has been deputation of the British laws and most of the Indian laws are virtual copies of the British legislation which have been passed from time to time. The advent of globalization and emergence of the concept of free trade, the entire complex of trade relation between countries has undergone sea change. An understanding has emerged that for a better and progressive economy, trade needs to be free and national barriers should impediment. There is a need for international agreement on IPR

TRIPS agreement is indeed a very important international agreement which is laid down to provide minimum level of protection to intellectual property rights at international level. The provisions of the TRIPS agreement are very broad and vague. Since many of the provisions are very broad and vague, they are subject to different interpretations. Different member countries make different interpretations of the TRIPS agreement. The TRIPS agreement is dominated by the lobby of developed countries, so the developed countries emphasize on the implementation of those interpretations, which suit to their economic benefits.

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