



NEW WINGS TO THE IPR REGIME: A STATUTORY CURE IN THE CORONAVIRUS ERA

Prachi Ajitsaria¹ and Shahin Ahmed²

Abstract

Life under lockdown has not only altered the lives of the people, but also different aspects of health care, security of rights and medication access. The current pandemic has created a danger that the intellectual property domain might be thrown into a nosedive. Companies with large IP holdings are greatly influenced by the pandemic and are therefore seeking to take certain compulsory action to mitigate the effects of the pandemic. Because, of the pervasive confusion, IP rights holders are on the brink of violation of their rights by third parties. Unadulterated guidance is needed for trademarks, patents and copyrights. With insufficient access to services, workers employed in the IP field are continually perplexed. The pandemic has impaired the seamless running of the IP network. In order to resolve the effect, IP offices around the world are formulating initiatives. The United States Copyright Office and USPTO are disseminating their services through electronic media. EU world intellectual property organization implemented the Coronavirus Aid Relief and Economic security act (CARES Act) by the. When biopharmaceutical companies invest massively without any guarantee that their vaccinations will make the pandemic move away, this pandemic is deleterious to intellectual property. Given the current situation of COVID-19, it was announced by WHO as a pandemic, marking it a national emergency or a case of extreme urgency under Section 92, 100 and 102 Indian Patent Act, Chapter 417 (laws of Malta, Article 31 TRIPS. Many countries are adapting Intellectual Property Laws to prioritize health during the pandemic. The Article highlights the corona affect, the role of Intellectual Property Rights, the required measures, benefit from their IP assets and the key to an edge.

Keywords: Compulsory Licensing, Patent Pool, Public Private Partnership, TRIPS agreement, United States Patent and Trademark Office (USPTO).

¹ National Law University and Judicial Academy, Assam.
Email: prachi025@nluassam.ac.in

² National Law University and Judicial Academy, Assam.
Email: sha32779@nluassam.ac.in



Introduction

World Health Organization defines “a pandemic as a disease that happens worldwide or in a relatively broad region crosses the borders of several nations and usually impacts a significant number of people.”³ The COVID-19 pandemic has caused a significant toll on people across the world due to its unforeseen challenges. According to the IMF, the global economy is expected to decline by over 3 percent in 2020, the highest contraction since the Great Depression of the 1930s. More than 36 million people are applying for unemployment benefits around March 21, which is nearly a quarter of the working-age population, as per a Reuters report.⁴

In implementing the rights specified in Section 6(2)(i) and Section 10(2)(l) of the National Disaster Management Act 2005 in accordance with the Epidemic diseases Act of 1897 Act, the Central Government and the Ministry of Home Affairs (MHA) issued a directive dated by the Ministries/ Government Departments of India and the Territorial Governments of the Ministry of Home Affairs.⁵

The directive issued emphasizes on the powers and functions of the National Executive Committee and National Authority, lay down policies on global disaster management⁶; The corona-virus spreads by interaction with an infected person; all the government of the world is focused on keeping social distance to monitor the disease transmission. These lockdowns have incarcerated many people to their homes slamming the business sectors eventually leading to a halt in all the economic activities.

³WHO, 'Infection Prevention And Control Of Epidemic- And Pandemic-Prone Acute Respiratory Infections In Health Care' (2014) <https://apps.who.int/iris/bitstream/handle/10665/112656/9789241507134_eng.pdf?sequence=1> accessed 01 August 2020.

⁴Brad Brooks Andy Sullivan, 'The Government is Failing Us: Laid-Off Americans Struggle in Coronavirus Crisis' (2020) <<https://in.reuters.com/article/health-coronavirus-usa-unemployment-insi/the-government-is-failing-us-laid-off-americans-struggle-in-coronavirus-crisis-idINKBN22J2CA>> accessed 04 August 2020.

⁵WHO, 'Infection Prevention And Control Of Epidemic- And Pandemic-Prone Acute Respiratory Infections In Health Care' (2014) <https://apps.who.int/iris/bitstream/handle/10665/112656/9789241507134_eng.pdf?sequence=1> accessed 02 August 2020.

⁶THE DISASTER MANAGEMENT ACT, 2005 <<https://www.ndmindia.nic.in/images/The%20Disaster%20Management%20Act,%202005.pdf>> accessed on 25th august 2020.



Impact of the Corona Virus on the Global Economy

Owing to a loss of productivity and unsustainable spending on the care and recovery of COVID-19 victims, countries are on the brink of levels of inflation.⁷Most importantly, it will have a tremendous influence on the human rights of a number of persons. This epitomizes the first case of history that the virus violates human rights. Democracy opinion was colored by three major freedoms with the adoption of the lockdown at universal application they are the right to education, the right to life and the right to livelihood (wages for self-support).⁸

These human rights are universally accepted and is being affected due to the pandemic. Fundamental rights are rights within specific territorial boundaries like the Constitution of India guides fundamental rights under part III for Indian citizens whereas, human rights are universally accepted rights like right to life, right to education. Fundamental Rights can be violated by government at time of this global crisis but Human rights cannot be curved under any prevailing circumstances like right to once life cannot be violated by any authority.

The Public Distribution System has dwindled egregiously to ensure the right to food to the people⁹. The judgment in PUCL v. Union of India¹⁰ guaranteed Right to food (under right to life) could not be put forth amid the time of pandemic. Despite the situation in mind, several NGO's and people have come out with food packets, sanitation, and basic protection equipment. Government has also approved schemes to provide food grains to people.

⁷Fair Health, "The Projected Economic Impact of the COVID-19 Pandemic on the US Healthcare System"(2020) <<https://www.fairhealth.org/article/fair-health-releases-brief-on-covid-19> > accessed 05 August 2020.

⁸ARORA N, 'How Covid-19 Is Questioning The Constitutional Fabric Of India' (*Dailyo.in*, 2020) <<https://www.dailyo.in/politics/covid-19-coronavirus-in-india-lockdown-fundamental-rights-constitution-of-india-right-to-health-right-to-education-midday-meal-privacy/story/1/32712.html>> accessed 7 August 2020

⁹ Neetu Abey George and Fiona H. McKay, "The Public Distribution System and Food Security in India" (2019 Sep; 16(17): 3221.) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6747310/>>

¹⁰*People's Union of Civil Liberties (PUCL) v. Union of India*[1997]1 SCC 301.



The lack of PPE is a severe violation of the fundamental rights of COVID-19 healthcare workers, making them fall beyond the framework set out in the CERC judgment¹¹. Also, the judgment of *K.S. Puttaswamy v. UOI*¹² ruled that the right to privacy was a constitutional right under Article 21 along with adding Article 21-A the legislature made the right to free and compulsory education (which is a part of human rights) under the Constitution of India. Since the lockdown was enforced, both of these rights were greatly violated or disregarded by the State. The incompetent administration struggled to keep up with labour legislation and appeared to be a massive let down in government policy. It did not seem to be a measure taken to tax or compensate those in the informal sector. One example of this is that of street vendors – a group that has been well documented and covered by the Street Vendors Act¹³. This led to vulnerability among the casual sector workers which eventually caused death out of hunger and starvation. More than 40 crore informal workers in India could be forced into deeper poverty due to the outbreak of COVID-19, according to the ILO survey¹⁴. In addition, 1.25 billion workers in these sectors are at high risk, more than 37.5 percent of the world's workers. In the low- and middle-income countries where factories and services hire a significant proportion of these workers, who account for 61 percent of the world's population or 2 billion people, the state of low-paid and low-skilled informal workers is very troubling. Therefore, indicating the denial of the right to livelihood. COVID-19 outbreak has left the system challenged with many questions that emerges out of the observation during the recent months. Some lead to the novel innovations outlined in the Integrated Global Science Blueprint¹⁵ for COVID-19 of the World Health Organization, while others have arisen from the needs of primary healthcare operations. India's efforts are commended not only for defending its population but also for supporting other nations by supplying anti-malarial medication, which has become widely popular as a tool to counter COVID-19 outbreaks.¹⁶

¹¹ *Consumer Education & Research Centre (CERC) and others v. Union of India and others*, [1995] AIR 922.

¹² *KS Puttaswamy v Union of India* [2012] Writ Petition (Civil) No 494.

¹³ The Street Vendors Protection of Livelihood and Regulation of Street Vending Act 2014.

¹⁴ K Chandra Shekar and Kashif Mansoor, "COVID-19: Lockdown Impact on Informal Sector in India"< COVID-19: Lockdown Impact on Informal Sector in India>accessed on 26th August 2020.

¹⁵ 'R&D Blueprint And COVID-19' (*Who.int*, 2020) <<https://www.who.int/teams/blueprint/covid-19>> accessed 26 August 2020

¹⁶ Bisht A, 'How An Anti-Malarial Drug Has Become A Tool Of India'S Diplomacy' (*Aljazeera.com*, 2020) <<https://www.aljazeera.com/news/2020/4/16/how-an-anti-malarial-drug-has-become-a-tool-of-indias-diplomacy>> accessed 27 August 2020



The Effect on the IPR Regime

The availability of Hydroxychloroquine has been used as a first remedy to prevent covid patience. At time with no availability of medicine or vaccine HCQ helped providing scope and had cured semi-infected patience's all over the world. India provided a supporting hand to many countries by providing hydroxychloroquine.

Several possible benefits against COVID-19 disease are shown by hydroxychloroquine (HCQ). Hydroxychloroquine (HCQ) and chloroquine (CQ) have been licenced by the FDA as an Emergency Usage Authorization for COVID-19. HCQ exerts significant immunomodulatory effects. Not all patients are appropriate for HCQ versus COVID-19¹⁷. Thereby a very pertinent question raises – Can these present medicinal drugs we use to curve COVID-19?

If so, are people free to use tools like that? Nothing has been hundred percent guaranteed in curving the disease but researchers around the globe are trying to find solutions that can help reduce corona's severity in infected people. Once the medicine is produced, the pharmaceutical companies will try to protect their products and process under the intellectual Property Rights (IPR) preventing its widespread manufacture and use by patent filing.¹⁸

By now, laymen as well as the global legal fraternity have realized that our IPR, constitutional legal frameworks was not designed with a view of a global pandemic. To react to this threat, additional laws were imposed around the board, thus converting several democratic nations into de facto police states overnight. At such an endemic time, world organizations and counties must use their power, their hold on IPR laws to save their people's lives. The dire consequences of COVID-19 have reached its zenith.

¹⁷ Li, X., Wang, Y., Agostinis, "Is hydroxychloroquine beneficial for COVID-19 patients?"(08th July 2020). <<https://doi.org/10.1038/s41419-020-2721-8>> accessed 27 August 2020

¹⁸Explained Desk, 'How covid-19 has affected the global economy,' The Indian Express, (New Delhi, India, 16th May 2020) <<https://indianexpress.com/article/explained/explained-how-has-covid-19-affected-the-global-economy-6410494/>> accessed 07August 2020.



The IPR laws will eventually bring patent rights to the pharmaceuticals and will help in production and with increase in production they would help in meeting the demand supply in the market. Where the need for vaccines is at the earliest these IPR regimes and other initiatives will help in pooling investment through different ventures and bring support to cure the pandemic as soon as possible. As it is rightly said “together we grow together we succeed”. With the help of IP laws the big pharma corporations adds small biotechnical laboratories, aiding clinical trials at a much faster rate. The law will also act as a safeguard for overlapping, conflict and specifically as guardian to the legal international agreements.

The trademarks, patents and copyrights under the dominion of U.S. federal court system have issued orders reducing physical proximity for the safety of the staffs. In the course of the pandemic, the staffs are working from home which generally implies that at times they might not stick by the agreement obligations as certain protocols would have been in place if they worked from their workspace. This might lead to termination of obligations of IP agreement¹⁹. The employees are toiling remotely and might not have access to adequate resources. Henceforth, this might lead to loss of trade secret protection when appropriate security measures are not in place to maintain confidentiality of information.

Few preventive steps should be implemented to minimize the chance of squandering. Employees and managers should be in continuous contact with each other about the ideas that have been created. Disclosure may cause patent protection to be lost. Employees ought to be cautious in some sort of notification. In order to ensure that patent rights are not breached during the pandemic, workers need to request recommendations from IP litigation lawyers to enforce effective mechanisms.²⁰

The IP infringement issues need to be guided by the experts. A review of all intellectual property agreements like licensing, joint ownership and research agreements need to be done to keep up with the IP obligations. The staffs need to be prudent about confidential information to avoid unintentional IP loss and avoid using unsecured sites while apportioning documents.

¹⁹The Economic Times, ' USTR puts India on priority watch list on Intellectual Property concerns' (2019) <https://economictimes.indiatimes.com/news/economy/foreign-trade/ustr-puts-india-on-priority-watch-list-on-%20intellectualpropertyconcerns/articleshow/69050830.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 11 August 2020.

²⁰'COVID-19 Impacts on Businesses and Their Intellectual Property Rights' (*JD Supra*, 2020) <<https://www.Jdsupra.com/legalnews/covid-19-impacts-on-businesses-and-20451/>> accessed 12 August 2020.



The employees and head staffs need to resort to teleconference for constant communication, especially in matters relating to confidentiality and proprietary information.²¹ The United States Copyright Office and USPTO are disseminating their services through electronic media. The hearings at the Patent and Trademark Trial and Appeal Boards and EPO are being directed to either postpone oral hearings or required them to be done via video-conference. USPTO has abolished petition charges.²² The EU Intellectual Property Office has introduced the Coronavirus Aid, Relief and Economic Security Act (CARES Act)²³ stretching its time limits by 30 days from the date of payment of such patent-related documents or payments to respond to patent and trademark acts as a result of the effect of COVID-19. By increasing bilateral interaction with USTR to meet the requirements of IP questions, USTR places India on the 'priority watch list' on 'Intellectual Property' concerns²⁴.

Under Section 301 of the US Trade Agreement²⁵, USTR will take necessary action in fighting against unfair trade practices and ensuring that their trading partners respect their international commitments. “During the past seven years, no compulsory license has been issued in India, and the IPO has retained a prudent and careful policy in its decisions on compulsory license applications”, words by IPA, a voice for major domestic drug manufacturers. The DCGI has approved two vaccines to join the first and second phases of human clinical trials, one developed by Bharat Biotech International Limited in partnership with the Indian Council of Medical Research and the other by Zydus Cadila Healthcare Ltd. According to ICMR reports, human clinical trials for Covid-19 vaccine were launched with around 1,000 volunteers taking part in the exercise for each of the two indigenously produced vaccine candidates.²⁶

²¹Vinod Kumar Menon, 'COVID-19: No Law for Vaccine Compensation in India' [2020] <<https://www.mid-day.com/articles/covid19-no-law-for-vaccine-compensation-in-india/22914213>> accessed 20 August 2020.

²²'COVID-19 Impacts on Businesses and Their Intellectual Property Rights' (*JD Supra*, 2020) <<https://www.jdsupra.com/legalnews/covid-19-impacts-on-businesses-and-20451/>> accessed 14 August 2020.

²³'USPTO Announces Extension Of Certain Patent And Trademark-Related Timing Deadlines Under The Coronavirus Aid, Relief, And Economic Security Act' (*Uspto.gov*, 2020) <<https://www.uspto.gov/about-us/news-updates/uspto-announces-extension-certain-patent-and-trademark-related-timing>> accessed 27 October 2020

²⁴The Economic Times, 'USTR Puts India on Priority Watch List on Intellectual Property Concerns' (2020) <https://economictimes.indiatimes.com/news/economy/foreign-trade/ustr-puts-india-on-priority-watch-list-on-intellectual-property-concerns/articleshow/69050830.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 16 August 2020.

²⁵The Trade Act of 1974 s 301 (19 U.S.C. §2411) -grants the U.S. Trade Representative (USTR) a range of responsibilities and authorities to investigate and take action to enforce U.S. rights under trade agreements and respond to certain foreign trade practices.

²⁶(2020) <<https://www.mid-day.com/articles/covid19-no-law-for-vaccine-compensation-in-india/22914213>> accessed 18 August 2020.



WHO director general on 24th August made an opening remark at media that “as of today 172 countries are currently involved in the COVAX Global Vaccine Project, which has become the worlds highest and most diverse collection of COVID-19 vaccines”.²⁷ Investing in the COVAX facility is the best way of stopping this pandemic and ensuring a sustained economic recovery. By the distribution process, COVAX will guarantee that all stable, middle and high-income countries provide the vaccine in a timely manner as long as a secure and successful vaccine is available. The next step for the collaboration is for countries to make contractual promises in favor of the COVAX project in order to be able to procure adequate doses to deploy the vaccines.

IPR right holders are given immunity from the exploit of third parties over their innovative. But the pandemic has built an extraordinary circumstance whereby IPR holders will be forced, even briefly, to enable third parties to utilize their IPRs, such as licenses or prototypes, for the public interest.²⁸ Several nations such as Chile, Israel, Germany, Canada, have released their legislation to promote compulsory licenses to help for the successful use, manufacture and selling of any IPR-protected medication or vaccine in that region for public interest.²⁹

Under Chapter 417 of the Laws of Malta³⁰, the Minister for Economy may allow the use, manufacture and distribution of an innovation without the approval of the patentee or application for a patent even without permission of the rights holder. Keeping in mind the current situation of COVID-19, the World Health Organization had declared it as a pandemic labeling it as national emergency or a case of extreme urgency as the death rates trolls every single day. These mean that in case of inventive and effective vaccine or drug, the government has the right to issue compulsory license for the same to effectively combat the public health crisis.

²⁷ PT Jyothi Datta, ' Covid Opens a New Flank in the IP Vs Public Health Stand-Off ' *The Hindu Business Line* (2020) <<https://www.thehindubusinessline.com/specials/pulse/covid-opens-a-new-flank-in-the-ip-vs-public-health-stand-off/article31426837.ece>>accessed 18 August 2020.

²⁸'COVID-19:And Its Effects On Intellectual Property' Lexology (*Lexology.com*, 2020) <<https://www.lexology.com/library/detail.aspx?g=5a6c1e3b-1ada-4ca5-96d3-10b6989e3f59>>accessed 21August 2020.

²⁹Andrew Green, ' COVID-19: Countries race to strengthen compulsory licensing legislation' <<https://www.devex.com/news/covid-19-countries-race-to-strengthen-compulsory-licensing-legislation-97595>> accessed 15August 2020.

³⁰Patents And Designs Act 2002 Chapter- 417 (Malta).



Clause 5(b) of the Doha Declaration³¹ reaffirmed that 'every representative of the WTO shall have the authority to grant compulsory licenses and the right to determine on the grounds for the issuance of such licenses.' Article 31 of TRIPS Agreement³² Member States may have a law allowing governments or third parties to exploit the subject-matter of the patent without the patent proprietor's due permission, and this requirement may also be waived under national emergency, intense urgency and general non-commercial use.³³ Thankfully, under sections 92, 100 and 102 of the Indian Patent Act³⁴, India may have found it appropriate to issue a compulsory license at any time in times of national emergency, in situations of serious necessity or in areas of non-commercial public use. In addition, in the event of a public health disaster such as an epidemic, it is not mandatory to follow the protocol for issuing a compulsory license as defined in Section 87 and Section 84 of the Act.³⁵

The landmark judgment regarding compulsory licensing in the "Bayer case"³⁶, the Hon'ble Court ruled that the proceedings pursuant to Section 84 of the Act must be in the public interest, as the whole justification for issuing the compulsory license is based on the purpose of making the proprietary product available to the public in appropriate quantities and at a reasonable price. In initial pricing negotiation with Thailand, Merck proposed Efavirenz and Abbott proposed Lopinavir/Ritonavir. Due to high costs, both offers were refused by the Thai government and mandatory licenses were given for both drugs in late 2006. Israel released a compulsory license to import generic forms of Lopinavir/Ritonavir on March 24, 2020. National Assembly Committee in Ecuador subsequently adopted a resolution ordering the Ecuadorian President and Minister of Health to offer free or accessible access to prevention, diagnosis and care services relevant to COVID-19 through the use of mandatory licenses.³⁷

³¹ Declaration on The Trips Agreement And Public Health (WT/MIN(01)/DEC/W/2 14 November 2001) <<https://www.who.int/medicines/areas/policy/tripshealth.pdf>> accessed 17 August 2020.

³² TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement 1995 Art 31.

³³ Paris Convention on Protection of Industrial Property 1883 Art 5A(2).

³⁴ The Indian Patent Act 1970 s 92, s 100, s 102.

³⁵ The Indian Patent Act 1970 s 87, s 84.

³⁶ *Bayer Corporation v. Union of India & Ors* [2014] W.P. (C) 1971, [2016] CS (COMM) No. 1592.

³⁷ Glob Health. 'The case for compulsory licensing during COVID-19' [2020] <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7242884/>> accessed 22 August 2020.



Patent Pools is another significant move by IP regimes in fighting COVID-19. In India, patent tools can either be set up by voluntarily getting license by the patent holder or by the government intervention. Thought the concept is very new in India and our Indian Patent Act, 1970 doesn't render for provision related to the formation of patent pool but at the same time neither restrains it from the creation of such rules and guidelines.

There are many who have started working on the development of drugs under the patent protection till 2035. With the help of section 102 of the Patent Act as a supporting provision for establishing patent pools that is to be controlled and managed by the government for public safety. The only hindrance in the functioning of patent pool that may be faced is the anti-competitive policies govern under the Indian Competitive Act 2002 (The Act disallows any agreement and license that prevents or reduce competition)³⁸. India is preparing to use Remdesivir, an anti-viral drug. Some of the other major Indian pharmaceutical companies have begun to work on the production of the proprietary drug "Gilead" developed by US pharma. India is now conducting the review of around twenty different medications to be used for COVID-19 therapy.

The Russian Direct Investment Fund, the Russian Sovereign Wealth Fund and the ChemRx Community have agreed to supply 17 countries with Avifavir (favipiravir), Russia's first COVID-19 approved drug. BioNTech agrees to purchase Novartis' manufacturing facilities in Marburg, Germany, with a view to increasing its production potential of COVID-19 vaccines by up to 750 million doses per year. Eli Lilly and Amgen declare a global partnership in the manufacture of antibodies to substantially expand the supply capability available for Lilly's future therapies for COVID-19.³⁹

In contravention to the Act of 2002, Section 140 of the Act of 1970 deals with certain restrictions that can be avoided at the time of providing license to work any process / product protected by patent under exclusive grant, prevention to challenges to validity of the patent licensing⁴⁰. Section 107A⁴⁰

³⁸ Manas Bulchandani, Akshya Khanna, 'Patent pooling in the Indian Scenario' [2018] <www.lawjournals.org> (International Journal of law [IJL] RJIF 5.12 Volume 4; Issue 2) 15-21 accessed 23 August 2020.

³⁹ 'Updated: Pharma COVID-19 Tracker' (*Global Pharma Insights*, 2020) <<https://www.globalpharmainsights.com/news/updated-pharma-covid-19-tracker>> accessed 27 August 2020.

⁴⁰ Mr. Vivek Anand Sagar.B, "Bolar Exemption – Indian Perspective" <<https://iplawindia.org/wp-content/uploads/2017/12/cipra-research-paper.pdf>> accessed 24 August 2020.



“Indian Bolar Exemption” is a defense used against Patent Infringement for Research and Development purpose. The court stated that rights conferred on the generic manufacturers, i.e. to the third parties under Section 107(A) are protected by the constitutional right, according to Article 19(1)(g) of the Indian Constitution. Right can't be curtailed merely by the lack of the term – export.⁴¹

Indian drug producers also face other obstacles. An Indian manufacturing factory can distribute products in the US only after it has been checked and licensed by the US FDA. Certification is of course out of the question with the ban on international trade, rendering it difficult for Indian drug makers to distribute in the US and other overseas markets.

‘Atmanirbhar Bharat’ or 'Self-Reliant India Mission' is India's Leader Narendra Modi's dream of transforming India into a self-reliant country. India self-reliant does not mean breaking off the part from rest of the planet. He started the initiative with a tagline vocal for local and asked its people to rely on local made good to balance the GDP of the Nation. Though India relies on China to meet its bulky drug requirement, the Indian government has taken steps to encourage the production of APIs and KSMs under the 'Made in India' initiative to reduce this reliance.

The bank credit facility would be extended up to Rs. 10,000 for each business for initial capital expenditures under this scheme. PM disclosed the economic bundle of Rs.20 lakh crores connected with the pandemic. The development of India's Personal Protective Equipment (PPE) market from nothing to 1,50,000 parts a day by early May is seen as a fine example of a self-reliant Country.⁴²

When the novel coronavirus exploded into a worldwide pandemic, the world faced a huge threat. The closure of borders and termination of international flights was one of the very first steps adopted by the international community, which was followed by restrictions on internal mobility, curfews and prohibitions on mass mobility.⁴³

⁴¹*Polpharma Sa Pharmaceutical works v. Astellas Pharma Inc* [2013].I-2 U 68/12 accessed 24 August 2020.

⁴²'18/07/2020' (*Empower IAS*, 2020) <<https://empowerias.com/blog/daily-articles/indian-pharma-industry-gs-3-empower-ias>> accessed 21 August 2020.

⁴³ Emre Aytakin, 'Steps taken by countries in fighting COVID-19 pandemic' [2020] <<https://www.aa.com.tr/en/health/steps-taken-by-countries-in-fighting-covid-19-pandemic/1812009>> accessed 21 August 2020.



The curfew was declared by Italy, Spain, Russia, and India, while the United Kingdom, Ireland, China Portugal, Brazil, Austria, and Israel, but they called for people to remain at home, they favored lighter restrictions. Governments around the world have introduced assistance programs for staff and businesses negatively impacted by the epidemic. In order to encourage international cooperation in the face of a pandemic, Turkey sent medical equipment to almost 30 nations, including the United Kingdom, Spain, and Italy.⁴⁴

A 25 billion euro fiscal rescue package has now been declared by the government. Other measures include the halting of layoffs, the one-time payout of EUR 500 to self-employed employees and incentives for Italians working during the lockdown. The German government announced the formation of a special crisis team to deal with the potential spread of Covid-19 in the region. With the exception of Brazil, Italy and Israel, all the countries with the highest cases registered have made it possible for the private sector in countries other than the Netherlands to postpone the treatment of the disease. Support, loans and funding have been given to substantially affected enterprises.⁴⁵

Several institutions filed patent applications on the genomic sequence of the coronavirus responsible for SARS, which led to discussions on the creation of a patent pool⁴⁶. In 2006, the Committee on Intellectual Property Rights, Invention and Public Health (CIPRH) of the World Health Organization (WHO) reviewed the reasons for creating public health patent pools and agreed that patent pools are on the upstream technologies may be helpful in fostering creativity that is applicable to developing countries.⁴⁷ The Patent Pool of Drugs is now involved in HIV, tuberculosis and hepatitis C, for which many proprietary drugs are on the WHO model list. Recently Leukaemia treatments Dasatinib and Nilotinib were added in 2017 list. The WHO will be in charge of building the pool system. The bill was tabled by the European Union, but the United States has held back on certain provisions.

⁴⁴ Emre Aytekin, 'Steps taken by countries in fighting COVID-19 pandemic' [2020] <<https://www.aa.com.tr/en/health/steps-taken-by-countries-in-fighting-covid-19-pandemic/1812009>> accessed 21 August 2020

⁴⁵Bhardwaj Ankur, 'The Coronavirus Crisis: How The World Is Dealing With The Pandemic' *Business Standard* (2020) <https://www.business-standard.com/article/economy-policy/the-coronavirus-crisis-how-the-world-is-dealing-with-the-pandemic-120040800819_1.html> accessed 22 August 2020

⁴⁶James H.M. Simon., 'Managing Severe Acute Respiratory Syndrome (SARS) Intellectual Property Rights: The Possible Role of Patent Pooling', (2005) < www.who.int/bulletin/volumes/83/9/707.pdf.> accessed 25 August 2020.

⁴⁷WHO, 'Report of The Commission on Intellectual Property Rights, Innovation & Public Health,' (2006) <<https://www.who.int/intellectualproperty/report/en>> accessed 26 August 2020.



Patent pooling will also overcome the problem of patent thickets relating to other upstream technology by calling for collaborative licensing to address the problem. WHO and the initial community of international health initiated a groundbreaking global and time-limited partnership on 24 April 2020 to accelerate the growth, processing, and inclusive global access to new critical health technologies for COVID. A rolling pledge drive was organised by the European Union on 4 May to increase awareness and encourage donations to the new cause.⁴⁸

The theme for the year is #VaccinesWorkforall. The Mission is not only about speeding up production and availability latest COVID-19 tools but it is to drive universal equal access to diagnose COVID-19 in a healthy, reliable, accessible and inexpensive way. Availability of therapeutics and vaccines, ensuring that nobody is left behind in the battle against COVID-19.⁴⁹ The problems of finance and regulatory enforcement can be solved by public-private collaborations.

The public-private partnerships and patent pools need to be endorsed at the global level.⁵⁰ The underdeveloped countries are already overburdened with poverty, lack of proper healthcare centers, Slums are closely packed spaces which make social distancing nearly impossible. Historically, public health programmes catering to slum areas have become ill-equipped to track health emergencies. The UHPs are dealing with slum residents' primary health care level.

The citywide quarantine soon followed the health crisis in Wuhan and the surrounding areas, reports of shortages of emergency protective equipment, medical personnel and hospital beds and created tremendous concern throughout the country. The National Health Commission of China released a notice on January 26, 2020, setting out guidance principles for emergency psychiatric distress measures aimed at minimising psychosocial risk.⁵¹

⁴⁸WHO, 'Access to Covid-19 Tools (Act) Accelerator'(2020)<<http://freepdfhosting.com/156521157a.pdf>> accessed 16 August 2020.

⁴⁹ WHO, 'Access to Covid-19 Tools (Act) Accelerator'(2020)<<http://freepdfhosting.com/156521157a.pdf>> accessed 16 August 2020.

⁵⁰'Needed: A Pandemic Patent Pool' (*The Hindu*, 2020) <<https://www.thehindu.com/opinion/lead/needed-a-pandemic-patent-pool/article31475628.ece>> accessed 22 August 2020.

⁵¹Jennifer Bouey, 'Public Mental Health Crisis during COVID-19 Pandemic China' (2020, Vol 26, Number 7) <https://wwwnc.cdc.gov/eid/article/26/7/20-0407_article> accessed 26 August 2020.



The U.S. mostly pays hospital costs, while Iran charges 10 percent of the real bill to individuals. The availability of hospital beds in the U.S., Spain, the U.K., China, Belgium, and India does not meet the needs in contrast, seven countries see the need to expand the number of intensive care units and 15 others require drugs.⁵²

With fewer physicians and a shortage of facilities, the quality of health care rendered by the Indian Public Health System is insufficient. Public health systems may face the risk of being overwhelmed by patients in the absence of adequate and reliable healthcare services. Their right to health is henceforth immensely ignored.⁵³ During the time of lockdown, this created a feeling of insecurity among migrant workers, with unfulfilled basic needs forcing them to return to their native places. But the government struggled to have sufficient transport services and was unable to resort to their issues.⁵⁴

A number of people are escaping from quarantine centers and some have also committed suicide. The quarantine facility is in sordid condition and lack of adequate care services makes it even worse. The staffs treat the inmates as untouchables and feed them by throwing food packets at them. Lack of basic amenities and detrimental condition is leading to ruckus in quarantine centres.⁵⁵ The phrase during lockdown restricted the freedom of movement but was not a violation of Fundamental right, as under Article 19(1)(d)⁵⁶ was restricted on the ground of protection for the interest of the public. In reaction to the outbreak of the infection, limits were imposed on senior people over 65 years of age and children not to leave their homes. Curfews and road controls also put business operations to a halt.

⁵² 'The Territorial Impact Of COVID-19: Managing The Crisis Across Levels Of Government' (OECD, 2020) <<https://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/>> accessed on 23 August 2020.

⁵³ 'The WHO Solidarity Trial For COVID-19 Treatments Officially Launched In Indonesia' (Wbo.int, 2020) <<https://www.who.int/indonesia/news/detail/24-04-2020-the-who-solidarity-trial-for-covid-19-treatments-officially-launched-in-indonesia>> accessed 25 August 2020.

⁵⁴ Kasthuri A, 'Challenges To Healthcare In India - The Five A's' (PubMed Central (PMC), 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6166510/>> accessed 23 August 2020.

⁵⁵ 'The Times of India, 'Covid-19: Why People Flee Quarantine Centres Read More At: [Http://Timesofindia.Indiatimes.Com/Articleshow/75783193.Cms?Utm_Source=Contentofinterest&Utm_Medium=Text&Utm_Campaign=Cppest](http://Timesofindia.Indiatimes.Com/Articleshow/75783193.Cms?Utm_Source=Contentofinterest&Utm_Medium=Text&Utm_Campaign=Cppest)' (2020) <<https://timesofindia.indiatimes.com/india/covid-19-why-people-flee-quarantine-centres/articleshow/75783193.cms>> accessed 26 August 2020

⁵⁶ The Constitution of India 1950 Article 19(1)(d).



The economy shrank, and productivity stunted. Millions are pulled through joblessness. According to International Monetary Fund (IMF) estimates, manufacturing production is sluggish in many nations, which interprets drop in export demand.⁵⁷In “*Keshavananda Bharti v. Sripadagalvaru & Ors. v. State of Kerala & Anr*”⁵⁸, the basic structure doctrine was made and Fundamental Rights fall under the category of basic-structure. But the court upheld in “*Maneka Gandhi v. Union of India*” case, that by developing rules that impose equal limits, it is necessary to regulate fundamental freedoms.

Conclusion

The Following pointers can be derived from the research -

- Both the government and people must support each other and cooperate to overcome and defeat the virus.
- Right to health is the priority of government and thus the healthcare centres were provided with N95 medical masks free of cost. The private hospitals were turned to quarantine centres. Various schemes / strategies were initiated by the government to cope up with the challenges.⁵⁹
- Public-private patent pool collaborations should be established at the global level to pool all inventions during the pandemic.
- Compulsory licensing, IP pledges and IP pooling should, however, be made compulsory. In order to ensure that anti-IP sentiment is not created internationally during a pandemic situation, the purity and dignity of the patent systems must be secured.

⁵⁷The Indian Express, 'How Covid-19 Has Affected The Global Economy' (2020) <<https://indianexpress.com/article/explained/explained-how-has-covid-19-affected-the-global-economy-6410494/>>accessed 25 August 2020.

⁵⁸*Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala & Anr* (1973) 4 SCC 225.

⁵⁹United Nations, 'The Millennium Development Goals Report' (2015) <[https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf)> accessed 25 August 2020.



- Government must raise the supply free of cost of supplies, mask, hand-wash and any kit needed. Two of the most prominent changes are the constitution of the joint India-US IPR working group and the formation of the national IPR Think Tank Group to devise a national IPR strategy.
 - Furthermore, survival during the pandemic is important. Therefore, the pharmaceutical sector in particular, the new administration is seeking to find a fine balance between protecting the IPRs of the inventor / sector and the greater public interest.
-