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Covid 19 and Intellectual Property Rights-Crossroads of Innovation & Challenges

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ABSTRACT

A pandemic situation calls for preparation, no matter whether it is engineered or being naturally existing. The innovation challenges in engineering vaccines are ought to be in priority for any state. Healthcare institutions must do regular IP audits and the collaboration of state and centre is one important factor to assist for the same. Pro health behavior and its linkage to Innovations are important. When COVID19 hit the world, no developed country was spared. It affected developing Countries to the core. In this paper, the irresponsible behavior of China as state and also the preparations required is analyzed. The indispensable linkage of privacy and IP audits as well as IP management cannot be ignored. Whether COVID 19 is an example of biological warfare like that of anthrax needs little attention against our own preparedness.

Keywords: **COVID19, Innovation, pandemic, biological warfare**

1. INTRODUCTION

While the world is being globalized, shrinking in its own perils of side effects of innovations in biotechnology and related areas, the threat to biological warfare cannot be negated. The anthrax attacks through letters that killed five Americans and contaminated several others, not being a fiction scares a developing country like India with aggravated intensity. The recent like of terrorists has been an attempt of procuring such biological weapons and committing heinous crimes against humanity as they did in 9/11. The innovations and biotechnology, its pace cannot be stopped. Trial on humans is a nude reality amidst Novel COVID 19. The definition of biological warfare can be stretched in light of contemporary situation. It may be concealed agenda of a state, a group, whatsoever, the question and onus depends on

two factors only. One, whether the state is having abilities to research on potential biological products like viruses, bacterias etc. in their controlled research facilities ? If the answer is yes, then certainly second factor is, whether the state is able to assess and control the risk or not. A state like China which had such sensitive research facilities in Wuhan province failed to control the contamination and leak of Corona Virus in November 2019. It is not of much importance to frame some controversy or conspiracy theories, but in later part of analysis in chapters ahead, it will be attempted to portray the horrific truth, that even developed states like USA and many states in EU failed miserably to control the contamination entering in their borders. The common thread that links with the systematic failure is the lack of preparedness of healthcare institutions, be it in developed countries or developing countries like India. Whatever biological products, researched in laboratory, whether be it Virus, bacteria, germs etc. has to be considered a potential threat to humanity and hence, there lies liability on the state, as state being custodian of the same, and the same contaminants as to be defined as Biological weapons. The intention of the state is irrelevant, the nature of biological elements is self sufficient to be qualified as weapons. It is like having a loaded gun in home.

2. HIGHLIGHTS OF BIOLOGICAL WEAPONS CONVENTION

Most biological materials are dual-use items, having legitimate commercial applications as well as being capable of producing biological weapons. The Geneva Protocol (1925) is not efficient to prevent Biological warfare as it does not prevent states from designing, testing, production, or stockpiling of their precursors, thereby enabling countries to continue productions and stockpiling of such weapons for future access [**1].** Biological Weapons Convention encourages consultation and information exchanges among states. This was not followed by China in 2019. China failed miserably to share complete data of its research activities with the world. This concealment rises suspicions and keeping it surprise led the world astray on nature of the virus and so, there was lack of preparedness globally. Following developments in March, 2001 when a Draft Protocol was released by Organization for the Prohibition of Biological weapons, it held power to oversee the implementation, fulfilment of general duties, ensuring compliance with Biological Weapons Convention and punishing the violators [**2].** However, in COVID 19 situation, the violators, China while playing the victim card denies any responsibility or liability. The flaw lies in exercise of sovereignty of states even when the loopholes created due to act of the state can easily impact its neighbours. India, the immediate neighbour suffered with around 9 lakh cases of COVID 19 infections. The advances in Bio Technology are at terrific stage, where apparatus and pharma patents are too frequently being patented. The Convention remained as a toothless tiger, neither accepted by USA nor respected much, but table talks. The fundamental loophole of indecisiveness and less potential for verification and recovery as a practice is the flip side.

A paper by a Brazilian official identified 148 bacteria, rickettsiae, fungi, and toxins that could be used as weapons [**3].**

3. IPR AND HEALTH CARE

IPRs could be potential tools for industrial development if they are combined with coordinated efforts to promote scientific and technical skill and knowledge development, as well as encouraging innovative business management and market growth. It is not merely rights or bundle of rights but the indispensable character of assets, primary and secondary bot. While the shift categorically derives in a suitable and flexible work places. The assets mostly are not maintained, monitored or regulated. Here, it creates danger for patient's safety. The lack in IP assets management, its regular audit, the continued usage of devices and apparatus without necessary expertise or supervision has resulted in disasters. The Healthcare sector in India needs qualitative inventions and innovations. Amidst COVID 19 pandemic, it has been realized that thermal scanners alone is not sufficient to detect the symptoms of the virus but we do need some deep bio-scanners which has to be affordable. Studying on how viruses work, to manufacture the responses, there is an urgent need to test them in laboratories in controlled environment. Since, it is all about infrastructure and investment, the cost involving it relates to innovations which has to be affordable to be widely installed. The materials used in such laboratories has the potential to devastate mankind, if not handled properly. Since, IPR also deals with capacity building and awareness, along with its crucial impact on economy, protective measures has to be rooted at both macro as well as micro levels. Due to lack of assets like ventilators, life saving medical apparatus in many govt. as well as private hospitals, the death tolls amidst COVID 19 pandemic are increasing at an alarming rate. A Russian state Pharmaceutical agency called as Biopreparat proves that viruses can be genetically altered to increase their virulence for development of pathogens to overcome existing vaccines. This indicates that with growing resistance and complexity of viruses, engineered and altered, the need to combat situation calls for more extensive research and establishment of research institutions in an aggressive manner. The large and efficient Patent Beaureucracy in China led its transformation from a mere assembler to originator of Patents, especially in healthcare related field, with a whopping figure of having over 6000 Patent Agents further to around 10000 [**4].**When India signed the World Trade Organization's agreement on intellectual property in 1994, it was required to institute patents on products byJan. 1, 2005. The lesser focus was with free trade and more to do with the lobbying authority of the

American and European pharmaceutical industries. The government in India has issued rules end the copycat industry for newer drugs. The access to essential medicines and vaccines depends on production and monitoring. The monitoring agencies at times miserably fail to do the quality checks due to which the production of uncharted generic medicines are on rise and no wonder India being one of the top exporter of generic medicines to USA and in history, there was also a stage when consignments has been returned due to it being inferior quality.

4. IP POLICY IN INDIA AND COVID 19

The vision and mission statement of IP policy is too broad and needs to be very specific, thereby enumerating the roadmap which ought to be achievable and practical. How the policy attempts to determine the role of institutions right from grass root level, determines the engagement of states with centre to further effectuate it. Nowhere in the Policy document there we can find the prioritization, it being abstract and surreal [**5].** It results in unsupervised freedom of healthcare institutions and research facilities to draft their own and thus begins corruption. When Anthrax hit USA, it was the time when there had to be space in the policy draft reserved for Innovation strategies in Pharmaceutical and aligned healthcare sector. Even if states being empowered to grant patents in emergency situations on expedient basis, how to be ensure that the same would be effective [**6].** The laid back approach of IP policy in India has only promoted private players to run errand without any control. The deepened effects can be seen in worse hit on public sectors health care institutions where there is serious lack of IP awareness, IP assets maintenance and audit. Regular audits are not even incorporated in enforcement strategy of IP Policy document with regard to its functional aspects in detail [**7].**

5. CONCLUSION

While, fighting against novel COVID 19, the warriors have achieved great success and there has been an appreciable effort by the executive in India, we are left stranded with certain limitations. We need to get our priorities straight, whether it is focus on innovations in healthcare, our preparedness and going for qualitative patents. Though, numbers are rising for patents in India, it is yet of little importance if they are not audited regularly. Pharmaceutical sector needs aggressive supervisions as there are deaths on regular basis due to manufacture of counterfeit drugs. Ventilators while being hoarded in market, shows the evils we contain. We may seek to establish district wise innovation and incubation centres to accelerate research to make such life saving apparatus or drugs affordable. The GDP share for healthcare while stuck around one percent is another reason for lack of infrastructure in India. It is to be remembered that health is wealth. It is only due to lack of innovation, actually affordable innovations that

many infected persons still goes undetected. There is an urgent need to shift our focus to combat epidemics that comes as surprises. Recently, in 2017-18 we witnessed rise in cases of Swine flu and the world was also hit by Bird flu. The English healthcare system of curative aspects of healthcare has its serious drawback especially visible in epidemics. Against epidemics, our weapon is solely to innovate more on boosting the immunity. It is both achievable and feasible, as India is already the thought leader and Vishwaguru.

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