
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**IS USAGE OF INTELLECTUAL PROPERTY RIGHTS, ETHICAL IN
MEDICAL RESEARCH?**- Anubhav Lamba¹**ABSTRACT**

Intellectual Property Law is one of the most interesting areas of law present in the world right now. This area of law provides protection to the rights of an individual who has done something different for the betterment of the world, and this protection of rights is provided in various fields such as industry, science, art and literature. One of the areas concerned with intellectual property is the Medical Industry and the inventions and procedures related to it. IPR law provide protection to certain areas of medical industry also, but the question which would be discussed in this paper is that, whether an industry concerned with human life should be covered under the IPR Law or not, or is protecting a medical invention which can decide a question between life and death of a human is ethically justified? Hence the paper aims to discuss the IPR law in light of Medical Research and Ethics considering the current Pandemic caused by Covid-19 with regard to the Intellectual Property Rights of the Covid-19 vaccine developed by various companies.

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INTRODUCTION

Intellectual Property Law provides collective rights to an individual resulting from his/her creative mind, referring to inventions, literary and artistic works, as well as different signs of distinction. These set by rights provided by the Intellectual Property law to an individual allows him/her to gain benefit out of them. The state acknowledges only the right (a type of monopoly) to use and dispose of intellectual creative beings protected by laws for all forms of industrial property by administrative act.

Intellectual Property has a huge impact on our day-to-day life, exploitation of it provides opportunities and jobs to society, and provides protection in form of benefits to those who introduce new products in our daily life and affects the welfare of the society. Intellectual property also provides a country with opportunities from foreign investors and domestic investors.

Now if we consider every law has some positive impact and negative impacts, according to its use, if we consider the same for Intellectual Property Laws, the misuse of the same can lead to a lot of damages such as deterring investors from protentional investments. Loss of welfare of the society, as well as loss of benefit to the developer of a particular idea, or a thing.

If we view the Intellectual Property in light of Medical Research and Ethics, here the consequences of the same have their own justifications, for example if an individual developed a medicine for treating a harmful disease, he/she should get intellectual property benefits out of the same, but what if due to the intellectual property benefits that medicine is not reaching to everyone who needs it on time because the production of the same is limited, due to the intellectual property law associated with it hence deferring the general public from taking benefit of the same. This leads to different companies deconstructing the medicine and creating illegal products which can further harm the society. Hence a line should be drawn in between where to separate the Intellectual Property with the welfare of society and till what extent such a distinction is ethically correct.

Therefore, with technological advancement and evolving laws, one should not ignore that, it is much easier now to develop an idea and share it with the world, and on the same time it is very difficult to stop the idea from misuse by unauthorized personnel.

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IMPORTANCE OF INTELLECTUAL PROPERTY IN TODAY'S WORLD

In the global economy today, the world is not much benefitted by the natural resources or production of industrial goods but is benefitted more from production of new ideas and inventions. For example, if consider the invention of combustion engine leading to invention of vehicles, this gave a boost to development of the world, which wasn't possible through the natural resources. If we take the example of invention of computer, this also gave a boost to the development of the world then any of the resources or industrial goods. Today a country is not judged upon the per income capita of a rich and poor person but the advancement of technology with help of information and knowledge. Therefore, it can be said that information and knowledge in the current society is becoming more important market goods with the appropriate prices.²

These days the objects of business relationships are changing to Patents, Copyrights, Trademarks, and other products of human mind, also these rights are many times traded as special forms of properties between traders and companies. The exercise of these rights can promote economic growth, but it can also have negative impact on a country's national wealth. Their positioning frequently indicates the level of success of their respective holders and owners. It should be noted that all products of the human mind generated in this manner are frequently factors in unfair competition with their competitors. Intellectual property rights (and, of course, patents) take on more relevance if they are in circulation and available to a wider range of topics.

If we look at the relevance of Intellectual Property Laws, in today's world considering the medical field especially in light of covid 19 pandemic, development of vaccines was extremely important for saving the world from Covid-19 pandemic, and majority of the pharmacy multinationals were constantly working for the same from day one. Now if they are successful to develop a vaccine after a lot of hard work, they would surely cover it under the applicable laws of Intellectual Property, hence making the same very important with regards to medical facilities during the pandemic also.

²Ethics, intellectual property and Medical Research, <https://www.avensonline.org/wp-content/uploads/JCTP-2573-3834-03-0011.pdf> (last visited Nov 9, 2021)

IS INTELLECTUAL PROPERTY ETHICAL IN MEDICAL RESEARCH?

Medicine is a science, a rational human endeavor, supported by its strengths and restricted by limitations but it does have defined accomplishments, rules, and potential. Medicine can only be understood as a science and via science, and everything beyond that is something different, whether it is referred to as experiential, alternative, traditional, or border medicine. Medical practitioners must use scientific procedures otherwise they are not considered medical professionals. It should be noted here that healthcare is a logical human activity with all of its advantages and disadvantages. It should not be overlooked that healthcare and protection are reflections of the country's social connections, economic standing, and political planning on the one hand (social variables) and scientific knowledge and advances in medical practice on the other (scientific elements) (technical and professional factors)³. The involvement of health to development and social community progress is viewed not only as a contribution to the community's overall prosperity and well-being, but also as a contributor in direct production.⁴

While assessing the society's role in the quest of medical services, it is important to remember that health care encompasses a model of social, collective, and individual initiatives, services, and activities for the preservation and promotion of health, disease prevention, early detection of diseases, timely treatment and health care, and rehabilitation. These dicey factors are correlated with biological process and the life of an individual and family (birth, death, illness), family life (upbringing and raising children, care for the elderly and disabled), professional activity (job accidents, disability, unemployment), natural disasters (earthquakes, floods), and social crises (wars, economic stagnation, migration)⁵. Part of such risk-related, health-related occurrences are solved, mitigated, or averted by the social community, most typically based on the principles of solidarity and mutuality of key stakeholders, through health care measures, activities, and actions.

Now if we discuss the Intellectual Property laws with regard to the covid 19 vaccine, so the question which comes first to one's mind is should a patent waiver be provided to Covid 19 Vaccines? During a pandemic, every country should be able to produce its own vaccines. The effort to temporarily waive intellectual property (IP) protection on coronavirus vaccinations is

³Jakšić Ž (1992) And associated Social Medicine - Practicum I “, Sixth Extended Edition, Faculty of Medicine, University of Zagreb, Zagreb pp: 375.

⁴Ethics, intellectual property and Medical Research, <https://www.avensonline.org/wp-content/uploads/JCTP-2573-3834-03-0011.pdf> (last visited Nov 9, 2021)

⁵Franjić S (2013) Basic Sources of Medical Law, JAHR, Godište 4, Broj 8, Rijeka, Prosinacpp: 857-870.

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based on this idea. More than 100 countries, as well as international institutions such as the World Health Organization and the United Nations AIDS charity, UNAIDS, have joined the campaign, which was started by India and South Africa. The purpose is to lower the hurdles to developing their own vaccines, especially for low-income countries.⁶

The Government of India is proposing an intellectual property rights waiver under the Agreement on Trade-Related Aspects of Intellectual Property Rights Sections 1 (copyright and related rights), 4 (industrial designs), 5 (patents), and 7 (protection of undisclosed knowledge). Seeking an IPR waiver is presumptively founded on the assumption that it will allow more enterprises to manufacture vaccines and medications, hence increasing their availability at a lower cost. IPR exemptions for COVID-19 vaccines and pharmaceuticals, on the other hand, are unlikely to make a difference. A more successful method would be to deploy compulsory licenses while lowering tariffs and non-tariff measures.⁷

Presently the pharmaceutical industry is not supporting the proposal and also is not supported by high income nations, the reason is obvious, the if the patent is shared then the benefits out of that would also be divided hence reducing the incomes of the pharmaceutical giants and countries itself, but here the ethics come into picture the question here which comes forward is, are profits out of an invention more important than mankind itself. Yes, in the Patent act of 1970, we have the provision that, Government of India can import the medicine and the drug for its own use or can import it for authorized usage. But this will still consume a lot of time, in a pandemic like covid 19 or any other pandemic a cure should be circulated to every company who is ready and is competent to produce it to save mankind and promote brotherhood over profits.

But if it is done, one of the most serious issues concerning IP waivers is that they give competitors a shortcut to expensive technologies. Companies who worked on year's day and night for something would not be able to provide that as cheap as the companies who copied the same, hence causing a loss to the original applicant of the patent. Hence to overcome this friction between benefits of the applicants of patents and consumers a balance should be made,

⁶A patent waiver on Covid vaccines is right and fair Nature News, <https://www.nature.com/articles/d41586-021-01242-1> (last visited Nov 9, 2021)

⁷Covid-19 and IPR Waiver : An indian perspective Economic and Political Weekly, <https://www.epw.in/journal/2021/35/commentary/covid-19-and-ipr-waiver.html> (last visited Nov 9, 2021)

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where welfare of public as well as pharmaceutical companies can be promoted ethically. Hence one can say, if government and pharmaceutical industry allows, the intellectual property laws are implemented in a balanced manner they are ethical towards the society.

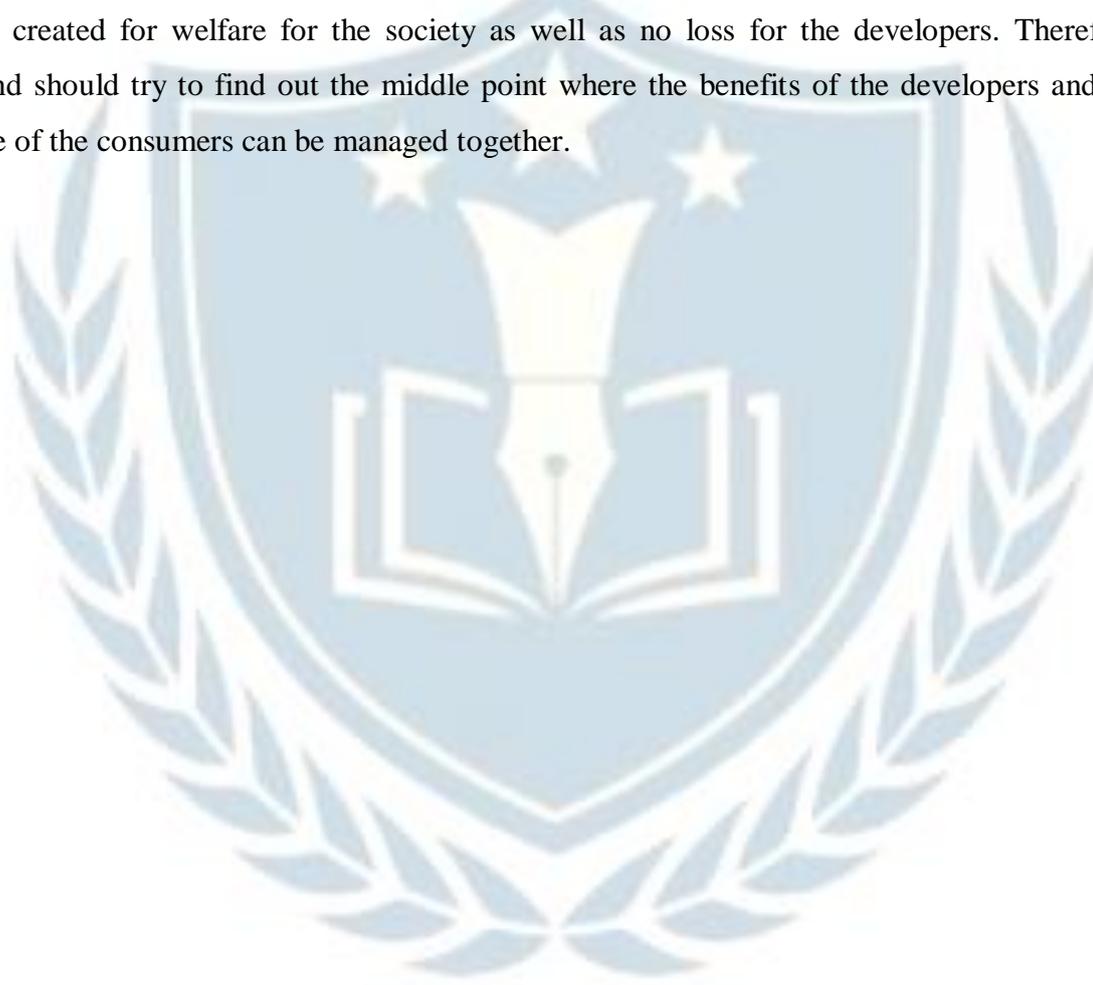


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CONCLUSION

The exercise of intellectual property rights in any national economy entails a better starting position in brand buying and selling negotiations. That is why it is critical to understand at least the fundamentals of intellectual property rights in order to dispose of the rights that develop as a result of them. Every nation has the right to protect the product of its citizens and a duty to provide benefit of creative mind of such individual to that person as well as the mankind, but yes as rightly said sometimes exceptions can be made, and one such exception can be medical industry, where benefits can be waived off in the name of mankind and humanity and a balance can be created for welfare for the society as well as no loss for the developers. Therefore, mankind should try to find out the middle point where the benefits of the developers and the welfare of the consumers can be managed together.



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BIBLIOGRAPHY

Websites Referred:

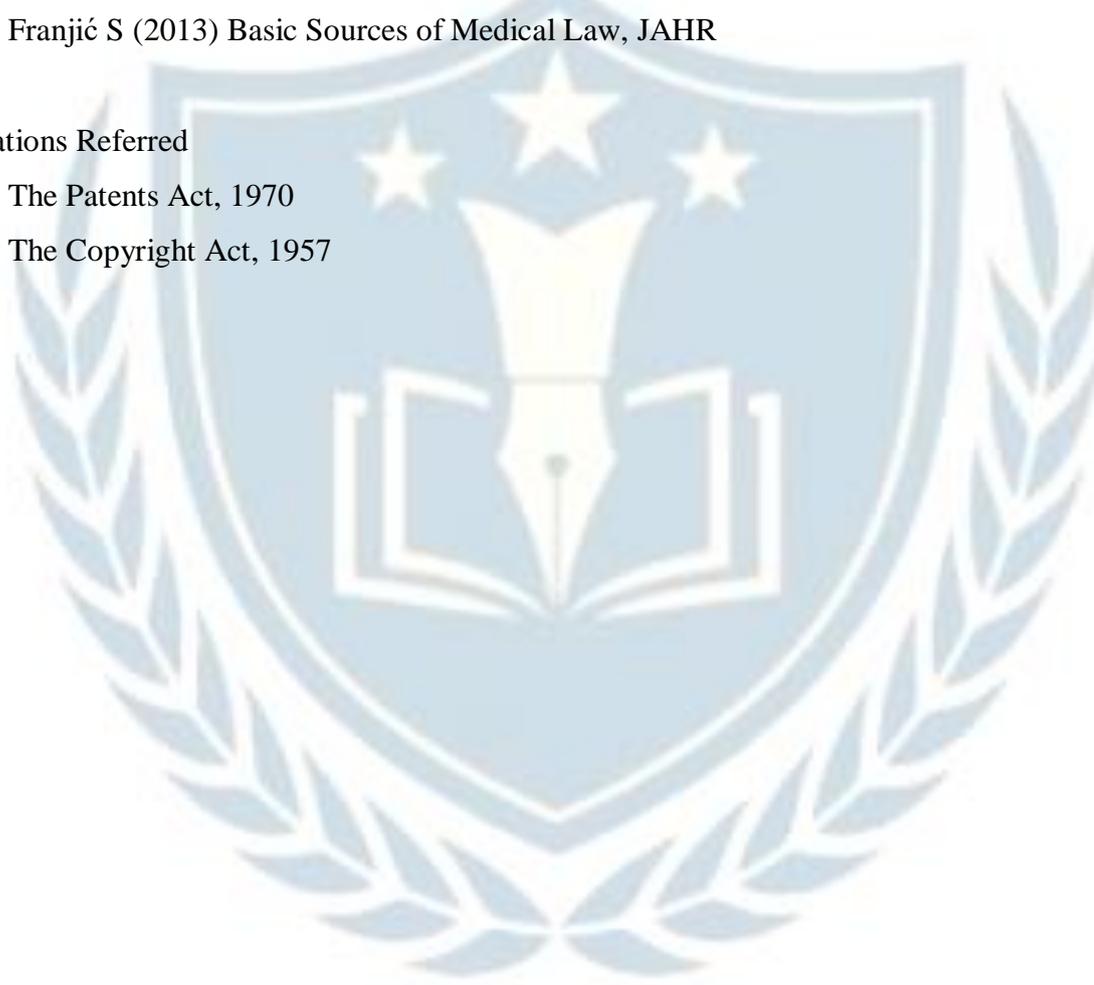
1. www.avensonline.org
2. www.nature.com
3. www.epw.in

Journals and Books Referred:

1. Jakšić Ž (1992) And associated Social Medicine - Practicum I “, Sixth Extended Edition
2. Franjić S (2013) Basic Sources of Medical Law, JAHR

Legislations Referred

1. The Patents Act, 1970
2. The Copyright Act, 1957



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