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ORIGINAL ARTICLE

Impact Of Product Patent Regime On Children's Health – A Critique

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ABSTRACT:

The integration of domestic economies into global markets can affect both the proximate and the underlying determinants of child health. As the World Trade Organization (WTO) extends its reach into areas formerly outside the range of international trade agreements, globalization poses new risks and challenges to communities which have not been exposed to such external factors before. Much of this health crisis reflects the underlying economic reality of globalization. The greatest gains from trade liberalization have accrued to the wealthiest nations, and to the most powerful economic actors within each country. While some people within developing countries have also benefited, trade liberalization has threatened the livelihoods of the world's most vulnerable communities by exposing them to global market forces. The resulting impoverishment of poor families across the developing world has in many instances led to increased health problems among children due to stricter norms of IPR protection and has raised the cost of medication.

INTRODUCTION

The Industrial revolution has forced all the Industrial Nations to explore new markets as this was felt essential for the very survival of the industries as the companies adopted the large scale production which ensured that goods can be manufactured at least cost and this cost benefit is transferred to the general public by pricing those goods at least price. The improvement in the science and technology and latest innovations in this field has improved the quality of goods on the one side and on the other side it has benefited the customers and has improved the standard of living. Every Industry has got its own Research and Development unit which consistently strive in improving the product in one or the other way. This research in the field of science is an ongoing process and it has become a routine work for the company to keep pace with their competitors and increase the market share. The world has shrink in terms of time and space any person can reach and communicate with other persons sitting somewhere else without any bounds all these have lead for exploration of new markets.

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The urge for exploration of new markets backed by developed countries interest and the initiation of United States of America in extending the trade over all the parts of the world without any barriers a policy measure was required. Hence at the initial stage the (GATT) General Agreement on Trade and Tariffs was adopted. The GATT (The general agreement on tariffs and trade) signed in the year 1948, was purely a Trade and Tariffs Agreement which had nothing to interfere with the domestic economies of the member countries, known as contracting countries or parties to the agreement.

Trade and International Trade was recognized as a support to the economy of a country and the intention was only mutual exchange of goods between two countries but as the time elapsed the concept originally adopted was looked differently after the world war II trade has become a passion and necessity of the advanced countries, led by the United States of America and other developed countries such as the South Asian Countries supported America in asserting their autonomy and identified their individual economic interests. This could not be done so easily by having a mere International Agreement on Trade and Tariffs until than the GATT was dubbed as "rich men's club" because of the reason that the policy was to make money by exploiting the poor and developing countries. The three pillars to manage the world economy were International Monetary fund, World Bank and International Trade Organization were conceived after the Second World War and the IMF (International Monetary fund) was seen as the world body to facilitate international liquidity; the World Bank was conceptualized as a sectoral lending institution and emerged as a full- fledged organization from the Bretton Woods Conference and the ITO International Trade Organization, the third body was a still-born baby and remained in shape of the GATT Agreement till 1995.

PURPOSE OF FORMING THE WTO

The WTO, successor of the old GATT, forms the trade arm of global economic institutions (including the World Bank and the International Monetary Fund, or IMF) that grew out of the multilateral discussions in the town of Bretton Woods, New Hampshire following World War II. The WTO's precursor, the General Agreement on Tariffs and Trade (GATT), was created out of these meetings. GATT met periodically to negotiate lower tariffs on imports, and in 1986 its Uruguay Round of negotiations commenced, the most recent of seven such rounds. The Uruguay Round greatly expanded GATT's purview to include issues that previously had been solely matters of domestic policy, including: investment; intellectual property rights; services such as banking and telecommunications; food, occupational and consumer safety standards; and product, health and environmental standards.

The WTO was created at the culmination of the Uruguay Round talks in 1994 to oversee and enforce the new global trade rules. Whereas the old GATT had no enforcement mechanisms (beyond encouraging bilateral settlements between nations), the WTO has the teeth necessary to implement its decisions. The nations that disagree appoint a dispute settlement panel consisting of three trade experts (in the case of disagreement, the WTO's Director-General appoints the third). The panel's judgments can be appealed once to a standing Appellate Body made up of seven trade experts appointed by the entire WTO, whose verdict is final. Any country that does not comply with a decision rendered by the WTO faces the threat of economic sanctions, such as a refusal of the other country involved to continue trading.

Because of its enforcement abilities the WTO has become the global institution of choice for transnational corporations and industrialized countries seeking to harmonize international standards and domestic regulations to maximize trade. Together with NAFTA, which bears similar enforcement teeth, the WTO has greatly increased the power and impact of globalization.

Prior to the Uruguay Round discussions the GATT was a relatively tame institution, essentially limited to negotiating tariff reductions among sovereign states. It emerged eight years later, however, with a hugely expanded mandate and scope, the enforcer of globalization with which all member countries must comply.

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[1]Arun Goyal and Noor Mohammad (eds), (2001), "WTO in the New Millennium" Academy of Business Studies Publications, New- Delhi. p4.

[2]Agreement establishing the World Trade Organization, Preamble.

[3]Hussain Shihab, Permanent Representative of the Maldives, Address to the Third United Nations Conference on the Least Developed Countries, October 31, 2000 available from http://www.undp.org/missions/Maldives/stldc55.htm visited on 2nd April, 2010 at 12:30p.m.

Since the institutionalization of the General Agreement on Tariffs and Trade (GATT) in 1994, the World Trade Organization (WTO) has become the drive for global free trade. Free trade promotes a mutually profitable division of labor, greatly enhances the potential real national product of all nations, and makes possible higher standards of living all over the globe." The view of WTO members was to "raise standards of living." By doing so, it is reasonable to expect that free trade and the WTO will improve worldwide economic welfare of nations and the social welfare of the population in the least developed and developing countries.

The process of globalization has been found partly responsible for this widening of the poverty gap worldwide, by marginalizing the least-developed countries and exacerbating developmental problems,and as a result, the WTO has become a target for criticism, not only by nongovernmental organizations, but also by other intergovernmental institutions such as the Committee on Economic, Social and Cultural Rights or the Commission on Human Rights specifically in the areas of labor and health. All the WTO members are required to adopt or amend domestic legislations in various areas, which can be considered the most intrusive international legal regime, and it is probable that WTO, in doing so, has had effects on non-trade related legislations, including socio-economic ones. Basically the WTO Agreements which is the successor of GATT Agreement makes it obligatory on the member countries to follow the multilateral and plurilateral agreements. The multilateral agreements are compulsory in nature and binds all the countries on the other hand the bilateral or plurilateral agreements are optional and exists between two countries only depending upon the economic needs of each countries. The multilateral agreements included the agreements on Agriculture, Textiles and clothing, Agreements on Technical Barriers to Trade, Agreements on Trade related Investment measures (TRIMS), Intellectual Property Rights(IPR), Industrial Products, Subsidies, Anti-dumping rules, government procurement, Balance of Payments Provisions, Safeguard Action and Coherence in Global Policy Making were the major themes.

OBJECTIVES OF W.T.O:

The main objective for the creation of the WTO is "to help free, fair and predictable trade flows". This objective carries various functions of the WTO. The above mentioned objectives can be divided as follows—

(i)To help Free Trade Flow
(ii)To help Fair Trade Flow
(iii)To help Predictable Trade Flow.

It is believed that World Trade enables every country to specialize and to export those things that it can produce at cheapest in exchange for what others can provide at a lowest cost, have been and still are one of the basic factors promoting economic well-being and increasing national income of every participating country.

The legal instruments that now form the WTO system are:

Marrakesh Agreement Establishing the World Trade Organization
Multilateral Agreements
Trade in Goods
General Agreement on Tariffs and Trade (GATT 1994)
Associated Agreements
Uruguay Round Protocol GATT 1994
Agreement on Agriculture
Agreement on the Application of Sanitary and Phytosanitary Measure (SPS)
Agreement on Textiles and Clothing
Agreement on Technical Barriers to Trade (TBT)
Agreement on Trade Related Investment Measure (TRIMs)
Agreement on Implementation of Article VI of GATT 1994 (Anti-dumping)
Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation)
Agreement on Pre shipment Inspection (PSI)
Agreement on Rules of Origin

Agreement on Import Licensing Procedures
Agreement on Subsidies and Countervailing Measures (CSM)
Agreement on Safeguards
Trade in Services
General Agreement on Trade in Services (GATS)
Intellectual Property Rights (IPRs)
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)
Plurilateral Trade Agreements
Agreement on Trade in Civil Aircrafts
Agreement on Government Procurement

TRIPS AGREEMENT:

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is one of the more controversial international intellectual property agreements that have entered into force. Its negotiations were highly contentious, and the perspectives of developed and less developed countries on the role of intellectual property protection and enforcement remain far apart. The question of how intellectual property rights (IPRS) affect the processes of economic development and growth is very much complex as it specially deals with non-tangible assets created by the intellect of the mind. Further, the significance of these effects would be dependent on circumstances in each country. However, in a broad setting of appropriate complementary policies and transparent regulation, IPRS could play an important and positive role in promoting economic growth. Indeed, the system of IPRS itself may be structured in particular ways to favor dynamic competition within a system of rights and obligations. The ultimate goal is to achieve and pass on the benefits to the general public for the welfare of the society and there should not be any compromise at the cost of innocent consumers and users of a product innovated by the intellects and their claim for making public their knowledge by way of patents, precedence should be given to the welfare of the society at any cost.

In recent years, less developed countries including both developing and least developed countries have expressed their deep dissatisfaction with the way the Agreement has been interpreted and implemented. They are also frustrated by the ongoing demands by developed countries for protections that are in excess of what they promised during the TRIPS negotiations often through new bilateral and regional trade and investment agreements. As they claim, the Agreement as interpreted by their developed trading partners and the additional TRIPS-plus demands ignore their local needs, national interests, technological capabilities, institutional capacities, and public health conditions.

INTELLECTUAL PROPERTY RIGHTS (IPR):

Intellectual property rights as a collective term includes the following independent IP rights which can be collectively used for protecting different aspects of an inventive work for multiple protection and includes

Patents
Copyrights
Trademarks
Registered (industrial) design
Protection of IC layout design,
Geographical indications, and
Protection of undisclosed information

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[4]Keith E. Maskus, Professor of Economics, University of Colorado, Boulder Prepared for the series “Beyond the Treaties: A Symposium on Compliance with International Intellectual Property Law”, organized by Fredrick K. Cox International Law
Center at Case Western Reserve University. Feb 6th 2000.
[5]Yu, Peter K, The international enclosure movement', Indiana Law Journal, 2007, 82(4): 827–907, 828.

NATURE OF INTELLECTUAL PROPERTY RIGHTS:

IPRs are largely territorial rights except copyright, which is global in nature in the sense that it is immediately available in all the members of the Berne Convention. These rights are awarded by the State and are monopoly rights implying that no one can use these rights without the consent of the right holder. It is important to know that these rights have to be renewed from time to time for keeping them in force except in case of copyright and trade secrets. IPR have fixed term except trademark and geographical indications, which can have indefinite life provided these are renewed after a stipulated time specified in the law by paying official fees. Trade secrets also have an infinite life but they don't have to be renewed. IPR can be assigned, gifted, sold and licensed like any other property. Unlike other moveable and immoveable properties, these rights can be simultaneously held in many countries at the same time. IPR can be held only by legal entities i.e., who have the right to sell and purchase property. In other words an institution, which is not autonomous may not in a position to own an intellectual property. These rights especially, patents, copyrights, industrial designs, IC layout design and trade secrets are associated with something new or original and therefore, what is known in public domain cannot be protected through the rights mentioned above. Improvements and modifications made over known things can be protected. It would however, be possible to utilize geographical indications for protecting some agriculture and traditional products. The Indian Patents Act did not recognize the patents on processes or products but due to the obligations on signing of the WTO Agreement, it has made every member a compulsion to strictly comply with the standards laid down in the TRIPs Agreements. The TRIPS agreement, once signed, placed a number of obligations on countries like India. The most important of these was the condition that required India to change to a product Patent regime in the area of pharmaceuticals and food, from the earlier system provided in the1970 Act which did not provide for Product Patents in these areas. It may be noted here that it was this simple provision in the Indian Patents Act which had enabled India capitalize its resources in these area and made India to a position where it is the 4th largest producer of pharmaceuticals and a large supplier of cheap generic drugs to poor developing countries. In order to conform to the TRIPS Agreement the Government of the day introduced Amendments to the 1970 Act in 1999 and 2002 and the Patents Ordinance of 2004.Subsequently, the Ordinance was amended and the Patents Amendment Bill 2005 was adopted by Parliament in March 2005.The Patents Amendment Bill 2005 was designed to address a number of public health concerns but to what extent India has been able to utilize the flexibilities is not yet clear since we are at the infant stage of the new product patent regime. The TRIPS agreement is a broad framework. Patent laws are country specific and country laws determine the extent to which such flexibilities are used. As India has adopted the product patent regime recently its impact is yet to be ascertained clearly what impact it actually has made and in what manner we can use the flexibilities that exist in TRIPs Agreement. E.g. Compulsory Licenses, Government use as a matter of public policy etc.

Due to the amendment made and providing product patents and process patents on drugs and medicines in the year 2005 has made a big difference in pricing of the drugs now the pharmaceutical companies can patent the product and charge exorbitant prices from the general public. It is in this area where conflicts on the issue of protecting the patent holder or the inventor for his disclosure of the invention to the general public and on the other hand to ensure that the patent products are not denied from the reach of the general public specially the life saving drugs and medicines specially in a country like India which is a developing country where large population is either middle class or below the poverty line who are to be protected in the globalized scenario. This has naturally raised the prices of various drugs and medicines most of which are life saving and essential drugs and this results in violation of the basic right i.e. right to life which gets value only if enforcement to right to health is recognized.

PATENTS RIGHTS, HUMAN RIGHTS AND RIGHT TO HEALTH:

The nexus between the WTO and the right to health, in order to determine how WTO law has affected states capacities to fulfill their human rights obligations vis-à-vis the right to health. The primary international human rights instrument that seeks to promote and protect the right to health is the International Covenant on Economic, Social and Cultural Rights (CESCR), to which 148 states are parties. Of these 148 states, it is important to note that 116 are also members of the WTO, with an additional 18 states which have applied for WTO membership. Further, although they have not ratified the Covenant yet

the 2 signatory states, members of the WTO, also have the obligation not to take measures that would affect the purpose of the Covenant. For those 116 states parties to both regimes, it is essential to find a balance between their trade obligations and their human rights obligations in health, to ensure that abiding by the obligations of one system will not prevent them from respecting their obligations towards the other.

The right to health has been established as a fundamental human right of economic and social nature in a number of international human rights treaties. As soon as 1945, the United Nations (UN) Charter established the role of the UN as, inter alia, to "achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (Art. 1.3). The UN's responsibilities also include the promotion of "higher standards of living" (Art. 55(a)) and of "solutions of international economic, social, health, and related problems" (Art. 55(b)). The principal international instrument to promote the human right to health is the International Covenant on Economic, Social and Cultural Rights (CESCR), which has thus far been ratified by 146 states. Art. 12 of CESCR, states, by ratifying the treaty, "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health," and agree to take measures to protect the right to health, towards:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness." (Art. 12.2)

The right to health has also been included as a fundamental human right in the Universal Declaration of Human Rights, a non-legally binding declaration adopted without a vote against by UN members in 1948. Children's right to health, specifically, is protected by Art. 24 of the Convention on the Rights of the Child, which also lists measures to be taken by states parties to protect it, i.e., the "provision of necessary medical assistance and health care … with emphasis on the development of primary health care" (Art.24.2 (b)).The recognition of the right to health as a fundamental human right has also been supported by its inclusion in regional human rights treaties. Indeed, it is guaranteed by the European Social Charter (Art. 11, 13), the Charter of Fundamental Rights of the European Union (Art. 35), the African Charter on Human and Peoples' Rights (Art. 16), and the Additional Protocol to the American Convention on Human Rights ("Protocol of San Salvador", Art. 10). Therefore, the right to health is a universal, justifiable right, not only in the international arena, but also in regional forums. However, and despite its legal recognition as a human right, the right to health has not been accepted by some as a fundamental one, with the same legal status as civil and political rights. But "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services …." Universal Declaration of Human Rights, Art. 25.1.

The international community seems to have become increasingly aware of its obligation to guarantee the right to health in the context of development - out of the eight Millennium Development Goals developed by the United Nations Development Program (UNDP) in September 2001, four goals are directly related to health, namely, to reduce maternal mortality and under-5 child mortality, and to reverse the spread of HIV/AIDS and ensure environmental sustainability by 2015. As an economic and social right, the right to health is to be achieved progressively, according to the state's available resources (CESCR Art. 2). However, no treaty clearly defines what the right to health consists in, what its scope is, and how to evaluate whether a state abides by its obligations. The Convention on the Rights of the Child lists states' responsibilities as including the provision of "necessary medical assistance and health care with the emphasis on the development of primary health care."

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[6]Office of the High Commissioner for Human Rights (OHCHR), Status of Ratifications of the Principal Human Rights Treaties, available fromhttp://www.unhchr.ch/pdf/report.pdf. Visited on 26th April 2010.

Similarly, disease and malnutrition are to be fought, "including within the framework of primary health care." In addition to primary health care, Art. 12 of CESCR and Art. 35 of the Fundamental Rights of the European Union include the development of preventive health care as a component of the right to health.

The right to health will consist of a right to access to healthcare, i.e., the right to have access to both preventive and primary medical care. Such definition is consistent with the report of the Committee on Economic, Social and Cultural Rights established that the right to health is an "inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information." Although there seems to be consensus on what, at minimum, the right to health is, human rights treaties do not provide methods to evaluate a state's compliance with its obligations. On this particular issue, the Committee has indicated four principles to be used in evaluating the level of compliance, namely, the (1) availability, (2) accessibility, (3) acceptability (culturally acceptable) and (4) quality of health care.

Therefore, any state action that will threaten or prohibit, directly or indirectly, the availability of, access to, acceptability of, or quality of preventive and primary health care, is to be a violation of the human right to health. 'States' obligations, is to protect its subjects with providing sufficient measures to combat the harmful effects of product patent regime especially with regard to food and life saving medicines. Therefore "Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices." -Charter of Fundamental Rights of the European Union, Art. 35.

According to the report on Access to Medicines, one third of the world's population does not have access to basic and essential drugs and this figure raises to one half if the poorest parts of Africa and Asia are considered (Dukes and Paula, 2004). Though the diseases pattern may differ in such developing countries, one common problem that prevails in such countries is the inadequate access to medicines. Keeping in mind that medicines are important in curing and preventing diseases, the ultimate goal of `Health for All' cannot be achieved if people do not have adequate access to essential drugs. It is an ironical fact that a high proportion of deaths/ailments in the developing world are preventable/ curable in principle with the available medicines, though accessibility is restricted due to factors such as cost of the drug, purchasing power of the people, physical availability of the medicine in the market and health care centers, and so on. Where government is involved in providing the medicines, accessibility can be impeded by lack of funding, inappropriate procurement and selection, and lack of prioritization due to absence of data regarding the essential demand for the right medicines. In the absence of this crucial data, government's meager resources are spent on unnecessary piling of drugs, which might not be used within their shelf life at all

According to Article 21 of the Indian Constitution every person has a right to life, the right to life and health is a fundamental right guaranteed to every person living in India and is not negotiable. But in new patent regime, product patent protection for medicines and agrochemicals creates monopoly and eliminates competition in the pharmaceutical market. Drug companies often abuse the patent monopoly and fix exorbitant prices for the patented medicines. The introduction of product patent thus reduces accessibility and affordability of drugs. The populations specially the down trodden and the poor do not have access to the medicines that could save lives is because the price of health is high, as many medicines are owned by pharmaceutical corporations that either sell their products at high prices, or request that the developing countries purchase licenses to produce or import those medicines. The result of this system is an obvious discrepancy between the prices of the medicines and the

possibility of those who need them to acquire these required medicaments. Thus access to essential drugs is a key ingredient for good public health. "The essential drugs" as defined by WHO are drugs that that individuals can afford." An unnoticed feature of this definition is the conflict between need and affordability of a drug. Whether or not a drug is considered essential must not depend on its price. In India it is observed that most of the person's especially rural women and children are denied with the minimum facilities of medications and life saving drugs. It is evident from the fact that in a country like India where large population are middle class and poor it is estimated that eight out of ten people among the middle class do not know that nearly two million children under five die every year of diseases and conditions that are easily treatable and preventable and one third of all malnourished children live in India

and 44 percent of Indian children are underweight. More than two thirds of the infants die in the first month and 92 percent of these deaths are due to easily preventable diseases like pneumonia and diarrhea as per the survey conducted by the Global Movement for Children, a coalition of organizations that includes save the children, UNICEF, PLAN and CARE, and world vision.It is admitted by the government that there are still deficiencies that still exists in meeting out the demands of the public. The public health situation in India requires medicines at affordable prices there is also growing requirement of medicines, as the country is overburdened by the co-existence of communicable and infectious diseases alongside an emerging epidemic of non-communicable diseases. While the burden of disease on account of communicable diseases is expected to decline, India's non communicable disease burden is set to increase significantly. Cardiovascular diseases and diabetes will become more than double. There may be a continued threat of the emergence of new infectious diseases. Further, it has been estimated that by 2015, the number of HIV/AIDS cases would be three times more than the current level, with a potential likely increase in the existence prevalence level of TB of about 8,500,000 cases. The number of cancer cases is expected to rise by 25 per cent, with more than 47 per cent of the incidence reported in cervical and breast cancer patients. Estimates further show that out of the per capita expenditure of households amounting to Rs 577 spent annually on health in urban India, Rs 400 goes into buying drugs, accounting for around 70 per cent of health expenditure. These bare facts show that the availability of affordable medicine is critical for India's health system. The new product patent regime changes the rules of the game. Indian generic companies are legally prevented from introducing the generic version of patented medicines. This would result in denial of new medicines at an affordable price to the people. “The patent system is designed to enable patent holders to set prices higher than those that would be obtained in the competitive market.”The foregoing situation is the natural fallout of the monopoly enjoyed by a patent holder over a product. With respect to drugs for some particular diseases not having any alternative, the door is open for the patent holder to set its limit. Apart from setting the prices at which he sells its products, the patent holder has the discretion on the quantity it releases into the market. To take advantage of principle of demand and supply, the patent holder may withhold supply from the market, thus creating artificial scarcity that further increases the price.

Patenting also touches on some other rights. The invocation of the other rights at some points creates conflict between the interests of the pharmaceutical companies and persons who need to have access to pharmaceutical products. Article 15 of the Economic Covenant, among others, provides for the right of everyone “to enjoy the benefits of scientific progress and its applications” and “the freedom indispensable for scientific research and creative activity.”

The issue thus arising for determination is which should prevail between the conflicting economic rights of the pharmaceutical industry and the health rights of citizens who need to have access to drugs.

Again making a reference to the United Nations Committee on Economic, Social and Cultural Rights' General Comment on the Right to Health analyzes right to health to include the treatment of prevalent diseases and the provision of essential drugs.Furthermore, the Committee indicates that detrimental practices by pharmaceutical companies constitute an infringement on the right to health and that states have a duty to protect consumers from such practices. At the international level, the Committee maintains that states have obligations to ensure access to essential health facilities and that other international agreements do not adversely affect the right to health.

India has been at a stage of infancy in the product patent regime and it has already faced a lot of difficulties in the area of health care systems including making accessibility to life saving drugs in the process patent era, however it was able to minimize the burden on the shoulders of innocent consumers and poor patients as alternate medicines were produced by adopting the different method what is popularly known as 'reverse engineering' which probably is not possible under product patent regime. Hence it is the duty of the state to provide all the facilities to the poor patients to get access to the life saving drugs and medicines.

Society as a whole and more particularly the consumers would prefer that patents be issued for a limited period and monopoly granted in proportion to the benefit brought by the inventor. On the other hand, the inventors would prefer patents granting a wide-ranging and long lasting monopoly that would provide them with a profit that far exceeds the investment in R&D.

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[7]United Nations Development Programme (UNDP), Millennium Development Goals (accessed available from http://www.undp.org/mdg/ visited on 29th April, 2010.

All these have lead to the harassment of the patients if there are no alternatives then it is the duty of the government to fulfill the needs of its subjects keeping in mind the present scenario.

CONCLUSIONS

As it has been rightly said that today's children are tomorrow's citizens and are the assets to the nation they have every right to be protected from various diseases that are life threatening in their infancy. This can be done only if the government takes appropriate steps in combating the effect of the strict IPR regime. Although the Indian Constitution provides the right to life but has not directly given protection to life when it comes to the question of right to health it is not clear whether one can force their right and force the government to provide facilities to have access to drugs and medicines. We see in our daily life a number of advertisements in the news papers seeking help for financial assistance for getting treatment including for drugs and medicines. Many of the cases of deaths are caused due to lack of medication in rural India including villages and mostly go un-noticed as they are not in a position to have access to medicines at their own costs. Many of the government hospitals are lacking behind to keep pace with the growing demand for medicines and are mostly generic versions there is no availability of patented drug or medicines.

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[8]Convention on the Rights of the Child, Article. 24.2(b).
[9]UN Secretariat, Economic and Social Council, Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, 2000, Para. 11. Accessed April 7, 2004. Available from UNODS. General Comment No. 14 is reproduced in Annex 2.
[10]N. Lalitha, Working Paper No. 161, Essential Drugs in Government Healthcare: Emerging Model of Procurement and Supply, Gujarat Institute of Development Research Gota, Ahmadabad 380 060, September 2005.
[11]The Hindu, Middle class underestimates child mortality rates: Survey, Tuesday, August 24,, 2010. P18.
[12]National Commission on Macroeconomics and Health, Report of the National Commission on Macro Economics and Health (New Delhi: Ministry of Health and Family Welfare, Government of India, 2005), pp.28-34.
[13]See C.M. Correa, Implications of the Doha Declaration on the TRIPS Agreement and Public Health, Geneva: World Health Organization, 2002, 5
[14] Article 15(3). See also Article 15 of Article 15 of the European Convention on Human Rights and Biomedicine (1997) which provides for scientific research in the field of biology and medicine to be carried out freely.
[15] United Nations Committee on Economic, Social and Cultural Rights (CESCR) General Comment 14, para. 6.