CORRESPONDENCE

Patent pains

The Ordinance amending India's patent law was hurriedly promulgated in the last week of December 2004. This was a consequence of India being coerced into being signatory to the World Trade Organisation (WTO) patent rules, which came into force from January 2005.

The Ordinance was subsequently passed by the Indian Parliament in the third week of March 2005 and with Presidential assent it came into force on April 5, 2005. It is now known as the Patents (Third Amendment) Act, 2005. The Honourable Union Minister for Commerce and Industry reassures the public that the Act contains comprehensive provisions concerning price and availability of medicines (1). However, we have reservations about accepting these assurances.

It is regrettable that richer countries continue to enjoy health benefits of new drugs while thousands of people die every day in poor countries because effective drugs are either too expensive or just not available. Multinational pharmaceutical companies continue to consider human disease a moneymaking opportunity. They ensure that favourable international laws are enacted, so that they can continue to exploit suffering patients of poorer economies.

Efforts have been initiated for the global harmonisation of laws governing intellectual property rights (IPR) in individual countries. Poor countries have been pressurised to toe the line or fall from the grace of the developed world. Business between countries has been predicated on signing such treaties.

It is one thing to charge high prices for luxury goods from people who can pay for them. It is another to force poor and sick patients to pay high prices for essential drugs that are patented. This defeats the basic principle of equity in medicine. The ill already have decreased earning potentials. Making them pay high prices at the time of a health crisis amounts to situational exploitation.

The World Health Organization (WHO) speaks of "health for all". But WTO patent rules ensure that equity in health is not attainable.

Trans-national drug companies will directly benefit from the ban on "reverse engineering" through the new patent laws. These companies hold more than 90 % of drug patents (2) and are more than likely to charge exorbitantly high prices for their products. Pharmaceutical companies argue that patent protection enables them to recover the money spent on research and development of a new drug. But this could be done through differential pricing, charging more in well-off countries and less in the poor ones.

The poor cannot even afford two square meals in a day. If they cannot enjoy the fruits of modern medicine then all development is a farce. Drug donations in poor countries during natural calamities are aimed at earning publicity even while these companies constantly drain the poor of such countries. Such donations are not philanthropy.

International organisations like Medicins Sans Frontieres and the Treatment Action Campaign have indicated that the WTO patent regime will have disastrous consequences and have called for reforms in TRIPS so that poor country governments have the unambiguous right to manufacture or import life-saving medicines at the cheapest possible rate without facing legal challenges or trade sanctions. Poor countries will have to take a united stand against the enforcement of this new Act. The movement must be supported by people in the developed world.

References

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Disclosure in blood banks

Most blood banks in Mumbai have done away with professional donors and now depend on voluntary blood donation. Patients needing blood must procure a donor. This donor will be checked for Hb levels (only) and bled. Later, if the donor's blood tests positive for HIV or Hepatitis B, the patient (for whom the donation is made) is refused blood or replacement. Some blood banks even refuse to tell the donor the reason for not giving replacement blood.

This has been done ostensibly at the behest of the Supreme Court, as it may attach a stigma to the donor in society.

To my mind this is a ludicrous position. How can you bleed a donor brought by a recipient and refuse to give blood afterwards? Surely HIV and HbsAg testing must be done before blood collection.

This is a very serious lacuna in law and opens a whole field for mischief, malpractice and selling blood through the back door.

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