PATENT LAW, TRIPS &PROTECTION OF PUBLIC HEALTH IN INDIA: A REVIEW

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Introduction-

"Laws: We know what they are, and what they are worth! They are spider webs for the rich and mighty, steel chains for the poor and weak, fishing nets in the hands of the government[2]."

PIERRE-JOSEPH PROUDHON

Law should not be an instrument in the hands of rich and mighty to exploit poor and helpless and it should also not be misused by state and its agencies or by any other powerful agencies for their own interests. Aim of law should be to provide universal justice for all and to give everyone his due. In a country, where majority of the people are illiterate, poor, downtrodden and oppressed, state initiatives to protect these teeming millions assumes great significance.Our constitution declares right to life as one of the fundamental rights of the people. Preamble of our constitution declares India as socialist, secular and democratic republic and state must secure justice to all. So, it has become obligation of the State to protect public health and to take necessary steps in this regard.Jurisprudence of protecting human health for Indians had become one of the most important issues from a long time back.Former Prime Minister of India, Indira Gandhi while speaking at the World Health Assembly in Geneva on May 6, 1981, was of the opinion that[3]-

"Affluent societies are spending vast sums of money understandably on the search for new products and processes to alleviate suffering and to prolong life. In the process, the drug manufacturing has become a powerful industry. My idea of a better ordered world is one in which medical discoveries would be free of patents and there would be no profiteering from life or death." In this historic session the participating countries unanimously adopted a resolution for "Global Strategy on Health for All".

India is one of the sovereign countries of the world. By virtue of her sovereign power, India can make laws. Any foreign company or individual will have to follow Indian laws at the time of doing business in India. Definitely national laws are enacted keeping in mind the international obligations. If any foreign company fails to make huge profit that does not mean it is the fault of our laws or it is because of weak laws of our country. Each country must fulfil its own interests first and accordingly India will also pay attention to protect the interests of Indian nationals first.Although the percentage of the world's population without

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[2].www.izquotes.com/quote/296904(Accessed on 15-07-2017).

[3].www.static.1.1.sqspedn.com/static/f/129694/787513/Recentdevelopment……html.(Accessed on 11-7-2017).

access to essential medicines has fallen from an estimated 37% in 1987 to around 30% in 1999, the total number of people without access remains between 1.3 and 2.1 billion people and lack of access is particularly concentrated in Africa and India[4].Indian health systems are grappling with the effects of existing communicable and non-communicable diseases and also with the increasing burden of emerging and re-emerging diseases (drug-resistant TB, malaria, SARS, avian flu and the current H1N1 pandemic). Inadequate financial resources for the health sector and inefficient utilization result in inequalities in health.The high burden of disease, disability and death can only be addressed through an effective public health system. However, the growth of public health in India has been very slow due to low public expenditure on health and very few public health institutes in India. The poor, downtrodden and have-nots are worst sufferer in India and they account for a major section of the society. It has become one of the great challenges today to protect the health of these millions and millions of poor people in our country. In this context the role of Indian Patent law vis-à-vis the TRIPS agreement and the impact of both these two legal instruments upon the health of common people assume great significance.

However, it is in this socio-economic spectacle in India, I have ventured to write this article on the topic "*PATENT LAW, TRIPS & PROTECTION OF PUBLIC HEALTH IN INDIA: A REVIEW*". The researcher has tried to discuss the provision of TRIPS and its impact upon public health in India. The paper has also discussed Indian Patent Act and its various relevant provisions to protect the public health in our country. The paper has also analysed the judgment in Novartis AG v. Union of India (UOI) and Ors[5] Case which is very essential to discuss this topic. Finally, the author has also given certain suggestions in this context.

TRIPS and protection of public health-

Infectious and other virulent diseases are taking the lives of millions and millions of people each year all over the world. More than 90% of these people are from developing countries. HIV/AIDS, malaria, tuberculosis, cholera and hepatitis are some of the diseases which are prevalent in Africa, Asia and South American regions. Access to life savings medicines is very essential for the survival of human race. The rich people in the society more of less manage to purchase these medicines by their monetary power. But, the poor and downtrodden cannot do that if the price of these medicines isincreased excessively. People of the third world countries are worst sufferer in this regard because of their poverty. The World Trade Organization (WTO) Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS), however, sets out the minimum standards for the protection of intellectual property including patent for pharmaceuticals. TRIPS offer safeguards to remove negative effects of patent protection or misuse of patent. Trade-Related Aspects of Intellectual Property Rights(TRIPS) attempts to strike a balance between the long term social objective of providing incentives for future inventions and creation and the short term objective of

[4].www.apps.who.int/medicinedocs/en/d/Js6160e/9.html.(Accessed on 11-07-2017).

[5] .AIR2013SC1311, 2013 4 AWC3611SC, JT2013(4)SC195, 2013-3-LW449, MIPR2013(1)313, (2013)3MLJ421, 2013(54) PTC1(SC), 2013(2)RCR(Civil)685, 2013(5)SCALE12, (2013)6SCC1, [2013]119SCL217(SC).

allowing people to use existing inventions and creations[6]. TRIPS attempt the arduous task of balancing private and public interests[7]. On the one hand, it protects the interests of the pharmaceutical companies that invest huge funds in research and development of drugs and on the other, it allows member countries to protect public health[8]. TRIPS agreement says[9]-

"The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

TRIPS also give freedom to member countries to incorporate necessary provisions in the existing laws and regulations to protect public health and nutrition. It says[10]

"Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology."

Article 27 of the TRIPS also permits the member countries to exclude from patentability inventions which are necessary to protect public health etc. It says[11]

"Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law".

So, TRIPS has given member countries enough flexibility to incorporate into the national legislation the necessary provisions to protect the interests of the common people of the country. India, on the basis of these flexibilities, has incorporated various provisions in the Indian Patent Act, 1970 to protect the public health.

The Fourth WTO Ministerial Conference, held in 2001 in Doha, Qatar, adopted a Declaration on TRIPS and public health [known as Doha Declaration] which affirmed the sovereignty of

[6].TRIPS and Pharmaceutical Patents, WTO OMC Fact Sheet, September 2006, www.wto.org/.../tripsfactsheet_pharma_2006_e.pdf.(Accessed on 5-7-2017).
[7] .Amit K Kashyap& Dr Anjani Singh Tomar, Trips & Public Health: With Special Reference to Doha Declaration & Indian Patents Law, International Journal of Health Science, Vol. 1 No.1, December 2013. www.aripd.org/journals/ijhs/Vol_1_No_1_December_2013/1.pdf(Accessed on 5-7-2017).
[8].Ibid.
[9].Article 7, TRIPS Agreement, WTO, www.wto.org/legal_e/27-trips(Accessed on 5-7-2017).
[10].Article 8, TRIPS Agreement, WTO, www.wto.org/legal_e/27-trips(Accessed on 5-7-2017).
[11] .Article 27(2), TRIPS Agreement, WTO, www.wto.org/legal_e/27-trips(Accessed on 5-7-2017).

governments to take measures to protect public health. It was an important achievement as it gave primacy to public health over private intellectual property rights. It allowed member countries to access to medical products. Doha declaration recognizes the gravity of the public health problems afflicting many developing and least developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics[12]. It, inter alia, says[13]-

"We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all."

The declaration recognizes inherent right of countries to take initiatives for the protection of public health. So, the member countries shall have power to overcome any obstacle which will come on the way to protect public health in the respective country. The declaration leaves members to decide what constitutes a national emergency or urgency and when to issue compulsory licenses for the interests of the common people and the country as a whole. Again countries without production capacity can make use of the compulsory licenses provisions to the same extent that countries with manufacturing capacity can use these provisions. The Doha Declaration recognizes the issue in paragraph 6 as under[14]:

"We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002".

However, in spite of some drawbacks, the Doha Declaration takes a large step towards ensuring that intellectual property protection actually serves the public interest, an interest broader than that of the commercial sector[15].

Patent Law in India & Public Health-

The Patent (Amendment) Act 2005 has efficiently dealt issues of public health and public interests in India. The Act contains many provisions to protect public health in our country. However, the relevant provisions of the Act are as below:

(i). Section 3(d): Chapter-II of the Patent Act, 1970 deals with 'Inventions not patentable'. Section 3 of the Act deals with what are not patentable. Section 3(d) says the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known

[12] .Declaration on the TRIPS Agreement and public health, World Trade Organization, Ministerial Conference, 4th Session, Doha,9-14 November, 2001, WT/MIN(01)/DEC/2, 20th November, 2001. https://www.wto.org/english/thewto_e/min01_e/mindecl_trips_ehtml(Accessed on 5-7-2017).
[13].Ibid.
[14].Ibid.
[15] .Ellen F.M. 'Hoen, Trips, Pharmaceutical patents and access to essential medicines: Seattle, Doha and beyond, www.who.int/intellectualproperty/topics/ip/tHoen.pdf.(Accessed on 5-7-2017).

substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant[16].

However, this section plays an important role to protect public health of teeming millions of our country. This provision is one of the most important safeguards under the Patents Act, 1970 to protect public health. This section contradicts the problem and claim of ever greening[17]. This provision does not recognize ever greening and permits entry of generic drugs which in turn makes the price of life saving drug cheaper. It will definitely protect the public health of millions and millions of people in India who live in below poverty line and have a little financial power to purchase medicine.

(ii).Section 47: This section, inter alia, says that in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the government or any other dispensary, hospital or medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

So, the above provision is very useful to protect public health on behalf of the government. In a developing country like India where protection of public health has become one of the most important challenges to the government, this section may be amajor relief to the government and this provision assumes special importance.

(iii). Section 66: This section says[18], where the Central Government is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked. So, this section has given an opportunity in the hand of Central Government by which it can revoke

[16] .An explanation to this Section says that- for the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.

[17] . Ever greening of patents refers to increasing the life of the patent or the patent term beyond 20 years to avail the benefits for much longer period of time than 20 years. Drug patent ever greening is a strategy that Multinational Pharmaceutical Companies have been using since 1980's in the US and in some other countries of the world. When the original patent of a medicine is about to expire, these companies claim large numbers of new patents on the ground of ever greening.Ever greening is a technique by which the patent owner takes undue advantage of the law and other regulatory process to expand their patent monopoly on that drug shortly before the expiry of the original patent. Ever greening expands market monopoly and prevents the entry of generic drugs. Of late, Indian Supreme court has refused to grant Swiss Pharmaceutical company Novartis a patent for a new version of its cancer drug 'Gleevec'.Novartis claims the drug is more easily absorbed into the blood and taking into consideration this feature, it is used to fight leukemia. According to the company, that is enough of an improvement to get patent protection(i.e. ever greening). But it was rejected by the court, inter alia, on the ground that mere discovery of a new form/use/property/process etc of a known substance which does not result in enhanced efficacy is not patentable.

[18].Section 66, The Patents Act, 1970.

any patent under this section when the patent or the mode of exercising the patent will be prejudicial to the public. Public interest can also be extended to protect the public health.

(iv). Section 84: This section,inter alia, says[19], at any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely:—

(a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or

(b) that the patented invention is not available to the public at a reasonably affordable price, or

(c) that the patented invention is not worked in the territory of India.

An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent and no person shall be estopped from alleging that the reasonable requirements of the public with respect to the patented invention are not satisfied or that the patented invention is not worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price by reason of any admission made by him, whether in such a licence or otherwise or by reason of his having accepted such a licence[20].

However, this section helps to maintain steady flow of products including medicinal products at reasonable price and prevents dishonest businessmen from creating artificial crisis and increasing prices of essential medicines.

(v). Section 85: This Section, inter alia, says that[21] where, in respect of a patent, a compulsory licence has been granted, the Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory licence, apply to the Controller for an order revoking the patent on the ground that the patented invention has not been worked in the territory of India or that reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonably affordable price. The Controller, if satisfied about these grounds, may make an order revoking the patent[22]. Hence, under this section the Controller has wide power to revoke the patent if he is satisfied that the patented invention has not been worked in the territory of India or that reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonably affordable price. So, this provision can also play the role of a check and balance in order to protect the public health of the common people of the country and this section is a weapon in the hand of Government to protect public health.

[19] .The Patents Act, 1970, section 84(1).
[20].Ibid, Section 84(2).
[21].Section 85(1), The Patents Act, 1970.
[22].Ibid, Section 85(3).

(vi).Section 92- This Section, inter alia, says if the Central Government is satisfied, in respect of any patent in force in circumstances of national emergency or in circumstances of extreme urgency or in case of public non-commercial use, that it is necessary that compulsory licenses should be granted at any time after the sealing thereof to work the invention, it may make a declaration to that effect, by notification in the Official Gazette[23]. Again, where the Controller is satisfied on consideration of the application referred to in clause (i) of sub-section (1) that it is necessary in— (i) a circumstance of national emergency; or (ii) a circumstance of extreme urgency; or (iii) a case of public non-commercial use, which may arise or is required, as the case may be, including public health crises, relating to Acquired Immuno Deficiency Syndrome, human immunodeficiency virus, tuberculosis, malaria or other epidemics, he shall not apply any procedure specified in section 87 in relation to that application for grant of licence under this section[24].

So, as per this section, Compulsory Licence can be issued in national emergency, extreme emergency and in case of public non-commercial use. Public health crisis is also one of the reasons where it can be issued.

(vii). Section 92A: This Section, inter alia, says[25]Compulsory licence shall be available for manufacture and export of patented pharmaceutical product to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products[26] from India. The Controller shall, on receipt of an application in the prescribed manner, grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him[27].

So, this section plays an important role in protecting public health in our country and Controller shall grant Compulsory Licence in appropriate cases as specified in this section to protect public health.

(viii).Section 107 A: This Section has permitted importation of patented products by any person from a person who is duly authorised under the law to produce and sell or distribute the product and it shall not be considered as an infringement of patent rights. So, this section may help to import patented drug at reasonable prices to protect public health in case of necessity.

[23] .The Patents Act, 1970, section 92(1)
[24].Ibid, Section 92(3).
[25] .Section 92A(1), The Patents Act, 1970.
[26] . An explanation to Section 92A says for the purposes of this section, 'pharmaceutical products' means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address public health problems and shall be inclusive of ingredients necessary for their manufacture and diagnostic kits required for their use.

[27],Ibid, Section 92A(2).

(ix). Section 102: This Section, inter alia, says[28] the Central Government may, if satisfied that it is necessary that an invention which is the subject of an application for a patent or a patent should be acquired from the applicant or the patentee for a public purpose, publish a notification to that effect in the Official Gazette, and thereupon the invention or patent and all rights in respect of the invention or patent shall, by force of this section, stand transferred to and be vested in the Central Government.

So, it is very clear from the words which are used under this section that for public purpose, the Central Government may acquire a patent from the applicant or patentee and in that case all rights of the patentee will be shifted to the Central Government. The term 'public purpose' is very wide here which includes 'public health' also. Hence, the Government can take action under this section to protect public health also.

Novartis AG v. Union of India[29] and its impact upon public health-

On 01-04-2013, Novartis AG v. Union of India case was decided on an appeal by Novartis against rejection by the Indian Patent Office of a product patent application for a specific compound, the beta crystalline form of imatinibmesylate. Imatinibmesylate is used to treat chronic myeloid leukemia and is marked by Novartis as "Gleevec".

The appellant's application for patent was taken out of the "mailbox" for consideration only after amendments were made in the Patents Act, with effect from January 1, 2005. But before it was taken up for consideration, the patent application had attracted five (5) pre-grant oppositions1 in terms of Section 25(1) of the Act. And it was in response to the pre-grant oppositions that the appellant had filed the affidavits on the issue of bioavailability of ImatinibMesylate in beta crystalline form.The Assistant Controller of Patents and Designs heard all the parties on December 15, 2005, as provided under Rule 55 of the Patent Rules, 2003, and rejected the appellant's application for grant of patent to the subject product by 5 (five) separate, though similar, orders passed on January 25, 2006 on the 5 (five) opposition petitions. The Assistant Controller held that the invention claimed by the appellant was anticipated by prior publication, i.e., the Zimmermann patent; that the invention claimed by the appellant was obvious to a person skilled in the art in view of the disclosure provided in the Zimmermann patent specifications; and further that the patentability of the alleged invention was disallowed by Section 3(d) of the Act; and also that July 18, 1997, the Swiss priority date, was wrongly claimed as the priority date for the application in India and hence, the alleged invention was also anticipated by the specification made in the application submitted in Switzerland.

The Court observed in this case that the physico-chemical properties of beta crystalline form of ImatinibMesylate, namely (i) more beneficial flow properties, (ii) better thermodynamic stability, and (iii) lower hygroscopicity, may be otherwise beneficial but these properties cannot even be taken into account for the purpose of the test of Section Atomic En of the Act,

[28].Section 102(1), The Patents Act, 1970.

[29]. AIR2013SC1311, 2013 4 AWC3611SC, JT2013(4)SC195, 2013-3-LW449, MIPR2013(1)313, (2013)3MLJ421, 2013(54) PTC1(SC), 2013(2)RCR(Civil)685, 2013(5)SCALE12, (2013)6SCC1, [2013]119SCL217(SC)

since these properties have nothing to do with therapeutic efficacy and hence,increased bioavailability alone may not necessarily lead to an enhancement of therapeutic efficacy. Whether or not an increase in bioavailability leads to an enhancement of therapeutic efficacy in any given case must be specifically claimed and established by research data. The court also observed that, in this case, there is absolutely nothing on this score apart from the adroit submissions of the counsel and no material has been offered to indicate that the beta crystalline form of ImatinibMesylate will produce an enhanced or superior efficacy (therapeutic) on molecular basis than what could be achieved with Imatinib free base in vivo animal model.The court added that in whichever way Section Atomic En may be viewed, whether as setting up the standards of "patentability" or as an extension of the definition of "invention", it must be held that on the basis of the materials brought before this Court, the subject product, that is, the beta crystalline form of ImatinibMesylate, fails the test of Section Atomic En, too, of the Act.

The court , inter alia, also held thatthe subject product, the beta crystalline form of ImatinibMesylate, does not qualify the test of Section 3(d) of the Act but that is not to say that Section 3(d) bars patent protection for all incremental inventions of chemical and pharmaceutical substances. It will be a grave mistake to read this judgment to mean that Section 3(d) was amended with the intent to undo the fundamental change brought in the patent regime by deletion of Section 5 from the Parent Act. That is not said in this judgment. So, the court finally held that the patent product, the beta crystalline form of ImatinibMesylate, failed in both the tests of invention and patentability as provided under Clauses (j), (ja) of Section 2(1) and Section 3(d) of the Patent Act, 1970 respectively.

However, the above judgment has a far reaching consequence upon the protection of public health in India where majority of the people are living below poverty line and has less financial strength to purchase lifesaving drugs. Under section 3(d) of the Patent Act, Novartis has been denied a patent for a new form i.e. ‘beta crystalline’ of a known substance i.e. ‘imatinibmesylate’ because Novartis failed to show and prove new and enhanced therapeutic efficacy of the drug. The court said that the new form of a drug must demonstrate an improvement in its therapeutic effect or curative property as compared to the old form in order to secure a patent. However, the court rejected the claim of Novartis and held that the properties submitted by Novartis may be valuable from storage point of view, but would not be relevant to prove “enhanced therapeutic efficacy”. However, the court in this case never said that a new form of known compound will never be patented. It only said that a new form of known compound will never be patented. So, from this angle, the judgment is never anti patent or against the invention in science and technology and the judgement will serve as a future model for developing countries of the world to protect public health.

Conclusion & suggestions

Indian Patent Act, 1970 contains certain provisions to protect the interests of domestic drug manufacturer who are producing generic drugs. The Act has given a litmus test to protect the right to health of millions and millions of people. It has restricted the access of life savings drugs to only the affluent, rich and privileged section of the society and it has opened these

for poor and needy of our society. Indian Patent law has made a balance between the rights of patent holders with that of the need of the public in general. It has also made a fine balance between strict intellectual property restrictions and flexibilities in the TRIPS.However, Indian court rejected the claim of Novartis and as a result Indian generic firms continued producing generic version of Glivec at a price of about one-tenth of the original drug. This has widened the scope of the poor people of our country to purchase lifesaving drugs with less cost.

Though TRIPS contains some provisions to protect the public health of common people, yet TRIPS has not become very effective as it should be for promoting public health in developing and Least Developed Countries. In order to give access of life saving drugs to the poor people of the developing countries, TRIPS should be restructured to incorporate a pharmaceutical pricing scheme that will compel patent holders to sell medicines at lower price. TRIPS should pay equal attention to the rights of pharmaceutical companies to earn profit and their duties towards the poor people of the society. Its goal should be to make sure that the patent system does not hinder but promotes the availability of medicines at affordable prices that fulfil national public health requirements.

If we consider the economic rational and jurisprudential justification behind grating the patent, we will see that one of the most important aim behind granting patent is to give respect and to encourage the inventors and to give them an opportunity to earn money for their investment in research and innovation. In **Bishwanath Prasad RadheyShyam vs. Hindusthan Metal Industries**[30], Supreme Court says "The object of Patent Law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period, stimulates new inventions of commercial utility. The price of the grant of the monopoly is the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of the monopoly, passes into the public domain." In **Clothworkers of Ipswich Case**[31]Court inter alia, held that when the patent is expired the King cannot make a new grant thereof. The grant of patent for an invention is the grant to the patentee for a limited period of a monopoly right in respect of that invention. It should not be granted permanently in some way or other which will adversely affect the society.This basic philosophy of granting patent must be kept in mind and ever greening [increasing the life of the patent] should be discouraged particularly in a country like India. Ever greening in patent will be a luxury in a country like India.Protection of health of our poor people is one of the most important aspects to us. We cannot compromise it under any circumstances. However, patent and new inventions are always encouraged but misuse of patent in the name of new invention should always be discouraged. So, let us make a balance between the rights of the pharmaceutical companies to earn profit and duties of the State to protect public health. Keeping in mind this fine balance, we have to take future decisions in this regard.

[30] .AIR1982SC1444, (1979)2SCC511, [1979]2SCR757.
[31].1614 Godbolt 252.