Patenting of life-saving drugs has created a global health crisis where human life has become a commercial commodity.

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Millions of people—mostly in developing countries—lack access to life-saving drugs. Righting this imbalance is among the most important challenges of global public health of this century, argues **Akansha Mehta***. There is scant evidence to prove that frameworks for intellectual property rights and patent protection have benefited research, development and innovation in developing countries. When the laws of trade and commerce override the human right to life-saving medicines, how can society protect public health from unbridled private markets?*

The concept of intellectual property rights is deeply rooted in the philosophical foundations of capitalism. The basic tenants of this philosophy make it incumbent on governments to foster free enterprise and act as a protector of private properties including intellectual ones. Right to property is considered essential for individual and societies to attain their ultimate potentials and fulfilments. Unfortunately, applications of the same principles in global pharmaceutical research and development (R&D) have metamorphosed into a system that is causing misery and death to a substantial part of humanity. The irony of patenting of pharmaceutical products through private R&D is that while incentivising research it is preventing parallel innovations and impeding the benefit of new discoveries to reach the masses. This peculiar dilemma remains locked in abstraction which only a cutting edge academic debate through the growing open access movement can resolve.

Scholarly research in this area can discern the fault lines in the theoretical basis of the economics of health care models and economics of drug pricing followed world over. Sustained high quality research in this area can result in improving the quality and life expectancy for millions who have no say in this matter. Today about 14 million people die every year from infectious diseases surprisingly many of which are curable and preventable such as acute respiratory infections, diarrhoeal diseases, malaria and tuberculosis. The death toll is unacceptably high specially in developing nations. This health crisis is largely due to the lack of economic accessibility of life saving medicines. Many of the lifesaving drugs are also beyond the reach of common man. For example, the cost of drug used for the treatment of bone cancer costs £2,375 for one dose and £114,000 pounds for a full course of 48 doses making it highly unaffordable.

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High prices of such drugs and medicines can be attributed to the patenting system which allows the drugs companies to gain a monopoly over the production and marketing of pharmaceutical products and processes permitting them to fix prices at high rates to maximise profits. Millions of diseased people round the world —mostly in developing countries—lack access to life-saving drugs. Righting this imbalance is among the most important challenges of global public health of this century. One source of the access gap is lack of infrastructure and skills for research within developing nations. On the other hand, both public and private sectors in the developed world naturally devote relatively little research to develop cures to diseases without having markets for them in their own countries. As a result, relatively few new drugs target diseases specific to developing countries.

Analysts have argued that poor health infrastructure, cumbersome drug regulatory procedures, and high tariffs and taxes in developing countries also act as obstacles to this access. One proposed solution to this problem targets a surprising set of actors: research universities and public sector research institutes in developed countries. Many of the world's most important medicines and public health devices are wholly or partly developed in academic laboratories. Their accessibility to those living in poor nations is profoundly affected by the kind of research, licensing and patenting decisions taken by these universities

Patent rights are extended around the world through the provisions of WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which is based on the presumption that patents and other intellectual property rights are highly imperative to encourage innovation and research. Yet there is scant evidence to prove that the introduction of TRIPS-compliant framework of IPR protection has ensured transfer of technology, research & development and innovation in developing countries especially in context of life saving medicines and human health. However, in 2001, the Doha Ministerial Conference of the WTO adopted the Declaration on the TRIPS Agreement and Public Health, incorporating certain provisions in the interest of public health which was proposed initially by the developing countries. The Declaration allows least-developed countries to delay implementation of patent protection for pharmaceutical products and legal protection of undisclosed test data, submitted as a condition of approving the marketing of pharmaceuticals until 1 January 2016.

The most important provision is the one which clarifies the freedoms all WTO members have with respect to compulsory licensing, their determination of what constitutes a national emergency or other circumstances of extreme urgency, and exhaustion of rights. The Declaration explicitly mentions that public health crises "relating to

HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency." Moreover, WTO members are free to establish their own regime for exhaustion of intellectual property rights. This is important because it means that, if national laws indicate that patent rights over drugs are exhausted by their first legitimate sale anywhere in the world, countries can then import drugs legally purchased in countries where they are sold at a lower price.

What IPR protection has ensured is that poor patients give their entire life savings to pharmaceutical companies to buy their treatments to save their lives. Pharmaceutical industry has built their profit systems around obscure set of intellectual property controls creating a commercial hegemony to capitalise human miseries. In the garb of protecting their intellectual property rights these multinational brands hold poor patients hostage to market forces. It amounts to denying known cures to a large part of humanity for commercial consideration and letting the public health remain degraded on a global scale. The struggle to access lifesaving medicines presents a legal and ethical minefield for rich and poor countries alike – one that is needed to be fought out by the common man by challenging pharmaceutical corporations over intellectual property rights.

This raises pertinent questions about global health equity. When the laws of trade and commerce override the human right to life saving medicines, can the society protect public health from unbridled private markets? In today's time when the idea of life saving medicine as a social good is eclipsed by the commodification of health, is the IPR regime enough to protect people's right to life? Nothing can be more dehumanising than equating human life with commercial commodity. Corporate houses should not be allowed to trade in human life.

What can researchers and governments do to ensure the results of their research are contributing to wider health provision?

Here, governments can play an active role in checking the imbalance in access to life saving drugs. States should encourage extensive and intensive research in developing life saving medicines by providing research infrastructure at public cost and by incentivising researchers and scientists directly rather than rewarding the venture capitalists and companies for the labour of real researchers. This remains extremely crucial as when the state steps in the market of pharmaceutical industry it focuses on social returns and health impact unlike the other pharmaceutical and biotechnology industries which are driven solely by long-term business considerations. The state should also facilitate high level academic and scholarly research in this field to ensure exchange of ideas and information on a more intellectual level.

The outcome of R&D related to life-saving drugs ought to be treated as public goods rather than private property. This idea can be realised through democratization of pharmaceutical production systems. One option is to have a global patent pool which is based on a system of free exchange of research without the traditional proprietary restrictions. This would safeguard public access to scientific discoveries and technologies that could be used for developing treatments. The International Genome project is a good example of that.

Another research model proposed to the World Health Organisation by Bangladesh, Barbados, Bolivia, and Suriname in 2009 was a centralized innovation fund, which would pool research and develop treatments like antibiotics and vaccines aimed at serving vulnerable communities. For HIV/AIDS drug development, the Medicines Patent Pool, based in Switzerland and funded by the United Nations, has already established a global knowledge-sharing platform to expand production of low-cost medicines.

Therefore, the ultimate solution can be nationalising the entire pharmaceutical research & development activities related to life saving drugs while letting private pharmaceutical industries to participate only in the production and distribution of drugs in the market Whether governments world over have the courage, political will and moral strength to take such a bold step remains a moot question.

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