



CL meets a political objective rather than solving the actual problem

Is price the only barrier faced by patients in India?

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Price is not the only barrier faced by patients in India. Access to all medicines is a formidable issue - even to over the counter generic medicines. Medicines which are free and part of Government programmes too do not reach those who need them the most. Further, poor patients do not have access to even the most basic healthcare. In order to improve public health requires a collective long-term commitment is required from the government, healthcare providers, and others comprising the healthcare system, as well as establishment of infrastructure at the local level.

Will the CL solve the access problem?

No. CLs cannot solve India's larger problems regarding access to medicines and healthcare. Patented medicines form barely two per cent of the pharmaceutical market. CL therefore meets a political objective rather than solving the actual problem. CLs erode the central incentive of the patent system, the exclusive right, for the development of new medicines. The use of CLs thereby impedes the development of, and access to, new medicines over the longer term.

Should CLs be reserved for infectious diseases affecting mass populations and not conditions affecting smaller subsets of patients? Or would this be deemed discrimination?

The fact that issuance of CLs are lawful in certain circumstances does not mean that they are appropriate policy measures to use in any or all instances. CLs should be issued in rarest of rare cases and reserved for instances of public health emergencies and other urgent situations as per the Doha Declaration of TRIPS and Public Health.

In the case of the Nexavar CL, the drug was of a life extending nature and Bayer sold to 15 per cent of the patients as Cipla was selling an infringing product at 1/10 th of the price in any case. It was also an orphan drug in the US and therefore provided additional incentives. These facts were not taken on board.

Will this CL discourage MNCs from launching new medications in India?

Adequate IP protection and enforcement are critical to engendering a robust and vibrant innovative pharma industry. The findings in the recent CL decision particularly that with regard to working of a patent is not compliant with India's TRIPS commitment (as well as its broader WTO obligations). The decision will have ramifications beyond pharmaceuticals and send a wrong signal to the international community. The research-based pharma companies will have less incentive to develop new medicines for Indian patients, knowing that getting a return on their investment will be difficult, if not impossible.

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