

A WIGGLE ROOM' FOR INDIA: COMPLIANCE OF TRIPS AGREEMENT IN LIGHT OF 'AZADI KA AMRIT MAHOTSAV'

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Abstract—'Azadi Ka Amrit Mahotsav' is not just an event to celebrate the 75 years of independence of India, rather it reflects the historical significance and future visions for India 2.0. India's visions and aspirations are further explored by addressing them in the context of the intellectual property framework and tracking TRIPS compliance. In today's scenario, the global perception of India is changing from a colonized to a powerful state with a comprehensive foreign policy. India established a significant benchmark during the Uruguay round of negotiations, highlighting the concerns of the developing nations. Post the adoption of TRIPS Agreement, India has put all its efforts to comply with its various provisions. It would be more pertinent to trace India's conformity with TRIPS in light of Azadi Ka Amrit Mahotsav. This article attempts to answer some of the pertinent questions like the role of India during TRIPS negotiations and India's compliance journey since the adoption of the TRIPS agreement. It will also address the significance of Articles 7 and 8 of the TRIPS agreement and will embark upon the relationship between the aspirations of the TRIPS agreement and India's vision of 'Atmanirbhar Bharat' reaccelerated by the 'Panch Pran of Amrit Kaal'.

Keywords: Azadi Ka Amrit Mahotsav, Atmanirbhar Bharat, TRIPS, IP Rights, Panch Pran of Amrit Kaal.

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I. INTRODUCTION

India is celebrating and commemorating its 75 years of independence honouring the illustrious history of its people their achievements and culture. In this regard, the Government of India has launched the “*Azadi Ka Amrit Mahotsav*”, an initiative dedicated to the people of India who have been the prime catalyst in the transformative and developmental journey of the country and taking forward the vision of Prime Minister Shri Narendra Modi of activating India 2.0 accelerated by the essence of Aatmanirbhar Bharat.¹

Aatmanirbhar Bharat is a vision of our PM of a self-reliant India where all the citizens are independent in major senses. The five pillars of this campaign are economy, infrastructure, system, vibrant demography and demand.² This campaign caters to the need of various sectors like MSME’s, industries, laborers, the middle class etc. The prime focus is therefore being vocal for local products and creating their global space.

When innovations and inventions emerge from these sectors, the role of intellectual property in protecting these creations comes into action. The government of India has and is still taking affirmative measures in harbouring a supportive environment for the creation and safeguarding of the Indian IP regime along with a strong IP administration.

In the past, when India was a British colony, various IP statutory laws were already in existence. The first copyright act of India was enacted in 1847, during the regime of East India Company which was replaced by the Copyright Act of 1914. The first legislation in India with regard to Patents was the Act VI of 1856 which was replaced by Act XV of 1859. Also, the first statutory law related to Trademark in India was the Trade Marks Act, 1940. But as soon as India got independence in 1947, the process of decolonization started in many areas. It was imperative to focus on the IP Laws at that time in order to boost the industries as India was largely an agrarian economy. Therefore, the IP laws like many other statutes had been transformed to cater to the needs of independent India pillared on the ideals of a social and welfare state. The first amongst those was The Copyright Act of 1957, followed by The Trade and Merchandise Marks Act of 1958 and The Patent Act of 1970.

Simultaneous with India’s independence and post-World War II, the General Agreement on Tariffs and Trade (GATT) was incorporated in the year 1947 to regularise the global trading system. GATT remained in place as the only functional instrument for global trading until replaced by World Trade Organization (WTO) in the year 1995, which actually was the result

¹ Azadi Ka Amrit Mahotsav, Ministry of Culture, Government of India, <https://amritmahotsav.nic.in/> (last visited on Oct. 2, 2022).

² Aatmanirbhar Bharat, <https://aatmanirbharbharat.mygov.in/> (last visited on Oct 2, 2022).

of Uruguay (Punta Del Este) round of negotiations between the years 1986 to 1994. Resultantly, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) became the most significant and imperative instrument as a result of those negotiations.

This article, therefore, attempts to discuss the role of India during TRIPS negotiations and India's compliance journey since the adoption of the TRIPS agreement. It also deliberates on the significance of Articles 7 and 8 of the TRIPS agreement and will embark upon the relationship between the aspirations of the TRIPS agreement and India's vision of 'Atmanirbhar Bharat' reaccelerated by the 'Panch Pran of Amrit Kaal'.

II. INDIA'S PARTICIPATION DURING TRIPS NEGOTIATIONS

At the time of Uruguay round of negotiations, states were divided on the basis of their ambitions, formerly in the groups of developed, developing and least-developed nations. Developing and least-developed nations were sceptical about the negotiations as they anticipated a narrower scope culminating out of the agreement predominated by GATT.³ The issues which were at focus pertained primarily to the intellectual property regime with respect to standard protections, enforcement mechanisms, dispute settlement and relationship of the anticipated agreement with the GATT.⁴ The views shared by the United States and European countries were similar and at the same time catering to their needs to protect IP rights strongly, which were at an advanced stage in comparison to the developing and least-developed nations. The stand taken by the developed nations led by the United States was to widen the scope of GATT along with the inclusion of protections relating to IP regime within the GATT framework, simultaneously covering the aspects of services as well. Emerging out of this, India and Brazil led by a group of ten developing nations opposed this move of developed countries in 1986. The demands raised by this group were not to include the measures pertaining to intellectual property within the framework of GATT.⁵

The premise of the Uruguay negotiations has been opposed by India in its paper submitted in the year 1989 reflecting, "it would not be appropriate to establish within the GATT framework any new rules and disciplines pertaining to standards and principles concerning the availability, scope and use of

³ Marta Leesti, *Historical Background, General Provisions and Basic Principles of the TRIPS Agreement and the Transitional Arrangement*, JOURNAL OF INTELLECTUAL PROPERTY RIGHTS 66–73 (1998).

⁴ *Ibid.*

⁵ *Ibid.*

intellectual property rights”⁶ India reflected then, that the United States continued to exert pressure and sanction-related threats which eventually would nullify the objectives of TRIPS negotiations.⁷ It had been addressed by Indian delegates that the anti-competitive and restrictive activities ought to be considered “trade-related” as it has the capacity to distort the trade regime.⁸ Further, it had been argued by India that the “socio-economic, developmental, technological and public interest needs of developing countries” must be addressed; otherwise, the whole operation would be merely the protection of monopoly rights of a few developed nations.⁹ India also mentioned in its paper the marginal role played by the GATT and the necessity to incorporate a new document on the trade-related aspects in order to reverse the monopolistic nature of intellectual property; wherein it mentioned that the need of the hour is to attune the agreement in relation to the other international conventions and instruments leaving developing nations free to incorporate the standard protection of IP regime as per their socio-economic conditions.¹⁰

It is to be noted that the group of ten led by India and Brazil had played a significant role in order to negotiate the formulation of the TRIPS agreement. Although the final draft contained the majority of the portions recommended by the developed nations. The points forwarded by the developing nations led by India and Brazil have been incorporated as Articles 7 and 8 of the final TRIPS agreement. It must be mentioned that Articles 7 and 8 still were insufficient to cater to the demands of the developing nations, although they provided ‘a wiggle room’ to developing and least-developed nations for their concerns and demands.

III. INDIA’S COMPLIANCE JOURNEY

The above section highlighted the proactive role played by India during the TRIPS negotiations. Indeed, it becomes important to look at the TRIPS compliance journey of India post the enforcement of TRIPS in 1995. In order to be fully complied with, developing and least-developed nations received a certain time frame to modify and transform their respective domestic IP regime. India in that scenario received an exemption till 2005 in order to comply its patent laws as well as other IP laws. It is to be noted that, prior to the enactment and enforcement of the TRIPS agreement, the Indian IP regime extended to copyrights, trademarks, and patent laws.

⁶ TRIPS Negotiating Group, *Standards and Principles Concerning the Availability Scope and Use of Trade Related Intellectual Property Rights: Communication from India* 19-20, MTN.GNG/NG1b/W/37 (July 10, 1989).

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ TRIPS Negotiating Group, *Communication from Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Nigeria, Peru, Tanzania and Uruguay*, MTN.GNG/NG11/W/71 (May 14, 1990).

Gradually, various legislations have been enacted afresh and few were amended during the exemption period. The Trade and Merchandise Marks Act of 1958 was replaced to introduce the Trademarks Act of 1999 in compliance with the regulatory framework laid down under Article 15 and 16 of the TRIPS agreement.¹¹ Further, The Geographical Indications of Goods (Registration & Protection) Act, 1999 in order to comply with Article 22;¹² The Designs Act, 2000 in order to comply with Articles 25 and 26;¹³ and The Semiconductor Integrated Circuits Layout - Design Act, 2000 in order to comply under Article 36 and 37¹⁴ have been enacted afresh. The Protection of Plant Varieties and Farmers' Rights Act, 2001; and the Biological Diversity Act, 2002 pertain to the statutory regimes of the International Convention for the Protection of New Varieties of Plants (UPOV Convention) and the Convention on Biological Diversity respectively; and also, in consonance with the TRIPS agreement. Another important IP law i.e., the Copyright Act of 1957 has been amended numerous times in the years 1983, 1984, 1992, 1994, 1999 and 2012 in order to comply with the Rome Convention, 1961 and the TRIPS agreement. The amendments to the copyrights law also make it synchronized with the WIPO Performances and Phonograms Treaty and also WIPO Copyright Treaty.

In addition to the above, the major turbulence that happened was to make the Patent Act of 1970 in conformity with the TRIPS agreement, for which the amendment took place in the year 1999, 2002 and 2005.¹⁵ Patent Act earlier didn't allow product patents in areas of "drugs, pharmaceuticals and agro-chemicals"; for which the application could be filed under the 1999 Amendment Act as "mail-box applications" that could only be examined from 1st January 2005.¹⁶ Another aspect of the 1999 Amendment Act was to introduce the "exclusive marketing rights" for the application filed for a product patent of the specified area well within the transition period.¹⁷ Further, the 2002 Amendment Act complied with TRIPS in other aspects such as the grant of 20 years of the uniform period for patents and under any field of invention, eighteen months' publication, enactment of IP Appellate Board and examination of the application by request.¹⁸ Finally, the product patents in the areas of "drugs, pharmaceuticals and agro-chemicals" were incorporated by virtue of the Amendment Act of 2005.¹⁹ Other than that compulsory licensing provision for

¹¹ TRIPS agreement, arts. 15 & 16.

¹² TRIPS agreement, art. 22.

¹³ TRIPS agreement, arts. 25 & 26.

¹⁴ TRIPS agreement, arts. 36 & 37.

¹⁵ Teg Alam & Rupesh Rastogi, *Pre TRIPS, Post TRIPS Patent Regime and the Indian Pharmaceutical Industry: An Empirical Study*, 9 INDIAN JOURNAL OF SCIENCE AND TECHNOLOGY 1-7 (2016).

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Mohammad & Ataul Karim, *An Excellent Guide to TRIPS-Complaint Patent Regimes and Public Health Concerns in the Developing World*, 11 JOURNAL OF INTELLECTUAL PROPERTY LAW & PRACTICE 795-797 (2016).

the export of medicines was introduced by the 2005 amendment to address the issues of emergent public health situations.²⁰ There was also a hue and cry post the 2005 amendment as it has been argued that certain subjects were classified as non-patentable and a new definition of “inventive step” was incorporated along with provisions of pre/post-grant opposition of the patent application.²¹

Nevertheless, it is to be noted that India took all the significant measures and steps in order to make its IP regime compatible with the TRIPS agreement. Numerous case laws by various High courts and Supreme Court reflects this arduous journey of strengthening Indian IP laws in consonance with TRIPS; howsoever for the purposes of the present article and to avoid repetition from the existing line of literature, it is less important to discuss those judgments here. Instead, it is pertinent to look into the *Objectives* and *Principles* laid down under Articles 7 and 8 of the TRIPS agreement which provides ‘a wiggle room’ to India as well as other developing nations.

IV. ARTICLES 7 AND 8 OF TRIPS AGREEMENT: ‘A WIGGLE ROOM’

Under Article 7 of the TRIPS Agreement²² five objectives are reflected which are as follows: “technological innovation, the transfer, and dissemination of technology, the production and use of technological knowledge, social and economic welfare, and a balance of rights and obligations”. The latter two objectives are wider in their nature to incorporate various IP rights, whereas the former three focus primarily on technological development, having a narrower scope.²³ The stand taken by developing nations herein is to associate the IP protection regime with the socio-economic situation and technological development of their nations.

On the other hand, Article 8 is considered an interpretive principle that recounts the needs of the developing and least-developed nations in order to grant flexible approaches to implement the laws in their respective nations which could cater to them to advance their technological base. “Public interest” principle is laid down under Article 8.1 of the Agreement²⁴ focussing on

²⁰ *Ibid.*

²¹ *Ibid.*

²² “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.”

²³ JAYASHREE WATAL, *INTELLECTUAL PROPERTY RIGHTS IN THE WTO AND DEVELOPING COUNTRIES* 11-47 (2001).

²⁴ “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.”

the rights of the member states to formulate and amend laws in furtherance of adopting measures for the betterment of public health. It is furthermore important as it strikes a consonance between the public interest in the association of the “socio-economic and technological development”.²⁵ The problematic aspect under Article 8.1 is the phrase, “consistent with the provisions of the agreement”. However, it has been pointed out by Professor Correa that the “consistency with the TRIPS agreement should be assessed in the light of Article 7 and of the Preamble, that is taking the balance of rights and obligations and the social and economic welfare into account”.²⁶

It has been widely recognised that Articles 7 and 8 serve as both a “bridge” connecting IP with other issues of public interest and as a “guiding light” for interpreting other TRIPS provisions²⁷. While Articles 7 and 8 do not explicitly mention TRIPS flexibilities, the principles outlined in these articles provide a broader context and rationale for the inclusion of these flexibilities within the TRIPS Agreement. The flexibilities help to ensure that intellectual property protection does not hinder access to essential medicines and technology transfer, and they support the overall objectives of the agreement in promoting innovation, development, and the public interest.

Articles 7 and 8 of the TRIPS Agreement play a vital role in guaranteeing the members of WTO the right to implement public health measures. The Doha Declaration on the TRIPS Agreement and Public Health is also a significant element for the interpretation of any provision of the TRIPS Agreement that may have public health implications. The WTO Panel decision of 2018 on the Australia – Tobacco Plain Packaging dispute serves a recent example of the utilization of articles 7 and 8 for interpretation in WTO law. The panel largely banked on the Doha Declaration to address this issue.

It noted: “*We note in this respect that the Doha Declaration, adopted by Ministers on 14 November 2001, provides that, “[i]n applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles” (para. 7.2407).*

While this statement was made in the specific context of a re-affirmation by Members of the flexibilities provided in the TRIPS Agreement in relation to measures taken for the protection of public health, we note that paragraph 5 of

²⁵ *Ibid.*

²⁶ Carlos M. Correa, Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement 91-114 (2007).

²⁷ Amy Tesoriero, *Using the flexibilities of Article 30 TRIPS to implement patent exceptions in pursuit of Sustainable Development Goal 3*, THE JOURNAL OF WORLD INTELLECTUAL PROPERTY (2022), <https://onlinelibrary.wiley.com/doi/full/10.1111/jwip.12239> (last visited on Nov. 5, 2022).

the Doha Declaration is formulated in general terms, inviting the interpreter of the TRIPS Agreement to read “each provision of the TRIPS Agreement” in the light of the object and purpose of the Agreement, as expressed in particular in its objectives and principles. As described above, Articles 7 and 8 have central relevance in establishing the objectives and principles that, according to the Doha Declaration, express the object and purpose of the TRIPS Agreement relevant to its interpretation (7.2408)”.²⁸

Articles 7 and 8 of the TRIPS Agreement therefore play a pivotal role in ensuring that member countries can prioritize public health and access to essential medicines. The examples of compulsory licensing, parallel imports, and the Doha Declaration illustrate how TRIPS flexibility allows nations to take decisive action to safeguard public health without sacrificing their obligations under the agreement. By empowering countries to adopt measures aligned with their specific needs, Article 7 and Article 8 promote a more equitable and sustainable approach to intellectual property and public health on a global scale.²⁹

It is in this light that Articles 7 and 8 acts as ‘a wiggle room’ for developing and least-developed nations wherein they can use these provisions in favour of their domestic requirements to challenge the excessive coercion by developed nations.

As far as India (or any other developing or least-developed nations) is concerned these provisions can effectively act as ‘a wiggle room’ in the following ways: firstly, it is to be noted that these provisions outline the objectives and principles of the agreement, therefore other provisions must be interpreted in accordance with these Articles; which has also been mandated by the Vienna Convention.³⁰ Secondly, these provisions can be used in situations of threat or sanction-related scenarios by developed nations, wherein these provisions act as a stringent defensive mechanism in favour of developing nations.³¹ The defensive attributes can be invoked in light of the social, developmental and public policy dimensions of the Agreement. Thirdly, these provisions can be used as “offensive tools”³² in many ways such as, by strengthening other provisions in light of social and economic welfare (for example seeking the support of developed nations for technological support as mandated under Articles 66 and 67 of the agreement); and by utilizing the provisions for non-compli-

²⁸ Thamara Romero, *Policy Brief 79*, June 2020 THE SOUTH CENTRE, <https://www.southcentre.int/policy-brief-79-june-2020/> (last visited on Dec. 30, 2022).

²⁹ Dianne Nicol & amp Olasupo Owoeye, *Using Trips Flexibilities to Facilitate Access to Medicines*, BULLETIN OF THE WORLD HEALTH ORGANIZATION (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3699798/> (last visited on Nov. 30, 2022).

³⁰ Carlos, *supra* note 26.

³¹ Graeme B. Dinwoodie, *The Architecture of the International Intellectual Property System*, 77 C-n.-KENT L. REV. 993, 1004 (2002).

³² *Ibid.*

ance by member states.³³ Fourthly, these provisions can be used as a linkage between TRIPS framework with other frameworks having attributions in light of enforcement or protection of IP rights.³⁴ And lastly, these provisions can be used as foundations to develop new norms highlighting the symbiotic relations between developed and developing nations.³⁵

India has served as a notable example of how to effectively apply the flexibilities granted by the TRIPS Agreement to address public health issues and provide access to cost-effective medications. India has strategically used several TRIPS flexibilities since the TRIPS Agreement went into force in 1995 to advance public health and nurture a strong pharmaceutical industry. Here are some key examples:

1. Compulsory Licensing

One of the most critical TRIPS flexibilities that India has utilized is compulsory licensing. It allows a government to authorize the production of a patented product or the use of a patented process without the patent holder's permission. This flexibility has been leveraged in India to create and market generic versions of necessary medications at a lower price.³⁶ In 2012, India issued its first-ever compulsory license for the cancer drug Sorafenib Tosylate, marketed under the brand name Nexavar, which was patented by Bayer. Natco Pharma, an Indian pharmaceutical company, was granted the license to produce and sell a generic version of the drug at a significantly reduced price, making it more accessible to patients in need.³⁷

2. Patentability Criteria and Evergreening

India's patent law includes strict criteria for patentability, preventing pharmaceutical companies from obtaining frivolous or minor modifications of existing drugs, a practice commonly referred to as "evergreening."³⁸ By doing so, India ensures that genuine innovations are rewarded while preventing monopolies on existing medicines. In 2013, India's Supreme Court upheld a decision rejecting Novartis' patent application for the cancer drug Glivec (Imatinib mesylate).³⁹ The court ruled that the modified form of the drug did not meet

³³ TRIPS RESOURCE BOOK.

³⁴ *Supra note 26.*

³⁵ "These norms may take the form of substantive rules or standards, procedural safeguards, or even equitable remedies."

³⁶ WORLD TRADE ORGANIZATION, WTO, https://www.wto.org/english/tratop_e/trips_e/factsheet_pharm02_e.htm (last visited on Dec. 27, 2022).

³⁷ Rachit Garg, *Bayer Corporation v Natco Pharma Ltd : A Case Analysis*, iPLEADERS (2023), <https://blog.ipleaders.in/bayer-corporation-vs-natco-pharma-ltd-a-case-analysis/> (last visited on Jul. 30, 2023).

³⁸ Prachi Bhardwaj, *Ever Greening of Patents of India* (2013), <https://articles.manupatra.com/article-details/Ever-Greening-Of-Patents-Of-India> (last visited on Jul. 30, 2023).

³⁹ Shamim S. Mondal & Viswanath Pingali, *Competition and Intellectual Property Policies in the Indian Pharmaceutical Sector* (2017), <https://journals.sagepub.com/>

the necessary criteria for patentability. This decision prevented Novartis from gaining an extended patent monopoly on the medicine, enabling Indian generic manufacturers to continue producing more affordable versions.⁴⁰

3. Price Control and Pharmaceutical Regulations

India has implemented price control mechanisms and regulations on essential medicines to guarantee their availability and affordability to the general population.⁴¹ The National Pharmaceutical Pricing Authority (NPPA) plays an essential role in regulating drug prices in the country.⁴² The NPPA uses the Drug Price Control Order (DPCO) to regulate the prices of essential medicines, including those used to treat various chronic diseases.⁴³ By capping the prices of these medicines, India ensures that they remain accessible and affordable to patients.

4. Access to HIV/AIDS Medicines

India's commitment to addressing the HIV/AIDS pandemic has been demonstrated by its approach to generic production and distribution of antiretroviral drugs (ARVs).⁴⁴ By promoting competition among pharmaceutical companies, India has contributed significantly to reducing the cost of HIV/AIDS treatment. In 2001, Cipla, an Indian generic drug manufacturer, introduced a low-cost version of the antiretroviral drug Efavirenz, which is widely used in HIV/AIDS treatment.⁴⁵ Cipla's initiative played a pivotal role in increasing access to affordable ARVs, not only in India but in many other developing countries heavily affected by the HIV/AIDS epidemic.⁴⁶

Overall, India's deliberate application of TRIPS flexibilities has significantly improved public health, particularly by expanding access to cost-effective,

doi/10.1177/0256090917704561 (last visited on Jul. 29, 2023).

⁴⁰ Dorothy Du, *Novartis Ag v. Union of India: "Union of India: "Evergreening," Trips, and "Enhanced Efficacy" Under Section 3(d)*, 21 JOURNAL OF INTELLECTUAL PROPERTY LAW (2014).

⁴¹ Sarthak Pradhan, *India's Price Control Policy Has Destroyed Drug – THE PRINT* (2019), <https://theprint.in/opinion/indias-price-control-policy-has-destroyed-drug-manufacturers-this-is-how-they-can-be-saved/338095/> (last visited on Jul. 29, 2023).

⁴² Venkatanarayana Motkuri & Rudra Narayan Mishra, *Pharmaceutical Market and Drug Price Policy in India*, SAGE JOURNALS (2020), <https://journals.sagepub.com/doi/10.1177/0972266120929146> (last visited on Jul. 26, 2023).

⁴³ Sakthivel Selvaraj et al., *Evaluating the Impact of Price Regulation (Drug Price Control Order 2013) on Antibiotic Sales in India: A Quasi-Experimental Analysis, 2008–2018*, JOURNAL OF PHARMACEUTICAL POLICY AND PRACTICE (2022).

⁴⁴ Brenda Waning, Ellen Diedrichsen & Suerie Moon, *A Lifeline to Treatment: The Role of Indian Generic Manufacturers in Supplying Antiretroviral Medicines to Developing Countries*, JOURNAL OF THE INTERNATIONAL AIDS SOCIETY (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2944814/> (last visited on Jul. 30, 2023).

⁴⁵ Cipla ready to launch low dose HIV drug "Efavirenz", ETHealthworld.com Pharma (2015), <https://health.economicstimes.indiatimes.com/news/pharma/cipla-ready-to-launch-low-dose-hiv-drug-efavirenz/49980226> (last visited on Jul. 30, 2023).

⁴⁶ Brenda, *supra* note 44.

life-saving medications. These instances highlight India's dedication to balancing the protection of intellectual property rights with the promotion of public welfare, making it a major player on the international stage in the pharmaceutical and public health sectors.⁴⁷

The usage of Articles 7 and 8, despite being only a smaller part of the TRIPS agreement is significant and caters to the aspirations and modalities of the developing and least-developed nations. India has managed to negotiate at par with its visions and aspirations with the effective utilization of these provisions. It henceforth becomes pertinent to embark upon the relationship between the aspirations of the TRIPS agreement and India's vision of 'Atmanirbhar Bharat' reaccelerated by the 'Panch Pran of Amrit Kaal'.

'Panch Pran of Amrit Kaal' and 'Atmanirbhar Bharat': The policy of Atmanirbhar Bharat (self-reliant) India is supposed to be understood in light of 'Make in India' policy launched by the government in 2014. The five pillars of self-reliant India are: economy, infrastructure, system, demography and demand.⁴⁸ These core objectives of the Atmanirbhar Bharat Abhiyan are to make India self-sufficient so that it can bridge the gap with the developed nations in order to become developed in itself.⁴⁹ For that to happen, it is pertinent that the loopholes ought to be identified in order to accelerate the process of development. Therefore, firstly it is extremely pertinent to revolutionize the growth of the economy in a quantum manner which could only happen if the dependence on foreign goods is reduced to an extent that products, goods and services are produced locally; which is premised on the idea of 'being vocal for local'. Secondly, in order to produce the goods and services locally, it is imperative that a functional and effective infrastructure is necessary. Thirdly, the existing modalities of administrations and systems are premised on the older methods, which ought to be synchronized with technology and digitalization. Fourthly, demography symbolizes the manpower of India retaining its unity in diversity. And lastly, demand and supply chains in the economy need to be strengthened so that the full potential can be achieved.

In order to picturize the IP regime within the realm of Atmanirbhar Bharat Abhiyaan, it has to be noticed that all five pillars revolutionize the IP regime of India exponentially. But before discussing that, it is also pertinent to reflect upon the 'Panch Pran of Amrit Kaal' which are the five resolutions for the next

⁴⁷ PRACHI SINGH, SHAMIKA RAVI & DAVID DAM, *MEDICINES IN INDIA: ACCESSIBILITY, AFFORDABILITY AND QUALITY* BROOKINGS (2020), <https://www.brookings.edu/articles/medicines-in-india-accessibility-affordability-and-quality/> (last visited on Jul. 30, 2023).

⁴⁸ *English Rendering of Prime Minister Shri Narendra Modi's Address to the Nation on 12.5.2020*, Press Information Bureau 2022, [online] available at: <<https://pib.gov.in/PressReleaseDetail.aspx?PRID=1623418>> (last visited on 2 Oct. 2022).

⁴⁹ *Ibid.*

25 years embarked by the celebrations of Azadi ka Amrit Mahotsav.⁵⁰ These resolutions are as follows: “goal of developed India, to remove any trace of the colonial mindset, take pride in our roots, unity and sense of duty among citizens”.⁵¹ It is pertinent to note that these resolutions are in furtherance of the five pillars of the Atmanirbhar Bharat Abhiyaan. If the five pillars of Atmanirbhar Bharat are being enabled in a proper manner, then the first resolution of Amrit Kaal would not remain a dream and India would become truly developed by the year 2047; further, the remaining resolutions of the Amrit Kaal would also be achieved as the five pillars and resolutions are interrelated and are also complimentary to each other.

In order to trace the relationship between the aspirations of the TRIPS agreement and India’s vision of ‘Atmanirbhar Bharat’ reaccelerated by the ‘Panch Pran of Amrit Kaal’ it is to be noted that there exists a direct correlation amongst these three coordinates. The core philosophy which binds these three coordinates is centered around localization i.e. being vocal for local. If the manufacturers of local products, goods and services focus on registering their creations under appropriate IP regimes viz. patent law, trademarks, geographical indications, copyrights, designs etc., it would exponentially boost the Indian economy. It would further strengthen India to cater to its goal of being developed nation. But there may be certain circumstances under which this situation may be in conflict with the TRIPS agreement particularly with relation to pharmaceutical industry patents and public health. Under certain circumstances, such as a national emergency or public non-commercial use, India may use compulsory licensing, a TRIPS flexibility that enables the government to allow the use of a patented invention without the patent holder’s approval. India can uphold its commitment to its “Atmanirbhar Bharat” vision while ensuring access to affordable medications by leveraging this flexibility.

Also, it is to be noted that IP laws such as geographical indications (GI) are very much centered around uplifting local products, which would also enhance the economic aspects in many ways. GI registration ensures protection to products with unique characteristics originating from specific geographical regions. However, there might be concerns about how GI protection aligns with TRIPS. TRIPS recognizes GI protection and provides provisions for member countries to protect GIs through a multilateral system⁵². India can leverage this system to register and protect its unique local products under GIs, thus supporting the ‘Atmanirbhar Bharat’ vision.

⁵⁰ *The Prime Minister, Shri Narendra Modi addressed the nation from the ramparts of the Red Fort on the 76th Independence Day* PRESS INFORMATION BUREAU 2022, [online] available at: <<https://pib.gov.in/PressReleasePage.aspx?PRID=1852024>> (last visited on 2 Oct. 2022).

⁵¹ *Ibid.*

⁵² Harsha Vardhana Singh, *India’s “Atmanirbhar Bharat” Vision Requires Open, Not Protectionist, Policies* ATLANTIC COUNCIL(2020), <https://www.atlanticcouncil.org/blogs/new-atlanticist/indias-atmanirbhar-bharat-vision-requires-open-not-protectionist-policies/> (last visited on Jul. 30, 2023).

Article 3 of the TRIPS Agreement establishes the principle of national treatment, which requires equal treatment of foreign nationals and domestic nationals with regard to intellectual property protection and enforcement. Article 4 of the TRIPS Agreement establishes the principle of Most-Favoured Nation (MFN) treatment, which requires that any advantage, favour, privilege, or immunity granted by a WTO member to the nationals of any other country must be extended to the nationals of all other WTO members. The MFN principle is based on the principle of non-discrimination and applies to the protection and enforcement of intellectual property rights. These principles go against the idea of Atmanirbhar Bharat since India provides tariff relief and tax concessions to nations, which are willing to set up manufacturing centres in India for their products.

However, there are various ways and means for resolving the conflict between the TRIPS Agreement and India's vision of 'Atmanirbhar Bharat'. Although national treatment and MFN are fundamental principles of the TRIPS agreement, the agreement also provides certain flexibilities that allow member countries to implement measures required to safeguard public health, promote access to medicines, and address particular development needs. These flexibilities help resolve conflicts that may arise from strict adherence to national treatment and MFN principles. The Doha Declaration on TRIPS and Public Health reaffirms the flexibility of TRIPS to support public health goals. It clarifies that TRIPS should not prevent member countries from taking necessary measures to protect public health and promote access to medicines for all⁵³. In some situations, member nations may issue compulsory licenses under Article 31 of the TRIPS agreement. This indicates that a nation can authorize the use of a patented invention without the patent holder's consent. Compulsory licensing allows a nation to meet its national treatment commitments while ensuring that the public has access to affordable medications.⁵⁴ Article 30 of the TRIPS agreement's Bolar exception allows member nations to permit the use of patented innovations for regulatory reasons, such as getting marketing consent for generic medications. Conflicts resulting from MFN treatment in the context of pharmaceuticals can be avoided by using this provision. Article 27.3(b) of the TRIPS agreement permits member nations to create sui generis systems of protection for traditional knowledge, traditional cultural expressions, and folklore. These systems can be tailored to the specific needs and cultural heritage of each country, ensuring the preservation of traditional knowledge while respecting national treatment obligations⁵⁵. A careful balance must be struck between international obligations and the member countries' developmental needs in order to resolve contradictions between Articles 3 and

⁵³ MATTHEW KENNEDY, *WTO DISPUTE SETTLEMENT AND THE TRIPS AGREEMENT APPLYING INTELLECTUAL PROPERTY STANDARDS IN A TRADE LAW FRAMEWORK* (2016).

⁵⁴ TRIPS Agreement, art. 31.

⁵⁵ *Trips Provisions as Interpreted by the WTO Dispute Settlement Organs*, LAW EXPLORER (2015), <https://lawexplores.com/trips-provisions-as-interpreted-by-the-wto-dispute-settlement-organs/> (last visited on Jul. 30, 2023).

4. Countries can create IP policies that encourage innovation, facilitate access to critical commodities, and support national economic development by utilizing the flexibilities and policy space provided by TRIPS.

In conclusion, by utilizing the available flexibilities and policy space, conflicts resulting from Article 3's (National Treatment) and Article 4's (Most Favored-Nation Treatment) of the TRIPS agreement can be successfully resolved. By taking use of the TRIPS agreement's flexibility, India can align its IP policy with its goals for "Atmanirbhar Bharat" and the "Panch Pran of Amrit Kaal." The challenge is to put policies in place that strike a balance between IP protection and the progress of regional businesses, public health, traditional knowledge, and technology while still upholding TRIPS's principles of non-discrimination and equitable treatment.

V. CONCLUSION

This paper attempted to tackle two important research questions. The first research question was: Whether Articles 7 and 8 of the TRIPS agreement caters to the needs of India considered it being a developing country? In order to answer, the first research question it has been noted that Articles 7 and 8, despite being the smaller part of the whole TRIPS agreement caters to the needs of India as well as other developing nations in numerous ways, wherein the provisions could be utilized as effective interpretation, offensive tools, bridging the gap and generating new norms under the TRIPS agreement. With regards to the research question of establishing an effective IP regime through the idea of self-reliant India ('Atmanirbhar Bharat') reaccelerated by the 'Panch Pran of Amrit Kaal', it has to be noted that there exists a symbiotic relationship between these three coordinates, therefore the relationship amongst IP regime, Atmanirbhar Bharat Abhiyaan and Panch Pran of Amrit Kaal is very much visible and obvious as these coordinates are intermingled and complimentary to each other.

As a matter of the concluding thoughts, it is important to reflect that India is emerging as a stronger player in the international and global order. Therefore, it is advisable that India must not leave any stone unturned in order to attune in the ambits to become a developed nation as soon as possible. Further, the Indian IP regime must focus to remove lacunas in order to accelerate the process in a smoother way.