

# **PRESENT STAKES AROUND PATENT POLITICAL ECONOMY: LEGAL AND ECONOMIC LESSONS FROM THE PHARMACEUTICAL PATENT RIGHTS IN INDIA**

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## **ABSTRACT**

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*The Intellectual Property Rights (IPR) regime adopted by any country is essentially a tool that strives to ensure both the growth of the domestic pharmaceutical industry and people's access to medicines. But, contrary to the very easily advanced theory, there is no paradox between the two. From this perspective, the Indian experience has shown that it is precisely the relaxation of its national IPR regime that promoted the growth of its domestic industry, thereby ensuring a better patient access to medicines. However, the globalisation process does not overlook any sector, which means that medicines too are submitted to the new legal framework established within the WTO. To understand better the stakes involved in the ratification of the TRIPS agreement in India, this paper addresses several issues. It begins by establishing that opting for the intellectual property regime is not without consequences. It determines the extent of progress achieved in the industrial and health sectors both in the developed as well as developing countries. Then, it analyses how the TRIPS agreement establishes a strong IPR system that aims to reconcile protection of innovation and public health promotion by providing for "exceptions" at the global level. Finally, after having dealt in detail with Indian reticence and tardiness in making its legislation TRIPS compatible, the paper presents the prospects available presently for India.*

**KEYWORDS:** WTO; TRIPS; public health; patent; medicine; India

## I. INTRODUCTION

The rationale behind patenting an invention can be traced to the community of interests between society and the inventor. For society, it means that an individual can be guaranteed access to new therapies that are safe and effective and obtain disclosures of an invention to promote innovation. For the inventor, he gets the benefits in the form of a monopoly on the use of the patented product or process. Certainly, patents are an incentive for innovation in a sector where processes and products are the fruit of expensive research and development (R&D) programmes, which often expose companies to problems of appropriation.<sup>1</sup> Thus, interests

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<sup>1</sup> In fact, companies experienced great difficulties in obtaining maximum benefit of their R&D activities and seemed unable to recover the considerable sum invested in the development of new treatment. They were under the constant threat of their competitors copying their products. So, it