

WATCHING THE NEW PATENT BILL

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The pending third amendment to the Indian Patent Act of 1970 will introduce a product patent regime for inventions in the fields of food, chemicals and pharmaceuticals. There are contentious issues here and these have been aired in the intervening years.

The nature of 'invention' recognised by the Bill is one. Following the US lead, increasingly both 'inventions' and 'discoveries' are becoming patentable. This is against the philosophy and the purpose of the patent system that was to reward inventions that had a use for society, so society benefited and so did the inventor. 'Invention' in the new bill must be clearly defined so that patents are granted only to products that benefit the public and not include mere discoveries of existing products.

Another concern is the scope of patents on microorganisms. This in my view is the start of the slippery slope pointing to patents on living organisms, a provision that raises ethical questions but in the case of India, even more directly economic ones. Microorganisms are important in agriculture and pharma industry. Opening the doors to product patents in key sectors with so little preparation, could create problems arising from overwhelmingly foreign patents.

The Patent Bill must keep the definition of patents very conservative and not admit genes, DNA, cells or cell lines as microorganisms, nor allow patents on naturally occurring microorganisms. Patents should be granted only for the particular function that constitutes the invention, so that the microorganism remains free for research and for others to create other inventions. There should be specific provisions that will not allow the grant of broad overarching patents with a very wide scope, as the corporations are trying to claim.

In the case of microorganisms that are extracted from Indian micro flora, the grant of any IPR must follow the protocol of the Convention on Biological Diversity. That means prior informed consent and material transfer agreements will have to be executed. When a patent is granted, the patent holder will be obliged to share the economic benefits with the communities by depositing the negotiated amount into the National Gene Fund. Given the critical role that microorganisms play in sensitive sectors, compulsory licensing provisions must be such that can safeguard food, health, defence & environmental security.

An interesting feature of the current patent legislation is the exemption granted to products of the Indian Systems of Medicine (ISM). These are derived from Indigenous Knowledge (IK). IK derived products should not be patentable. Products used in ISM are the product of years of creative, innovative work undertaken by indigenous communities. This body of knowledge is their intellectual property. Granting patents to others on their intellectual property would be unethical and illegal.