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# **GENERAL PROVISIONS AND BASIC PRINCIPLES OF TRIPS AND THE ERA OF BTAS AND FTAS- A CASE FOR DEVELOPING COUNTRIES.**

AUTHORED BY - SHIKHAR SINGH

LLM (IPR)

## **Literature Review**

### **1. Trade Related Aspects of Intellectual Property Rights**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO). It establishes minimum standards for the regulation by national governments of different forms of intellectual property (IP) as applied to nationals of other WTO member nations. TRIPS was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) between 1989 and 1990[5] and is administered by the WTO.

### **2. Comprehensive Economic Partnership Agreement (CEPA) between the Government of the Republic of India and the Government of the United Arab Emirates (UAE)**

Article 11.12 gives way for both countries to beyond TRIPs, there are other articles as well which on further reading will be incorporated in the paper.

### **3. Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options, Professor Carlos M Correa**

This book cuts through the daunting technicalities of one of the most important of the WTO (World Trade Organization) agreements, that dealing with Intellectual Property Rights (hitherto primarily the preserve of national patent legislation) and their treatment as internationally tradeable commodities. Professor Correa makes comprehensible the TRIPS Agreement and explains its main provisions.

#### **4. Bilateralism, MFN and TRIPS: Exploring Possibilities of Alternative Interpretation**

It delves how many bilateral trade agreements signed by developing countries contain intellectual property rights rules more stringent than the standards given in the TRIPS agreement, known as TRIPS plus provisions. The article discusses whether the most favoured nation (MFN) clause occurring in the TRIPS agreement binds developing countries, which are parties to bilateral agreements containing TRIPS plus rules, to extend the same TRIPS plus provisions to rest of the WTO member countries. The article argues that such an expansive interpretation of the MFN rule is untenable because it will curtail the policy space of developing countries. It argues how TRIPS plus provisions in bilateral agreements are an exception to MFN.

#### **5. THE OBJECTIVES AND PRINCIPLES OF THE TRIPS AGREEMENT Peter K. Yu**

It talks about how in recent years, less-developed countries including both developing and least-developed countries have expressed their deep dissatisfaction with the way the TRIPS Agreement has been interpreted and implemented. How the ongoing demands by developed countries for protections that are in excess of what they promised during the TRIPS negotiations often through new bilateral and regional trade and investment agreements.

#### **6. THE LEGAL STATUS OF THE DOHA DECLARATION ON TRIPS AND PUBLIC HEALTH UNDER THE VIENNA CONVENTION ON THE LAW OF TREATIES James Thuo Gathi**

This article talks about how developing countries have argued that the TRIPS Agreement does not limit their sovereignty to address crises such as HIV/AIDS. They view compulsory and parallel licensing as permissible objectives that do not violate the TRIPS Agreement. It indulges the reader to understand the view of Developed countries, particularly the United States and Switzerland, have argued that the only flexibility in the TRIPS Agreement is the staggered implementation periods developing countries enjoy under the Agreement.

#### **7. TRIPS Enforcement and Developing Countries Peter K. Yu**

The above article talks about the China regime of IPR and how it has used the TRIPs

flexibilities for its benefit. It mentions the Dispute between China and USA of Dispute Settlement Body. It discusses Panel Report. It explains how the report includes some disappointments—most notably in its lack of discussion of Articles 7 and 8 of the TRIPS Agreement.

8. Other FTAs of India are yet to be studied and the paper will limit to 2/3 FTA as it points out the achievement or loopholes of those. Eg- India-Australia ECTA/.

### **Problem Statement-**

Although the TRIPS Agreement's one-size-fit-for-all, more precisely, is highly problematic, the Agreement includes a number of flexibilities to facilitate development and to protect the public interest. To safeguard these flexibilities, Articles 7 and 8 provide explicit and important objectives and principles that play important roles in the interpretation and implementation of the Agreement. But are the developing countries are aware enough to use the flexibilities or exceptions under the TRIPs.

### **Hypothesis-**

1. Whether India can go beyond TRIPs and use flexibilities in signing FTAs for its national interest.
2. How efficiently the FTAs signed by India with countries have utilized the TRIPs Flexibilities.

### **Research Objective-**

1. Analyzing and interpreting Basic principle of MFN, Article 7, Article 8 among other.
2. Understanding Trade Agreements of India w.r.t IPR.
3. Identifying Relevant Provisions in FTA where it has gone beyond TRIPs.
4. Exploring the Scope whether India can use the TRIPs flexibility better than it has used.
5. Building a case where India can exercise freedom as to policy making to sign FTAs/ CEPA/ BTA without the fear of violating TRIPs agreements, with relevant examples.