



Outreach and overreach

Task Force:

1. Judicial intervention in response to the Union government's flailing response to the health crisis has reached its apotheosis with the Supreme Court order forming a 12-member national task force for the effective and transparent allocation of medical oxygen to the States and Union Territories "on a scientific, rational and equitable basis".
2. Making recommendations on augmenting the supply based on present and projected demands and facilitating audits by sub-groups within each State and UT is also part of its remit.
3. The Court has also mandated it to review and suggest measures for ensuring the availability of essential drugs and remedial measures to meet future emergencies during the pandemic.
4. In other words, the national task force has become a judicially empowered group that may significantly guide the handling of the health crisis set off by the second pandemic wave.
5. Faced with proceedings in High Courts relating to the allocation and availability of oxygen, the Centre submitted that an expert committee may be constituted, consisting of persons drawn from public and private healthcare institutions, to facilitate a fresh assessment of the basis for the allocation.

Outreach and overreach or not:

1. Several High Courts and the Supreme Court are examining different aspects of the pandemic response, including the availability of beds and oxygen. The trend did raise concerns about the judiciary encroaching on the executive domain.
2. There is some merit in the argument that allocation of resources based on a formula related to the present and projected requirements of each State is indeed an executive function.
3. However, as the daily infection numbers and death toll have acquired frightening levels, the constitutional courts felt obliged to take it upon themselves to protect the right to life and good health of the population.



- Justice D.Y. Chandrachud has clarified that the Court was not usurping the executive's role, but only wanted to facilitate a dialogue among stakeholders. As long as this position is clear, the present intervention need not be seen as a dangerous overreach.

A TRIPS waiver is useful but not a magic pill

The U.S.-supported move will have an effect if countries simultaneously address non-IP bottlenecks among other things.

US supporting IP waiver:

- The United States has finally relented and declared its support for a temporary waiver of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement for COVID-19 vaccines at the World Trade Organisation (WTO).
- In October 2020, India and South Africa, at the WTO, proposed waiving Parts of the TRIPS agreement (covering copyrights, industrial designs, patents, and undisclosed trade information) related to the prevention, containment, or treatment of COVID-19.
- The U.S.'s support of the TRIPS waiver is a significant step forward in the global fight against the pandemic. Hopefully, the U.S.'s decision would cause other holdouts like Canada and the European Union to give up their opposition.
- Legally, the waiver is surely possible since Article IX of the WTO Agreement allows for waiving obligations in 'exceptional circumstances' which the COVID-19 pandemic undoubtedly is.
- The stumbling block is the political will of the richer countries that house the giant pharmaceutical corporations producing COVID-19 vaccines and medicines.

Devil in the details

- The countries would now negotiate on the text of the waiver at the WTO. If the experience of negotiating such waivers, especially on TRIPS, were anything to go by, it would be too early to celebrate.
- Negotiation may a lot of time and may come with strings attached.

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3. The U.S. supports waiving intellectual property (IP) protections on COVID-19 vaccines. However, India and South Africa proposed a waiver not just on vaccines but also on medicines and other therapeutics and technologies related to the treatment of COVID-19.

Overcoming key obstacles

1. Waiving IP protection does not impose a legal requirement on pharmaceutical companies to transfer or share technology.
2. Therefore, governments would have to be proactive in negotiating and cajoling pharmaceutical companies to transfer technology using various legal and policy tools including financial incentives.
3. Finally, while a TRIPS waiver would enable countries to escape WTO obligations, it will not change the nature of domestic IP regulations. Therefore, countries should start working towards making suitable changes in their domestic legal framework to operationalise and enforce the TRIPS waiver.

Notwithstanding the usefulness of the TRIPS waiver, it is not a magic pill. It would work well only if countries simultaneously address the non-IP bottlenecks such as technology transfer, production constraints, and other logistical challenges such as inadequacy of supply chains and unavailability of raw materials to manufacture vaccines and medicines.