

17. *What do you understand by TRIPS plus provisions being advocated by developed countries outside the WTO based TRIPS agreement? Do you think India should show some flexibility and incorporate certain TRIPS plus provisions in its IPR regime? (250 words) 15*

Approach:

- Explain TRIPS Plus, while differentiating it from TRIPS Agreement.
- Discuss the likely consequences of TRIPS Plus provisions as per Indian/developing countries' context.
- Give arguments as to whether India should or should not go for TRIPS Plus in its policies.
- Conclude with a way forward.

Answer:

Agreement on Trade-Related Aspects of Intellectual Property Rights (or TRIPS Agreement) set the standards for intellectual property protection in the world today. Building upon it, TRIPS-Plus provisions refer to the stricter and tighter IPR legislations/standards of protection in their patent laws than are required by the TRIPS Agreement. They extend protection to a broader array of intangible property and reduce flexibilities established in TRIPS.

Since the developed countries own most of the new upcoming technologies, they advocate TRIPS-Plus provisions in order to achieve the following objectives:

- Stricter patent enforcement and restrictions on compulsory licenses.
- Anti-circumvention laws to strengthen Digital Rights Management systems.
- Stronger rights for broadcasters/webcasters.

The need for TRIPS plus provisions presents justification on the following grounds:

- Better Research & Development ecosystem as there is a positive correlation between high protection and **R&D**.
- Stronger IPR's in trade agreements benefits developing countries by creating a favourable business environment that encourages **foreign direct investment** and **technology transfers**.
- **Protection of traditional knowledge** to further specific development needs.
- Stricter enforcement of **anti-circumvention and anti-counterfeiting trade laws** for the purpose of establishing international standards for IPRs enforcement.

However, there is a strong case for developing countries such as India, to resist moving beyond TRIPS Agreement as the stronger TRIPS-Plus provisions would:

- Increase prices of medicines, agricultural inputs etc., thus impacting social development.
- Reduce competition by favouring creation of monopolies among generic players impacting industrial growth and exports.
- Compromise safety, quality and efficacy of products, as **data exclusivity** provisions would hamper data usage by the generic manufacturers.
- Hinder public access of technology at affordable prices.
- Restrict the application of compulsory licenses to emergency situations, antitrust remedies, and cases of public non-commercial use.

Going beyond TRIPS could have a broader impact on IP protection internationally and would result in distortion of trade. Further, to protect its domestic manufactures and pharma-exports, India has tried to stick to TRIPS provisions so far.

Nowadays, data exclusivity and other TRIPS plus provisions are frequently pushed as a part of free trade agreements between developed and developing countries. For developing countries like India, the best mitigating strategy lies in the combination of multilateralism and networking along the lines of a rights-based approach.

In this context, India should adopt a two-pronged approach. On one hand, it should build consensus for review of TRIPS Agreement under WTO-agenda with a country-specific and context-sensitive approach. On the other hand, it should update the standards of domestic players with a long-term perspective of IPR regimes that are only going to get stricter.