Chapter 5
Parallel Import in India: A Study

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ABSTRACT

People often say that the world is not only “Black and White” but there are many other shades which pose difficult question. Parallel import, which is also known as “Grey area” is one of them. Parallel imports are goods produced genuinely under protection of a trademark, patent, or copyright, placed in one market, and then imported into another market without the approval of the Intellectual Property Right holder. Through this chapter, the Author(s) have tried to give an insight on parallel imports by discussing all possible national and international issues related to it. Some principal concepts like exhaustion, regional and global have acquired considerable space in the chapter. A brief contemporary view on parallel import has also been taken by the author(s). The contradictory views; one which favours the Parallel imports by endorsing that it enhances the local competition; and another which condemns parallel imports are covered in the later part of the chapter.

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INTRODUCTION

Inventions are not mechanical process; a lot of hands and minds are involved every time. Success and failure are the ultimate results, but the hidden labour cannot be ignored rather appreciated and stimulated for next time. Inventions\(^1\) and innovations\(^2\) are key points while explaining economic growth and must be protected to facilitate the human life. Invention protection systems, which confer monopoly rights to the originators of new ideas for a limited period of time, can be traced back to the Greek colonial city of Sybaris in 500 B.C. With the advent of time the same system has converted into intellectual property rights.\(^3\) To bring more clarity, Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in law by, for example, patents\(^4\), copyright\(^5\) and trademarks\(^6\), which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.\(^7\) Intellectual property rights (IPRs), for example patents, play an important role in this innovative market, affecting the diffusion of knowledge, innovation process and economic efficiency. These IPRs have usually been granted by Governments as a way to protect inventions and then promote further innovation through a limited monopoly (Lewell, 2009).

The relationship between innovations and IPRs laws has paved the way for economic development. It is assumed that the IPRs laws have positively contributed in the socio-economic regime. IPRs laws are not abstract and futile concepts which are confined to law textbooks, but these laws play an important role in everyday life. For example, patent is a reward for every new idea and technology, which encourage the development in innovation and inventions. As we know patent, copyright and trademark has various dimensions and reach, and gives valuable protection to works done various fields like Biotech, computer software, medical science or nanotechnology etc. Like other fields of law, IPRs laws are also struggling with some problems and issues in all these fields. But some of the concerns are very crucial and complex too.

The pharmaceutical sector has unusual prominence in debates about IP policy, and has served as the front line for national and international controversies about the relationship between IPRs, R&D (Research and Development) incentives, pricing and access to medicines (Cockburn, 2009a). Two basic areas which impact
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