

Impact of bioethics on patentability of inventions

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Focus of the paper

- Possibility of denying patents to inventions tainted by lack of consent
- Context: Non therapeutic research involving the use of human biological material
- The framework
- Human dignity and right to self determination - paramount

Basis for PIC

- Right to self determination
- the overriding value
- Respect for human dignity- ultimate concern of every society
- Respecting the choice of every individual

Patents, public good and morality

- Patents are meant to promote public good
- A trade off- but not morality
- Moral rider - “the invention should not be frivolous or injurious to the well being, good policy, or sound morals of the society”
- Ethical obligation on the inventor

Patent legislations

- India: Sec 3(b) of Patent Act 1970 : “ an invention, the primary or intended use or commercial exploitation of which would be contrary to public order or morality or which causes serious prejudice to human life or plant life or health or to the human environment are not inventions within the meaning of the Act”
- Not explicitly stated
- Article 5 of Italian Patent Act requires the patentee to file a declaration that the person from whom biological material is derived has expressed his informed consent for such use.
- European Commission through Recital 26 of EC Directive 98/44/EC
- Andean Community Patent

Constitutional basis

- Article 21: No person shall be deprived of his right to life.....
- Supreme Court says “any act that interferes with the body or faculty of the person, be it temporarily or permanently would amount to depriving the person of his right to life”
- Right to life extends to full range of conducts that gives expression to a persons life.