

# A patent conundrum

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## Abstract

Who does publicly funded scientific innovation belong to?

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How can we make public funding of science research accountable? That's the question raised by the Protection and Utilisation of Public Funded Intellectual Property (PUPFIP) Bill, currently with a Parliamentary Standing Committee. The bill stresses the creation of intellectual property rights (IPR) as a form of accountability — inspired by the American Bayh-Dole Act of 1980. IPR are monopoly rights granted by governments as part of a social quid pro quo for the promotion of creativity and innovation. Patents, for instance, prevent others from making use of the protected invention for a period of 20 years. However, the terms of this quid pro quo must naturally change if the invention arises from research conducted using taxpayers' money. Additionally, these patents cost a lot of public money to register and maintain, as the government well knows: on average, Centre for Scientific and Industrial Research (CSIR) spending on registering and maintaining patents was more than ten times what it earns as royalties from those patents. While government research is not driven solely by the profit motive, the aim should not be to needlessly burn through taxpayers' money either. The government (which funds more than three-fourths of all R&D in India) should thus seek to encourage research and its dissemination, and not to curtail it by forcefully asserting various IPR. While we are bound to the patent system by international treaty commitments, we can at least ensure that it does not work against the interests of development.

In fact, the head of CSIR has gone on record stating that he does not plan to charge royalties for the innovative solar-powered rickshaw that CSIR scientists have patented. Furthermore, the Open Source Drug Discovery project, that has got CSIR recognised as a pioneer in the world of drug discovery, has notched up more than 2,000 contributors and an international publication within a year of its launch, and is now moving on to re-annotation of mycobacterium tuberculosis genome. Such renunciation of royalties for the public good and models of open collaboration will not be possible under the PUPFIP Bill as it stands, since it severely restricts the freedom of researchers and academics to speak to their peers in conferences and to publish papers, and mandates patent protection of all publicly funded research.

The Bill, as presented before Parliament, also allows for exclusive licensing of public funded IPRs to individual corporations (thus leading to monopoly pricing) without providing any guidelines or safeguards to uphold the interests of the public, which in India consists largely of the poor. The very idea of public interest, which after all is the barometer by which public funding is to be measured, seems to be present nowhere except for the aims and objectives of the Bill. This must be rectified if any bill on publicly funded research is to hold water. Additionally, the emphasis in such a bill must not be on publicly funded intellectual property, but on public funded research and development. Legislation cannot be a panacea for the ills (both real and imagined) of Indian science — and a legislation focussed solely on IP even less so. A legislation that inhibits scientists from sharing knowledge and does not approach the matter from a public interest perspective can only worsen the situation.

One of the best ways to induce accountability into the system is to insist on open access publications that can be studied, learnt from, and criticised by the researcher's peers as well as the public. This is also a recommendation of the World Health Assembly's Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property. Patents alone cannot substitute for innovation, nor are they, especially in today's fast-moving world, a good measure of the same. As Google's senior vice-president put it recently, innovation and production of value lies not so much in building walls, but in building bridges. We cannot be following paradigms established 30 years ago in a completely different Western context, and hope that Indian science will benefit thereby. We must engage in a national dialogue on public access to publicly funded research, and must not allow a bill drafted in secrecy, and focussing solely on IP protection, to be passed in a roughshod manner.

By recently convening a meeting on the problems with the Bill, the departments of biotechnology and science and technology have taken the concerns of several senior scientists seriously, and are now willing to involve the public in discussion around the implications of the PUPFIP Bill. This is a positive step, for which they must be lauded.

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