

Plant Variety Protection and IPR with Special Reference to Farmers' Rights

Misbah Fatima,
Assistant Professor, Department of Management,
Center for Management Studies, JAIN (Deemed-to-be University), Bangalore, India
Email Id: misbah_fatima@cms.ac.in

ABSTRACT: *The paper focuses on analyzing whether the rights of the farmer's brotherhood are a tactic masked as the right to strategize and to resist the interpretation of current IPR (Intellectual Property Rights) unfair treatment and its plant variety regime. As marketable intellectual property models have taken their own road to cultivation, farmers have gradually been disenergizing conventional seed-saving customs. There are various insinuations about this cruise. Farmers' rights are, on the one hand, a special form of law that can help translate intellectual property conventions by means of methods that are more appropriate for the registration and content promotion of new modes of invention, such as those proposed by agricultural societies. Farmers' privileges, on the other hand, have been very difficult to implement. And the movement risks further legitimizing the injustice that is reciprocal in situating farmers' rights alongside conveniently enacted commercial breeders' rights. At the national level, the industrialized countries began to accept and protect intellectual property as the revolutionary role of commercial plant growers. The US, EU, Australia, Africa and the Philippines were the first to initiate this programme. The Indian law exploits smartly and has approved the one-species law known as the Act to protect plant varieties and farmers rights of 2001. Indian legislation exploits the versatility of TRIPs. This Act also acknowledged many farmers' rights. In the domestic and international field, Indian law is important when many other countries attempt to create similar laws. The development of modern intellectual property systems which are appropriate for their interests and, at the same time, protect the rights of breeders and farmers is a warmongering factor in other emerging countries. The primary concern found is that the very essence of protection for farmers is to be investigated. In the fortification system for intellectual property rights, the essence of the defence of farmers' rights has been investigated for due gratitude for the status of farmers. The essence of protection for farmer rights was examined in two contexts: first of all, the appropriateness of either the legislation on patent or plant varieties for farmers and secondly, the appropriateness of farmers' rights as privileges, benefits sharing and rights of possession. This paper analyses the definition of plant variety and IPR for farmers.*

KEYWORDS: *Development discourse, Farmers' rights, Indigenous knowledge, IPR, TRIPs.*

INTRODUCTION

Why is important to discuss the Intangible aspect of the rights pertaining to plant varieties? The no. of applicants for intellectual property Rights is increasing day by day and the tracking the count of year by year increase in number is becoming more and more of a task. The following search conducted on WIPO's website for total number of application filed for the registration of trademark shows the drastic increase in numbers:

During debates about the global political economy and the establishment of dominance institutions, IPRs have become one of the most questionable places of political scum. This is nowhere truer than in the fight against biological capital. In the run-up to Cancun, and after the conference of the World Trade Organization (WTO), in the autumn of 2003, the third world campaign for access to proprietary drugs grabbed headline headlines and a new, as important, seed controlling fight has taken place in agriculture.

The efficiency in trade farming and pharmaceutical interests to connect the intellectual property of biological properties with foreign trade in the 1980ies, and the resulting institutionalization of security of IPRs within the WTO, has taken on enormous importance for agricultural producers around the world. Intellectual property.

The signatory countries are indebted to expand the fortification of exclusive rights to vegetable varieties in a critical and contentious clause of the WTO Trade Related Aspects of Intellectual Property rights (TRIPs). This ensures that they are indebted to government monopolies for the commercial supply of science-made crops. A virtual seed war broke out in the shadow of this IPR order. The creation of this fortification for the biotechnology industry – by so-called breeding privileges – provides a long-standing recognition and just

compensation to business seedlings who have taken the holistic view of seed invention from farmer's decades ago.¹

But the growth of IPRs to plant variations represents an exodus from traditional traditions and values for many farmers in developed countries and poses a danger to their sovereignty and their existing lifestyles. The impact of IPRs on bioengineered seeds being used to legally prohibit farmers who use the new seeds from recycling and exchanging seeds harvested from their own fields is a problem for many, and is of particular importance to smallholder populations who rely on small deliveries of traded seeds to respond to changing land conditions.

The view that high yield promises could then drive out conventional variability and thus compel farmers to buy new seeds for each crop has caused fear that agricultural communities will increasingly depend on international seed traders. Moreover, since global seed enterprises receive significant benefits from their advances, many farmers feel that the historic contributions made to biodiversity and seed production by their communities are largely unrecognized.²

In reaction to that, the Third World networks of farmers organized extensive demonstrations and advocacy efforts for more than a decade in coalition with activists' non-governmental organizations (NGOs). The specific interests and tactics vary among the diverse parties concerned, as in other coalition social movements. Yet the discernment that Foreign IPR commands are overwhelmingly weighted toward farmers is noticeable by these classes. The relation in the terminology used by the parties is as influential. The whole of the board has come to permeate the discourse with the language of "rights," the same language as the now powerful IPR regime uses. When "breeders' rights" are the pivotal elements on which agri-businesses have pushed for commercial law vicissitudes, the rights of fishermen, the rights of indigenous peoples and, more recently, the basis of the conflict between IPRs of plant species.

DISCUSSION

1. *Benefits of PVP:*

The benefits of "Plant Variety Protection" (PVP) are as follows:

- To create an appropriate or Sui Generis plant variety protection scheme, in order for a national plant variety protection system to be internationally recognized.
- Protects plant breeders' interest.
- Respect and defend the rights of farmers to contribute to the conservation, production and availability of plant genetic resources to produce new plant varieties.
- Promote plant breeding investments.

And, with the increase in the number of filings, the number of cases relating to the intellectual property are also on a rise. Henceforth, it is important to consider the following rights of farmers under the Act related to PVP and FR (Figure 1).

¹ Dr Philippee Cullet, Radhika Kolluru, Plant Variety Protection and Farmer's Rights, International Environmental Law Research Center.

² Plant Variety Protection, Chadha & Chadha IP.



Figure 1: Rights of Farmers

2. Patent or Plant Variety Protection for Farmers:

Under patent legislation, farmers will be endangered if they meet the patentability requirement. The patent scheme is, however, allegedly not suitable for varieties of plants. In order to enforce the rules of the scheme intended to preserve the scientific inventions of plant varieties, many technological issues have come into contact with the hunting industry. The patent scheme may be considered unacceptable, for two principal reasons.

- Plant content was not experiential since it meant that it met the standards of novelty, the creative activity and the disclosure.
- In view of their combined prominence, it was not supposed to be in the public interest to permit a monopoly in plant diversity.

A fundamental view is that the practice of the free rearrangement of new plant material within plant breeding organizations was desirable to maintain, as far as possible. The modern amalgamations of genetic knowledge will be fully disseminated and used. The rights of farmers are linked to a less precise increase in the process of invention.³

3. Role of Farmers

Farmers play significant role in farming. Actually farming practices are done by agricultural community. Their role in maintenance of plant genetic resources, modernizer of new plant varieties and as hackneyed suppliers of food is discussed below.

- Plant genetic resources conservation, Farmers have contributed to the survival and growth of plant genetic capital and continue to do so. While many consider that it was an undefined, abstract term, there has nevertheless been grounds for and respect for the important role traditional farmers play in maintaining and refinement of such tools.
- Innovator of New Plant from different ranges of Farmers are decent innovators. They always try to evolve or innovate new practices. Due to the nature of agriculture farmers constantly have to adjust and originate new practices to ensure a steady and high level of food production.

IPR, as the term says, should be the rights to thinking, ideas and knowledge, particularly with regard to new technologies and processes. By empowering an inventor to remove imitators from the market at a given date, they are to be understood. Such a right is intended to encourage industrial innovation with better returns than will otherwise be available on the markets.

³ Singh Sushil Kumar, Plant Variety Protection and Intellectual Property Rights with Special Reference to Farmers Rights, Dr. Rammanohar Lohia Avadh University, Faizabad.

The result of IPRs is therefore the commodification of its subject matter in its practical use. New challenges arise in terms of protecting innovation with the globalization and the increased market opening, as the defense of new technology is no longer exclusive to the developed countries. As a result of the Uruguay Round of GATT, the WTO umbrella organization has emerged, requiring all member countries to enact and update legislation in line and in compliance with World Trade Organization purposes. India is a WTO member and a TRIPs agreement signatory. In accordance with the terms of the TRIPs Agreement, the signatory States shall provide safeguards for a variety of intellectual property rights, including plant protection.

Under the conditions laid down under the TRIPs, the Plant Variety Protection and Farmers' Rights Bill, which ended the long difficult fight for the recognition of farmers' rights in India's sui generis legislation, has finally been adopted by both the House of the Indian Parliament. India has now, for the first time, put in place a regulation to confer rights on new seeds on plant breeders (PBRs).

4. *Essential for fortification of PV:*

Inventions focused on living organisms (e.g. new varieties of crops by hybridization, crossing and selection) were called natural, sensitive innovations before the advent of advanced technology in the agriculture industry, which could barely be replicated and did not have much security. Biotechnological growth has radically altered the situation. Biotechnological technologies demand considerable investment and can be quickly replicated by their methods and goods. Such plant breeding is being gradually conducted in most developing countries by major multinationals and by some government agencies in a few developing countries. In order to promote and have incentives for their potential innovation, institutions undoubtedly want returns on their investments. The protection of intellectual property offers way to safeguard financial profits and also prevents the illicit replication of new technologies and seed materials.⁴

This opens up a range of issues relating to the need in less developed countries for such security. Indigenous people and other agricultural peoples have no sense of owning rights over lives in third world cultures. In fact, there was no legislation to provide conventional plant breeders with exclusive rights to produce new varieties of plants and crops. Third world farmers advanced and innovated new crop varieties in the tradition of free trade in order to meet their environment, soil and nutritional requirements.⁵

The fortification model provided for in the TRIP, which is modelled on the tenacities of advanced world countries, fails to provide due recognition for the needs of the original farmers in developed countries. The North-South division in the WTO has been further broadened. The UNDP Human Development Report summarizes correctly the western point of view by stating: "technology is created to respond to consumer pressures—not to the needs of the weak with no buying power." The study also points out that "politics and not charity" is required "in developed countries for building technical capacity." It seems from these comments that innovation in technology in the developed nations of the West is more and more concerned with the reduction and realization of Trips (IPRs), in all fields of technology, including agriculture, and not the development of technology to public benefit of the poor and needy.

Due to his huge influence and contribution to conserving biodiversity, the Indian farmer deserves protection. Security according to the Act is explicitly commensurate with farmers' commitment to the survival of ground races and plant varieties. These laws are bound in their execution to be limited. This applies in the Indian peasantry more often than other parts of society, which is numerically huge, less learned and less remedial. In this sense, the duty to raise the necessary consciousness among farmers is extremely important to scientists, lawyers, NGOs and other knowledgeable sectors of the society.

The Act would most likely enhance the operation of the plant breeding industry, which would lead to expanded germplasm option in the private sector. However, not all farmers can prosper similarly, since hybrid seed processing and high-intrusion farming are the focus of private seed companies. The seeds and technologies produced by public sector plant breeders would have to be used by the small and medium-sized farmers. Small and medium-sized farms write of the capital shortage and, above all, the loss of consciousness. In the hands of

⁴ S.P. Bala Ravi, Farmers' rights, their scope and legal protection in India.

⁵ *Ibid.*

major global seed corporations, the public sector plant breeding institutions and home seed industry suffer from limited access to safe technologies.⁶

All groups of farmers must be addressed and the following should be included:

Rising public spending on biotechnology and plant breeding practices and ensuring that new plant breeding fruits are favorable to the disadvantaged. In order to benefit from modern biotechnology instruments, the public sector should work towards being scientifically qualified and knowledgeable in developing power and training.

Make government-run comprehensive services much more aggressive in sharing technology advantages with farmers, particularly in educating them about its excessive usage problems. Small and medium-sized growers must be ready to choose modern technologies. Small farms need to be widely used for the integrated pest and fertilizer control technologies.

India has to settle on the diplomatic forum by which it can communicate with other nations. The UPOV scheme is practically hostile to emerging countries' needs and may not be a smart idea. It also has no notion of the interests of farmers. A draught treaty with the Center for Agricultural and Scientific Development has been established by an NGO named Gene Campaign.

This alternative is named as the CoFaB and this Treaty, which seeks to provide small and large farmers with reliable, high-quality seeds; to preserve genetic diversity in the farming sector and to guarantee that breeders of new varieties are protected on the market without prejudice to the public interest.

The UNDP Human Development Report (1999) describes CoFaB as a solid, organized international initiative, providing a much better option for developing countries to UPOV by addressing the need to protect farmers' interests, food interests, and nutrition protection objectives. This would be a strong basis for international interactions if consensus among the developed countries emerged.⁷

CONCLUSION

The PPVFR is an effective sui generis system which seeks to rehabilitate farmers' traditional rights and recognizes farmers as 'farmer breeders.' Another encouraging indicator is that 2012 is the growth in the number of registered farmers. This law and its rights must be made known to farmers and indigenous peoples in the most distant corners of India. In addition, Plant Genome Savior Community Awards, the "Farmer Reward" & the "Farmer Recognition" Plant Genome Savior should be made known. The obstacle, however, is to hit those remote Indian bags inhabited by isolated tribal groups.

A global framework for the definition and implementation of Farmer's Rights needs to be promoted urgently. Farmer's rights should be taken into account. Action to guarantee economic advantage by an emphasis on Farmers rights as rights for growth needs to accompany the political and strategic gains by identifying Farmers rights as IPR types. The various forms of IPR in the field of agriculture are totally new to India and are associated primarily with the need to fulfil Indian foreign obligations in place and to the general movement towards information privatization.

The development of the rights of the farmer thus offers the ability to reconsider patents and the rights of the plant breeder. This should lead, for example, by placing new terms on copyright holders, both in relation to conventional information and biodiversity preservation, to revealing these more "traditional" rights to intellectual property.

⁶ Dr Philippee Cullet, Radhika Kolluru, Plant Variety Protection and Farmer's Rights, International Environmental Law Research Center.

⁷ *Ibid.*