
THE ROLE OF INTELLECTUAL PROPERTY RIGHTS (IPR) IN AGRICULTURE AND MEDICINE

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Intellectual property is an intellectual work, produced by the intellect of human brain. The owner of intellectual property has exclusive right over his intellectual property. It allows the creators to have the benefits from their works when they are exploited commercially. Intellectual property rights are intangible rights over tangible property. This type of property cannot be seen but can be felt by senses. Intellectual property law regulates the creation, use and exploitation of human ingenuity. IP is mainly divided into 2 main categories; Industrial intellectual property rights and Artistic intellectual property rights. Industrial property includes Patents, Trademarks, Designs and Geographic Indications. Artistic intellectual property refers to Copyright and Neighbouring rights. Copyright covers literary and artistic works such as novels, poems, plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures. The international arrangements for the protection of IP have a long history. The Paris convention for the protection of Industrial Property , 1883 and Berne Convention for the protection of Literary and artistic Works,1886 established an International regime for the protection of IPRs in their respective fields. As far as international IP laws are concerned, global rule making was primarily in the domain of the WIPO till the conclusion of TRIPS.WTO has three pillars; trade in goods, trade in services and TRIPS. The fundamental characteristic of the TRIPS agreement is that it makes protection of IPRs an integral part of the multilateral trading system..

Agriculture plays an important role in seeking for the protection of goods or services of several IPRs mentioned above. Patents are probably the most important IPR today for agricultural goods and services as they provide the strongest protection for patentable plants and animals and biotechnological processes for their production. Biotechnology is the sector that holds the most potential for advances in agriculture to improve productivity. Biotechnology R&D is mostly

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concentrated in the hands of large multinational enterprises in the US, Europe and Japan. Today, in the US, patents are even granted to animal inventions and human gene sequences, if these are available for such protection. It was in the 1980s that for the first time in **Diamond vs Chakravarti** case a microorganism of the genus *Pseudomonas* was filed for patenting and was granted patent by the US Court. This organism was responsible for eating oil spillage in the sea. This gave rise to the patenting of microorganisms found in nature, if it involved a new, inventive and useful technical intervention by man. Another case involved is the **Harvard oncomouse**, useful in research on cancer. Recently, the Indian Supreme court announced its verdict in **Novartis vs Union of India** wherein the evergreening of patents by the MNCs was discouraged. S-3(d) of Indian Patents Act, 1970 can be used to deny patents on the new use of a known substance. Further, it prevents frivolous claims by clarifying that mere discovery of a new form of a known substance which does not result in the enhancement of a known efficacy is not patentable

As per Article 7 of TRIPS, the protection and enforcement of IPRs should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare and to a balance of rights and obligations. The universe of IPRs under TRIPS comprises of Patents, Copyrights and related rights, Trademarks, Geographical Indications, Industrial designs, Layout designs of integrated circuits and undisclosed information.

The main aims of TRIPS are;

- a) Reduction of distortions and impediments to International trade**
- b) Promotion of effective and adequate protection of Intellectual Property Rights and**
- c) Ensuring that measures and procedures to enforce IPR do not themselves become barrier to legitimate trade.**

The most important amendment introduced by the amendment of 2005 in order to make the existing patent regime in India TRIPs compliant was the introduction of Pharmaceutical product Patents. The amendment of 2005 extends full TRIPs coverage to food, drugs and medicines. The term of the patent has been extended to 20 years compared to 7 years which was provided by the Act of 1970. The Act gave the GOI the power to issue compulsory licenses for drugs whose price and production does not suit an existing public need.

Article 27 of TRIPs agreement defines patentable subject matter and required that members to provide for the protection of plant varieties whether by patenting or by an effective sui generis system or by any combination thereof. As a developing country, India had a period of 5 years from Jan 1 1995 within which to comply with the provisions of article 27.3 (b) of TRIPs Indian legislature passed the **Plant Variety Protection and Farmer's right Act, 2001** to fulfill its commitment under TRIPs. The need for making this Act arises out of treaty obligations under GATT. The main aim of this Act is to provide an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants. Indian law is a progressive legislation. It speaks of registration of New Plant Varieties not patenting. The Act is the first piece of legislation in the world which recognizes the contribution of the farming and tribal communities in conserving biodiversity and developing new plant varieties.

The Act underlines the following objectives;

- 1) To stimulate investments for research and development both in public and private sectors for the development of new plant varieties by ensuring appropriate returns on such investments.**
- 2) To facilitate the growth of seed industry in the country through domestic and foreign investment which will ensure the availability of high quality seeds and planting material to Indian farmers and**

3) To recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country agro-biodiversity by rewarding those for their contribution through benefit sharing and protecting the traditional rights of the farmers. The farmers have the traditional rights to save , use, share or sell his farm produce of a variety protected under the.

A Criteria for deciding protection of a plant variety are;

Distinctiveness....a variety will be considered distinct from another if it differs in one essential character.

UniformityA variety will be regarded as uniform if it is sufficiently uniform in its relevant characteristics subject to variations.

Stability ...a variety remaining stable if its relevant characteristics remain unchanged even after repeated propagation.

Novelty ...A variety will be treated as new if propagating material/harvesting foe breeders right has not been sold/disposed off to others (at the date of filing of application). If people have free access to the variety in the past, then no protection is available because their interests will suffer. Often grace period is given to see the response of the variety in the market.

Appropriate denomination....variety to be designated by generic denomination.

The condition laid down is that it is not for the purpose of reproduction under a commercial marketing arrangement. A National Gene Fund was established to promote the conservation and sustainable use of genetic resources of agro-biodiversity. The protection of Plant varieties and farmers rights Authority has been established with necessary powers to perform all functions relating to the protection of plant varieties. The duties and functions of the Authority inter-alia include;

To promote and develop new varieties of plants and to protect rights of the farmers and breeders, to register extant and new plant varieties, to develop characteristics and documentation of varieties, to provide the compulsory licensing of protected varieties if the right holder does not arrange for production and sale of the seeds to ensure that protected seeds are available to the farmers, to collect statistics with regard to plant varieties ,seeds and germplasm for compilation and publication. The primary mode of protection under the Act is by means of registration. An application for registration cannot be made in respect of the genera and species which are excluded from the protection by a notification by the central Government on the ground that prevention of commercial exploitation of such variety is necessary to protect public order/morality or to preserve human /plant/animal life.

Registration gives an exclusive rights to the breeder to produce, sell, market, distribute, import or export the variety for 3 years which may be renewed at a time for 3 years. This right may be extended to a maximum period for 3 years. This right may be extended to a maximum period of 18 years by periodical renewals from the date of registration in respect of trees and vines and 15 years in respect of extant variety and others from the date of registration

In the light of the knowledge gained in the field of IPR the farmers, breeders and researchers are supposed to be well acquainted with the use of IPR laws in order to protect their valuable assets, innovations, varieties, seeds and plants. These laws are gaining importance day by day especially in the institutes involved in research and the urgent need to know about it.