Inspira-Journal of Commerce, Economics & Computer Science (JCECS)
ISSN : 2395-7069, Impact Factor: 5.660, Volume 07, No. 04, Oct.-Dec., 2021, pp. 15-17

A NOTE ON FARMERS RIGHTS CHALLENGES UNDER INTELLECTUAL PROPERTY RIGHTS

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ABSTRACT

The UPOV (Union for the Protection of New Varieties of Plant) Convention represents a western devised form of plant variety protection, referred to as a Plant Breeders' Right (PBR). Breeders' rights include a full control over the formal marketing and such a monopoly of breeders is harmful to the farmers who are normally unaware of rights whereas breeders are well versed with their rights. Farmer's Rights are devised as a counter to breeder's rights and are based mainly on the idea that farmers also contribute to agricultural innovations. They deserve recognition and rewards just as breeders do. This paper with the help of cases determines the need for the protection of farmer's rights and present strong point that the farmer's rights must be different from breeders' right not only in context with India but with all the fora.

***KEYWORDS**: UPOV, PBR, IPR, Agricultural Innovations, TNCs.*

Introduction

Today the economic survival of third world communities is under severe threat from the new monopolistic protections being carved out for transnational corporations (TNCs) through IPR regimes. In fact, in the trade liberalisation regime, which is supposed to end protectionism. IPRs are the main instrument of this new form of protectionism that is becoming the major means of dismantling both local and national economies as well as national sovereignty through resource piracy, intellectual and cultural piracy and economic piracy.

IPRS –The Plant Breeder's Rights Vs Farmer's Rights

The UPOV (Union for the Protection of New Varieties of Plant) Convention represents a western devised form of plant variety protection, other than patenting. This form of intellectual property rights protection, referred to as a Plant Breeders' Right (PBR). Breeders' rights include a full control over the formal marketing (produce, sale, market, distributions, import &export etc) of seeds. Such a monopoly of breeders is harmful to the farmers who are normally unaware of rights whereas breeders are well versed with their rights. 1991 Revision of the UPOV Convention, severely restricts farmers' rights by removing all rights for them to save seed for sowing for the following year. The protected variety may still be used as an initial source of variation for the creation of new varieties but such new varieties cannot be marketed or sold without the plant breeders' rights' holder allowing it.

Farmer's Rights have generally been devised as a counter to breeder's rights. Farmer's Rights are based mainly on the idea that farmers also contribute to agricultural innovations. Farmers are a main source of seed supply and a large amount of the seed requirements are met through farmer-to-farmer exchange. The notion of farmer's right is particularly relevant in developing countries, as the traditional division between breeders and farmers does not exist in advanced countries. Thus the farmers deserve recognition and rewards just as breeders do.

Basic Concerns

Inclusion of agriculture under the scope of TRIPs Agreement created a lot of confusion and discomfort to the third world agriculture. It would be highly disadvantageous for the farming communities of the third world countries where agriculture is not only undeveloped but also lacks provisions for

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scientific research. Most of the benefits would accrue to the developed countries and MNCs operating in these countries. They will earn and go back. Seeds, plants and tissue culture patents will decrease trade volumes. Only popular varieties will be developed, resulting in more cropping culture which may disturb the ecology. Cost of cultivation will go up. Nutrition values will be questionable. Traditional varieties could lapse. A culture of **'produce yourself for yourself or perish'** will develop. Use and throw culture is harmful to both environment and ecology. Evidence show that MNCs focus entirely on hybrid crops. In certain cases, PBRs have facilitated access to an improved foreign variety but contributed little to food security.

Farmer's privileges are likely to be withdrawn; use of uncertified seeds will be treated as an offence and liable to punishments; this amounts to stealing the right of farmers and imposing on them the compulsory acceptance of a certified brand with uncertified quality; the prices of seeds may increase manifold thereby threatening the food security of the country.

Case- 1

In the event of the issuance of patents for seeds, the rights of farmers will be seriously undermined. This is evident from a dispute, which arose in Bavaria where commercial seeds (patented) are available. A farmer in the village of oberding having not satisfied with the quality of such seeds developed his own ecological variety of wheat seeds, few other farmers from the neighboring villages procured the wheat seeds from him. On this, the Government of Bavaria fined the farmers for using and trading uncertified seeds.

Indian Context

WTO(1999) directs the member countries to have either a patent or an effective sui generis system or combination of both for protecting plant Variety for effective integration with the global economy; in a way that is most appropriate for their stage of agriculture development and overall socio economic situation and status. Under Protection of Plant Varities and Farmer's right Act 2001 India opted a sui generis system to provide adequate protection to new plant varieties from unauthorized sell, export, import or production without permission of breeders, to ensure seed availability of a protected variety, to protect the traditional rights of the farmers to save, use, share or sell his farm produce of a protected variety; to recognise the role of farmers, villagers, tribal communities for their contribution in conserving and maintaining countries bio-diversity

Till Seattle has been emphatic on the negotiation on international protection for 2 types for intellectual properties namely:

- Indigenous knowledge and genetic resources, and
- Geographical indications like Darjeeling tea, Basmati rice and Alphousa mango.

The thrust of the western IPR regimes is diametrically opposed to indigenous knowledge systems. In this paradigm IPRs represent the property rights to the products of mind, which has been so narrowly defined that the creativity of nature and non-western knowledge systems have been ignored. The PVP legislation in India is expected to curtail the rampant piracy of varieties and breeding lines. A UNDP study shows that third world countries are losing $ 300 million in unpaid royalties for farmer's seeds and over $ 5 million in unpaid royalties for medicinal plants,(@2% royalty). Biopiracy and patenting of indigenous knowledge is a double theft because

- It allows theft of creativity and innovation
- Exclusive rights established by patents on stolen knowledge steal economic options of everyday survival based on indigenous biodiversity and knowledge.

A frequent comment heard in scientific and lay circles, is that "we should patent all our traditional knowledge and biodiversity. However, neither traditional knowledge nor biodiversity can be patented by indigenous practitioners because for indigenous societies, it is not 'novel', it is ancient. It is because of two reasons;

- The colonial hangover of the idea that science is unique to the west, and indigenous knowledge systems cannot be treated as scientific.
- Countries like the US, where most pirated indigenous innovations are filed for patenting, do not recognise the existing knowledge of other countries is *prior art*.

Case-2

Another area of IPRs is geographical indicators which find its full application to agriculture. Some agricultural products attract export market on ground of their places of origin. One such example is the Indian grown basmati rice. In 1997, a controversy arose in India in respect of the issuance of patent in the USA to Ricetech, a US Company for its claim to have invented novel basmati rice. In September 1997, Ricetec was granted a patent for allegedly novel basmati lines and grains which were created from the crossing of the basmati germplasm (of Pakistani origin) taken from an ex situ gene bank in the US with American long grained variety of rice. Ricetec has claimed that the new varieties have the same or better aroma, grain length and other characteristics than the original basmati variety grown in India and Pakistan and can be grown successfully in specified geographical areas in North America. The Agriculture Export Development Agency (APEDA), Government of India has been entrusted with the task of representing the rice exports in any re-examination of the patent in the US Patent and trademarks office (USPTO), if it is decided that there are sufficient grounds for the eventual revocation of the patent.

Here the question is whether Ricetec can use the title –Basmati for the product that it has claimed to invent. This is possible only when basmati is treated, as a generic name having referred to a variety of rice and therefore no protection can be available for it. If Basmati is placed specific and refers only to India and Pakistan, then no patent can be granted to Ricetec and adequate protection has to be granted for such variety. This is again a lesson for India while farming an effective sui generis system.

Need of Right Options

If India does not evolve its own *sui generis* system centred on intellectual rights of farmers and adopts the UPOV model, a rights regime will have been created that protects the rights of the seed industry but offers no protection to the rights of farmers. This in turn will allow a free flow of agricultural biodiversity based on centuries of breeding from the fields of Indian farmers, while the farmers have to pay royalties to the seed industry for the varieties derived from farmers' varieties.

FAO has been a pioneer in the recognition of the contribution of farm facilities in genetic resource conservation and enhancement by promoting the concept of farmer's rights. UPOV should also undertake the task of preparing an integrated concept of breeder's and farmer's rights. India should seriously consider new system to ensure protection of new uses (Swiss type claims), petty inventions (utility model) and a sui generis systems of protection of indigenous knowledge and products.

The costly and bitter experience we learnt from turmeric and now basmati necessitating legal and physical measures to protect our biological wealth led to the enactment of 'Geographical Appellation Act 2000'. With the Act now in place, what is further needed is the framing of rules and regulations and the establishment of implementing authority for early registration of 'basmati rice' and thereby bringing an end to unethical claims and exploitation of what belongs to us.

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