

PROTECTION OF BREEDERS AND FARMERS RIGHTS UNDER INTELLECTUAL PROPERTY IN CONTEMPORARY INDIA

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Abstract

“I would rather be on my farm than be emperor of the world.” – George Washington¹

Framer plays a very crucial and significant role in Indian scenario. The contribution of Agriculture in terms of livelihood and as a source of employment is significant. Rural areas in India are inhabited by people who are dependant for their livelihoods on agriculture. In India agriculture is carried out mostly in the rural areas where small farmers dominate food production by using traditional agricultural practices. The rural communities are contributors of land races and farmer’s varieties and in breeding of new varieties. Moreover, they are needed to be made aware the Plant Genome Saviour Community Awards, the Plant Genome Savior “Farmer Reward” & “Farmer Recognition”. However, the challenge is to reach to those remotest pockets of India which are dominated by tribal communities who live in isolation.

Key Words: Farmers Rights, Agriculture, Plants Varieties, Breeders.

Introduction

The demand for extending intellectual property protection to agriculture in developing countries has met with counterclaims for granting farmers rights. Developing countries are currently attempting to fulfill these demands that simultaneously protect the rights of breeders and farmers.

Plant Breeders Rights were initially adopted only in industrialized countries and most developing countries did not grant PBRs. The demand for extending PBRs in developing countries arose with the conclusion of the TRIPs (Trade Related Intellectual Property Rights) Agreement in the WTO. The farmer’s rights is particularly necessary or mandatory in developing countries. The breeders and farmers do not exist as it does in advanced countries. In most developing countries,

¹ Available at <https://everydaypower.com/farmer-quotes/> accessed on May 25, 2023.

farmers are a main source of seed supply and a large amount of the seed requirements are met through farmer-to-farmer exchange.

Situation of Farmers

An alarming trend has been witnessed in India in recent years with rising rates of farmers committing suicide. There are no official figures but media reports put the toll at shocking high rates. Since 1995, it has been reported that more than 25,000 farmers have committed suicides all over the country and around 3,500 have occurred over the past one-and-a-half years.² The number of suicides in the most badly affected districts, Warangal in Andhra Pradesh, reached over 600 in 2000-01. The total numbers of suicides reported in Maharashtra, till December 2004, were 644, with most of the deaths occurring in the Vidharbha, Marathwada and Khandesh regions of the state (TISS, 2005). The government's response has mainly been to announce compensation to the relatives of victims, but even this money doesn't appear to be reaching the farmers.

Enforce Agriculture sector in India

Agriculture plays a key role in India's economy both from the point of view of employment generation as well as its share in GDP.. The dismal situation in which many farmers find themselves in India today was reflected in a study sponsored by the Government of India, known as the 'Situation Assessment Survey of Farmers' (SAS), which for the first time assessed the situation of farmers in 2003. An alarming trend has been witnessed in India in recent years with rising rates of farmers committing suicide. Newspapers echoing the 'crisis in Indian agriculture' continue to report daily incidents of suicides in various parts of the country. Several different reasons have been put forward as the cause of suicides including: mounting debt of farmers, crop failures due to overuse of pesticides, imbalances of international trade, or social and psychological factors. Agriculture was generally excluded from intellectual property protection in India and there was no legal system of Plant Breeders' Rights or Farmers' Rights for decades.

Specific provisions regarding breeders and farmers rights

² Available at www.hindustantimes.com/news/specials/htemotions2005/anger_farmer.shtml?sid=ang. Raju Bist (2004) A price too high for Indian farmers www.atimes.com/atimes/South_Asia/FF29Df02.html last visited on June 20, 2023.

This section discusses the development of the Protection of Plant Varieties and Farmers' Rights Bill by examining the law-making process, and the interaction of structural forces with the agency of particular actors in the context of drafting provisions on Plant Breeders' Rights and Farmers' Rights.

Plant Breeders' Rights

Prior to the late 1980s, plant breeding in India was largely the preserve of the public sector. The seed sector was governed by a regulatory framework that prohibited the entry of large foreign and domestic firms, and inhibited private sector research and development

The Seed Association of India (SAI) is one of the major seed industry associations, and represents medium to large foreign and domestic firms. An important aspect of its mandate is to cultivate links with the Ministry of Agriculture and the public sector. To this end, it has established itself as an industry representative within policy networks by, for example, securing seats on a number of government committees. Its presence on in these committees offers it privileged access to policy-makers and, therefore, a base from which to influence policy.

Plant Variety Protection based on Plant Breeders' Rights emerged before the TRIPs Agreement entered into force, and from within Indian industry associations. In this sense, the development of the Indian legislation cannot be considered as a strict response to its obligations under the WTO.

Farmer's rights

The approach of defining Farmers' Rights as intellectual property rights may provide political rather than economic benefits for developing countries, whereas defining Farmers' Rights as development rights may ensure greater economic/social advantages. While defining Farmers' Rights as a kind of intellectual property rights could provide a tool for negotiating at the global level, it may not be of great utility in ensuring rights for farmers in developing countries.

Farmers Rights have generally been devised as a counter to breeder's rights. Farmers Rights are based mainly on the idea that farmers also contribute to agricultural innovations and deserve recognition and rewards just as breeders do.

The Farmers' Rights Project aims to provide an empirical basis for proposals to the Governing Body of the International Treaty on the realization of farmers' rights.

Article 39 of India's legislation states that farmers who have bred or developed a new variety shall be entitled to PBRs in the same manner as breeders. To the extent that these agreements recognize farmer innovation, it is within the ambit of the contribution made through the innovation to enhance genetic diversity. Article 39 of the Bill is substantially different from either of these agreements, in that it recognizes the plant breeding efforts of farmers in the same manner as those of breeders engaged in formal research.³

Issues

The Indian Act on Protection of Plant Varieties and Farmers' Rights passed in 2001 (PPVFR, 2001) is being projected as 'the first of its kind sui generis legislation. There is a need to be more practical and cohesive in our approach to implement various provisions already made in the Act. This is the time to concentrate on developing a road map and establishing the institutional mechanism, including awareness generation and increasing IPR literacy and information services.

Some provisions of the PVPEF Act, 2001 may find problems of implementation due to various reasons, such as the following:

- (i) Lack of case laws or functional models for the Act in general and some sui generis clauses in particular; for example, meeting/examining the essential criteria for providing protection to extant and farmer varieties, making request on behalf of the farmers for fair and equitable benefit sharing, valuation of germ plasm used in development of a protected variety for the purpose of compensation, etc.;
- (ii) Greater likelihood of dissimilarities in interpretation of various purposes and provisions of the Act by the presenters, and technical and legal experts;

³ The extent to which this provision will be meaningful in practice is, however, open to debate. To obtain protection, farmers' varieties must still conform to the UPOV criteria of distinctness, uniformity and stability. Given that breeding efforts of farmers typically occur in situ, and that farmers (unlike breeders in formal breeding programmes) cannot entirely control the agro-ecological conditions in which varieties are bred, it is questionable to what extent varieties claimed by farmers will meet the DUS criteria.

(iii) Difficult clauses, such as, the right for compensation to the farmer for under- performance of the propagating material of protected variety.

Therefore, the most important challenges in the pre-implementation stage of the Act are, bridging the information gaps, simplifying the interpretation for the nature and objectives of law, and institutionalized law enforcement for the administration of justice. This assumes further importance because of the global nature and consequences of IPR laws in general, which can have a direct bearing on the registrability of Indian protected varieties, whether breeder developed or farmer developed ones, in other convention countries. The need to elaborate and strengthen the area of jurisprudence related to (*sui generis*) protection of plant varieties in conformity with the TRIPs Agreement should also be realized on priority. In September 2009 only three farmer's varieties of rice (tilak chandan, hansraj and indrasan) reached the stage of field testing and subsequently registered.⁴

INTERNATIONAL DEVELOPMENT OF PLANT BREEDERS RIGHTS AND FARMERS RIGHTS

India's legislation adopts two systems that were developed at the international level: plant breeder's rights and farmers rights. India borrowed some aspects of these regimes but also modified them within its Act. This section provides an introduction to the emergence of plant breeder's rights and farmers rights globally. Plant Breeders Rights (PBRs): Plant breeders rights (PBRs) are a special form of IPRs created to provide incentives for the seed industry. Breeders led the move to evolve plant breeder's rights as an alternative to patents (the main form of IPRs for industrial innovations) because of the political opposition to extending patent protection to plants and legal complexities of defining plant varieties.

The initial move to harmonize plant breeder's rights emerged with the UPOV (Union pour Protection des Objections Vegetales) in 1961. The plant breeders right as defined by UPOV is an exclusive right over the commercial production and marketing of the reproductive or vegetative propagating material of the protected variety. This right was less stringent than patents as it allowed for: 1) research exemption (a protected variety may be used in competing breeding

⁴ Sudhir Kochhar, How Effective is *Sui Generis* Plant Variety Protection in India: Some Initial Feedback, *Journal of Intellectual Property Rights*, p.277 Vol.15, July 2010, pp-273-284 .

programs as long as subsequently derived varieties do not require the repeated use of the protected variety for its production) 2) Farmers Privilege: use and exchange of saved seeds allowed but not sale of seeds.

INDIAS POLICY ON PBRs AND FARMERS RIGHTS

India did establish IPR laws to protect the rights of innovators, but attempted to balance this with the need for access to resources at reasonable prices (3) A majority of agricultural research in India has largely been conducted by the public sector. India's seed policy until the 1980s restricted the role of the private sector in agriculture. These factors promoted a system where India did not provide for plant breeders rights as there was no real demand for such a system for decades. The absence of PBRs also meant that there was no requirement for farmer's rights as a counter to IPRs. Farmers were free to use, share and exchange seeds and since breeders could not acquire PBRs, there was no system of benefit sharing or compensation. Prior to the conclusion of the Convention on Biological Diversity, genetic resources were considered common heritage, freely used and accessible to all. Only 6 multinational companies namely Aventis, Dow, DuPont, Mitsui, Monsanto and Syngenta control around 70% of the patents held on staple food crops.⁵

Stakeholder perceptions on Farmers' Rights

1. Description of Stakeholders

A large number of diverse stakeholders influence India's policy on Farmers' Rights. The range of actors is vast including national NGOs, local level grassroots groups, seed industry associations, farmer's lobbies, and government departments. The wide variety and number of stakeholders in India's agricultural scenario cannot be completely represented in one study. However, an attempt has been made here to focus on the major stakeholders in the debate on Farmers' Rights in India. We begin with a description of stakeholders in various categories: NGOs, farmer's lobbies, government and industry.

2. Government Bodies

⁵ Available at http://www.actionaid.org.uk/sites/default/files/doc_lib/53_trips.pdf, p.2, accessed on May 30, 2023.

India has a large bureaucratic system for implementing agricultural policies. We focus here on a few of the relevant bodies, as it is not possible to cover all of them in this study. Two recently established organizations are the focal points for Farmers' Rights in India.

The main governmental body to deal with agriculture in India is the Ministry of Agriculture. It comprises of three Departments, namely, Department of Agriculture and Cooperation, Department of Agricultural Research and Education/Indian Council of Agricultural Research, and the Department of Animal Husbandry and Dairying. The Ministry of Agriculture is given the mandate to undertake all possible measures to ensure timely and adequate supply of inputs and services such as fertilizers, seeds, pesticides, agricultural implements and also provides agricultural credit, crops insurance and ensures remunerative returns to the farmer for his agricultural produce.⁶

NGO Activities in India

NGOs have taken a lead in documenting and conserving genetic resources and traditional knowledge in India. They have also taken steps to recognize and promote farmers/communities efforts in conservation and agricultural innovation. One expert mentioned that NGOs activities in recognizing farmers through the media, distributing prizes to innovative farmers, holding meals (gatherings/fairs) to promote farmer's varieties, serves as a real source of encouragement to farmers. The Honeybee Net- work is laudable according to one expert and it could provide clues for implementing Farmers' Rights.

Apart from the NGOs mentioned by the respondents, there are a number of NGOs in India focusing on Farmers' Rights. These NGOs fall into two broad categories: NGOs that focus more on conservation in promoting Farmers' Rights and NGOs that focus on promoting extension of IPR type rights to farmers.

Barriers of Farmers' Rights in India

⁶ Available at www.agricoop.nic.in last visited on April 15, 2023.

One of the main barriers to achieving Farmers' Rights is the 'top down' rather than 'bottom up' approach to implementing Farmers' Rights in India.

Farmers' Rights are defined and established by the decision makers at the national level without adequate mechanisms to incorporate regional and local perspectives. Farmers may be represented by farmers' lobbies or NGOs but will not directly be able to voice their demands. This is a serious shortcoming that may lead to the interpretation of Farmers' Rights in ways that may not really benefit the farmers. It may also enable more powerful groups (large farmers, influential NGOs) to promote their interests while marginalizing small farmers and grass roots community organizations.

Another barrier to achieving Farmers' Rights is the lack of adequate policy measures to promote effective utilization of germ plasm. The policy towards Farmers' Rights in India focuses more on asserting and assigning ownership rights, than on measures to utilize traditional knowledge and genetic resources for the development of farmers.

A third barrier that must be evaluated is the economic, political and social condition of farmers. The Farmers' Rights debate at times appears to neglect the complex problems facing farmers today. In the attempt to extract rents for farmer's innovations, the Farmers' Rights issue sometimes gets reduced to a legal struggle to codify benefit sharing. While this is also important, it must not become the dominant discourse, ignoring the tasks required to improve the economic, political and social conditions of small farmers.

Implementation of Farmers' Rights

The Governing Body of the International Treaty must now take up the task of establishing clear guidelines for defining and implementing Farmers' Rights.

Farmers' Rights must be promoted at the international level and cannot be left only to national governments to design. If each country, under Farmers' Rights, sets up barriers to access of genetic resources, limits exchange of resources and competes to stake claims over innovations, the implications would be severe for farmers.

India and other developing countries are faced with a dilemma in defining and implementing Farmers' Rights. On the one hand, they are interested in acquiring IPRs and asserting ownership

rights over genetic resources and farmer's innovations. The fact that agreement on defining and implementing Farmers' Rights has not emerged in India, even after establishing a law on Farmers' Rights, should serve as a signal internationally that establishing legislations is insufficient.

Objectives of PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS Act 2001⁷

- To provide for the establishment of 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.
- To considered necessary to recognize and protect the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties.
- To accelerated agricultural development in the country, it is necessary to protect plant breeders' rights to stimulate investment for research and development, both in the public and private sector, for the development of new plant varieties;
- To such protection will facilitate the growth of the seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers.
- To give effect to the aforesaid objectives, it is necessary to undertake measures for the protection of the rights of farmers and plant breeders.

Statutory Provisions Regarding PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS

“Breeder” means a person or group of persons or a farmer or group of farmers or any institution which has bred, evolved or developed any variety.⁸

“Essentially Derived Variety”, in respect of a variety (the initial variety), shall be said to be essentially derived from such initial variety when it— (i) is predominantly derived from such initial variety, or from a variety that itself is predominantly derived from such initial variety, while retaining the expression of the essential characteristics that results from the genotype or

⁷ PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

⁸ SECTION 2(C) PLANT VARIETIES AND FARMERS' RIGHTS Act 2001

combination of genotype of such initial variety; (ii) is clearly distinguishable from such initial variety; and (iii) conforms (except for the differences which result from the act of derivation) to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotype of such initial variety.⁹

. Registration of essentially derived variety¹⁰.—

(1) An application for the registration of an essentially derived variety of the genera or species specified under sub-section (2) of section 29 by the Central Government shall be made to the Registrar by or on behalf of any person referred to in section 14 and in the manner specified in section 18 as if for the word “variety”, the words “essentially derived variety” have been substituted therein and shall be accompanied by such documents and fees as may be prescribed.

(2) When the Registrar is satisfied that the requirements of sub-section (1) have been complied with to his satisfaction, he shall forward the application with his report and the entire relevant document to the Authority.

(3) On receipt of an application under sub-section (2), the Authority shall get examined such essentially derived variety to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.

(4) When the Authority is satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety, it may direct the Registrar to register such essentially derived variety and the Registrar shall comply with the direction of the Authority.

(5) Where the Authority is not satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety it shall refuse the application.

(6) The rights of the breeder of a variety contained in section 28 shall apply to the breeder of essentially derived variety: Provided that the authorization by the breeder of initial variety to the

⁹ SECTION 2(I) PLANT VARIETIES AND FARMERS' RIGHTS ACT 2001

¹⁰ SECTION 23 PLANT VARIETIES AND FARMERS' RIGHTS Act 2001

breeder of essentially derived variety under sub-section (2) of section 28 may be subject to such terms and conditions as both the parties may mutually agreed upon.

(7) An essentially derived variety shall not be registered under this section unless it satisfies the requirements of section 15 as if for the word “variety”, the words “essentially derived variety” have been substituted therein.

(8) When an essentially derived variety has been registered by the Registrar in compliance with the direction of the Authority under sub-section (4), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with seal of the Registry and send a copy thereof to the Authority and to such other authority, as may be prescribed, for information.

Exclusion of certain varieties¹¹—(1) Notwithstanding anything contained in this Act, no registration of a variety shall be made under this Act in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment.

(2) The Central Government shall, by notification in the Official Gazette, specify the genera or species for the purposes of registration of varieties other than extant varieties and farmers’ varieties under this Act.

Farmers’ rights¹² —

(i) Notwithstanding anything contained in this Act,— (i) a farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act;

(ii) the farmers’ variety shall be entitled for registration if the application contains declarations as specified in clause (h) of sub-section (1) of section 18;

(iii) a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund:

¹¹ SECTION 29 PLANT VARIETIES AND FARMERS’ RIGHTS ACT 2001

¹² SECTION 39 PLANT VARIETIES AND FARMERS’ RIGHTS Act 2001.

Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act;

(iv) a farmer shall be deemed to be entitled to save, use, sow reshew, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act: Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.

Conclusion

The farmers and tribal communities across the remotest corners of India are to be made aware of this legislation and also their rights. Framers play a very crucial and significant role in Indian scenario. The contribution of Agriculture in terms of livelihood and as a source of employment is significant. Rural areas in India are inhabited by people who are dependant for their livelihoods on agriculture. In India agriculture is carried out mostly in the rural areas where small farmers dominate food production by using traditional agricultural practices.