



PROTECTION OF FARMER'S RIGHT IN INDIA UNDER THE AEGIS OF INTELLECTUAL PROPERTY LAW

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The economic growth of India mainly depends upon the agricultural production of the country. Farmers are the backbone of the agricultural development in India. They are the important factor for the survival of Indian Societies, as they provide food and fiber for the nourishment of the Indian people. Farmer's make responsible use of natural resources and utilize both primitive and advanced technologies to accomplish this. Now a days agricultural research including the development of new plant varieties are the the important area where the Government and public sector institution have taken keen interest. It may be stated that The International Union for the Protection of New Varieties of Plants or UPOV was established in Geneva by The Convention for the Protection of New Varieties of Plants. The Convention was adopted in Paris in 1961 and revised in 1972, 1978 and 1991.¹ Under this Convention, the breeder's rights are limited to the exclusive production and sale of productive or vegetative propagating materials of his variety.² According to the Convention for the Protection of New Varieties of Plants, 1991, "breeder" means the person who bred or discovered and developed a variety. Again variety means a plant grouping within a single botanical taxon of the lowest known rank, resulting from a given genotype and is distinguished from any other plant.³ Again, UPOV is an independent international organization with an international legal personality with its own employees. The purpose of UPOV is to ensure that the members of the Union acknowledge the achievements of breeders of new varieties of plants by granting them a place in intellectual property on the basis of a set of clearly defined principles. However, to be eligible for protection under the Convention, the plant varieties have to be new in the sense that they must not have been commercialized prior to certain dates established by reference to the date of the application.⁴ Thus, the plant variety protection, also known as 'plant breeder's right' (PBR) is a form of intellectual property right granted to the breeder for a new plant variety. These exclusive rights to the plant breeders benefit the farmer and encourage them to make their new varieties or protection of their existing indigenous breeds.

The First International Intellectual Property (IP) Convention was the Paris Convention for the Protection of Industrial Property held in the year 1883. In this Convention agriculture was envisaged as an area of enterprise in which property rights can be secured. Article-1(3) of the Paris Convention declared that "Industrial Property shall be understood in the broadest sense and apply not only to the industry and commerce, but to agricultural and extractive industries and to all manufactured or natural products, for example- wines, grain, leaf, fruit, cattle, mineral water, flowers and and flour". In the Plant Patents Act, 1930, United States, for the first time included the biological agricultural innovations in the Intellectual Property Statute.

It may be stated that the member States of WTO are the parties to the Trade Related Intellectual Property Right agreement (TRIPs agreement). India became the signatory to the Trip's Agreement in 1994.⁵ The Agreement on TRIPs requires WTO Members to introduce an effective system for the protection of plant varieties. The commitment by WTO Members implies that most of the developing countries have not extended the intellectual property rights to their agricultural sector. The WTO Members urged to those developing countries to consider the agricultural sector under intellectual property right. Article-9 of the International Treaty on Plant Genetic Resources for Food and Agriculture also recognized the farmer's right. The Treaty on Plant Genetic Resources for Food and Agriculture recognizes the enormous contributions made by farmers worldwide in conserving and developing crop genetic resources. This constitutes the basis of farmer's rights. According to Article- 9, government are to protect and promote farmer's rights, but can choose the measures

¹<https://www.upov.int>

²Law Relating to Intellectual Property Rights.- Dr. M.K.Bhandari. Central Law Publication. 5th Edi. 2019. P.279

³Ibid.2

⁴Intellectual Property Rights Laws.- Dr. S.K.Singh. Central Law Agency. 3rd Edi. p.467

⁵Intellectual Property Laws –Meenu Paul. Allahabad Law Agency. 1st Edi. P.6

to do so according to their needs and priorities. Measures may include the protection of traditional knowledge, equitable benefit sharing, participation in decision-making, and the right to save, use, exchange and sell farms, saved seeds and propagating material.⁶ Being a member of UPOV Convention, 1961 and WTO, India have to provide legal protection to plant varieties and farmer's right. In order to fulfil its obligations under the TRIPS Agreement, India had enacted the Protection of Plant Varieties and Farmer's Rights Act, 2001. The main objectives of the Act are:

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 protect plant breeder's rights to stimulate investment for research and development, both in the public and private sector for the development of new plant varieties.

To facilitate and growth of seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers; and

To undertake measures for the protection of the rights of farmers and plant breeders.⁷

Again Sec-2(k) of the Act define 'farmer' as any person who –

Cultivate crops by cultivating the land himself, or

Cultivate crops by directly supervising the cultivation of land through any other person, or

Conserves and preserves severally or jointly with any other person, any wild species or traditional varieties through selection and identification of their useful properties.

In Sec-2(l) of the same Act, it is mentioned about farmers variety which include the plants traditionally cultivated and evolved by the farmers in their fields or is a wild relative or land race of a variety about which the farmers possess the common knowledge. The Act also mention about the 'Gene Fund', which means the National Gene Fund constituted under sub-section-(l) of Sec-45.

The Act also provides for the establishment of an Authority by the Central Government for the protection of plant varieties and farmer's right. Under Sec-14, the farmer can apply for registration of their plants. Once registered, the breeder or the farmer or his successor or his agent or licensee can produce, sell, market, distributor, import or export of that variety and thus can enjoy the full benefit of that plant variety.

From the above discussion regarding the Act, it is clear that the farmers of India have the full right over their plants, whether they are innovative or traditionally farm plants. Assam, the North East Region of India witnesses the rich flora with plant varieties and medicated plants. The different types of rice are produced in Assam. The farmers, who produce that rice, have the intellectual property rights over their production. They can sale or can keep for their own consumption or keep that as breeder according to their own choice. But the real fact is that nearly 80 per cent of the farmers in India belong to marginal or small farmers.⁸ The benefits given by Government are mainly availed by big farmers. The small farmers are committing suicide due to various reasons. Environmental pollution, non-availability of water resources, intervention of brokers are some of the reasons for decreasing the value of their production. To cope with this type of situation Government have to take initiative in a scientific manner for the up gradation of production and marketing. In other word total revolution in scientific way is required at the agricultural sector to protect the farmer's rights and intellectual property rights.

⁶ www.farmersright.org.

⁷ Ibid.3

⁸ https://www.quora.com