

ISSN :2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 6 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench.

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

SOWING IPR's AND REAPING PRIVATISATION

AN ANALYSIS OF THE SIGNIFICANCE OF FARMERS RIGHTS IN AN ERA OF PRIVATISATION OF SEEDS

AUTHORED BY – MEENAKSHI & ABIN P SHAJU

Farmers' are an important part of the economic, social, and political fabric of the society in developing countries¹. India is popularly recognised as an Agrarian Economy as agriculture plays an irreplaceable role in nurturing said economy by way of generation of employment as well as maintenance of GDP. Hence, the diversity in structure and historical significance of the Sector, combined with the above mentioned factors, constitute a constant need for adequate Farmers Rights to exist. However, with the dawn of an era of privatisation, the need for a comprehensive system of protection has arisen as well, as it is quite evident that the industrialisation of the agrarian sector has robbed farmers of their autonomy over seeds. Thus, it may be stated that the extent of influence that the private sector wield over the agrarian sector via employing Intellectual Property Rights and the Legislative provisions available to combat the exploitation of such influence forms a subject that demands thorough analysis.

Farmers Rights Equals Intellectual Property Rights?

The most striking question one can ask with respect to the topic at hand would be whether or not certain farmers rights, such as those mentioned above, can be viewed as intellectual property rights. A case study was conducted on this topic by the University of Pune, in which various scientists, academicians and farmers were asked the aforementioned question. However, it was noted that most participants did not provide a clear yes or no answer. Some of the respondents were of the opinion that Farmers Rights should be viewed as IPRs as long as the presence of innovation is evident. It was also mentioned that the aspect of conservation is one that should be viewed in the utmost seriousness in this context. However, contrary to this particular opinion, many respondents who participated in the case study emphasised that IPRs are quite different from Farmers Rights. This statement was made based on the difference in general characteristics of IPRs and Farmers Rights. The former was placed in the category of individual rights, whereas the latter was classified as a collective right. It was opined that the innovation of farmers in the development and improvement of crop plant varieties takes place at the community level over an extended period of

¹Nandita Patil, *Farmers Rights and Intellectual Property Rights Protection of Plant Varieties in India*, 2 RURAL SOUTH ASIAN STUDIES JOURNAL 5, (2016).

time. Hence confining them within the purview of IPR would be an undue influence of the western system, thereby promoting monopoly of the private sector and market competition.

Privatisation Of Seeds; How Bad Is It?

The industrialisation of agriculture was a process that marked its beginning in the 1950s and gradually developed throughout the 1960s and 1970s. This resulted in production processes being extremely mechanised, thereby significantly transforming agriculture from what it once was. Some among the many factors that facilitated said transformation include specific markets that emerged for seeds, fertilisers, animal feed, pesticides and so on, which in turn created a system where farmers could not manage to produce their crops autonomously. Instead, they metamorphosed into mere members of a long chain of production.

Seeds have constantly been the very foundation of social, cultural and productive processes that have accorded the rural population with the ability to maintain a certain level of autonomy. However, with the development of capitalism in the agrarian sector, laws that grant property rights over seeds have been reinforced by other regulations that are supposed to ensure seed quality, market transparency, prevention of counterfeits and so on. These regulations include seed certification, marketing and sanitary rules. By means of these regulations, it becomes mandatory, for instance, for farmers to purchase or use only commercial seeds tailored for industrial farming². Not all small-scale farmers are in a position to take advantage of new opportunities. Subsistence farmers innovate predominantly in response to risk, while only those with accumulated assets, expanded production or off-farm employment are able to 'step out' into commercial markets.³

The Monsanto case⁴ may be considered an adequate example of how privatisation of the seed industry negatively affects farmers as mentioned above. Monsanto, which is an agrochemical company filed a suit for infringement against a Canadian soy-bean farmer named David for saving their seeds. The Federal Circuit held that planting a seed containing the gene sequence constitutes infringement because the seed contained the gene which is used in planting amounts to an infringement act. While this is a justifiable application of Intellectual Property Rights, the fact that More than 500 private seed companies (the largest with a turnover of about \$3 million at official exchange rates), 24 of them with links to multinational seed companies, and many with their own hybrid development programs are operating in India alone, according to a study by the World Bank

² La Via Campesina, *Seed Laws That Criminalise Farmers: Resistance and Fightback*, GRAIN, <https://grain.org/fr/article/entries/5142-seed-laws-that-criminalise-farmers-resistance-and-fightback>.

³Tittonell P, *Livelihood strategies, resilience and transformability in African agro- ecosystems*, 126 AGRICULTURAL ECOSYSTEMS 3, 14 (2014).

⁴Monsanto v David (516F. 3d at 1014), 1999.

in 2001⁵, needs to be given due consideration. Even if seed saving could be employed, the hybrid seeds that are sold by private corporations, do not yield well when it comes to the second generation. This more or less compels farmers to purchase seeds post each harvest.

The monopoly of privatised entities in this particular sector is problematic due to multiple reasons as elaborated by the IAASTD (International Assessment of Agricultural Knowledge, Science and Technology For Development). Firstly, it has been stated that the monopoly of power leads to the concentration of research and development being invested into only a small number of seed varieties. This would directly result in the second reason as provided by the IAASTD, namely, concentrated market control preventing other firms from entering the seed economy. Such concentration of market control is considered detrimental to the sector as other firms which may be able to offer alternative products and more sustainable business models are prevented from entering. Moreover, the competition stifling effects of a dominated marketplace may lead to massive hikes in seed prices, as illustrated in the case of cotton seeds in the United States. Since the introduction of genetic modification of organisms the prices for cotton seeds in the United States have risen approximately three to four fold. Substantial increases in the price for cotton seeds subsequent to the above mentioned hike can also be seen in several developing countries⁶.

An advantage that is evident in the Indian legal system, with regard to such privatisation is that the Protection of Plant Varieties and Farmers Rights Act, 2001, has included a seed saving exemption. Similarly, The US Plant Varieties Protection rights provide 'save seed' exemptions under which farmers are allowed to grow protected varieties to save the resulting seed for use on the farm and also to sell such seeds for purposes other than reproductive purposes without paying any licensing fees⁷. Such provisions need to be employed adequately and be developed in order to ensure that farmers are not exploited.

The Legislative Framework; An Overview

In India the contribution of Agriculture in terms of livelihood and as a source of employment is significant. Therefore, it is absolutely necessary to thoroughly understand and protect farmers' rights. Exploitative practices employed by private entities in the name of Intellectual Property Rights such as the issue at hand concerning the privatisation of seeds may be combated by exercising such rights that have been warranted

⁵ <http://Inweb18.worldbank.org/oed/oeddoelib.nsf/DocUNIDViewForJavaSearch/EAA847661F5C30D1852567F5005D8C3D>.

⁶ *The Privatization of Seeds*, RESET, <https://en.reset.org/knowledge/privatisation-seeds>.

⁷ Neil Wilkof, Shammad Basheer, *Overlapping IP Rights*, Oxford University Press, New Delhi, 2013.

by Legislations such as The Protection of Plant Varieties and Farmers Rights Act, The National Biodiversity Act, The Geographical Indications of Goods (Registration and Protection) Act and The Seeds Act.

The Protection of Plant Varieties and Farmers Rights Act (hereinafter referred to as PPVFR)⁸ is the most significant legislation that has been implemented in the nation with respect to Farmers' Rights. Although the Act was introduced in order to satisfy the demands of the seed industry, which was pushing for breeders rights, it came to be the primary law for the purpose of protection of farmers rights as well. Prior to the introduction of Intellectual Property Rights into agriculture, it was extremely common practice for farmers to retain seeds to use for the next round of cultivation, or even share or exchange the same. These practices were governed by the principle of free exchange (common heritage). This principle was built on the ideology that the major food crops are not under the ownership of a specific entity. Instead, they were thought to be a part of genetic resources governed by human heritage. However, the downside to this was that there was no system of compensation or benefit sharing, thereby negatively impacting breeders as they could not acquire plant variety protection.

The Rights of Plant Breeders in India were first advocated for by The Seed Association of India. This movement garnered strength with the conclusion of the TRIPs agreement and thus, the government commenced the process of drafting an adequate legislation for the same. However, it was only post five revisions that a legislation that incorporated both farmers and plant breeders rights could be formulated. Subsequent to such revisions, nine rights were established in favour of the farmers of the country with regard to selecting, saving and maintaining seeds. The first among the same would be the Right to Seed⁹. This provision actively aims at attempting to secure the rights of farmers to use, save, sell or exchange seeds as they did prior to the implementation of the PPVFR Act. The conservation of this right was one of the most significant demands put forward concerning the topic. However, according to the provision, the right is only preserved conditionally and the farmer is not entitled to sell seeds in a packaged form that is labeled with a registered name. Similar to the right to seed, the Right to Register Varieties has also been warranted via the PPVFR. This is similar to the rights granted to commercial breeders to seek IPR over varieties that farmers develop. The criteria for the accordance of IPR for the same is similar as well, namely, the presence of factors such as stability, uniformity and distinctness. This is a unique right warranted by the Indian legal system and provides exclusivity with respect to the production and marketing of the registered variety of seed. Subsequently, we can see that the legislation also warrants rights apropos of Reward, Recognition and Benefit Sharing. These provisions have paved the way for the establishment of the National Gene Fund, which in turn rewards farmers that facilitate the conservation of varietal development of plants. The fund is maintained through the payment deposited by breeders under the title of 'benefit sharing', a claim of which may be submitted by a person or group of persons, a firm or a governmental or non-governmental organization.

⁸ The Protection of Plant Varieties And Farmers Rights Act, 2001, No. 53, Acts of Parliament, 2001 (India).

⁹The Protection of Plant Varieties And Farmers Rights Act, 2001, § 39(iv), No. 53, Acts of Parliament, 2001 (India).

The Right to Information and Compensation for Crop Failure¹⁰ and the Right to Compensation for Undisclosed Use of Traditional Varieties as provided under the PPVFR are extremely significant when considering the extent of protection that they guarantee exclusively to farmers. The former requires breeders to provide information regarding the expected performance of their respective registered variety and if such crops fail to perform or grant an adequate yield, then the farmers can claim compensation under said provision. Similarly, the latter stipulates that in cases where it is established that the concerned breeder has not divulged the source of varieties that belong to a particular community, then compensation would be granted through the National Gene Fund.

The Right to Availability of Registered Material employs the IPR's that are in the possession of breeders in favour of farmers by stipulating that such breeders are to provide ample supply of seeds or material of the concerned plant variety to the public at a reasonable and fair price. Moreover, if post three years of registration of said variety, the breeder fails to accomplish the same, any person can apply to the Authority for a "compulsory licence". Compulsory licenses possess the power to revoke the exclusive right granted to the breeder and enable third parties to produce, sell or distribute the registered variety. Moreover, the Right to Free Services and the Right to Protection from Legal Infringement in case of Lack of Awareness take into account the possible deficit in cognizance among farmers in relation to aspects of law and ensure that they are not held liable for the same. These provisions also focus on imparting information to people employed in the agrarian sector to maximise their awareness of the rights that are available to them.

The National Biodiversity Act¹¹ (NBA) is largely based on the Convention on Biological Diversity and has its nucleus at regulating access to genetic resources in India. It focuses on guaranteeing safe and fair use of the same as well. The primary intention of the legislation revolves around establishing the nation's sovereign right over its genetic resources by establishing administrative regulations for foreigners, as well as Indians, to access the same. The NBA has implemented several provisions for the purpose of preserving and protecting the knowledge of local communities. A method for warranting such protection includes the registration of local knowledge. Moreover, the NBA actively combats bio-piracy by way of the establishment of Biodiversity Authorities at the National and State levels.

With respect to the topic at hand, it may be stated that the Geographical Indications of Goods (Registration and Protection) Act¹² aims to provide protection for agricultural goods originating from a specific region or territory. Although the Act does not deal specifically with farmers, the impact it exerts on farmers in terms of protection that can be granted for agricultural commodities is evident. It can be employed to protect the rights of farmers and it may also restrict the access of farmers to the protected goods depending on its mode of implementation. Benefit Sharing is a significant aspect of this legislation as well. A real-life example of such an agreement of benefit sharing would be the one that was entered into by the Tropical Botanic Garden and Research Institute with a tribal nomadic community in Kerala known as the Kanis. It revolved around a

¹⁰The Protection of Plant Varieties And Farmers Rights Act, 2001, § 39(2), No. 53, Acts of Parliament, 2001 (India).

¹¹ The Biological Diversity Act, 2002, No. 41, Acts of Parliament, 2002 (India).

¹² The Geographical Indications of Goods (Registration and Protection) Act, 1999, No. 48, Acts of Parliament, 1999 (India).

plant with medicinal properties that was discovered by the Kanis and was used by a company under a transfer agreement with the TBGRI to manufacture a drug that had anti-stress properties. Fifty percent of the license fee and fifty percent of the royalties obtained with regard to the drug were agreed to be received by the tribal community as per the benefit-sharing agreement.

The Seeds Act of 1966¹³ may be analysed as well and this particular legislation was implemented for the regulation of seed quality with regard to sales that occur in the nation and matters that are associated with the same. Various organisations such as The Central Seed Committee¹⁴, The Central and State Seed Laboratories¹⁵ and Certification Agencies¹⁶ have been established under the Act in order to ensure that its stipulations are adequately carried out. This ensures the protection of farmers from being exploited in such matters.

Conclusion

The conclusion that a certain amount of security should be warranted to the farming community via IPRs without compromising traditional values and practices, is an obvious one. The most fundamental reason behind granting IPR on plant varieties would be the undeniable innovation in developing a new variety that is distinct from pre-existing ones through selection that may or may not involve recombination. Unlike the innovations that are made in many non-biological domains, life forms such as crop varieties are not completely invented, but are always created from pre-existing life forms and propagated by natural processes. Thus, the creation of a new variety has two components: the use of pre-existing varieties and the knowledge required to select a new variety by recombining the pre-existing ones or by other processes¹⁷.

The protection granted by Intellectual Property Rights with regard to the subject at hand creates a deviation from the traditional rights that farmers enjoyed in an unrestricted fashion. Hence, the practices that have been currently implemented require careful navigation in order to ensure that ample rights over seeds and plant varieties are granted to the farming community and excess privatisation is avoided. An apt example of the same would be the seed saving exemption¹⁸ that has been warranted by the PPVFRA. As mentioned above, similarities may be drawn between said provision and The US Plant Varieties Protection Rights which provides a 'save seed' exemption. Therefore, in conclusion, such provisions and practices need to be employed adequately and be developed sustainably in order to ensure that farmers are not exploited and are granted the autonomy that every farmer should ideally be able to exercise.

¹³The Seeds Act, 1966, No. 54, Acts of Parliament, 1966 (India).

¹⁴The Seeds Act, 1966, § 3, No. 54, Acts of Parliament, 1966 (India).

¹⁵The Seeds Act, 1966, § 4, No. 54, Acts of Parliament, 1966 (India).

¹⁶The Seeds Act, 1966, § 8, No. 54, Acts of Parliament, 1966 (India).

¹⁷S P Bala Ravi, *Farmers Rights, Their Scope and Legal Protection in India*, BIODIVERSITY INTERNATIONAL (last accessed Sep. 16, 2021)

https://www.biodiversityinternational.org/fileadmin/user_upload/online_library/publications/pdfs/Community_biodiversity_management/6.3.farmers_rights_protection_india.pdf.

¹⁸The Protection of Plant Varieties And Farmers Rights Act, 2001, § 39(iv), No. 53, Acts of Parliament, 2001 (India).