PROTECTION OF BREEDERS AND FARMERS UNDER THE UPOV AND PPVFR ACT

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ABSTRACT

This abstract seeks to bring out the study of Role of IPR in Sports Law. Article 21 of the Indian Constitution ensures just, fair and reasonable procedure for disposing off any matter came before any Hon’ble court or any tribunal. Faster the disputes are resolved it will be better for all the parties concerned in as particular and for society in general. Repudiation of justice through hindrance is one of the biggest derisions of law, but in India it is not limited to mere derision; the postponement of case, in fact kills the entire justice dispensation system. The act “Protection of Plant Varieties and Farmers’ Rights” was passed by the parliament of Indian in the year 2001, when India has signed the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs) in the year 1994, and then there is the need of statute that was required to be formulated. As per the Article 27.3 (b) of TRIPS agreement which says that all the signatory states will have to keep eyes on the applications that are filed in the patent office and out of those which are eligible for patents and what can be excluded from granting of patent for the protection of plant varieties that are created by any combinations thereof. The member countries have the choice to draft any law that fits and shall not be contradictory to any existing laws; India exercised this option and drafted the law. The existing Indian Patent Act, 1970 prohibits the grant of patent relating to the field of agriculture and horticultural methods of production. The sui generis system as per the TRIPS agreement give power for the safeguard of new plant varieties that had been discovered and provides right to breeders, farmers and researchers to have monopoly rights for the certain period of time and to take care of the equitable sharing of profits. The paper is proposed to critically analyse the provisions regarding the “Protection of breeders and farmers under the Union for the Protection of New Varieties of Plants and Protection of Plant Variety and Farmers Right Act”. The researchers would like to review all the related articles and data’s of various such incidents and occasions to draw an inference about the present situation regulating the protection of breeders and farmers under the UPOV and PPVFR Act and what changes are required for maximizing the outcome of such polices. In the light of above stated research methods researchers would like to attain a conclusion that now is the high time for the concerned authorities, legal professionals, jurists and general mass to discuss about the process of resolving the matters and come out with solutions which is most probably new legislation or better enforcement of existing provisions for ensuring the fact that the state is primarily responsible for taking care of the underprivileged ones and the fact that the justice should be provided to one and all.

Keywords: UPOV, PPVFR Act, Farmer
INTRODUCTION

At the present scenario the rights of a farmer have been recognized as an international issue, even though it is one of the biggest questions is that how to implement Farmer’s Rights. Worldwide it is accepted to a certain extent that farmers are important part of our society and plays an important role for development of any country. India is one among the primary countries across the globe which has passed a legislation regarding the Farmer’s Rights in the form of the Protection of Plant Varieties and Farmer’s Rights Act\(^1\). Law of India is very unique as it not only provides protection to farmers but it also protects the rights of breeders. In the trade discussion, in the year 1986\(^2\) agriculture was considered as new aspect. The role of farmers in agro- diversity protection and improvement is accepted world-wide, since the revised agreed explanation under the International Undertaking on Plant Genetic Resources. The rights of farmer are essential to ensure food security and sustainability which has recognized under the International Treaty on Plant Genetic Resources for Food and Agriculture\(^3\).

ORIGIN OF THE INDIAN LEGISLATION

In the history the Paris Convention of 1883 is considered as the first multilateral agreement in which various nations came together for the protection of IP Laws, the next 50 years has been witnessed various efforts by different countries in Europe for the extension of IP protection regarding agricultural field. The first attempt was done by USA in the year 1930 and brought the act “Plant Patent Act”\(^4\) and it aims protecting the asexually cultivated plants by patents. In the year 1973 the European Patent Convention adopted these exceptions\(^5\) and the same was used in the TRIPS Agreement, 1995\(^6\). Even though by 1970’s it was established in developed countries that protection to IP laws will extend to agriculture, the developing countries agreed to it by adoption of TRIPS Agreement in 1995.

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\(^1\) Passed in the year 2001  
\(^2\) GATT, 1986  
\(^3\) ITPGRFA, 2004 also known as “seed treaty”  
\(^4\) https://www.upov.int/edocs/mdocs/upov/en/upov_trainer_en_16/upov_trainer_en_16_05.pdf  
\(^5\) Article 53  
\(^6\) Article 27.3 (b)
NEED FOR PLANT VARIETY PROTECTION

Fresh varieties of plants are discovered after doing research for number of years to the selective bequest of character which provide higher quality products, and better resistance power to such plant varieties. New technologies for plant production need to be developed for getting new and better results. The fabulous growth in agricultural productivity in different parts of the world is mainly based on these high performing plant varieties, which in turn is a crucial aspect for improving rural income and overall economic development. Though, the process of plant breeding is lengthy and costly, so it is not likely to have regular breeding efforts unless and until there is a fair chance of reward for the time and money invested in it. So, it is important to give an effective protecting system of PVP, with the aim to encourage the development of new varieties, for the benefit of the general public.

Indian government has passed legislation “Plant Variety Protection and Farmers' Rights Act 2002” under the sui generis option which was willing to help with the WTO in field of plant breeders’ rights and also protecting the rights of farmers. In the legislative history this act was recognising first time the rights of the farmers as conservator, breeders and cultivators.

PLANT VARIETY PROTECTION AND FARMERS' RIGHTS ACT 2002”

The Act was published in the Newsletter of Seed Association of India which contains 11 chapters and is divided in 97 clauses. The first chapter contains title and the definitions used in framework of the Act. The last chapter talks about miscellaneous clauses and the other nine chapters deal with PPVFR power, registration process of plant varieties, duration and outcome of registration and benefit sharing, surrender and revocation of certificate, right of farmers, compulsory licence, appellate tribunal, investment, accounts, assessment, violation, offences and penalties, etc.

The objectives of the Act are as follows:

- To provide establishment for an efficient system for protection of plant varieties.
- To provide the rights of farmers and plant breeders.
- To motivate for doing investment in R&D & to facilitate the growth of seed industry.
- To make sure the availability of high quality seeds and planting materials for farmers.

The act also provides exclusive rights to the farmers which are as follows:

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• Under section 39 (IV) of the chapter the farmer has a right to sell seeds. This right is essential for maintaining the livelihood source of the farming community and the nation’s independence in the field of agriculture.
• Breeders wanting to use the seeds have to take prior permission from farmers’ for creating Essentially Derived Varieties (EDVs).
• Protecting farmers from the new set of provision that has been put in place. The new Act lay down that if farmers want to inspect documents and want to receive copies of regulations and decisions made by the various authorities, they will be let off from paying any fees.
• A farmer can claim damages if a variety fail to give the expected performance under given conditions. The amount of claim has to be paid by the breeder as directed by the Authority after hearing to both the parties, namely the farmer and the breeder.

PROTECTION FOR BREEDERS

Violation of Breeders right can be seen at several levels Infringement will be seen at the time of packing which creates confusion in the mind of buyer that the product belongs from that breeders itself which harms the goodwill. Legally, a similar packing will be considered “Passing off” and compensation can be claimed. Anybody other than the Breeder cannot use the registered name or without prior permission. The use of the same or related name in any way will comprise a breach and will be punishable. Penalties are prescribed for applying false denomination and for selling varieties to which false denomination is applied. The right of Breeders have been made stronger to the point that if there is doubts of infringement, the onus of prove will be on alleged violator. This is to some extent disproportionate and needs to be amended.

Penalties for doing this is ₹50,000 to ₹10,00,000 as well as a imprisonment of three months to two years, depending on the harshness of the injury occurred. If the violator is selling, offering for sale or merely having a possession of a registered variety belonging to anyone else, the penalty is a bit worse (penalty remains the same, ₹50,000 to ₹10,00,000, but the imprisonment shall not be less than six months, going up to two years). If the crime is repeated, the minimum imprisonment is for one year, extending to three years and the fine starting at ₹1,00,000 to ₹20,00,000.

The Indian legislation provides clear laws for protecting the rights of breeders’ and also provides adequate inducement for the seed industry to invest in this sector. It is also essential to keep in mind
that all IPR systems must do a balance between the monopoly granted to the Plant Breeder and the benefits the society (in this case the farmers and consumers). In view of the fact that, no one is concerned about public interest and it will be in few hands only, it is essential to maintain competition and energy in the plant breeding sector. An IPR structure shall not grant such strong monopoly to breeders that farmers get suffer and their source of revenue are in danger. But, in other hand, the breeders’ innovation should be remunerated so that they can carry on breeding of useful varieties for the benefit of agricultural and food sector.

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)

In the year 1961, five European countries came together to provide sui generis IP protection to plant varieties and created the International Union for the Protection of New Varieties of Plants Act,1961 (UPOV) which provides the rights of plant breeders, and also barred two or more types of safe guard to a particular plant variety. It provides protection to the interests of the farmers against plant breeders\(^8\). There were three amendments brought in the year 1972, 1978 and 1991 for making the legislation more flexible and effective that will help in giving justice to the needy person. However, it restricts plant breeders’ right with an opinion of public interest to avoid unfavourable consequence of monopoly in the market. This provision ultimately addressed the right of farmer to the ample of seeds availability. The amendment of UPOV Act, 1991 makes a relaxation of farmers’ privilege to the signatory countries. However, the motto of the convention is to regulate the privileges for the farmers’ that should be in reasonable limits which is subject to safeguarding of the lawful interests of the breeder. It is an actuality that neither of the two previous amendments talks about the operative rights of farmers. The options that the UPOV Act gives for farmers are not actually the rights, but they are mere privileges. India is the part of UPOV, even though it has not able to safeguard the rights of farmers and has to bring PPVFR Act, 2001.

PLANT BREEDER’S RIGHTS UNDER UPOV

Article 14(1) of the act speaks about Scope for Breeder’s Right which is considered as exceptions and exhaustion of Articles 15 and 16. In respect of the breeding the plants which needs the authorization of the breeder the following parameters should be kept in mind:

i) Production or reproduction

\(^8\) Article 5 of the UPOV Convention, 1961
ii) Conditioning for the purpose of breeding
iii) Offering for sale
iv) Exporting
v) Importing
vi) Marketing

THE EFFECT OF PLANT BREEDERS’ RIGHTS

The UPOV Convention sets out a least scope of safeguard and offers members the best possible option available for national or local circumstances into account in their legislation.

The UPOV Convention defines the rights of the breeders related to breeding material in relation to which authorization is required by them. Like all other intellectual property rights, plant breeders’ rights are approved for a specific period of time, and after the expiration of due date it will be put into the public domain.

The rights are also the subject matter to controls, in the public interest, against any possible misuse.

It is also essential to keep in mind that the permission of the holder of a plant breeder’s right is not mandatory if they are for personal use, for non-commercial purposes or for research purposes, nor for use in the breeding of further new varieties.

CONCLUSION

UPOV act provides protection to variety of plants and a limited scope for protection for recognizing only value-addition in new varieties, and is helpful for advanced breeders. Therefore, India has implemented a middle path by distinguishing the rights of the breeders and farmers as well.

The Act is the first that includes provisions for safeguarding the rights of farmers. On the other hand, it cannot be efficient because there is less obligations on the part of breeders to take consent of farmers whose hereditary material or genes they may be using for commercializing their varieties. There is also no compulsory profit-sharing between breeders and such farmers. Both these exclusion are a breach of India’s obligation under Article 8 (j) and 10 (c) of the convention. Regarding customary knowledge, even though provision like sharing of profits has been incorporated in the Act. However, there is a need to have a separate legislation for giving protection to this section of the society. The fact is that

9 Biological Diversity Convention, 1992
the industries are using the traditional knowledge for earning profits, but are not giving the credits to the actual person who has discovered it or created it. The remedy, both in Civil law and Criminal law must be used for preventing the unlawful use of traditional knowledge for commercial utilization. India has been stepped for the complete independent legislation. In fact it promotes ample of rights to farmers’, including full protection of their knowledge and agro-diversity and responsive to the moral issues involved in commercializing life styles. The law must promote both the public sector and private sector for crop breeding within a framework of social justice and ecological sustainability.