INDIAN JUDICIAL PROPOSAL ON FARMERS INTELLECTUAL PROPERTY RIGHTS AND PLANT VARIETY PROTECTION (PVP)

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Abstract

The economic dynamics and repercussions of the diverse activities commonly referred to as "biotechnology" promise a slew of new jobs and business opportunities. It's no surprise, however, that many private-sector experts are gushing about the promise of this new 'frontier' of research provided market forces are permitted to drive investments and competitiveness, free of government interference to the extent possible. International law has long been concerned in the distribution of property rights over biological resources. Since decolonization, one of the core elements of international law has been states' permanent sovereignty over their natural resources. It was with a strong dedication to the public interest in mind that the intellectual property framework for plant variety protection was established. Specifically, the entire provision for forced licensing was created with this goal in mind solely. Plant breeders' rights holders are neither permitted neither to refuse any application nor to propose unreasonable terms in exchange for their rights under this provision of compulsory licensing. It is clear from the discussion presented in this paper that the economic reforms promised by the government have shifted the country's economic trajectory away from a socialist model toward a market-driven economy.

Keywords: Indian, judicial, farmer, intellectual property, right, and PVP, etc.

1. INTRODUCTION

The economic dynamics and repercussions of the diverse activities commonly referred to as "biotechnology" promise a slew of new jobs and business opportunities. It's no surprise, however, that many private-sector experts are gushing about the promise of this new 'frontier' of research provided market forces are permitted to drive investments and competitiveness, free of government interference to the extent possible. However, the nature of technology, such as the possibility for changing our perceptions of ourselves and allowing the creation of techniques about which no one knows for sure what the ecological repercussions would be, has sparked valid public discussions. Union International Pour Law Protection Des Obtentions Vegetables or International Union for the Protection of New Varieties of Plants [18] or UPOV Convention gives life to plant variety protection, farmers' and breeders' rights. In 1961, the Convention was signed in Paris and became effective in 1968. It was revised three times: in 1972, 1978, and 1991. It guarantees plant variety protection and grants exclusive property rights to DUS Criteria that are distinct, uniform, and stable [15]. The UPOV Convention granted the following privileges/exemptions for three decades (1961-1991):
Breeder exemptions, which enabled breeders to utilise protected varieties for breeding new kinds and for research purposes.

Farmers' privilege, which permitted farmers to sow the next crop on their own farm using their own harvested protected variety material [16].

Insofar as plant breeders' rights provide significantly weaker rights to commercial breeders, the Convention is a viable alternative to patents. It does not, however, recognize farmers as breeders or provide them rights to varieties [12].

2. RIGHTS TO INTELLECTUAL PROPERTY IN LIFE FORMS AND FARMERS

International law has long been concerned in the distribution of property rights over biological resources [15]. Since decolonization, one of the core elements of international law has been states' permanent sovereignty over their natural resources. The issue of sovereignty has remained exceedingly contentious, and it is one of the major reasons for the lack of an international legal framework governing forest management to this day [13]. The international dispute over the distribution of biological resources has heated up in recent years. The first reason is that there are growing concerns about biodiversity conservation as a result of increased global exploitation of biological resources. Second, breakthroughs in genetic engineering and biotechnology [20] have created important new economic prospects. As a result of economic globalization, concerns of access to, use of, and control over biological resources have become a hot topic in international forums. In recent years, however, problems about biodiversity-related knowledge and inventions have supplanted the issue of control over the resources themselves. As a result, intellectual-property rights related to biodiversity have received a lot of attention. Because nature and nature-related information were previously excluded from the scope of intellectual property law, the establishment of intellectual property rights has been controversial [15].

It's difficult to define who has the right to restrict others from using their ideas or information for their own economic gain. Intellectual property has been a fairly obscure specialization until recently, as it requires sophisticated legal techniques [13]. A growing circle of people requires some understanding of what they entail. International agreements on intellectual property are becoming more common, but legal protection remains mostly a matter of national legislation. As multinational commerce expands, specialists will need to be familiar with the IPR laws of all major nations, as well as their impact on their constitutional systems. The utilitarian rationale sees intellectual property rights (patents, trademarks, registered designs, copyrights, and so on) as a way to encourage social creation and innovation. "Economic studies of the patent system frequently emphasize the difference between the opportunity cost to the inventor and the opportunity cost to the three developers in bringing an invention to market, and conceptualize the invention as a 'public good,' with the patent system seen as a means of evening out these costs."

For the past two decades, law in the subject of life patenting has evolved in the west, keeping pace with advances in biotechnology. "Biotechnology is a new word for an ancient notion," says Iver P Cooper, "the idea of a technology based on the utilisation of other living creatures." Advances in this field have shown that the genetic constitution of living creatures can be changed. As a result, genetic engineering has emerged as a scientific revolution that promises the creation of new life. Microorganisms, hybrid plants [18], genetically engineered animals, Gene therapy, genetically engineered vaccines, and new antibody technology are examples of biotechnological inventions. Recombinant DNA technology, also known as genetic engineering, is used to develop disease
resistant plants, herbicide resistant crops [16], human genes, and cell lines. Genetic research has been a major area of trade and investment due to its enormous commercial potential [19].

3. LEGISLATION AND PLANT VARIETY PROTECTION

Following the establishment of the Agreement on Trade-Related Aspects of Intellectual Property Rights, the protection of plant varieties through intellectual property rights has become increasingly important (TRIPs). TRIPs' plant variety protection is based on the need to incentivize private sector players to invest in plant breeding. The ultimate goal of plant variety protection is to improve food security by introducing new improved varieties and increasing seed availability through private sector channels. Plant variety protection has substantial consequences in India because seed has traditionally been supplied largely by farmers and the state sector, with the commercial sector having a minor role in most crops until recently [16, 17]. Even though the Protection of Plant Varieties and Farmers' Rights Act was passed in 2001 to comply with TRIPs responsibilities, the subject of plant variety protection remains unresolved from a legal standpoint [14]. This is due to a variety of factors:

✓ To begin with, plant variety protection is a problem that goes beyond providing financial incentives to the private sector. While the TRIPs agreement is the immediate cause of the adoption of plant variety protection, it is not the only treaty that is relevant. The Biodiversity Convention, as well as the International Treaty on Plant Genetic Resources for Food and Agriculture (PGRFA Treaty), are crucial [19].

✓ Second, while plant variety protection is directly tied to agricultural innovation, it must be understood in a broader framework that includes biological resource conservation.

✓ Finally, plant variety protection is opposed to the concept of agricultural management based on the sharing of knowledge and resources.

From both an intellectual and a practical one, this might be critiqued. However, given the widespread ratification of TRIPs and the increasingly precarious nature of farmers' control over their resources and knowledge, it is necessary to look beyond criticism and understand the additional requirements of the current international legal system in terms of farmer needs and, more broadly, food security for all people.

4. MOVING FROM PLANT VARIETY PROTECTION (PVP) TO PLANT PATENTS

It was with a strong dedication to the public interest in mind that the intellectual property framework for plant variety protection was established. Specifically, the entire provision for forced licencing was created with this goal in mind solely. Plant breeders' rights holders are neither permitted to refuse any application nor to propose unreasonable terms in exchange for their rights under this provision of compulsory licensing [12]. In its role as a tool to support the interests of plant breeders in generating new varieties by granting them proprietary rights on the one hand, and as a custodian of public rights of access and use of genetic material on the other, plant variety protection has proven to be effective. Plant breeders can get patent-like rights through the use of PVP. The genetic make-up of a given plant variety is what is protected in this instance. The following are the different requirements for protection: innovation, distinctness, uniformity, and stability. PVP rules can provide exemptions for breeders, allowing them to save seeds from their harvest for use in plant breeding. As a result, PVP is considered to be the weaker sister of patenting, primarily due to the exemptions provided by PVP laws. Furthermore, PVR supports cross-licensing between a holder of PVR and the owner of an
applicable patent. Anyone who wishes to use protected material for breeding purposes is permitted to do so under the breeders' exemption of plant variety rights. The patent regime, on the other hand, does not reciprocate in kind.

According to Article 53(b) of the European Patent Convention, animal and plant variations have traditionally been barred from patentability in Europe (EPC). The Convention on the Rights of the Child was signed in 1973. The term 'variety' was not specified in the European Patent Convention. Plant varieties could be protected under existing national law (plant breeder's right) or under the UPOV agreement, depending on the situation at the time. With this jurisdiction, the European Patent Office began to establish the fact that plant varieties are subject to the patent regime's jurisdictional requirements. In Europe, one of the most significant causes for the slow expansion of the biotechnology industry has been identified as a lack of confidence regarding intellectual property protection for biotechnological ideas. Two proponents of biotechnology contend that conflicts between ethical aspects of technology development and commercial rewards from technology have hindered the development of this industry's development. In this regard, the Novartis ruling (decision GOI98) appears to be a confirmation. Patents on plant varieties are not allowed, according to the ruling, however patents on genera are permitted under the ruling. The genus consists of species, subspecies, and variations, all of which are classified as such. As a result, patents control of varieties is obtained through the private control of the genus under consideration.

5. PROPOSAL FOR INDIAN JUDICIAL REFORM

Calcutta High Court issued a groundbreaking ruling on January 15, 2002, permitting a patent application for a genetically edited microbe known as infectious bursitis vaccine to be filed with the government. The appellant had filed a patent application for an inventive process for the preparation of infectious bursitis vaccine, which had been granted by the USPTO. A rejection of the application was made by the Patent and Trademark Office on the grounds that:

i. The process of preparing a vaccination containing a living thing cannot be deemed to be a manufacturing process.

ii. According to Section 2(1) of the Patent Act of 1970, the above-mentioned process is neither an invention nor a discovery.

iii. A procedure that falls under the purview of innovation must result in a material, and a vaccination that contains a living organism cannot be deemed a substance under the law.

The appellant argued that the preparation of infectious bursitis vaccine qualifies as an invention because:

i. The procedure contains innovative stages, and the produced vaccine protects poultry against infectious Bursitis; and

ii. The invention protects poultry against infectious Bursitis.

iii. The patenting of final products whose production involves the use of live viruses is not prohibited under current Indian law.

iv. The patent sought in this case is only for the process of preparing the vaccine itself, not the vaccination itself. Taking into account the arguments on both sides of the debate
The following was the decision of the High Court:

i. The controller committed a legal error by concluding that, simply because the finished product contains live virus, the process involved is not an invention under the law [13].

ii. The patent claim should have been evaluated by the Controller in accordance with the provisions of Section 3 of the Patent Act. Examiners did not raise any objections in accordance with Section 3.

iii. When the vendibility test was applied, the vaccine was classified as a material.

After hearing the case, the Court ordered the Controller to reexamine the grant of a patent to the appellant. It is argued that this decision has created new prospects for acquiring patents in India for microorganism-related discoveries that were previously denied protection in the country.

6. CONCLUSION

It is clear from the discussion presented in this paper that the economic reforms promised by the government have shifted the country's economic trajectory away from a socialist model toward a market-driven economy. Under the influence of globalisation, a steady shift in the function of the state from one of active regulator to one of passive intervener is taking place in the realms of social, economic, agrarian, and labor relations. Since the government is currently reassessing its position in light of the ongoing economic transformation and the introduction of a new economic regime, it cannot be expected to maintain an active involvement in the foreseeable future. Given that India is currently undergoing structural adjustment changes, it is unlikely that the policies will be abruptly reversed, and it is too late to attempt a reversal of the globalisation process at this point. Consequently, pragmatism dictates that required countermeasures be implemented to mitigate the detrimental consequences of these economic policy improvements.

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