

Role of Intellectual Property Rights in Agriculture

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ARTICLE ID: 001

Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. IPR is one of the important determinants of technology development, transfer and dissemination.

The primary objective of an Intellectual Property Rights is to encourage inventions by promoting their protection and utilization so as to contribute to the development of Industries, which in turn contributes to the promotion of technological innovation and to the transfer and dissemination of technology. In any industry, the maintenance of Intellectual Property Rights (IPR) is an essential basis for innovation and progress. Intellectual property protection is necessary to encourage continued investment in research and development and is important for bringing news innovations to farmers.

The role and importance of the intellectual property protection has been formed in the Trade-Related Intellectual Property Systems (TRIPS) Agreement, with the establishment of the World Trade Organization (WTO). The TRIPS Agreement came into effect on 1st January 1995, is considered till date most complete multilateral agreement on intellectual property. At the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) treaty in 1994, it was negotiated. The TRIPS Agreement incorporates, in principle, every form of intellectual property and targets the complementary and firming standards of protection and providing for operative enforcement at national as well as international level. It addresses the applicability of general GATT principles and the provisions in international agreements on IP (Part I). It also builds standards for scope, usage, readiness (Part II), enforcement (Part III), acquisition and maintenance (Part IV) of Intellectual Property Rights.



Moreover, it addresses related dispute prevention and settlement mechanisms (Part V). Formal provisions are addressed in Part VI and VII of the Agreement, which cover transitional, and institutional arrangements, respectively.

On the basis of type of invention and creation of human mind and their application, the IPRs are classified as follows:

1. **Patents** - A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. Patentability of any invention needs to fulfill certain criteria such as Usefulness, Novelty and Non obviousness. It provides protection for the invention to the owner of the patent for a limited period, i.e 20 years.
2. **Trademarks** - A trademark is a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise.¹ It may be one or a combination of words, letters, and numerals.
3. **Copyright and related rights** - Copyright is a legal term describing rights given to creators for their literary and artistic works.³ Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties.
4. **Geographic indications of source** - A Geographical Indication (GI) is a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin. The Geographical Indications of Goods (Registration and Protection) Act 1999 (the Act) provide for registration of Handicrafts as Geographical indications (GI). As on 31 July 2016, 1152 GI Authorized user have been registered under the Act for handicraft goods.
5. **Industrial designs** - Industrial designs refer to creative activity which results in the ornamental or formal appearance of a product and ‘design right’ refers to a novel or original design that is accorded to the proprietor of a validly registered design. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 which aims at enacting a more detailed classification of design to conform to the international system and to take care of the proliferation of design-related activities in

various fields.

6. **Trade Secrets** - Broadly speaking, any confidential business information which provides an enterprise a competitive edge may be considered a trade secret. Trade secrets encompass manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the trade secret. Contrary to patents, trade secrets are protected without registration.
7. **Protection of plant varieties & farmer's rights** - The objective of this act is to recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro-biodiversity by rewarding them for their contribution and to stimulate investment for R & D for the development of new plant varieties to facilitate the growth of the seed industry which will ensure the availability of high quality seeds and planting material to the farmers.
8. **Protection of Biological Diversity** - The Biological Diversity Act covers the traditional knowledge in the preamble itself. It also provides for issues related to traditional knowledge under the umbrella of associated knowledge within various provisions of the Biological Diversity Act, 2002. The benefit claimers are conservers of biological resources, creators and holders of knowledge and information relating to the uses of biological resources.

Governing Regulations

Intellectual properties rights in India is governed under the following Acts:

- Trade Marks Act, 1999
- The Patents Act, 1970 (amended in 2005)
- The Copyright Act, 1957
- The Designs Act, 2000
- The Geographical Indication of Goods (Registration and Protection) Act, 1999
- The Protection of Plant Varieties and Farmers Rights Act, 2001
- The Information Technology Act, 2000

The IPR security for fresh plant species in India in the form of the Protection of Plant Varieties and Farmers' Rights Act (PPVFR) of 2001 came about as a consequence of this law.



In India, a sui generis scheme was created which integrates breeders, peasants and groups with respect to the safety of plant varieties. Sui generis allows the design and additions to a patent scheme for the security of plant varieties of its own. The IPR security for fresh plant species in India in the form of the protection of Plant Varieties and Farmers Rights Act, 2001 came about as a consequence of this law.

Rights under PPV and FR Act, 2001

1. Protection for -

- New varieties
- Extant varieties
- Essentially derived varieties (It is the variety predominantly derived from an initial variety and retaining the expression of the essential characteristics of initial variety. It is clearly distinguishable from the initial variety)
- Farmers' varieties (Variety cultivated traditionally and evolved by farmers in their field)
- Varieties of common knowledge
- Land races

2. May not be protected-

- Gene use restriction technology or terminator gene

3. Rights

A. Breeders' Right: These rights are granted by government to a plant breeder, originator or owner of a variety to exclude others from producing or commercializing the propagating material of that variety.

- Rights on the variety for 15 years (*18 for tree and vines*)
- Commercialization of the registered variety
- Total control over formal marketing of the variety
- May authorize other person for right
- Similar right on EDV (*Essentially Derived Variety*)

B. EDV-It is derived from initial variety, while retaining the expression of the essential characteristics that result from genotypes or combination of genotypes of such initial variety

Requirements of PBR (Plant Breeder's Right):

A plant variety must satisfy the following four criteria for protection: Novelty, Distinctiveness, Uniformity and Stability

Breeder's exemption: The use of material of a PBR protected variety (the initial variety) for the development of new varieties is permitted and PBR for the new varieties so developed will be of the breeder who developed them, while the holder of PBR-Title of the initial variety will have no claim to their PBR titles. This provision is called *breeder's exemption*.

C. Researchers' Right:

- Registered varieties under protection can be used freely for research to develop new varieties
- For repeated use as a parent authorization certificate is required

D. Farmers' Rights: (as conserver and cultivator)

- Right to save, use, sow, re-sow, exchange, share or sell farm produced seed, including the seed of registered variety . However, the right excludes sale of branded seed of a protected variety
- Right to share benefit when farmers' variety is used for breeding new commercial variety. (Link to National Gene Fund)
- Right to farmers and communities to receive reward and recognition for conserving PGR(India instituted Plant Genome Saviour Award)
- Right to get adequate supply of seed of registered varieties at reasonable prices. (Linked to Compulsory Licensing)
- Right to claim compensation for under performance of registered variety
- Right to register farmer's variety
- Right to give consent for commercializing essentially derived variety (EDV) developed from farmer's variety
- Exemption to farmers from paying all fees related to administrative and judicial proceedings
- Judicial Protection against innocent infringement of this Act

Benefits from PBR:

1. The opportunities to breeder for obtaining profits from varieties developed by them



2. A PBR system encourages private companies to invest in plant breeding activities
3. It will encourage competition among various organizations engaged in plant breeding which is likely to be beneficial to both the farmers and the nation.

Address of the Authority:

Protection of Plant Varieties and Farmers' Rights Authority Government of India,
Ministry of Agriculture, NASC Complex, New Delhi 110 012

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