

IPR cases against Farmers in India

Four cases by PepsiCo India Holdings Private Limited (PIH) against potato farmers in Gujarat show how the IPR regime can go against farmers' seed freedoms. The petitioner company - PIH, a wholly owned subsidiary of an American MNC PepsiCo, filed these cases in April 2019 claiming that the defendant farmers had infringed its intellectual property rights (IPRs) on a potato variety FL 2027/FC5 by growing it and selling its produce without its consent and without paying it any royalty for its variety. Therefore, PIH was demanding a relief from courts in the form of a permanent injunction restraining the farmers from using FL 2027 registered under the PPV&FR Act. In 2018, the company had also filed cases against other farmers, traders, cold storage owners and local snacks businesses in Gujarat. But the popular reactions in defense of farmers' seed freedoms and the campaigns by networks like ASHA were focused on the cases initiated against farmers in different courts in Gujarat. Under pressure PIH withdrew the cases in May 2019. PepsiCo India said that the withdrawal was "after discussions with the Government". This was the first time that IPR infringement cases on planting material were filed against farmers in India; there is much to be done to ensure that such cases do not recur. In July 2019, the MNC announced that it would invest Rs 514 crore over 3 years, to set up a greenfield snacks manufacturing plant in Uttar Pradesh. It plans to double its snacks business in India by 2022. For this it relies on the government for a favourable environment including IPR protection for its seeds.

PROTECTION OF PLANT VARIETIES & FARMERS' RIGHTS (PPV&FR) ACT, 2001

The grant of PVP by a governmental agency – the Protection of Plant Varieties and Farmers' Rights Authority in India under the PPV&FR Act, means that the company, institute, group of persons or even farmer/s get an exclusive right by law to:

PRODUCE, SELL, MARKET, DISTRIBUTE, IMPORT, EXPORT
the variety that is granted IPR.

But in India these rights to the breeder are subject to farmers' seed freedoms.

FARMERS' SEED RIGHTS ARE GUARANTEED BY THIS INDIAN LAW BUT ITS CHAPTER ON FARMERS' RIGHTS IS THREATENED BY DEMANDS FROM CORPORATIONS FOR HIGHER IPR THROUGH FTAS/BITS, EITHER IN THE FORM OF PATENTS OR UPOV 1991 LEVEL PLANT BREEDER RIGHTS THAT RESTRICT FARMERS' SEED FREEDOMS.

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FARMERS' SEED RIGHTS Versus IPRs in FTAs/BITS

Plant variety protection (PVP)

is a kind of intellectual property right (IPR) that gives legal entitlements for a prescribed period to plant breeders over the variety of crop/tree/vine that they develop.

PVP is generally considered less than another IPR – patent, in three main ways:

1. **Protection Period** is for lesser time (15 years for crops; 18 years for trees & vines) versus 20 years of exclusive economic rights to patent holders.
2. **Research Exemption** permits researchers the use of the variety under PVP without action against infringement.
3. **Farmers' Privilege** allows using the PVP-protected variety for own (subsistence) purposes.

The Indian law on PVP instead recognises and provides for FARMERS' SEED RIGHTS.

RELEVANT LAWS FOR THE DISCUSSION

International:

WTO

World Trade Organisation

TRIPS

Agreement on Trade-Related Aspects of Intellectual Property Rights

UPOV Convention

International Union for the Protection of New Varieties of Plants

FTAs - Free Trade Agreements

BITS - Bilateral Investment Treaties

ITPGRFA

International Treaty on Plant Genetic Resources for Food and Agriculture

UN Declaration

United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas

National:

PPV&FR Act, 2001

Protection of Plant Varieties and Farmers' Rights Act

BD Act, 2002

Biological Diversity Act & Rules, 2004

Seeds Act, 1966

& related Seed Rules, Orders, etc.

Farmers in India have never asked for intellectual property (IP) for their seed innovation, i.e. they have said 'NO' on IPRs on planting materials. It was a requirement of the World Trade Organisation (WTO)'s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that member countries must make laws to provide IP protection in the seed sector. This was based on a demand by seed MNCs and corporate plant breeders for IPRs over crops, either through patents or plant variety protection (PVP). Both houses of the Parliament of India passed the *Protection of Plant Varieties and Farmers' Rights Act, 2001* in response to the treaty obligation under WTO TRIPS to make an IPR law on plant varieties.

WTO = IPRs on Seeds; FTAs = 'WTO-plus' standard of IPRs on Seeds & their enforcement;

BITS = Priority access to land and water to investors; their IPRs protected as 'investment'

Section 39(1)(iv) of the PPV&FR Act: **Notwithstanding anything contained in this Act** a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into the force of this Act,

provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.

Based on the experience of IPRs in agriculture in India, in the interest of FARMERS' SEED RIGHTS in India, the list of people's demands includes...

Section 39(1)(iv) of the PPV&FR Act must be reiterated by the granting Authority and the Union Ministry for Agriculture and Farmers' Welfare (MoA&FW).

No demands for IPRs from seed companies or other MNCs for higher IPRs, such as patents or UPOV-styled breeders rights should be agreed to.

PVP registration of plant varieties should be revoked when harassment of farmers takes place through frivolous litigation; a suitable clause on this must be introduced in the certificate, if required

Certificates of PVP Registration granted to applicants must insist that the PVP-holder's rights are subject to farmers' seed freedoms.

Unilateral changes to India's seed laws on the pretext of WTO obligations are unacceptable. Our IPR laws are already WTO TRIPS-compliant.

Contracts of companies doing contract farming with farmers as 'growers', must not violate the legal rights conferred on farmers by the PPV&FR Act, 2001

Alongwith reviving WTO/Trade cells, Farmers' Rights Desks/Offices should be opened in all states, just as regional offices of the PPV&FR Authority have been operationalised in different parts of India to grant PVP.

Post-grant of PVP, the PPV&FR Authority must have a mechanism to monitor how the PVP-holders are abiding by the law, particularly its farmers' rights provisions.

Since agriculture is a state subject as per the Constitution of India, state governments must be consulted.

Agriculture chapters and IPR provisions in negotiating texts of FTAs/BITs must be shared with farmers' groups.