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SUI-GENERIS PLANT VARIETY PROTECTION: AN INDIAN OVERVIEW



ABSTRACT:-

The agriculture sector is significant role to enactment sui-generis plant variety protection regimes at national level, reason for enhancement of food security all over the world and to avoid food scarcity in future generations. The introduction of plant variety protection regime, in India to fulfill obligation of WTO/TRIPs Membership, for this reason to enact sui-generis Plant Variety Protection act 2001. In India plant breeding was confined to the public sector. This was adopted keeping in mind of food security of Indian population.

The overview of the paper, focus on the adoption of sui-generis plant variety protection in India, is to provide an incentive to commercial breeders for developing new plant varieties, and which it direct linkages with the rights of farmers who have traditionally been breeding plant varieties as per their local conditions, accessibility to plant genetic plant varieties (PGR) and concerns related to food security.

KEY NOTES: Plant variety protection, developing nations, Sui-generis, PPVFR ACT.

INTRODUCTION

The agricultural sector is a crucial source of food, employment and trade, and hence, contributes to overall economic growth and poverty reduction. Plant

Thippeswamy S.

Research Scholar , Department of Studies & Research in Law, Gulbarga University, Gulbarga , Karnataka- State.

variety protection (PVP) regimes, which have important impacts on agriculture therefore affect food production, food security and also have important impacts on livelihood, employment, trade and biodiversity¹.

Intellectual property protection of new plant varieties has been in the debate ever since plant breeding became a corporate commercial venture. It was at the instance of the global seed industries that a specific provision for intellectual property protection of new plant varieties was introduced in the TRIPs Agreement.

In India plant breeding was confined to the public sector. This was adopted keeping in mind the food security Indian population. However Indian agriculture was not treated as an industrial activity. This development got changed in late 1980, when foreign seed corporation were allowed to enter Indian market and this growth gave rise to demands for IPR protection for agriculture².

Due to rapid changes, India forcibly to become a member of the WTO on January 1, 1995 as member, was required to comply with the TRIPs Agreement, specifically under Article 27.3 (b) of TRIPs requires member countries to protect plant varieties either by patents, or by an effective sui-generis system of protection, therefore the Indian Parliament passed the Protection of Plant Varieties and Farmers' Rights Act (PPVFR) 2001³.

The issue of plant variety protection is significant and can be understood in two ways: first, in the narrow sense where protection of plant variety is important to provide an incentive to commercial breeders for developing new plant varieties; and second, in the broader sense where plant variety protection has direct linkages with the rights of farmers who have traditionally been breeding plant varieties as per their

local conditions, accessibility to plant genetic resources (PGR) and concerns related to food security⁴.

PLANT VARIETY PROTECTION

India has had a number of reasons for introducing a plant variety protection regime. The most immediate trigger for the plant variety Act 2001 are the obligation undertaken in the WTO context, specifically under Article. 27.3(b) of the TRIPs Agreement. It imposes on all countries the introduction of some form of intellectual property protection for plant varieties. However, it does not impose the introduction of patents and therefore leaves members states free to devise their own legal framework in this regard (sui-generis option).

The justifying reason for to introduce plant variety protection in the form of Intellectual property rights, in India, both from the perception of commercial breeders, farmers, or local communities, their, conservation, development and sustainable agricultural biodiversity and another reason for, an enhancement of food security due to expand population all over the world. There is necessity, to encourage food crops/yields and avoid food scarcity in future⁵.

OVERVIEW OF SUI-GENERIS PLANT VARIETY PROTECTION INDIA

Plant variety protection through intellectual property rights has been a contentious issue for a long time and plant varieties were traditionally excluded from patentability at the international level. Some countries and regions progressively introduced plant variety protection in the course of the twentieth century, but it was generally felt that granting patents was not appropriate in this filed⁶.

After independence, the government of India adopted the model of confining plant breeding to the public sector to address food security issues of the population. The model succeeded when at the end of the 1970s, India graduated from being an importer to achieving self-sufficiency in food. India's move towards promoting agricultural trade was partly prompted by the entry of foreign seed corporations into the Indian market in the early 1980s which gave rise to demands for IP protection⁷. At the International level, Convention on Biological diversity (CBD), 1993 by giving sovereign rights to nations over their Plant Genetic Resources (PGR) also raised concerns about breeder's rights, farmers rights, right to communities engaged in conservation of biological resources.⁸

PROTECTION OF PLANT VARIETIES AND FARMERS RIGHTS ACT, 2001.

In India, agricultural research including the development of new plant varieties has largely been the concern of the government and public sector institutions. Earlier, India did not have any legislation to protect the plant varieties and, in fact, no immediate need was felt. However, after India became signatory to the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs) in 1994, such a legislation was necessitated⁹.

In order to fulfill WTO/TRIPS obligation, India enacted the Protection of Plant Varieties and Farmers' Rights Act in October, 2001 to protect the new plant varieties. The act covers all categories of plants except micro-organism. The Government of India, states following reasons for introducing the PPVFR Act:

- + To protect the intellectual property associated with the development of plant varieties in fulfillment of an agreement under WTO.
- + In order to recognize the rights of plant breeder, farmers and local communities, arising from their contribution in conserving, improving, developing and agricultural bio-diversity.
- + To stimulate public and private investment in plant breeding to accelerate agricultural development.
- + To ensure high quality seed and planting material to farmers by promoting the seed industry¹⁰.

The 'Protection of Plant Varieties and Farmers' Rights Act, 2001' aims to provide protection for plant varieties, rights to the farmers and breeders and to encourage development of new varieties of plants. The Act has many unique features. It strikes a balance between the rights of farmers and breeders by rewarding the farmers and local communities from the pool of National Gene Fund for their conservation and development efforts and, at the same time, ensuring reward for innovation by granting plant breeders' rights.

Public interests will be taken care of through provisions of compulsory licensing, non-registration of varieties which affect public order and morality and are injurious to human, animal, plant life and health.

To ensure that modern breeding techniques, which uses advanced technologies like biotechnology, are not

misused, the Act prohibits registration of any variety which contains genetic use restriction technology (GURT). It is hoped that this legislation will stimulate research and development in agriculture both in public and private sector by providing protection for plant varieties. However, the legislation has scope for further improvements and fine tuning¹¹.

SUI-GENERIS SYSTEM

The "effective sui generis system" referred to in Article 27.3(b) of the TRIPS Agreement is clearly intended to be an alternative to the patent system. In this connection, it is useful to recall that the UPOV system was also established, in 1961, as a special form of protection, in lieu of the patent system, covering only plant varieties and specifically adapted to plant varieties. In this sense, the UPOV system was already conceived in 1961 as a sui generis form of protection, alternative to the patent system¹².

This flexibility of the sui generis system is important for developing countries like India for three major reasons.

First, it will facilitate in striking a balance between promotion of private interest in national plant breeding and safeguarding the vital public good role being served by plant varieties in enhancing the livelihood opportunities of farming communities, in poverty alleviation, in promoting food security, and in conserving the agro-biodiversity and associated traditional knowledge. Many developing countries are notable for agriculture as the major or only source of income for majority of their populations, for their very low productive assets and for their wealth of genetic diversity present as large number of farmer-selected traditional varieties.

The second aspect is the conflict between TRIPS Agreement and other legally and morally binding international declarations, treaties and conventions concerned with poverty alleviation, economic development, human rights protection and bio-resources conservation. The relevant legally binding instruments are the UN Convention on Biological Diversity (CBD) the International Treaty on Plant Genetic Resources (ITPGR) for Food and Agriculture and UN International Covenant on Economic, Social and Cultural Rights (CESCR).

The legally non-binding instruments are the Universal Human Rights Declaration (UHRD) and UN Declaration on the Right to Development (DRD). The conflicts that these international instruments have with TRIPS Agreement are discussed later. As these international instruments have important bearing on large public good concerns and are binding on Member countries as much as the TRIPS Agreement, the Members should have the right to harmonize these conflicts in their national legislation until the sources of conflicts are addressed.

The third important aspect is that, as an IPR protection device, the sui generis system is equivalent to the patent system in the stringency of offered protection. This is explicit from the TRIPS Agreement Article 27 3(b) which affirms that plants and animals other than microorganisms are excluded from patentability.¹³

PLANT VARIETY PROTECTION IN DEVELOPING COUNTRIES:

- + PVP law aims to promote international trade in agriculture by opening developing country markets for hybrids and better quality plant varieties and help in reducing deficiencies in agriculture practices in these countries.
- + PVP to enhance food security and promote economic growth in developing nations.
- + The legal protection offered by intellectual property rights in the form of plant variety protection provides incentives for private sector and promotes its involvement in the development of new plant varieties
- + The only solution to the continuously rising problems of "food Security" and loss of agricultural land" in the developing is to increase the "productivity per unit area." PVP law help in this direction by promoting research for the development of modified varieties with improved nutritional value.
- + PVP law provides incentives to domestic plant breeders for their innovation and compensating for their investments¹⁴.

IMPACT OF PLANT VARIETY PROTECTION ON DEVELOPING NATIONS

The introduction of sui-generis plant variety protection is not appropriate for agricultural developing nations. However only it's suitable for developed nations. The following concerns are:-

- + Private sector investment results in consumer oriented food instead of catering to the needs of the poor.

- + Restriction on traditional practices and harmful effects of terminator technology.
- + PVPs themselves have not necessarily fostered food security.
- + Effects on biodiversity.
- + Over patentability.¹⁵

CONCLUSION:

An above observation of the article, the sui-generis plant variety protection in India, both from perspective of commercial breeders, farmers, or local communities. However, to provide incentives to commercial breeders and to protect private sector interests, the rationale for provide incentives to commercial breeders, particularly an enhancement of food security. It requires to promote food crops due to increase population all over the world. Other side, sui-generis plant variety protection, it impact to the farming and local communities' rights in respect of their developing, conserving, and sustaining agro- biodiversity.

Especially, the sui-generis plant variety protection is suitable for only developed countries, not appropriate for agricultural developing nations.

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