

# ROLE OF WIPO FOR PROTECTION OF FARMERS RIGHTS IN INDIA

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## ABSTRACT

Agriculture began when early humans realized that some of the plants growing in the wild could be used for food, clothing and health care. Humans all over the world identified, selected and cultivated only those plants that were useful to them and were best suited for cultivation in their regions. Each crop plant is considered to have originated in a specific region of the world. Crop plants from these regions spread to other parts of the world during different periods of our agricultural history. According to the Government of India, one of the reasons to legislate the PPVFR Act and to allow PBR on plant varieties is the TRIPS agreement India signed under WTO. Considering the consequences of this to Indian agriculture and the farming community, one may like to ask why India did join the WTO and undertook such agreements. WTO is a world organization for trade. International trade is important to all countries and more so to India because of its big population and growing economy. India is a founder member and key player of the United Nations system and the General Agreement on Tariffs and Trade (GATT). The GATT, which was established under UN, has now been changed to the WTO. International relations are important for every country, particularly in times of globalization. International relations, however, have both advantages and disadvantages. Every country tries to achieve a net advantage over the long term. In the WTO, India is one among 147 countries. Most of the countries who are not currently members of the WTO are trying to get membership.

**KEY WORDS: Farmers Rights, Issues and Challenges, Role of WTO & WIPO**

## INTRODUCTION

Farmer's rights are the traditional rights farmers have on the seeds or the propagating material of plant varieties. This right arises from the important role farmers have been playing to conserve and enrich varieties and the knowledge they hold on the total genetic variability of the country. Hence, the farmers' rights on seed is concerned with both the traditional varieties conserved by them and modern varieties bred by using traditional varieties. The importance of these rights from the conservation point of view becomes more compelling with the grant of PBR to breeders. Therefore, the PPVFR Act safeguards farmers' rights on plant varieties, while simultaneously allowing PBR. This Act gives the traditional rights on the seed and other collateral rights arising from seed. All these rights are explained later in detail. Farmers' rights on seeds in variety rich countries like India promote the global public good cause of enrichment and conservation of crop diversity. Without this right farmers cannot continue the important process of variety

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selection and conservation, which are responsible for evolution of novel genetic diversity in crop plants. Hence, enrichment of genetic diversity by on-farm conservation is of high importance to global agriculture.

## FARMERS RIGHTS

Agriculture was generally excluded from IPR protection in India and there was no legal system of Plant Breeders' Rights or Farmers' Rights for decades. 'Common heritage' or the principle of free exchange based on the view that the major food plants of the world are not owned by anyone and are a part of our human heritage governed genetic resources. Farmers were free to use, share and exchange seeds and since breeders could not acquire plant variety protection, there was no system of benefit sharing or compensation. The farmers rights components are,

1. Protection of traditional knowledge;
2. The fair and equitable sharing of benefits;
3. The right to participate in decision-making; and
4. No limitation to rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material.

Despite the many challenges and barriers in the realization of Farmers' Rights at national level, efforts are already underway with regard to implementation of components of Farmers' Rights in the International Treaty. Progress is being made with regard to the protection of traditional knowledge; equitable benefit sharing; the participation in decision making; and the right of farmers to save, use, exchange and sell farm-saved seed/propagating material. This indicates that there exists an opportunity for sharing and learning from the examples of different countries and stakeholders in putting Farmers' Rights into practice.

The initial demands for IPRs in agriculture arose with the change in policy that allowed private sector entry into the seed sector with the New Seed Policy of 1988. The Seed Association of India, formed in 1985, first actively promoted the need for plant breeders' rights in India. With the conclusion of the TRIPs agreement there was also external pressure on India to establish PBRs in India. India's public sector had initially objected to plant variety protection partly because it would enable private companies to take advantage of breeding material developed by the public sector, but this stance underwent a change due to the changing role of the private sector and the relationship between the public and private sectors (Seshia, 2001). Enormous protest against implementing TRIPs, and introducing PBRs, arose from non-governmental organizations and farmers' lobbies in India. Their most effective and forceful argument was that the IPR system as outlined in TRIPs recognizes only agricultural innovations of breeders and corporations, but ignores informal innovations of farmers and communities, especially in developing countries. They asserted that TRIPs and western IPR regimes promote 'bio-piracy' as they only recognize formal innovations and ignore indigenous knowledge systems. Bio-piracy refers to the utilization of traditional knowledge or resources by industrialized nations to create profitable products without compensation. TRIPs allows countries to establish 'effective sui generis' systems, but many developing countries are implementing even

higher standards than the minimum requirement, such as UPOV 1991. Developing countries are also subject to pressure to implement higher standards from TRIPs plus agreements, including regional trade agreements.

### **Role of Government protection of agricultural Rights in India**

The main governmental body to deal with agriculture in India is the Ministry of Agriculture. It comprises of three Departments, namely, Department of Agriculture and Cooperation, Department of Agricultural Research and Education/Indian Council of Agricultural Research, and the Department of Animal Husbandry and Dairying. The Ministry of Agriculture is given the mandate to undertake all possible measures to ensure timely and adequate supply of inputs and services such as fertilizers, seeds, pesticides, agricultural implements and also provides agricultural credit, crops insurance and ensures remunerative returns to the farmer for his agricultural produce.<sup>25</sup> The Indian Council of Agricultural Research (ICAR) is the apex body of the country for promoting agricultural research, education and extension education. It has the mandate to coordinate agricultural research and development programmes and develop linkages at national and international level with related organizations to enhance the quality of life of the farming community.<sup>2</sup> The body played an important role in the formulation of the PPVFRA Act and will also be actively involved in its implementation. Operating under the ICAR is the National Bureau of Plant Genetic Resources (NBPGR) which is the nodal organization in India for exchange, quarantine, collection, conservation, evaluation and the systematic documentation of plant genetic resources. It was established in 1976 in its present set up although the activities were initiated in 1946.<sup>3</sup> Another constituent of ICAR is The National Academy of Agricultural Research Management (NAARM) was established in 1976, in Andhra Pradesh, to promote management in agricultural research and education. The Council of Scientific & Industrial Research (CSIR) is the premier industrial R&D organization in India and was constituted in 1942 by a resolution of the then Central Legislative Assembly. Today CSIR with 38 laboratories is recognised as one of the world's largest publicly funded R&D organisations having linkages to academia, R&D organisations and industry. The CSIR has been actively involved in opposing patents on basmati and turmeric. It is also establishing a database<sup>4</sup> on traditional knowledge with WIPO<sup>4</sup>

### **ROLE OF WIPO FOR PROTECTION OF FARMERS RIGHTS IN INDIA**

During 1998 and 1999 WIPO conducted fact-finding missions in 28 countries in order to identify the IP- related needs and expectations of traditional knowledge holders (FFMs). Indigenous and local communities, non- governmental organizations, governmental representatives, academics, researchers and private sector representatives were among the more than 3000 persons consulted on these missions. The results of the missions were published by WIPO in a report entitled "Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-finding Missions (1998- 1999)" (FFM Report). In late 2000, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the Committee) was established. The Committee has made

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<sup>2</sup> [www.icar.org.in](http://www.icar.org.in)

<sup>3</sup> [in.nbpgr.delhi.nic.in](http://in.nbpgr.delhi.nic.in)

<sup>4</sup> [icar.naarm.ernet.in](http://icar.naarm.ernet.in) & [www.csir.res.in/](http://www.csir.res.in/)

substantial progress in addressing both policy and 15 practical linkages between the IP system and the concerns of practitioners and custodians of traditional knowledge. Various studies have formed the basis for on-going international policy debate and assisted in the development of practical tools. Drawing on this diverse experience, the Committee is moving towards an international understanding of the shared objectives and principles that should guide the protection of Traditional Knowledge. All these materials are available from the Secretariat at WIPO<sup>5</sup> As part of its broader programs. The WIPO also organizes workshops and seminars, expert and fact-finding missions, commissions' case-studies, and carries out and provides legislative drafting, advice, education and training. The International Union for the Protection of New Varieties of Plants (UPOV) Convention provides a sui generis form of IP protection specifically adapted for plant breeding, with the aim of encouraging the development of new plant varieties. This system of protection provides for a "breeder's exemption": no restriction applies to acts done for the purpose of breeding other varieties, so as to maximize the availability of genetic resources for plant breeders and thereby maximize breeding progress for the benefit of society. The "farmer's privilege" concerning farm saved seed is an optional benefits having mechanism, under which UPOV Member States may permit farmers to use part of their harvest of a protected variety for the planting of a further crop on their own farms. The "distinctness" requirement under the UPOV Convention provides that protection shall only be granted after an examination to determine if a variety is clearly distinguishable from all other varieties, whose existence is a matter of common knowledge, regardless of their geographical origin. This provides a legal basis for defensive protection in relation to existing plant varieties. Under the UPOV system, only the person, who may for example be a farmer, who breeds a new plant variety can claim protection for that variety.

## CONCLUSION

Intellectual property right (IPR) is a recognition granted to an innovation or creation of new knowledge useful to the community. The community benefits from these innovations that improve the quality of life. In return the innovator is allowed to exercise exclusive right to commercialize the innovation and to make financial gains therefrom. In this age of science and technology, development and economic growth is knowledge-intensive. Human advancement from pre-historic time has always been knowledge-driven. The TRIPS agree to deny patents to those inventions or technologies that are against the public order, morality, health of people, animals and plants and prejudicial to the environment of a country. TRIPS insist on patents for microorganisms, microbiological processes and non-biological processes. While TRIPS exempt plants and animals and essential biological processes from patentable subjects, TRIPS require protection of plant varieties either by a patent or an effective sui generis system, or a combination of both. It was in compliance with this that the Government of India established the PPVFR Act as an effective sui generis system of plant variety protection

<sup>5</sup> at <http://www.wipo.int/tk/en/tk/index.html>

**REFERENCE**

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2. Global Environment Facility (GEF), established on the eve of the 1992 Rio Earth Summit, is a catalyst for action on the environment — and much more. A financial mechanism for 5 major international environmental conventions: The Minamata Convention on Mercury, the Stockholm Convention on Persistent Organic Pollutants, UNCBD, UNCCD, UNFCCC. GEF funding helps reduce poverty, strengthen governance and achieve greater equality between women and men. Website: [www.thegef.org](http://www.thegef.org)
3. The International Fund for Agricultural Development (IFAD) is dedicated to eradicating rural poverty in developing countries. IFAD's Strategic Framework 2016-2025 is aimed at catalysing country and global progress towards the following overarching goal: rural people overcome poverty and achieve food security through remunerative, sustainable and resilient livelihoods. IFAD supported programmes is consistently aim to target and benefit the largest number of poor rural people possible, empower them socially and economically, and promote gender equality. Website: [www.ifad.org](http://www.ifad.org).
4. FAO's mandate is to raise the levels of nutrition, improve agricultural productivity, better the lives of rural populations and contribute to the growth of the world economy. (iv) Development Fund of Norway, supports small scale farmers in their fight against hunger and poverty. Website: <http://www.utviklingsfondet.no/en>
5. Swiss Development Cooperation provides support to small farmers of both genders for the efficient use of natural resources conserving them for future generations, this all in the context of social and economic changes and the impact of climate change.
6. Website: <https://www.eda.admin.ch/deza/en/home/themes-sdc/agriculture-food-security.html>