

## Report

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# Roundtable on “Resolving Legal Ambiguity related to IPR and Access to Technology in Reference to Seeds”

27 July 2016

New Delhi

As a follow-up of the earlier Roundtable Discussion on “IPR, Access to Technology and Policy Deliberations” held on 4 June 2016 RIS organised a second Roundtable Consultation on 27 July 2016 at New Delhi with the experts in biotechnology regulation, agricultural scientists and legal experts and practitioners specialising in intellectual property, for an in-depth discussion on certain legal provisions, contained within the existing related legislations such as Patents Act, PPV&FR Act, Environment Protection Act and Essential Commodities Act. Prof. Sachin Chaturvedi, Director General, RIS, welcomed the experts with his opening remarks setting the agenda for the consultation, followed by the key remarks made by the Chair, Dr. S. R. Rao, Adviser, Department of Biotechnology, Ministry of Science and Technology stating the overall background of the present debate. The set of probing questions was discussed in the roundtable is given in Table 1 and the deliberations tried to bring in consensus.

### Key Points

The various key points emerged during the consultation are as follows:

#### **I. Ambiguity Between Various Related Legislations such as Patents Act, PPV&FR Act, Environment Protection Act and Essential Commodities Act**

- Most of the experts were of the opinion that there is no ambiguity

between the existing legislations per se, as all these legislations operate in their respective domain within a defined boundary. However, their interpretations need to be more clearly spelt out.

- There is no question of one Act subsuming another; except in the case of Essential Commodities Act (ECA), when it comes to fixing the price of an essential commodity. Seed is listed as an essential commodity in the Schedule II of the ECA.
- Acts such as Indian Patents Act and Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act should be seen as complementary to each other. While Patents Act allows for patenting of gene technology, PPV&FR Act allows for patenting of the whole plant variety.

**Table 1: List of Probing Questions**

Sl. No.	Question
1	How Indian laws such as Patents Act and PVP&FR Act confer rights and regulate them with respect to seeds and traits? What is the interface between them and is there any conflict/ambiguity or coherence? In case of conflict/ambiguity how to address them using legal principles and case laws?
2	What are the provisions under different Acts on fixing of fees for traits and are they in conflict or are they coherent? Is using the power to revoke a patent a good solution? What is the role of Competition law and Competition Commission of India (CCI) in this?
3	With respect to access to technology and trait, what are the powers available under these legislations and are they subject to any limitations? Do we have case law in India to address these issues?
4	What are the lessons for India from experiences elsewhere on overlaps in IP laws with respect to seeds and plant varieties and in using IP law and competition law to prevent abuse of monopoly and/or to enhance access to technologies and traits? Can case law and experiences in other sectors such as telecommunications help in addressing the issues in case of seeds and plant varieties?

## II. Promoting Healthy Competition

- There was an apprehension regarding issuance of the Seed Price Control Order 2015, which clubbed all varieties of seeds under one category ‘Seed’ and directs for a uniform pricing structure throughout the country. It is perceived to be negatively affecting the spirit of competitiveness among the seed industries to produce better quality seeds.
- It was also expressed that there is only one foreign company which controls more than 98 per cent of the cotton seed sector, owing to its ownership of the Bt technology. Given this fact, all the Indian companies which needs access to this technology, have to sign a contract agreement with the licensor company. This contract agreement is touted as restrictive in nature, as it states that the Indian licensee companies could not access any other alternative technology from any other source. If that happens, the contract will be terminated, which will lead to the destruction of all the germplasm parent lines acquired from that company. This process takes time and may cripple the licensee companies’ market competitiveness in a big way. The Competition Commission of India has *prima facie* found that this argument is valid and needs further investigation.

## III. Ensuring Balance between Incentivising Innovator and Protecting Farmers Interest

- There is no denying of the need for a well-balanced mechanism to address the issue of adequately rewarding the innovator and the issue of farmers’ interest.
- The recent National IPR Policy in its objective 3 emphasises for having strong and effective IPR laws, which balance the interests of IP rights owners with larger public interest.
- A Product Liability Law needs to be discussed and framed given the notion of far-reaching impact of technologies such as GM on the socio-economic status and as well as on environment health and biodiversity. Such liability laws in other countries have huge financial implications for both, licensee and licensor, particularly in the context of low level

presence of GM products in non-GM component of trade, organic cultivation and specialised commodity exports, as non-tariff barriers.

- Rather than being reactive, a pro-active technology assessment exercise needs to be undertaken every time a new technology is going to be introduced into the agricultural sector as the needs will change depending upon factors like climate change, supply and demand, agricultural policy and vagaries of monsoon, etc.

#### **IV. Price Control Order and Guidelines for Licensing Agreements**

- It was argued that bringing a notification for any price regulation is unwarranted, unless and until all other available means are exhausted. There are provisions of Compulsory Licensing within the Patents Act and PPV&FR Act, which can be invoked to control the prices, if required at all, under the larger interest of public good.
- There are competent authorities such as Controller General of Patents, Designs and Trademarks or PPV&FR Authority, which can take effective decision on this matter. Similarly, for investigating any claim of monopolisation or exploitation of its dominant position by any company, there is a Competition Commission of India; which is mandated to look into the contract licensing agreements and to nullify them if found invalid.
- It is also true that under the Essential Commodities Act (ECA), the government has the power to fix/regulate prices of the listed essential commodities under Section 3; and seed is listed as an essential commodity. However, how justified it would be to use an administrative mechanism like invoking ECA for seeds in the present times needs to be discussed and deliberated, in the light of the farmers' interest rather than some specific seed industry's interest.
- It was pointed that the Seed Price Control Order 2015 lowered the seed price marginally, while it brought down the trait fee heavily, which is tantamount to be interpreted as an action only to harm the innovator/licensor company; while there is no real gains for farmers.
- It was also argued that instead of signing individual contract agreements, the companies could have explored the benefit sharing mechanism as mentioned under the Section 26 of the PPV&FR Act, which states that

the amount of benefit sharing, if any, for which the claimant is entitled will depend on the extent and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed; and the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.

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