



AGRICULTURE AS A PART OF INTELLECTUAL PROPERTY – EMPHASIS ON THE PEPSICO CASE

Background:

Pursuant to the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, India enacted the Protection of Plant Varieties and Farmers' Rights Act, 2001 (“Act”) with an objective of providing an efficient system of protecting the plant varieties through plant variety protection (“PVP”), providing rights to farmers plant breeders. The purpose of the act was to provide intellectual property rights to the framers and plant breeders, thereby encouraging them to develop new plant varieties. The advantage of registering the new plant variety is that it confers the rights on the farmers to sell, assign, or transfer its rights to others and also provide civil and criminal remedies to the breeders and farmers to enforce their rights. Pursuant to the enactment of the Act, numbers of applications were filed for grant of registration of intellectual property rights for new seed varieties, of which numerous applications have been granted registration but not a single registration has been given to farmer’s variety. The rights granted under this Act are also heritable. The purpose of registration for seed variety is to confer an exclusive right on the owner of the PVP to produce, sell, market, distribute, import or export the said variety. The term of PVP for the said varieties is granted for a period of 15 (fifteen) years.

Brief details of the PepsiCo case:

Potatoes are one of the primary crops in which PepsiCo has a direct relationship with farmers. The relationship flows in two ways:

- (i) For multiplication and production of potato seeds, and
- (ii) For cultivating the potatoes to be used in manufacturing of its chips.

On 1st February 2016, PepsiCo India got PVP rights for two potato varieties from the Protection of Plant Varieties and Farmers' Rights Authority in India.

PepsiCo India Holdings Private Limited (“PIH”) has been undertaking contract farming of potatoes in several states, the

first and major (over 50%) being in Punjab since 1995. PIH supplies its registered varieties to the farmers with specific stipulations. PIH assured buy-back of the produce at pre-agreed prices thereby making the contract attractive for the farmers.

Further, the contract prohibits the farmers to sell the potatoes in the open market; except in cases where the production is more than the requirements of PIH.

PIH discovered that four farmers violated the contracts entered by them by illegally growing the potato variety registered in its name under the Act. It initiated legal proceedings against the said four farmers before the Principal Senior Civil and Commercial Court in Banaskantha, Gujarat; during early 2019 which resulted in widespread agitation throughout the Country. While the public rose in protest against PIH on a sentimental basis, it is pertinent to note that the farmers also had the following legal safeguards under the Act to protect their interests:

- A farmer is entitled to save, use, sow, re-sow, exchange, share or sell his farm produce even if the same is protected under the Act so long as he does not sell ***branded seed of a variety*** protected under the Act [Section 39];
- A farmer shall not be held guilty if the Court finds that at the time of the infringement, ***he was not aware of the existence of such right*** [Section 42].

In addition to the above, a 2014 research paper points out that until the year PIH obtained PVP rights over its potato varieties, it had not pursued legal action against ‘defaulter’ farmers even though the practices leading to such violation were prevalent for a long time.

Following widespread agitation, PIH withdrew its case and the long lived grey areas emerged into the spotlight.

Practical Scenario in Gujarat (instant case):



1. Farmers in the potato-producing region of Gujarat may get their seeds and propagating material directly from the company or from local seed dealers. Irrespective of the source, if farmers have saved some planting material from their potato harvest, the question arises if the re-use of such planting material is an infringement of PIH's PVP.
2. There is also a grey market of potato spuds that exists. Sometimes spuds, too small for processing, are left over and these find their way through seed traders to the farmers. Often they may not be marketed in the original name or denomination that is IPR-protected. Therefore, until and unless the Government is able to plug this supply, the farmers run the risk of being liable, while the seed dealers/traders ought to be held accountable.

Interestingly, other than by the Indian Council of Agricultural Research (ICAR) the registrations for potato are held by dominant private sector players.

Instances of legal action initiated from around the world:

Canada

Canadian farmer, Percy Schmeiser was sued by the biotech seed giant Monsanto for patent violation of its genetically modified Roundup Ready canola, when the seeds had accidentally landed on his farm. The Court ruled in favour of Monsanto stating that Schmeiser deprived Monsanto of its monopoly over the Roundup Ready Canola, however, without imposing damages on Schmeiser.

United States

Similarly, Monsanto has sued hundreds of small farmers in the United States in an attempt to protect its patent rights on genetically engineered seeds that it produces and sells. The Court held that while an authorized sale of a patented item terminates all patent rights to that item, such exhaustion does not permit a farmer to reproduce patented seeds through planting and harvesting without the permission of the patent holder.

Indonesia

The employees of the seed company PT Benih Inti SuburIntani (BISI) and several government extension officers serving as witnesses charged Tukirin, a farmer with "*stealing parent seeds from PT BISI*". Tukirin was involved in a cooperation project between PT BISI and the local government to develop corn seeds. Tukirin participated even without knowing the object of the project yet was named the second best seed developer in the project. There were no legal terms of contract between the farmers and the project management or PT BISI.

In 2003, Tukirin wanted to breed his own seeds using the skills he had acquired during the project. He sold his harvest from the seeds he developed without labels among his neighbours. PT BISI got hold of this information and filed a case against Tukirin and his friend Suprpto, accusing them of distributing seeds illegally without certification/registration.

Tukirin was found guilty by the Court since he had failed to get the seeds certified in accordance with *Article 14(1) of Law No. 12/1992* on plant cultivation system.

Conclusion:

The instances of violation of intellectual property rights with respect to agriculture enunciate the plight of the farmers who could not comprehend or use the legal machinery in their favour to protect their rights, which is very much existent in all countries. Also, the Courts have always resorted to decide the violation based on the existence of genes of protected seeds in crops which begs the question whether protection can be offered to the seeds bred only or even the plant itself as a whole. If the broader interpretation is taken, this will be detrimental to the farmers, since the reproduced seeds or the plant itself will belong to the owner of the PPV.

While the lawsuit filed by PIH has been successful in bringing to light the difficulties faced by the farmers other than on account of act of god, the fact still remains that the farmers have not been provided with adequate protection to compete or take on MNCs like PIH who have become key



players in determining the value of their produce. The only way to provide actual protection to the farmers is by ensuring that adequate carve-out is made in the Act based on the practices followed and sufficient awareness is created among the farmers about their rights.

FINTECH COMPANIES: THE RISE, THE CHALLENGES AND THE WAY AHEAD

Position till date:

Fintech is an industry that utilizes technology to offer financial services to its customers. When technology joined hands with financial companies initially, the world was just learning to juggle with this new concept. However, after the financial crisis of 2008, financial sector was not just about OTPs (One-Time Password) and ATM pins; but rather, a larger idea came through with the amalgamation of two giant sectors i.e., finance and technology. This collaboration enabled the companies to primarily address inefficiencies and unexplored opportunities in the respective sectors of finance and technology. Fintech companies have defined and redefined themselves since then. From being actively present in sectors such as Payments, Digital Wallets, Consumer Lending and SME Lending, they have also started crawling towards niche areas like, artificial intelligence, machine learning, insurance, etc. Statistically, the growth of fintech companies have multiplied in the past decade, with over 2,000 fintech startups coming up in the last couple of years. India is presently accounting for second highest number of start-ups globally.¹ In India, many economic factors and policies, such as, abundance of technical/entrepreneurial individuals and digitally savvy millennials coupled with initiatives such as demonetisation, Make in India, Jan-Dhan Yojana, etc.

contributed to this growth. NASSCOM predicts the market potential to touch USD 2.4 billion by 2020².

The Good:

Why are fintechs so important? According to a report by Deloitte titled '*Fintech in India: Ready for Breakout*', fintechs serve the following benefits:

- They reduce costs and improve quality due to their operations through technology which can further pass on the benefits to the end consumers;
- With a lot more scope in building innovative business models with the use of big data and machine learning, analysing risks and credit history for customers can be undertaken more largely; and
- Better scope of employment and secured means of services focusing on a diverse financial growth.

Apart from these strikingly remarkable advantages, fintechs can help in delivering financial services in a more efficient and reliable manner, thereby making banking and payments quicker and more accessible. This is even more relevant in case of India where a large section of people do not have access to such financial products.

Multiple factors have contributed towards the growth of fintech in India such as:

- Inefficiencies in the banking system;
- A large unbanked and underserved population;
- Steep smart phone penetration;

¹<https://www.financialexpress.com/industry/sme/indias-fintech-startups-soared-3x-during-2015-18-second-highest-globally-says-report/1503433/>,
<https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/fintech-startups-paving-way-for-a-financially-smart-india-with-global-recognition/articleshow/68610868.cms?from=mdr>

²https://economictimes.indiatimes.com/articleshow/67986757.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst



- Increasing access to the internet;
- A booming e-commerce market; and
- Availability of a large talent pool which is tech savvy as well as financially literate.

The Challenges:

The fintech companies are already facing challenges due to many factors. Few of the major ones are captured below:

1. Fintechs are currently regulated by four (4) regulatory bodies in India, viz, Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), the Telecom Regulatory Authority of India (TRAI) and the Insurance Regulatory and Development Authority (IRDA). Considering that the industry is in the nascent stage, the probability of the regulatory bodies incorporating additional legislations that may be more stringent are quite high. However, a scenario where lack of adequate and/or proper implementation of the regulations would result in uncertainty in the minds of the customers and investors, lack of transparency, higher risk of fraud and trust deficit amongst the stakeholders of such companies. Further, the regulators will also face challenges in the future with respect to pinning of liability on any party involved in a transaction considering the number of intermediaries involved in fintech companies.
2. *Data is the new gold.* It is not an understatement when one says data is more valuable than gold. With the advent of big data and machine learning, customization of data to suit customers has led to a more satisfied consumer as well as increased accountability of start-ups in ensuring data privacy and security. The solution lies in adopting advanced defence mechanisms and security measures to counter any likely breach. Startups should also enforce confidentiality clauses whenever they partner or associate themselves with any third party. In view of the above, it is pertinent to state here that B.N Srikrishna Committee had submitted a draft of the Data Protection Bill, 2018 that proposes to regulate the collection, processing and protection of personal data. The said Bill is being considered by the Government.

3. New companies especially the ones dealing with money are not easily trusted by the consumers. To gain credibility in the eyes of the public, the fintech companies are required to do a lot of groundwork that involves (a) choosing the right investors, (b) marketing themselves to establish their brand; and (c) formulating and adopting an innovative business model.

The Opportunities:

1. RBI has introduced concepts like United Payments Interface (UPI), Bharat Interface for Money (BHIM), Bharat Bill Pay System (BBPS), or Aadhaar-enabled Payment System (AePS) to ease the business complexities for the consumers and the companies. Similarly, various other regulating authorities have also taken significant steps to boost the fintech industry in India. The prominent ones being the ease of startup listing norms, proposed crowd funding norms by SEBI and proposed norms for selling and servicing of insurance products through e-commerce by the IRDA. The Reserve Bank of India has also been regulating the fintech companies involved in P2P lending through the introduction of Peer to Peer Lending Regulations vide 04th October, 2017. Interestingly, while regulators are usually seen as hindering innovation, it seems to be different this time as the regulators are allowing creativity and experiments to take the lead and to counter-check any misuse as and when it arises.
2. Being specialised in an area or field, such as working with artificial intelligence and creating new technologies will provide the fintech startups a head start. Since one of the challenges faced by the industry is the willingness of the users to avail the services of fintech companies, the expertise and specialisation brought in by fintech companies will help solve the problem faster due to the want of such products offered by such specialised entities.



Way Ahead:

The way ahead is not as uneven as it sounds. With proper regulations and a strategically innovative stand taken by fintechs, there are fields left to explore. Advancement in technology is changing multiple industries and the end of such growth and change is nowhere in sight. What, rather, is in sight is the fact that the potential to grow for fintechs in the sphere of financial services is almost uncountable. According to Accenture's 2017 Technology Vision, 70% of financial services executives believe that artificial intelligence will significantly change their organization by 2020.³ Once proper regulations are in place, all and any legally compliant, innovative and efficient fintech can make way for an easier and an all inclusive financial future. Until then, fintech companies must seek legal aid to oversee and mitigate present as well as any future legal issues through proper licenses, documentation/ contracts and general awareness to the laws applicable to the business and affiliate/partner's business.

³http://economictimes.indiatimes.com/articleshow/67986757.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst



COMPLIANCE CALENDAR

Captured below is a snapshot of the various statutory forms required to be filed by the companies to be in compliance with the Companies Act 2013 and its relevant rules.

SL.NO.	FORM	APPLICABILITY	DUE DATE
1.	E-Form Active (INC-22A)	Every Company incorporated on or before the 31 st December 2017 shall file the particulars of the Company and its registered office	On or before 15 th June, 2019
2.	E-Form DPT – 3	Every Company shall have to file Form DPT 3 providing particulars of transaction that has not been considered as deposit	On or before 29 th June 2019
3.	Form BEN-1	Every Individual who is a significant beneficial owner has to file with the Company	---
4.	E-Form BEN-2	Company is required to file form BEN-1 in e-Form BEN-2 with ROC	Within 30 days from the date of receipt of Form BEN-1
5.	Form MSME 1	All the companies who get their supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprises exceeded 45 days from the date of acceptance of the goods or services shall submit a half yearly return to the MCA	1. For the period from April to September- On or before 31 st October every year 2. For the period from October to March- on or before 30 th April of every year
6.	E-Form DIR 3 KYC	All Directors	On or before 30 th June 2019
7.	Form MBP-1	All Directors to submit Form MBP-1 to the Company	On or before 1 st Board meeting of the Company for the financial year 2019-20
8.	E-Form MGT-14	All public and listed companies to file e-Form MGT-14 for resolution passed for taking on record of Form MBP-1 received from directors	Within 30 days from conclusion of first board meeting
9.	E-Form AOC-4 (Financial Statements)	All companies	Within 30 days from the conclusion of AGM
10.	Form MGT-7 (Annual Returns)	All companies.	Within 60 days from the conclusion of AGM



LEX REVISORS

1. Ministry of Corporate Affairs notifies Form PAS- 6 for Share Capital Audit Report

The Ministry of Corporate Affairs vide Notification dated 22th May, 2019 substituted following sub-rules in Rule 9A of Companies (Prospectus and Allotment of Securities) Rules, 2014 and prescribed PAS-6 for Share Capital Audit Report w.e.f 30th September, 2019. It notifies that every unlisted public company shall submit Form PAS-6 to the Registrar with prescribed the fee within 60 days from the conclusion of each half year which shall be duly certified by a company secretary in practice or chartered accountant in practice.

[For details refer to, http://mca.gov.in/Ministry/pdf/Rules_23052019.pdf]

2. Ministry of Corporate Affairs amends rules related to Incorporation of Companies

The Ministry of Corporate Affairs has amended the Companies (Incorporation) Rules, 2014, pertaining to incorporation of companies to provide more clarity and uniformity in choosing names for the companies.

[For details refer to, http://www.mca.gov.in/Ministry/pdf/AmendmentRules_08052019.pdf]

3. Clarification for form ADT-I filed through GNL-2 under the Companies Act, 2013

The Ministry of Corporate Affairs has clarified that companies which had filed Form No. ADT-1 through GNL-2 as an attachment (by selecting 'others') during the period from 01st April, 2014 to 20th October 2014 may file e-form no. ADT-1 for appointment of Auditor for the period upto 31st March, 2019 without fee, till 15th June, 2019 and thereafter fee and additional fee shall be applicable as per the Companies (Registration of Office and Fees) Rules, 2014.

[For details refer to, <http://ebook.mca.gov.in/Default.aspx?page=notification>]

4. Companies(Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019

The Ministry of Corporate Affairs notified the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019 vide Notification dated 08th May 2019. Form STK 2 Fee has been increased to Rs. 10,000/- from Rs. 5000/-.

[For details refer to, http://www.mca.gov.in/Ministry/pdf/AmendmentRules3_08052019.pdf]

5. Notification regarding Companies(Acceptance of Deposits) Second Amendment Rules, 2019

The Ministry of Corporate Affairs vide its Notification dated 30th April, 2019 has amended the Companies (Acceptance of Deposits) Rules, 2014. This amendment is in relation to its earlier Notification dated 22nd January, 2019 which mandated the non-government companies to file Form DPT 3 providing particulars of transactions that have not been considered as deposit under the Companies Act, 2013 or both as on 22nd January, 2019. With this amendment, the Companies are mandated to provide aforesaid information as on 31st March, 2019. Further, the Ministry of Corporate Affairs has extended the due date for filing Form DPT 3 from 22nd April, 2019 to 30th June, 2019.



[For details refer to http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceDepositsSecAmendRules_01052019.pdf]

6. SEBI issues enhance disclosures in case of listed debt securities

SEBI, under a circular dated 27th May, 2019, has issued a set of consolidated guidelines for enhanced disclosure in case of listed debt securities which seeks to protect the interest of investors in securities market and promote the development and regulation of the securities market.

[For details refer to https://www.sebi.gov.in/legal/circulars/may-2019/enhanced-disclosure-in-case-of-listed-debt-securities_43118.html]

7. Permitting Foreign Portfolio Investors (FPI) to invest in Municipal Bonds

SEBI says foreign portfolio investors can now invest in municipal bonds. As per the RBI, foreign investment in municipal bonds should be within the limits set for FPI investment in State Development Loans (SDLs). The limits for FPI investment in SDLs is 2% of outstanding stock of securities.

[For details refer to https://www.sebi.gov.in/legal/circulars/may-2019/permitting-foreign-portfolio-investors-fpi-to-invest-in-municipal-bonds_42927.html]

8. Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications and systems offered and used by Mutual Funds

SEBI has asked all mutual funds companies in India to report Artificial Intelligence (AI) and Machine Learning (ML) applications and systems offered to investors (individuals and institutions) or used internally by it to facilitate investing and trading or for any other purpose.

[For details refer to https://www.sebi.gov.in/legal/circulars/may-2019/reporting-for-artificial-intelligence-ai-and-machine-learning-ml-applications-and-systems-offered-and-used-by-mutual-funds_42932.html]