

# Food security and patents politics essay



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The spectre of lack of food security is by far the most relevant one that has come out as a case against TRIPS from the developing countries.[1] Countries that have agriculture as a major pillar of their economy have a great deal to lose in the current lopsided scheme of things. In the context of the developed world, the large subsidies, the extreme economic advancement amongst other things create a safe grid for the farmers and those associated with agriculture. However, this is an extreme that cannot be imagined in an economy like India, despite the recent industrial and technological advances made by it. This is because the large contribution that agriculture still makes to the economy. It may be on the wane, but certainly far from being ignored. In a fast industrializing and developing world, it is equally important for the industry to prosper and that cannot be achieved without adequate safeguards. These safeguards can be incentivising scientific innovation and inventions through patents and a stiff regulatory framework that ensures the same. At the same time, it must also be borne in mind that the same is not at the cost of the less privileged population like the farmers and the agriculturalists. The issues of biotechnology and patents therefore are of immense relevance and consequently the TRIPS arrangement, as the modern day agriculture depends significantly on technological inputs. Food security also enters the scene as a major factor to consider. In an economy that functions with a tremendous emphasis on enforcing strict patent norms in order to protect the interests of the large corporations and industries, food security stands to receive a major challenge. This is criticized and opposed to by the groups from developing country and that has been seen to challenge the premise of the TRIPS. In the WTO era, that is aimed at the free flow of trade between nations, and of which the TRIPS is a major part of, food

security is an issue that is of prime importance, as this will ensure the success of the arrangement at a level which has a significant stake involved, which is, the entire developing world. All this has been dealt with in the course of the paper in the following parts. The moot question that has been sought to be answered is that TRIPS is a major effort at creating a framework to address the various aspects of intellectual property regulation across the globe, however, there are discrepancies in the way it has chosen to approach the issues that have often faced especially the developing world.

### Nature and Scope

The present project deals with aspect of patents and their impact on the food security of nations. It seeks to look into the various provisions underlying the position of law with regard to the above. In choosing to demonstrate that the food security as a major implication of the patent regime, the paper seeks to highlight the possible ways in which the same stands to be compromised. The issue of food security has been taken up as the key highlight to show the gravity of the matter. This paper is thus, restricted to patents in the context of food security and the developing world.

### II. Research Questions

The researcher for the purpose of arriving at a clear understanding of the topic on the aspect of food security has tried to do so by focusing on certain questions. The entire project has been woven around the answers to these questions, which form the skeleton of this project. These questions are fundamental to the concept of mergers and demergers. the research questions are as under:

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What are the concerns regarding food security in the developing world?

How are patents a possible threat to the food security of an economy?

What are the possible ways in which the two seemingly irreconcilable ends of patents and food security be merged?

-These research questions will act as the fulcrum upon which the entire project will revolve.

### Patents and Food Security in India

The strict IPRs regimes have almost always benefited developed countries and transnational corporations more than the targeted consumers.[2]Before TRIPS, most countries had excluded the patenting of life forms, biological resources and knowledge on their use. However, TRIPS led to a vast change in the manner in which this was perceived and dealt with. Article 27. 3(b) of TRIPS effectively mandates WTO members to allow patenting of micro-organisms as well as non-biological and microbiological processes. Plants and animals, and essentially biological processes for the production of plants and animals may be excluded from patentability. However, that is left to the discretion of each of the countries. Granting patents on life encourages biopiracy, the theft of genetic resources and traditional knowledge belonging to local communities.[3]Traditional knowledge is certainly one of those areas that have seen a lot of action over the last few years, especially as the concept of patents and food security have taken centre stage in the intellectual property law matters across the world. Some illustrations as to the ways and means in which patents can potentially lead to a situation in

which they can affect the food security of an economy is the case of patenting the seeds. This will reduce farmers' access to seed and genetic resources, which can also significantly alter the modes of traditional farming that are still prevalent in Indian agriculture. Other consequences as increased prices of the seeds on account of the royalty fees charged by the patent owner, which is quite understandably a major issue in agriculture in the developing economies of the world.[4]An important class of transgenic process patents are on Genetic Use Restriction Technologies (GURTS), the most infamous of which is ' Terminator Technology' which leads to the growing plants that produce sterile seed. This forces farmers to buy new seeds each year as the line of plants is broken. Consequently, also the breed that the farmer is conversant growing gets altered. Patents on food crops and seeds also reduce agricultural biodiversity. This is chiefly on account of the fact that there are very few patented varieties that are available in the market. This narrows farmers' options, displacing diverse traditional varieties, and undermines the farmers' ability to reduce the risk of crop failure.[5]

Food Security and TRIPS:

Issues Specific to the Developing World

TRIPS has been put together to act as an umbrella for the purpose of all regulations regarding the intellectual property regulations all over the world. The ambition has been to create a set-up that answers for a uniform platform to deal with the various aspects of intellectual property regulations all over, thus acting as an overarching world body of sorts. The aim has been to take

it to a level at which the mandate of the TRIPS and the concerns of the developing countries both find a common point of resonance. However, as one comes to consider the practical concerns associated with the same, it has been often felt that the balance is being created to the disadvantage of the developing countries and has been felt to favour the developed countries. Various efforts that are being undertaken to harmonise and strengthen the intellectual property protection regimes are “choking the knowledge spillovers from the industrialized to the developing countries by way of benefit sharing and adversely affecting technology transfer”.<sup>[6]</sup> The implementation of the provisions of TRIPs Agreement is also understood to be coming in the way of achieving the greater public goals of food security and poverty elimination. To illustrate the point, one may consider the two recent patents granted by the European Patent Office (EPO), the developing countries face an immediate threat from the wide disparities that are obvious from the differential manner in which the work is treated from the two parts of the world based on a pure-play of economics. To quote Mr. Devinder Sharma from his paper on the trend of globalisation on food security across the world:

“[a]t a time when the WTO’s TRIPs Council is still engaged in reviewing Article 27. 3 (b) of the TRIPs Agreement, dealing with biological materials, traditional knowledge and folklore, the EPO first struck in May 2003 by upholding a controversial patent granted to Agracetus (subsequently bought by the multinational giant Monsanto) for a particle bombardment (biolistic) method of transforming soybeans. In simple words, this broad-spectrum patent grants Monsanto exclusive control over all genetically modified

varieties of soyabean. The patent also covers all other plants that use the same GM technology for crop improvement.”[7]

TRIPS has become one of the most controversial agreements of the wto. This is because of its wide and far-reaching mandate and its complex socioeconomic implications. The various changes made to the Indian Patents Act in response to trips will endanger the food sector and the rights of small farmers by conferring strong rights on “ upstream agents who produce proprietary agricultural inputs using biotechnology”.[8]The main detriment has been seen to felt in the food security sector. It has been felt that the case of the small farmer especially stands to be marginalized, a significant point considering that the majority of the farmers in India are small and marginal, without easy access to the technological inputs or easy availability of credit. It has been felt that the application of the TRIPS agreement as the primary legal provision will lead to a situation where the said agents exert monopoly price control over agricultural inputs for 20 years and they also have the right to determine the conditions under which farmers and researchers use the various aspects of the patent, most importantly the patented processes and products.[9]

The spectre of lack of food security is by far the most relevant one that has come out as a case against TRIPS from the developing countries. Countries that have agriculture as a major pillar of their economy have a great deal to lose in the current lopsided scheme of things. In the context of the developed world, the large subsidies, the extreme economic advancement amongst other things create a safe grid for the farmers and those associated with agriculture. However, this is an extreme that cannot be imagined in an <https://assignbuster.com/food-security-and-patents-politics-essay/>

economy like our's, despite the recent industrial and technological advances. This is because the large contribution that agriculture still makes to the economy. It may be on the wane, but certainly far from being ignored. The issues of biotechnology and patents therefore are of immense relevance and consequently the TRIPS arrangement, as the modern day agriculture depends significantly on technological inputs. Food security also enters the scene as a major factor to consider. In an economy that functions with a tremendous emphasis on enforcing strict patent norms in order to protect the interests of the large corporations and industries, food security stands to receive a major challenge. This is criticized and opposed to by the groups from developing country and that has been seen to challenge the premise of the TRIPS. In the WTO era, that is aimed at the free flow of trade between nations, and of which the TRIPS is a major part of, food security is an issue that is of prime importance, as this will ensure the success of the arrangement at a level which has a significant stake involved, which is, the entire developing world.

The ire against TRIPS has been seen to be organized in terms of the various groups, which oppose it vehemently at every possible forum. TRIPS, World Trade Organisation's (WTO) controversial 1994 pact on trade-related property issues, as per the segment opposed to it is in direct opposition to the Convention on Biological Diversity (CBD), concluded in 1992 at the United Nations' Rio Earth Summit. It has been seen that the TRIPS allows those who develop or innovate a product to get patent protection for up to 20 years, as opposed to what the convention recognizes as national sovereignty over all genetic resources. It further argues that “ access to, and



sharing of, benefits from the commercialisation of these resources is vital to maintain the world's biodiversity".[10]On the other hand, TRIPS does not extend any guarantee that the owner will share the benefits and be able to exploit the patent from the scientific invention. Again within te ambit of the main controversy, the issue of food security has been overshadowed by the debate on the pharmaceutical industry.[11]

## V. Conclusion

Therefore, in conclusion, one can see that food security and patents are at a level linked intrinsically. Food security in the age of biotechnology and GM technology is an issue that needs to be dealt with in a manner that it is a win-win proposition to all the stakeholders. In a fast industrializing and developing world, it is equally important for the industry to prosper and that cannot be achieved without adequate safeguards. These safeguards can be incentivising scientific innovation and inventions through patents and a stiff regulatory framework that ensures the same. At the same time, it must also be borne in mind that the same is not at the cost of the less privileged population like the farmers and the agriculturalists. In this context, it can be said that the main ambition of the TRIPS in achieving a level and uniform playing field in terms of the various patents involved is challenged in the face of the allegations by the less developed world. It cannot be said to be the best way forward in terms of putting in place a global set-up for the purpose of dealing with IP regulations. It has its own set of loopholes, which are glaring. These lacunae need to be sorted out in order for it to be truly meaningful and effective in addressing the concerns of all parties concerned.