

ARE INDIAN IPR LAWS ADEQUATE?

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New laws on Intellectual Property Rights have been enacted in India after the coming into force of the TRIPS/WTO. The most radical changes in the IPR laws pertain to biological materials, agro chemicals and drugs. The new legislation are the Act on Geographical Indication 1999, The Protection of Plant Variety and Farmers Rights Act 2001, the Biodiversity Act 2002 and the Patent Act 2002 which has undergone further revision and is pending as the Patent Amendment Bill 2003.

The Patent Act 2002/ Bill 2003 allows product patents, patents on microorganisms and microbiological and non-biological processes but it does not allow patents on plants, animals or genes. The rules should restrict the scope of patents on microorganisms to prevent overarching patents being granted to one agency. The Act specifically protects indigenous knowledge, as it does not allow patents to be extended to products derived from the Indian Systems of Medicine. The provisions for compulsory licensing protect the public and should be used to control drug prices but the Act is inadequate with respect to 'working' the patent. By not insisting that the patented product be manufactured here and allowing imports to be considered 'working', the Act fails to protect national interest.

The Act on Geographical Indication would allow protection of products like Basmati rice and Darjeeling tea but at present this remains notional. Until the WTO/TRIPS is amended to allow protection of products other than wines and spirits, Basmati and Darjeeling tea cannot be protected internationally. We need to lobby aggressively in the WTO on this.

The most discussed legislation is the Protection of Plant Variety and Farmers Rights Act that the seed industry finds 'inadequate' because of the rights granted to farmers. The industry would have that only they, the breeders should have rights but not the farmers.

The Indian legislation is balanced because it seeks to protect the interests of farmers, plant breeders, scientists and the public. It does this by having a distinct Farmers' Right (the only legislation in the world to do so), a well-defined Breeders' Right and a Researchers' Right that allows scientists to use genetic material freely. Compulsory Licensing provides for assured access to seeds at reasonable rates. The badly drafted, and self-contradicting Biodiversity Act is however quite inadequate. By not excluding patents on plants, it strikes a blow to the national and international efforts to keep living things out of the purview of patents.