

The basmati rice patent

It is certainly not a misunderstanding...

Suman Sahai

Much has been written about regarding the basmati patent controversy. Originally from India and Pakistan, Basmati became a controversial 'issue' after RiceTec, a Texas-based company, in 1997, patented some types of rice they developed as "American basmati". Two non-governmental organizations (NGOs) — Centre for Food Safety, an international NGO that campaigns against biopiracy, and the Research Foundation for Science, Technology and Ecology, an Indian environmental NGO — have filed legal petitions in the United States. They seek trade protection for basmati rice of the Indian subcontinent and jasmine rice of Thailand. They have demanded amendment of U.S. rice standards to specify that the term "basmati" can be used only for rice grown in India and Pakistan, and jasmine for the Thai rice. The Indian government, after putting together the evidence, officially challenged the patent in June 2000.

Many have been the questions asked so far, and many are being asked. Is RiceTec guilty of biopiracy? Yes, say some. No, say others. Should the basmati patent be revoked in the light of protests from India? Again, yes... and no. Was India right in raising a hue and cry over this? Is the term 'basmati' a generic one, or does it refer specifically to rice long aromatic rice grown in India and Pakistan?

There are many interpretations and many versions to different issues in this story. Here are some comments and reactions from Dr Suman Sahai, Convenor, Gene Campaign (a nongovernmental organization in India), in a telephonic interview with PlanetRice.

RiceTec CEO Robin Andrews¹ has said that there has been tremendous misunderstanding about the basmati patent because of the lack of similar laws in India. RiceTec claims that they have patented the breeding method, not the term basmati itself, and that the patent poses no threat to Indian farmers and breeders. So what is the issue all about?

“We, Gene Campaign, **Berne declaration, RAFI and others**, have been running an international campaign on this issue. A group of us had gone to meet the Prince of Liechtenstein, who owns major shares in RiceTec, and tried to explain that it was really biopiracy of a kind, apart from the patent claim. He is fully aware of what the issues are. But he seemed not to bother about the technical aspects, and felt that India should take care of its own problems.

I don't buy the idea that it is a misunderstanding. It is not so complicated and there is nothing to understand. This is a patent filed in the US, where novelty has to be proven. There are certain quirks in the US law which will allow a discovery to be patented, which is very peculiar, because no law allows discovery, only inventions. But the US at some stage ruled that according to its purposes, the interpretation of discovery and invention will be kept on par, which means that the US laws will acknowledge discoveries also in the patentable categories. But in any case, in order to prove that your product is patentable, you simply have to demonstrate that novelty exists. That is the basis on which we had challenged the turmeric patent — we said that the wound-healing properties of turmeric were not new. We could demonstrate that the knowledge exists. So novelty could not be proven. How can they say that this is a new product? They claim a certain range in the **size of the rice grain** in the patent. **Variability exists in all biological materials.** Any biologist will know that.“

The USA Rice Federation and RiceTec say that 'basmati' is a generic term to describe aromatic rice, rather than a term for a specific type of rice produced in India and Pakistan². What do you think?

“It is NOT a generic term. This is the plea that Rice Tec has been taking all along. Initially when we raised this issue and said that it is an infringement of geographical indication, our own government said that we don't yet have a law. I then argued that whether we have a law or not, international trading practice acknowledges basmati as only from India and Pakistan. The Saudis and the British, who are the major basmati **traders**, only label rice from India and Pakistan as basmati. Tradition has given us this rice. **International marketing practices for years have acknowledged this rice to be ours.**

. Now India also has a **law to protect Geographical Apellations**, and basmati is considered geographically indicated. There is no way it can be considered generic.“

The question is still being asked, so who is to decide that it is a generic term?

India has declared that it is not a generic term. We will have to lobby for acceptance of our position.

What does India or Indian farmers gain by the cancellation of the patent?Is the gain only a moral win, or are there practical implications?

“There are practical implications. If there is an existing American patent on a product called basmati, technically every export from here **to the US** is vulnerable to rejection. India and **Pakistan must therefore challenge the Basmati patent in the US, to protect our interests, our markets.**

RiceTec spokesperson Bruce Hicks says that Texmati has been sold for two decades as either American or Texas Basmati. There was no objection to this all those years. It was only when the patent was granted in 1997 that there was a hue and cry².

What is the reason for this? Why did India not react earlier?

“This brings up the question of protection. When everything was free, germplasm was also exchanged freely. The question of IPRs had not arisen. The world order is changing. Everyone is grabbing everyone else's natural resources, and people are patenting everything.

Earlier, most countries did not not patent rice or other plants. When the world order is changing in this manner, even we have to protect our rice. If we did not say anything till **now**, it **does not mean we will not protect our rights now..** And the other aspect of this argument is **that if we did not say anything does it mean Rice Tec should steal our rice and the Basmati name to market its products?”**

Why was there a delay in the Indian government challenging this patent?

“Unfortunately the challenge took very long, but it has finally been filed in June 2000. This delay has given RiceTec reason to believe that we are not interested. That is a mistake. It was delayed because the government **took time to put the evidence together, in the way that the patent claim was made, in order to demonstrate that all these qualities exist already. For example, in India we do not normally codify the aroma as a chemical index. Since that is**

their in the patent claim, it had to be challenged with the same kind of evidence. Even then, the government should have acted faster to send the message that we will protect our property and will not allow its theft.

In all this, where does the rice farmer stand?

“The rice farmer...unfortunately most people are quite unaware of what is happening and what the patent means. **When the Texmati issue happened, the basmati people were quite unaware of what was at stake and when contacted by us, took the whole matter very casually. This would be unheard of any where else. Special interest groups are normally very aggressive about protecting their specialty products. Try and touch the interest of Champagne producers and see what they do to you!**

So where does the farmer stand? If the patent is revoked, India’s basmati exports can continue as before. Our farmers will continue to benefit. If the patent is not revoked, Indian farmers stand to lose a great deal. .

Gene campaign and Suman Sahai

Dr Suman Sahai has a Ph.D in Genetics from New Delhi and over 25 years of research and teaching experience in the Universities of Edmonton, Chicago and Heidelberg. She did her Habilitation in Human Genetics at the University of Heidelberg. Dr. Sahai has published 38 scientific papers, 42 Policy papers and over 120 popular articles and has been guest professor at several universities in India and abroad.

Dr. Sahai today combines the roles of scientist and activist. Since 1992 she has been the Convenor of the Gene Campaign, a grassroots-level research and advocacy group in India. The Campaign’s 35 odd Core Groups in 17 states serve as centres for public education and awareness generation and as pressure groups pushing for certain policies.

Gene Campaign works on conservation and policy issues of Biological Resources, Indigenous Knowledge, Intellectual Property Rights and Farmers Rights , National Legislation on IPR and Science and Education Policy.

Interviewed on 22 July 2000

References

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2. Tom Hargrove 2000. “‘Basmati’ and ‘Jasmine’ are generic terms”: *RiceTec. NGO petition could impact entire U.S. rice industry, RiceTec says.* PlanetRice. <http://www.planetrice.net>. Access date: 30 June 2000.