

# **BASMATI UNSTUCK**

**Suman Sahai**

The Basmati case or the Basmati violation reveals the aggressive and acquisitive mood of the western corporate sector today. Lucrative products commanding premium prices belonging to the third world are being acquired with impunity through the magical new instrument of Intellectual Property Rights (IPRs). Whether it is Basmati rice, Darjeeling tea, Turmeric, Coleus or other medicinal plants, these money spinning products are forcibly being acquired by western patents.

The Basmati patent struck a more emotive cord than turmeric and there was a hue and cry in the country about this latest American intransigence. Rice is the food of Asia after all. The Prime Minister told the nation that his government will spare no effort to protect India's rights over Basmati. Five months down the line the Indian attack to reclaim Basmati is coming unstuck. Far from marching into battle to the US courts to claim our stolen property, as we did in the case of turmeric, there is a confused whimpering emanating from those in government who have been entrusted the task of formulating the Indian challenge. The word is out that the Basmati case is not coming together.

The government's defeatist position is mystifying even if its incompetence is not. The Basmati case has two clear cut issues which have been explicitly presented in the media and in several submissions to the powers that be. The first issue is the violation of India's (and Pakistan's) geographically indicated rights on the name 'Basmati', the second is the patent obtained in the US on a Basmati variety.

In order to attack the American patent, the conditions under which the patent was granted will need to be challenged. The easiest point in this case is to prove that the characteristics reported are not new or novel and therefore fail to satisfy the 'novelty' criterion which is necessary for a product to qualify for a patent. It should not be difficult to challenge the 'novelty' of the characteristics of the Basmati that has been patented by Rice Tech. Any plant breeder could quite easily demonstrate that the special qualities supposed to be present in the patented Basmati are found in the normal diversity of Basmati populations.

If one were to analyse the Basmati strains of India and Pakistan, all the characteristics described for size and quality of the rice grain or for the height and behaviour of the plant, would be found. The case can be effectively made that at best the patented variety has brought a combination of favourable characters together but that is the everyday stuff of plant breeding and does not qualify for a patent. It is astonishing that a country with the kind of skills we have in agriculture and plant breeding has failed to undertake an elementary documentation exercise and is floundering on a simple subject like this.

The other aspect, that of geographically indicated rights is even more straight forward. The strongest, almost inviolate defence that we have in the Basmati case is that based on the Geographical Indication clause found in section 3 of TRIPs. This deals with the property rights acknowledged over goods that are identified exclusively with a certain geographical region. So, France protects the name 'Champagne wine' under this clause and Scotland aggressively defends the name 'Scotch whisky'. The Americans would not dare to call their whisky Scotch or even American Scotch. They would as little

dare to label Californian wines as American Champagne or Champagne. If they did this, they would be hauled by France and UK to the WTO Dispute Settlement Court and made to retract or pay penalties and face sanctions. Why we need to ask ourselves, do the Americans dare to purloin the Basmati name? Because we behave like a nation of spineless jellyfish, that's why.

It is imperative that India protects Basmati both on geographical Indication as also on the patent. If it fails to do this, it will mean the loss of a lucrative international market worth crores of rupees. Because of their special rights, India and Pakistan control the Basmati trade of the world and therefore earn exclusively from it. Allowing others to use this name or this variety will mean that these others will start claiming a share of the international market. Any share they succeeded in grabbing is the share and revenue that we will lose. Its as simple as that. The choice before India is therefore clear: We either protect the revenue we earn from this and other specialty products or we send a signal to the scavenging corporate sector that Indian products are up for grabs since India is incapable of protecting its interests.