CHAPTER- 3
BASIC PRINCIPLES OF INTELLECTUAL PROPERTY RIGHTS

It would not be an exaggeration to say that the buzzword of today's world is 'Intellectual Property Rights' (IPRs). It has, as though, suddenly become the 'darling of the world'. Of course, it would be more appropriate to say that the market-savvy 'developed world', and not the limping 'developing world', which has, sort of deified the IPRs. Hence, it can be regarded as the high priest of IPRs. For the developing world, IPRs are regarded as uninvited guests. It is alleged that IPRs are thrust down the throats of developing countries.

With the coming into its own of biotechnology and its various applications, the gamut of IPRs has also been enlarged. IPRs have made a deep foray into the areas of medicine, environment, agriculture, etc. This has been facilitated by the World Trade Organisation (WTO) and an agreement entered into under its aegis i.e., Agreement on “Trade Related Intellectual Property Rights” (TRIPs). It is asserted that these agencies and instruments are solely responsible for the pathetic plight of the Third World countries today. WTO's insistence on IPR protection to anything under the sky is at the root of the Third World's ire against the First World. The Third World Civil Society Organisations, leading philanthropists, committed activists and various scholars have questioned the need for extending IPRs protection to,
especially, agricultural inventions, in the light of the nature and contours of agricultural practices. One may say that Indians have indeed taken a lead in this endeavour.

Hence, the attempt here is to analyse the basic principles and nature of IPRs regime in the backdrop, of course, of agriculture.

3.1 Intellectual Property Rights

It is indeed difficult to give a picturesque description of IPRs. It is said, "Intellectual Property (IP) can be loosely defined as creations of the human mind".\footnote{Jayashree Watal, Intellectual Property Rights, (New Delhi: Oxford University Press, 2005), p.1.} It is also noted, "Intellectual property, as the name implies, has something to do with mental work... unlike properties such as land, car or machine that are tangible and have a physical existence. Intellectual property right (IPR) is a right on such properties, and is recognised by laws....".\footnote{Biplab Dasgupta, "Patent Lies and Latent Danger", Economic and Political Weekly, April 17-24, 1999, p.979.}

The word IPRs is described in different ways, depending upon the subject matter considered under its rubric. It is said, "IPRs are defined differently. It is the creative work of the human mind or an intellectual capital. It is a form of legal entitlement which allows its holder to control the use of certain intangible ideas and expressions".\footnote{K.D.Raju, Intellectual Property Law, (Delhi: New Era Law Publications, 2005), p.1.}

Describing 'property', Salmond says, "the subject-matter of a right of property is either a material or an immaterial thing. A material thing is a physical object; an immaterial thing is anything else which may be the subject..."
matter of a right... The only immaterial things, which are recognised by law on the subject matter of rights of this description, are the various *immaterial products of human skill and labour*. Speaking generally we may say that in modern law every man owns that which he creates. That which he produces is his and he has an exclusive right to the use and benefit of it. The immaterial product of a man's brains may be as valuable as his land or his goods. The law, therefore, gives him a proprietary right in it, and the unauthorised use of it by other persons is a violation of his ownership, no less than theft or trespass is".4

Thus, it appears that IPRs are nothing but fantastic creations of human mind and, because of the commercial value attached to them today, especially after the biotechnology revolution, they are in great demand.

But, the gamut of IPRs has changed over years. Initially, the term 'Industrial Property' was used to describe much of what stands for IPRs today. It is observed, in this connection, thus: "At the broadest level, intellectual property has traditionally been divided into industrial property—inventions and identifying marks that are useful for industry and commerce—and artistic and literary property, or works of culture. This distinction reflected a perception that cultural creations differed fundamentally from functional commercial inventions. The distinction has, however, been

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considerably blurred in the age of information technology and digital products". 5

The term has undergone a sea change today. 'Industrial Property' is no more a fashionable word. 'Intellectual Property' has arrived in its stead. Hence, it is said, "the term intellectual property has come to be internationally recognised as covering patents, industrial designs, copyright, trademarks, know-how, and confidential information. Patents, designs, and trademarks were used to be considered as different kinds of industrial property. But when copyright and confidential information were included, the term 'intellectual property', though a little high sounding, is a more appropriate description for this class of property". 6

Hence, today, IPRs have assumed a larger-than-life meaning. TRIPs, which is by far the most wide ranging and far reaching international treaty on the subject of intellectual property, recognises almost eight types of IPRs viz., copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, undisclosed information and protection of plant varieties 7.

Apart from TRIPs, there are many other Conventions and Agreements in the world that deal with IPRs. Prominent among them are: (a) Paris Convention for Protection of Industrial Property, 1883; (b) Berne Convention

7 Supra, n.1, pp 2-3.

Insofar as India is concerned, the legislations mentioned hereinafter are pertinent ones with reference to the IPRs regime viz., Copyright Act, 1957; Patents Act, 1970; Trademarks Act, 1999; Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act for short); Designs Act, 2000; Semi-Conductor Integrated Circuits Layout Design Act, 2000; Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR Act, 2001 for short) and Biological Diversity Act, 2002. Apart from these, there are certain other legislations and bills that have a great bearing on the subject. They are: Seeds Act, 1966 and Seeds Bill, 2004 (which seeks to replace the Seeds Act, 1966), The Food Safety and Standards Act, 2006 and several Rules and Regulations.

It is relevant to note at this juncture that the present study needs to focus on the Patents Act, 1970, the PPVFR Act, 2001, the G.I. Act, 1999, the Seeds Act, 1966, the Seeds Bill, 2004 and the Food Safety and Standards Act, 2006 to do justice to the theme of the thesis.

3.1.1 The Justifications for IPRs

Admittedly, a sweeping legal regime such as this is bound to evoke conflicting views. It is not surprising that there are supporters as well as
detractors of IPRs. As such, the role of IPRs in general, and in agriculture in particular, assumes great significance in this context.

It is claimed that Intellectual Property protects ideas by means of exclusive rights.\(^8\) It is emphasised in this connection, “an economy’s growth, the creation of employment, social, technical, commercial and cultural progress, all depend, to some extent, on the genesis, and then the exploitation of new ideas, techniques, products and processes. Protecting the creation and development of ideas lies at the heart of intellectual property. The purpose of doing so is to stimulate and increase the genesis, development and dissemination of the ideas necessary to progress. This can be done by preventing the value of an idea being misappropriated by others. This can be regarded as the public justification for intellectual property rights”.\(^9\)

Accordingly, it is asserted, “new ideas will be stimulated if: (a) the creator is rewarded for the effort and expenditure of creation; (b) the investment needed to develop the idea for a commercially viable proposition is protected from unfair competition, including inward investment from other countries…. This remains an important incentive for developing countries to adopt suitable intellectual property regimes; (c) dissemination of the new idea is enhanced if its exploitation does not lay it open to immediate imitation, thus ensuring public access to new knowledge and ideas, whereas, without

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\(^9\) Ibid, p.20.
protection, the natural alternative would be to turn to secrecy and thus deprive the public of the idea”.10

Intellectual Property Rights have a private justification too. It is said in this context, “it has also been argued that creators, whether author, inventor or designer, have a natural right to the results of their labours. This is founded upon the theories of Locke.... that everyone has a property right in the labour of his own body and that the appropriation, of an unowned object arises out of the application of human labour to that object. To this is added the condition that there must remain objects of similar quality in sufficient quantity to supply others. It rests upon the assumption that ideas are unowned before their appropriation”.11

The economic implications of IPRs seem to be quite a hit. Certain indicators are spelt out by economists in an effort to underscore the paramountcy of IPRs. Thus, it is said that stronger patent regimes could lead to increased global trade, attract more foreign direct investment, lead to increased licensing of technologies to, and possibly more local production through, FDI in developing countries, may lead to development more appropriate to the needs of developing countries, and contribute to higher growth rates.12

Apart from these arguments, several conceptual propositions have also been put forth in support of IPRs. It is said, for instance, “In 1963, Machlup

10 Ibid., p.21.
11 Id.
12 Supra, n.5, p.364.
identified four justifications for the grant of patents: the natural law thesis, the
reward-by-monopoly thesis, the monopoly-profit thesis, and the exchange-
for-secrets thesis. But, it is significant to note that the concluded that
neither the empirical evidence nor the theoretical justifications either confirm
or refute the theory that the patent system promotes technological progress or
economic productivity.

It is interesting to note that this conclusion drawn by Machlup has been
used by detractors to denounce the IPRs regime.

Thus, it is asserted, “IP or IPR is ... a fashionable description of
research results and other original ideas. As a title, the term may sound
rather grandiloquent. But then, at its most serious, this is a branch of the law
which protects some of the finer manifestations of human achievement.

It is further asserted, “intellectual property protects applications of ideas
and information that are of commercial value. The subject is growing in
importance, to the advanced industrial countries in particular, as the fund of
exploitable ideas becomes more sophisticated and as their hopes for a
successful economic future come to depend increasingly upon their superior
corpus of new knowledge and fashionable conceits. There has recently been

13 Supra, n.8, p.21.
14 Id.
p.3.
a great deal of political and legal activity designed to assert and strengthen the various types of protection for ideas".  

3.1.2 Objections to IPRs Regime

IPRs have to, and do indeed, encounter severe criticism. It is in fact paradoxical that its justifications themselves are the source of this criticism. Hence, it is said, “the justifications given for granting exclusive rights, then, provide an important framework for critical evaluation of the effectiveness of intellectual property rights..... The success of the substantive law can only be assessed in the light of the objectives that law was designed to achieve”.

Perhaps, the major criticism against IPRs revolves around the fact that they confer monopoly on the beneficiaries. It is asserted in this context, “the intellectual property rights have been described as exclusive; indeed, they are forms of monopoly. A patent confers an absolute monopoly over the use, manufacture and sale of an invention....”

Of course, it is asserted that IPRs do not confer monopoly per se. Thus, it is said, “however, the intellectual property right does give the potential for monopolistic power. To have a monopoly over the provision of a product enables the monopolistic producer to control the market in several ways.... This power creates a clear conflict between a consumer's interest in access to

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\[16\] Ibid., p.5.
\[17\] Supra, n.8, p.15.
\[18\] Id.
commodities at the lowest cost, and a manufacturer’s interest in securing the maximum profit”.\textsuperscript{19}

Now, among all the different IPRs, patents are most important and relevant too in the context of the present study. Hence, the interlinking of patent and monopoly assumes great significance. It is important to note, “the patent right endows its holder a time-bound monopoly in the given product. The right is more negative than positive in its orientation. For example, Article 10 of the European patent legislation does not authorise implementation, but merely entitles the patent holder to prohibit others from exploiting it for industrial and commercial purposes…”\textsuperscript{20} It should be noted that the provision in Indian Patents Act, 1970 is also similar.

Now, it is asserted that “the justification usually given for the time-bound monopoly allowed to an inventor is that it allows the inventor to recoup his cost of developing… product and also to compensate him for the risk he undertook”.\textsuperscript{21}

However, there is no unanimity and certainty that monopolistic patents provide incentive to invent. It is asserted, “there is no evidence that Holland and Switzerland were harmed during their years without patent…. One Canadian study showed that patents were not important in investment

\textsuperscript{19} Id., pp 15-16.
\textsuperscript{20} Supra, n.2.
\textsuperscript{21} Id., p.980.
decisions... Overall there is no direct statistical association between the existence of patents and private R and D investment..."²²

To substantiate the dispensability of monopoly in patents, specific instances are emphasised upon. Hitting hard on the head, it is said, "coming to agriculture, by far the biggest progress in increasing productivity in India has taken place under a no-patent regime — the green revolution technology.... While sharing many of the ills associated with privatisation of rights and dependence on MNCs it was free from the patent regime".²³

Of course, it is another thing that Green Revolution suffered from several drawbacks. But what is important is that Green Revolution could improve production without any IPR protection.

Asserting on the same lines, it is said, "it is often stated that IPRs will not stop traditional farmers using native seeds. However, when it is recognised that IPRs are an essential part of a package of agribusiness controlled agriculture in which farmers no longer grow native seeds but seeds supplied by the TNC seed industry, IPRs become a means of monopoly that wipe out farmers' right to save and exchange seed. This leads to TNC totalitarianism in agriculture. TNCs will decide what is grown by farmers, what they use as inputs, and when they sell their produce, to whom and at what price. They will also decide what is eaten by consumers, at what price, with

²² Id.
²³ Id.
what content, and how much information is made available to them about the nature of food commodities".24

Thus, it is evident that monopolistic IPRs can wreck havoc. But this is not the end of it. There are several economic objections as well to this monopoly power. Thus, it is said: “The economic arguments conflict. Against monopolist behaviour, it is argued that the consumer is forced to buy an alternative which is inferior to the monopolist's overpriced product. This means: (a) that too little of the resources available reach the market; (b) that the monopolist's wealth is created at the consumer's expense; (c) that the monopolist controls the market with respect to quality, service and repair, further development and supply, removing any incentives for improvement; (d) that the monopoly removes any incentive to keep production costs down”.25

Besides, IPRs also create a sort of collective monopoly. It is asserted in this regard, “not only does an intellectual property right confer monopolistic potential on its particular owner, however, but it also enables collaboration between several intellectual property right owners in order to increase the market power available to them. This can be seen in patent licensing pools, for example, divisions of markets on a regional or international basis..... One motivation for such associations may be to enable individual owners to

25 Supra, n.8, p.16.
enforce their rights effectively, but the effect is also one of increased market power."\textsuperscript{26}

Thus, it appears that the IPRs regime comes in the way of individual development. But, this is just the tip of an iceberg. Even sovereign countries cry hoarse against IPRs. Of course, it goes without saying that the complainants are developing countries. The developed countries have always been beneficiaries.

It is said, "a developing economy depends on the acquisition of technology and information from the developed world. This is hindered where intellectual property protection prevents such access, or prices it an unattainable level. In addition, developing countries have complained that large multinational enterprises have imported products (protected by national intellectual property rights) into the developing country, rather than producing them locally. This hinders any technology transfer that would be attained by local production."\textsuperscript{27}

Thus, there appear to be very severe criticisms against IPRs globally as well as locally. Now, with TRIPs on the scene, the debate has actually hottened up. It is claimed, "TRIPs has engendered considerable debate in academic and inter-governmental fora on the economic implications of strengthened intellectual property protection in developing countries.... importantly, there is hardly any study that shows the effect of strengthened

\textsuperscript{26} Ibid., p.17.
\textsuperscript{27} Ibid.
patent protection on domestic inventive activity in developing countries".  
Hence, as noted previously, developing countries still prefer to rely on Machlup who said, “if we did not have a patent system, it would be irresponsible, on the basis of our present knowledge of its economic consequences, to recommend instituting one”, because “since Machlup’s time there have been many studies that show that patents are not necessarily the most important economic instrument for generating innovation...”.

There are, of course, more arguments to substantiate these fears. It is asserted, “patent rights, while providing incentive to invent, grant a monopoly and give rise to monopoly prices, thus reducing consumer welfare, as he would now consume less than he would have without such monopoly.... It has also been found that about two-thirds of patented products are never produced. They are patented to keep rivals away form the field, while the firms concerned continue to produce similar products catering to the same type of consumer need, thus further reducing consumer welfare”.

IPRs are criticised from other angles too. It is observed, “given that an overwhelming proportion of patents originate in the developed world, patent protection is likely to lead to a transfer of income from the less developed to the more developed countries and thereby to widen income disparities between the two”. It is also asserted, “another consequence would be a shift

28 Supra, n.1, pp 5-6.
29 Ibid., p.6.
30 Supra, n.2, p.982.
31 Id.
away from the public domain as public funding of research and development for the overall benefit of citizens would be replaced by private companies solely concerned with their own profit".\textsuperscript{32} It is rued in this context thus: "In India most people have no idea about how powerful, and how potentially harmful, these multinationals are. These are very large entities, the largest among them having annual turnover figures that are close to the national income of a country as big as India.... The new patent regime would provide them with monopoly to sell their commodities in Indian market, and no Indian or competing foreign enterprise would be able to market those in India. Product patent rights together with the monopoly marketing rights in the hands of the multinational companies would become a lethal combination..."\textsuperscript{33}

That is why it is said, ". Vellve sees possibilities of higher agricultural costs and less welfare as a consequence of patenting of agricultural technologies..."\textsuperscript{34}

It is thus evident that serious criticism against and opposition to IPRs in general and patents in particular, are discernible. A sinister scenario may certainly be visualised by perceptive critics, and hard days for Indian farmers are predicted.

As if these mundane charges are not enough, IPRs have drawn flak from moralists and puritans. IPRs are criticised left, right and centre for their unethical ramifications. It is said, "intellectual property rights are a major
ethical issue when the domain of ownership over products of the mind is expanded beyond mechanical artefacts to living resources, life forms and biological material.... The patenting of biological organisms.... creates unique ethical, epistemological and ontological problems...." 35

The ontological problem regarding patents on life and the "making of life forms" came to the forefront with Anand Mohan Chakrabarthy applying for the US patent on genetically engineered Pseudomonas bacteria, who had taken plasmids from three kinds of bacteria and had transplanted them into the fourth. He was granted patent and the US Supreme Court approved it on the ground that the micro-organism was not a product of nature but was his invention and hence patentable. It was observed in this context thus: "In coming to its precedent-shattering decision, the court seemed unaware that the inventor himself had characterised his creation of the microbe as simply shifting genes, not creating life".36

This decision37 generated lot of heat and evoked sharp reactions that brought IPRs into sharp focus. It was said, "let us at least get one thing straight: Anand Chakrabarthy did not create a new form of life; ... We are incalculably far away from being able to create life de novo, and for that I am profoundly grateful". 38

36 Ibid.
38 Supra, n.35.
This raised the question whether life can be made and life should be made. Of course, an attempt was made to say that there was no ethical problem related to the ontological status of life forms since DNA was not life but a chemical substance. But it was refuted strongly and said, "... genes do not make organisms.... It is also not genes that are self-replicating but the entire organism as a complex system. Since the entire organism is self-replicating, and not the genes alone, relocating genes does not amount to making an entire organism. The organism makes itself. To claim that an organism and its future generations are product of an inventor's mind needing to be protected by IPRs as biotechnological innovations amounts to denying the self-organising, self-replicating structures of organisms.... It amounts to a theft of nature's creativity."\(^{39}\)

This hits at the very basic concept of biotechnological innovations and IPRs since the protection of the latter can be extended to inventions but the former do not merit, it appears, as inventions at all.

In the light of this backdrop, it is indeed significant to analyse the relevance of IPRs regime in Indian agriculture.

3.1.3 Agriculture vis-a-vis the Intellectual Property Rights Regime

Agriculture in India has always been held in high esteem, and regarded as a way of life. It has never been measured in terms of profit and loss. Farmers in India have cultivated and nourished, since time immemorial, an emotional attachment with their lands. As such, it is quite natural that

\(^{39}\) Ibid.
agriculture has not been regarded as a subject fit for industry, let alone
intellectual property. On the contrary, if one may venture, it may be regarded
as 'emotional property'.

Hence, ever since the law relating to patents has come into force in
India, our policy is to keep agriculture out of the purview of patentability. It
has continued to be so even today. Similarly, plants or animals in whole or
any part including seeds, varieties, species and essentially biological
processes for production or propagation of plants and animals are also kept
outside the rubric of the law relating to patents. The reasons are obvious. It
is claimed, "for various reasons, including ethical reasons, living organisms
were generally regarded as being outside the patent system". Since
agriculture is glossed with a philosophical attitude, even seeds required by the
farmers were grown by and exchanged among, themselves. Even though, in
the wake of Green Revolution, the public sector seed centres contributed to
the seed pool, they were guided by public interest and their policy was 'high-
volume, low-value' seeds. Thus, at no point of time, has India conceived
the idea of patenting this life-giving and life-saving agriculture and its different
facets. That is the reason why "in the area of seeds and plant genetic
resources, innovation in both 'formal' and 'informal' systems has so far been

40 Patents and Designs Act, 1911.
41 See Section 3(h) of the Patents Act, 1970.
42 Section 3(j) of the Patents Act, 1970.
43 C.Niranjan Rao, "Patents for Biotechnology Inventions in TRIPs", Economic and Political
Weekly, June 1, 2002, p.2126.
44 C.Niranjan Rao, "Indian Seed System and Plant Variety Protection", Economic and Political
guided by the larger human good. Norman Borlaug, the scientist behind the
Green Revolution... made this clear.... He expressed concern about private
companies and TNCs gaining control of plant genetic resources and seeds
and patenting plants".45 In fact, viewing IPRs and Plant–Genetic Resources
as a prescription for famine, and commenting on the US demand for patents,
Borlaug is reported to have said, “God help us if that were to happen, we
would all starve”.46

However, with the emergence of agricultural biotechnology and TRIPs,
things have changed drastically and menacingly. The combination of these
two has threatened and indeed destroyed the age-old concept of Indian
agriculture. Of course, both have their protagonists and antagonists. The
relative merits and demerits of biotechnology are already touched upon in the
previous Chapter. The dangers posed by biotechnology are put thus: “Such
is the cost of these techniques and such is the prohibitively expensive cost of
developing new products... that if we wanted to create a hole down which
precious money and resources could be poured, then this is that hole.
Biotechnology, if not wisely applied, can be a black hole, down which valuable
resources of money and intellectual manpower of a developing country can
disappear without any positive benefit accruing to the investing country”.47

45 Supra, n.24.
46 Ibid.
47 D.M.Nachane, "Intellectual Property Rights in the Uruguay Round: An Indian Perspective",
With TRIPS alleged to be MNC-friendly and denting the Indian agriculture mercilessly, it is imperative that the impact of TRIPS-driven IPRs on our agriculture has to be analysed in the proper perspective. It is widely claimed that the IPRs regime perpetrated by the WTO and TRIPS is indeed annihilating the Indian agricultural sector.

Hence, an attempt is made, in the following pages, to analyse the contours and effects of law relating to patents, plant variety protection, geographical indications, seeds, etc.

3.2 Meaning, Nature and Scope of Patents

The ordinary connotation of the word patent is 'privilege'. The word has its origin in the term "Letters Patent". It is said, "The expression Letters Patent meant open letters as distinguished from closed letters. These were instruments under the Great Seal of the King of England addressed by the Crown to all the subjects at large in which the Crown conferred certain rights and privileges on one or more individuals in the Kingdom".

The word 'letters patent' is derived from the Latin expression litterae patents. It is observed, "Letter patent are writings of the King sealed with the great Seal of England, whereby a person or officer is enabled to do or enjoy that which otherwise he could not; and so called, because they are open with the seal affixed, and ready to be shown for confirmation of the authority thereby given.... They are not sealed up, but are left open, and are recorded

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in the Patent Rolls, so that all subjects of the realm may read and be bound by their contents; hence the term letters patent”.49

The patent law is, of course, the British legacy. It is asserted, “India's patent law is a legacy of its British past. Inscrutable, because it is esoteric, and crucial, because it affects our lives very fundamentally”.50

Thus, patents conferred, through the letters patent, a privilege. Though the concept of letters patent, as issued by the British Crown, has undergone a transformation, the tone and tenor of the patents remain the same; in fact, they are alleged to be more threatening and devastating.

It is claimed, “a patent is an intellectual property right relating to inventions and is the grant of exclusive right, for limited period, provided by the Government to the patentee in exchange of full disclosure of his invention for excluding others from making, using, selling, importing the patented product or process producing that product for those purposes”.51

Thus, patent is an intellectual property right granting an exclusive right on a person. It is said, “a patent is a monopoly right granted to a person who has invented a new and useful article or an improvement of an existing article or a new process of making an article. It consists of an exclusive right to

manufacture the new article invented or manufacture an article according to the invented process for a limited period".\textsuperscript{52}

In other words, then, "a patent implies a grant from the sovereign power securing to the inventor for a limited time the exclusive right to make, use, and vend the invention. It conveys to the inventor substantive rights and secures to him a valuable monopoly..."\textsuperscript{53}

A patent, thus, is an exclusive monopoly right granted for an invention. In fact the statutory definition also is on the same lines.\textsuperscript{54}

\textbf{3.2.1 Patents in Retrospect}

A brief historical outline of the evolution of patents is, it is submitted, appropriate at this juncture. It is said, "the idea of conferring a market monopoly as an incentive to innovate has old roots".\textsuperscript{55} Further, "although there is evidence suggesting that something like patents was used among some ancient Greek cities, patents in the modern sense originated in Italy. The first patent law was a Venetian Statute of 1474..."\textsuperscript{56} This Venetian law "went so far as to establish a positive system for granting 10-year privileges to inventors of new arts and machines".\textsuperscript{57} As such, "the first known right for manufacturing and preparing of an exclusive dish was awarded in Sybaris (a

\begin{itemize}
\item \textsuperscript{52} Supra, n.6, p.11.
\item \textsuperscript{53} Supra, n.49, p.1421.
\item \textsuperscript{54} See Section 2(1) (m) of the Indian Patents Act, 1970: "Patent means a patent for any invention granted under this Act".
\item \textsuperscript{55} Supra, n.15, p.92.
\item \textsuperscript{56} Supra, n.3, p.5.
\item \textsuperscript{57} Supra, n.55.
\end{itemize}
Greek colony) in the year 500 B.C. to a confectioner and cook who invented that dish. That right was allowed for a period of one year.\textsuperscript{58} 

In England, using the Royal prerogative, the British Crown could issue letters patent providing any person with a monopoly. But, when this power was widely abused, the British Parliament asserted itself and legislated the Statute of Monopolies in 1624. This restricted the monopoly power to only inventors or introducers of original inventions for a fixed number of years. By and large, the spirit of this Statute of Monopolies, 1624 continued to influence the British system till the enactment of the Patents Act, 1977 that harmonised the U.K. Patents Law with the European Patent Convention.\textsuperscript{59} 

The U.S. was the second country to enact patent law. It did so in the year 1790. France became the first European country to go for patents in 1791. Germany followed suit in 1877. Germans included the criteria of novelty and opposition to proceedings which had a great influence on the future development of this law.\textsuperscript{60} 

With the Paris Convention for the Protection of Industrial Property, 1883, (revised in 1967 and amended in 1979), IPRs generally, and patents specifically, received the necessary boost. Thereafter, several Treaties and Conventions\textsuperscript{61} have championed the cause of patents. The entire process

\textsuperscript{58} Supra, n.56.  
\textsuperscript{59} See, Supra, n.3, p.5.  
\textsuperscript{60} Ibid., pp 6-7.  
culminated in the Agreement on Trade Related Aspects of Intellectual Property Rights.

3.2.2 Evolution of Indian Patent Law

It is mentioned in the previous paras that Indian patent law is a legacy of the British. It had to be so since we were ruled by them for a long time. Enumerating the evolution of patents, it is said, “Act XV of 1859 provided a patent regime for granting exclusive privileges to inventors in British India. In 1872, the Patent and Designs Protection Act, 1872 was enacted and later the Inventions and Designs Act, 1888 was made. Later a comprehensive legislation was enacted through the Patent and Designs Act, 1911. The Indian Patents and Designs (Amendment) Act 1950 brought many changes in the Act”.62

Soon after independence, it was felt that the patent law based on the British model was not suitable or conducive to Indian needs. Hence, two Committees – Justice Bakshi Tek Chand Committee and Justice N.Rajagopal Ayyangar Committee- were appointed to review the existing patent regime. The result was the enactment of the Patents Act, 1970 which held the sway for nearly three decades. It should be noted that the Patents Act, 1970 was, from many a point of view, a landmark legislation. It, in fact, safeguarded the interests of Indians.

However, things changed drastically in the '90s. India became a signatory to the WTO and consequently, the TRIPs. This compelled the

Indian authorities to amend the Patents Act, 1970 substantially—so much so that the amendments seem to have ushered in a new Act—that changed the whole concept of patents. Three major amendments in 1999, 2002 and 2005, respectively—were made to overhaul the existing patent system. That, in fact, has become the bone of contention today since these amendments and other laws, to be TRIPs-compliant, have virtually, it is argued, threatened the Indian agriculture.

3.2.3 Salient Features of Patents Act, 1970

In India, the law regarding patents is incorporated in the Patents Act, 1970. According to this Act, patent means a patent for any invention granted under this Act. Thus, it is crystal clear that the statutory definition envisages a patent for inventions only. Invention means a new product or process involving an inventive step and capable of industrial application. This definition of 'invention' is the result of the amendment brought about in the year 2002. The definition of 'invention' focuses on two concepts viz., inventive step and capable of industrial application. Inventive step means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art. Capable of industrial
application means that the invention is capable of being made or used in an industry. Patentee means the person for the time being entered on the register as the grantee or the proprietor of the patent.

These are some of the basic concepts enshrined in the Patents Act, 1970. As such, the crux of the matter lies in an exclusive right being granted to an invention. It is claimed, “An invention is the creation of intellect applied to capital and labour to produce something new and useful. Such creation becomes the exclusive property of the inventor on grant of patent. The patentee's exclusive proprietary right over the invention is an intellectual property right. The owner of the patent, i.e., patentee, is entitled to deal with his such property in the same manner as owner of any other movable property deals with such property.”

Thus, “the patent law recognises the exclusive right of a patentee to gain commercial advantage out of his invention. This is to encourage the inventors to invest their creative faculties, knowing that their inventions would be protected by law and accordingly no one else would be able to copy their invention for certain period during which the respective inventor would have exclusive rights.”

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67 S.2(1) (ac).
68 S.2(1) (p).
69 Supra, n.48, pp 5-6.
70 Ibid., p.6.
Patentee, thus, gets a monopoly albeit a limited one. This certain period, for which monopoly exists under the Patents Act, 1970, is 20 years.\(^{71}\)

In *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*,\(^ {72}\) the Supreme Court has held, “the object of patent law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period stimulates new inventions of commercial utility. The price of the grant of the monopoly is the disclosure of the invention at the Patent Office, which after expiry of the fixed period of the monopoly passes into the public domain”.

There are three fundamental principles underlying the patent law, and the concept of invention. They are (i) novelty; (ii) usefulness and (iii) non-obviousness (NUN). Now, unless an invention possesses these three qualities, it cannot be patented. That, however, does not mean that every invention which satisfies these three requirements would get the protection of the Patents Act, 1970. For, the statute itself gives a list of inventions not patentable.\(^ {73}\) It is interesting and pertinent to note that agriculture and plants do fall within the domain of non-patentable inventions.\(^ {74}\) In other words, even though inventions can be made in the fields of agriculture and plants, the law

\(^{71}\) Section 53 of the Patents Act, 1970 provides for a 20-year patent from the date of filing of the application for the patent.

\(^{72}\) *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*, (1979) 2 SCC 511.

\(^{73}\) Chapter II, Ss 3 & 4.

\(^{74}\) See Section 3(h) and 3(j), respectively, of the Patents Act, 1970.
has not regarded them fit enough for patents, obviously in the light of public interest and welfare.

In the light of this, an in-depth study is required to examine whether, and if yes, how far, patents affect our agriculture. Since agriculture, in itself, is not patentable, the question is—whether the alleged impact of agricultural biotechnology is just much ado about nothing or whether there is a veil of secrecy to be lifted to ascertain the truth. Perhaps, answer/s to this vexed question will illumine the otherwise grey area.

3.2.4 Patentability and Indian Agriculture

It should be borne in mind that with reference to India, at least until recently, patents and agriculture were sworn enemies. In fact, up to the mid ‘90s, India had abhorred the concept or idea of patenting of agriculture. However, the emergence of biotechnology, which found its ultimate expression in the TRIPs, has changed the scenario drastically, and it is a moot question today whether agriculture is patentable. Of course, the Patents Act, 1970 does not explicitly propagate patenting of agriculture. But, the global and domestic IPRs regime leaves no doubt as to the patentability of agriculture.

The traditional reluctance exhibited by India is understandable. Agriculture in India has always been a way of life, a noble mission and an altruistic activity. Never has agriculture been recognised as an industry or industry-like activity. None of the concepts animating the modern industry
has found a place in Indian agriculture. It has never been conversant with words such as capital, investment, profit, R & D, technological changes, etc. Farmers have always been influenced not by profit, but by philanthropy; not by riches but by righteousness; and not by selfishness but by selflessness. Values such as 'Live and Let Live' and 'All for One and One for All' have shaped their philosophy. Hence, we have never known farmers buying the seeds or agricultural implements; rather, we know them exchanging these inputs, saving them for fellow farmers and the future. Obviously, they never regarded crops as commodities for sale. Of course, Green Revolution did introduce some changes in their lives. It ushered in mechanisation, modern fertilisers and implements and consequently, more production and money. However, its insistence on food crops basically and its reliance on public sector arrested the capitalistic trend that had begun to surface and restored the status quo ante.

Patents, however, operate on an altogether different plane. It is claimed that they are diametrically opposite to the humanitarian values championed by our farmers. Notwithstanding its incentive for research and development, and potential for materialistic benefits for the public in the long run, a patent system perpetuates monopoly, capital intensive methods, and breeds the monocultures of the private sector. It is basically a profit-oriented system.
This polarisation between agriculture and patents can be discerned from the earlier definition\textsuperscript{75} of the term 'invention' in Patents Act 1970. It clearly revolved around the concept of industrial application. It was basically meant to cater to the needs of industry and industry alone. In fact, it is worthwhile to note here that patents were initially regarded as 'industrial property'. Patents never envisaged agriculture as patentable commodity or invention.

This fact is further corroborated by the exclusion of plants and agriculture from the purview of Patents Act, 1970.\textsuperscript{76} This is true even today.

Thus, the traditional concept and the present statutory regime indicate that agriculture and patents are poles apart. But-and this is a very big 'BUT' indeed-in reality, agriculture is in the clutches of patents. There is no doubt that the Indian agriculture is in the deathly tentacles of patents. Theoretically, it appears that the Patents Act, 1970 has got nothing to do with agriculture. But practically, the Patents Act, 1970 and its complementary laws, enacted in the wake of the WTO-TRIPs duo have held the Indian agriculture to ransom.

Perhaps, this development has occurred in two phases. One is the Green Revolution phase, and the other is the Gene Revolution phase. During the former, the earlier definition of 'invention' was exploited to obtain patents for various agricultural machines, apparatus, fertilisers, etc. Thus, though

\textsuperscript{75} Prior to its substitution by Act 38 of 2002, Invention meant any new and useful-(i) art, process, method or manner of manufacture; (ii) machine, apparatus or other article and (iii) substance produced by manufacture and included any new and useful improvement of any of them and an alleged invention.

\textsuperscript{76} Supra, n.74.
agriculture itself could not be patented directly, it was sought to be paralysed by adopting a circuitous route. Farmers were compelled to adopt the Green Revolution technologies at an exorbitant cost, and were ultimately, ruined by them. Green Revolution changed the basic and inherent features of Indian agriculture for worse.

During the latter, a phase which is expanding day by day, several developments have strengthened the hold of patents regime on agriculture. Of course, there is no need to say that the Patents Act 1970 does not affect agriculture directly. But, this Act, dictated purely by the WTO–TRIPs, and legislations compliant to them have virtually made the position of Indian agriculture worst.

Now, it is asserted, “for various reasons, including ethical reasons, living organisms were generally regarded as being outside the patent system”\textsuperscript{77} Of course, the Patents Act, 1970 keeps plants and animals in whole or any part thereof and seeds, varieties, species and essentially biological processes for production or propagation of plants and animals outside patentability. However, it allows micro-organisms and non-biological processes to be patented. In other words, life is sought to be patented since patenting micro-organisms is nothing but patenting life. Moreover, it is observed,“... distinction between biology and microbiology was applicable to

\textsuperscript{77} Supra, n.43.
the scientific knowledge of that time. But later scientific developments have blurred the distinction between these two."\(^78\)

That apart, according to the 'Guidelines for Examination at the European Patent Office', "... the question whether a process is essentially biological is one of degree depending on the extent to which there is technical intervention by man in the process; if such intervention plays a significant part in determining or controlling the result it is desired to achieve, the process would not be excluded..... a method of treating a plant or animal to improve its properties or yield or to promote or suppress its growth by some mechanical, physical or chemical process- e.g., a method of pruning a tree- would not be essentially biological since, although a biological process is involved, the essence of the invention is technical".\(^79\)

Thus, it can be seen that there is great confusion in interpretation of a key concept. Under such circumstances, one cannot simply rely on the statute and rest assured.

Further, the Patents Act, 1970 provides that plants and animals are not patentable. Does this mean that product patents should not be granted but process patents can be granted? If the answer is in the affirmative, it seems that the very spirit of the provision is frustrated.

Also, the non-exclusion of biotechnology from the list of non-patentable inventions gives a strong indication that none can prevent agricultural

\(^78\) Ibid.
\(^79\) Ibid., p.2127.
biotechnological inventions from being patented. In fact, "Article 27 (3) (b) of the TRIPs Agreement provides for protection of plant-biotechnology inventions". 80

Under these circumstances, it is asserted, it is futile to contend that Patents Act, 1970 does not envisage patenting of agriculture. There is a very strong case made out in favour of those who argue that Gene Revolution is, or will be, the last nail in the coffin of agriculture. Hence, for a proper grasp of the issues involved, it may be appropriate to trace the genesis of these developments. Since the acceptance of biotechnology has virtually changed the way agriculture is practised in this country, it is imperative that all the events leading up to their culmination need to be properly analysed.

The first link in this sinister chain is the ushering in of General Agreement on Tariffs and Trade (GATT). GATT reached its logical (or illogical!) conclusion with the formation of the WTO and incorporation of the TRIPs.

3.3 General Agreement on Tariffs and Trade (GATT): A Brief Outline

It is often alleged that the kernel of the entire present crisis is the deliberations and consequences of the Uruguay Round of Multilateral Trade Negotiations under the aegis of the GATT. The Final Act of the said Round is criticised for the virulent attack it mounted on the reluctant South. It was castigated, "Many hostile intellectuals, especially of Third World Countries, hold the view that the Final Act has, vis-à-vis developing nations and former

80 Supra, n.43.
colonies, 'nothing to offer, but blood, toil, tears and sweat'. So it is that expressions like 'GATTAstrophe', 'recolonisation', 'design for disaster', 'conquest by patent', and 'Patent Folly' et al have gained currency. 81

The roots of GATT are traced to the mid-'40s. It is noted, "The Bretton Woods Conference was held in 1944 to restore the economic activity which was shattered by Second World War. International organisations such as the IMF, WB and GATT were set up to revive the global economy". 82 Hence, it is asserted, "The Bretton Wood Conference (1944) marked the beginning of a new World Trade Order, switched the purpose of global alliance from the openly military to the plainly economic, and this paradigm shift is basic to an understanding of the nature and structure of the Final Act cannily crafted by Arthur Dunkel". 83

Further, it is observed, "The GATT, a trade pact and an organisation was founded in Geneva in 1948 to pursue the objective of free trade in order to encourage growth and development of all member countries". 84 However, it is interesting to note that GATT was visualised as only a temporary arrangement. It was to have been replaced by another arrangement. Thus, "It was... to be replaced by the Havana Charter and the International Trade Organisation (ITO). However, the ITO was not ratified by the Congress as the

83 Supra, n.81, p.13.
84 Supra, n.82
United States of America; as a result, the GATT became a provisional treaty that continued to govern international trade for the next 45 years.  

Initially, the GATT was not even remotely concerned with IPRs. It was purely a forum for trade negotiation. It is claimed, “Under its basic framework, all contracting parties, big and small, are bound by the most favoured nation (MFN) clause; unequal being treated equally! Moreover, protection for domestic industry should be provided only through tariffs. The GATT 1948 was essentially a code of rules and a forum to negotiate and resolve trade disputes arising out of the international sale of goods.”

Hence, since inception, the GATT Rounds focussed on issues related to trade. In fact, during the first 30 years of its existence, seven major trade negotiations took place. It is emphasised, “The first seven GATT Rounds sought to stimulate international trade through reduction in tariff and lowering of non-tariff restrictions on imports.”

However, the nature and scope of the GATT negotiations took a beating with the 8th GATT Round. It is asserted, “The Eighth Round of GATT was launched in Punta del Este, Uruguay, in September 1986 and it concluded in April 1994. It commenced when the world’s leading economies were still reeling under the severe recession of 1980-81.... In reality it was a

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85 Supra, n.81, p.15.
86 Ibid.
87 These Seven Rounds are: The Geneva Round; Annecy, France: Torquay, England; Geneva; Dillon Round; Kennedy Round; and Tokyo Round.
88 Supra, n.82.
frantic scramble to capture the domestic markets of the South by the world's advanced countries facing recession".  

The said recession and the multifarious prospects promised by the emergence of biotechnological revolution determined the course that the 8th Round was to navigate. Till then, the GATT had not bothered about IPRs, Agriculture, etc. As such, it is claimed, "Until the Uruguay Round, the GATT only applied to goods. It excluded services, investments and intellectual property from its purview and contained broad exclusions with respect to agriculture".  

But, it is observed, "the Uruguay Round of GATT negotiations went well beyond the area of international trade. It entered fields not within the jurisdiction of GATT and extended to areas which were essentially part of domestic policies of a nation. New issues such as intellectual property rights, agriculture... were deliberately brought on the agenda of multilateral trade negotiations".  

This step sealed, it is asserted, undoubtedly, the fate of millions of farmers in India, and generally in the Third World. It led to the hegemony of the First World countries, and through them, that of the various TNCs. Hence, it is said, "the distortion of the original (at least professed) agenda of the General Agreement on Trade and Tariffs (GATT) and then the WTO, has been breath taking in its impunity. Public interest goals have been subverted,

89 Ibid.
90 Supra, n.81, p.19.
91 Supra, n.82.
the interests of the poor fully disregarded and structures placed atop the original, to make the trading regime the preserve of big money". \(^92\)

Anyway, inclusion of IPRs and agriculture in the GATT gamut did not come about without resistance. The resistance was led by India and Brazil.

However, this resistance did not last long. It is lamented, "pressures were mounted on India to give up or dilute its stand, and India succumbed to U S. pressures agreeing to bring the new areas of substantive issues of intellectual property rights within the scope of GATT negotiations. However.... India's capitulation was made without any consultation with Parliament or the States or any public explanation". \(^93\)

After India's capitulation in April 1989, the formalities were completed in quick succession. On 20\(^{th}\) December, 1991 Arthur Dunkel tabled a Draft Final Act of the Uruguay Round. On 15\(^{th}\) December 1993, the final sessions concluded in Geneva and the Director General Sutherland brought his gavel down on seven years of Uruguay Round negotiations. On 15\(^{th}\) April 1994 the ministerial meeting at Marrakesh, Morocco, ratified the result of the Uruguay Round. India too obeyed, and came home to play up GATT as the best bet. \(^94\)

Finally, on 1.1.1995, the World Trade Organisation was born, taking over all the business from the GATT.


\(^{93}\) Supra, n.81, p.21.

\(^{94}\) Ibid., p.23.
3.4 India's Entry into the WTO: A Critique

Ever since India's entry into the WTO, serious concerns have been voiced about the propriety of the whole process. The reactions have oscillated between simple scepticism and stunning shock. It is asserted that the Central Government kept everyone, including the Parliament, in dark about the Final Act and its implications, and hardly did anything to allay the fears in this regard.

It is noted with grave concern, "... India capitulated to U.S. pressures and agreed to bring the new area of intellectual property rights within the scope of GATT. However, India's surrender was made without any consultation with Parliament or the States or any public discussion. Neither the Parliament, the President nor the States were briefed as to the reasons for the change in India's stance or the consequences of extending the ambit of GATT to substantive issues of intellectual property protection, an area falling within the sovereign decision making space of the member countries".95

What is discernible from this is that India's entry into the WTO, as perceived by the lawmen and laymen alike, is mired into controversies, characterised by constitutional impropriety and reflective of a severe compromise of her sovereignty.

Of course, the Union Executive did make some attempts to clear the cobwebs. But, being half hearted, they all proved to be more ambiguous and equivocal in tone and tenor.

95 Ibid., p.33.
For instance, it is noted, "in January 1992, the Government appointed a Committee of Ministers to examine the GATT issues. The Committee of Ministers failed to hold any sessions in public. It is not clear if the evidence presented before the Committee was recorded; and if so, what became of the record. The Government never took a stance before the Committee. The secrecy of the Government about its own position and of the Committee about its own deliberation made the entire exercise valueless as democracy and a fraud on governance. The Committee never published its deliberation or a report".96

As if this was not sufficient, another exercise in futility was undertaken. It is noted, "in June 1992, the Ministry of Commerce privately circulated a paper titled, 'The Uruguay Round of Multilateral Trade Negotiations- A Paper for Discussion'. It is important to note that this Paper does not contain any policy statement of the Government and gives no indication of the positions of other nations in the negotiations". 97


96 ibid., p.37.
97 ibid., pp 37-38.
Rights (TRIPs)... and Institutional Arrangements, namely, the operation of the successor organisation to the GATT, then known as the Multilateral Trade Organisation (MTO). In each of these areas, the Gujral Report concluded that the provisions of the Dunkel Draft would adversely affect India.98

However, it is unfortunate that "... the Union Government ignored the conclusions of ... (Gujral Committee) which declared that each of the six critical areas of the treaty promised adverse consequences for the country".99

Thus, it can be seen that the attempts of the Government to clear the doubts were perceived to be counter-productive since they gave rise to more doubts.

However, despite the apathy on the part of the Central Government, the States, by demanding information from the Central Government, tried to discharge their constitutional obligations. Concerned about the possible destruction of the federal structure and agriculture being the State subject, several Chief Ministers took up the cudgels and wrote letters to the Prime Minister, demanding the relevant information.100 However, none of them received any reply whatever.

The Parliamentarians did not lag behind either. It is mentioned, "on December 23, 1992, in a short debate in the Lok Sabha, Members of Parliament protested the lack of discussion and information and the

98 Ibid., p.41.
99 Ibid., p.160.
100 Correspondence was made by Mr.Jyoti Basu, Chief Minister of West Bengal on 21-10-1992; Mr.Bhairon Singh Shekhawat, Chief Minister of Rajasthan on 10.12.1993; Mr.Biju Patnaik, Chief Minister of Orissa on 30.12.1993; Ms.J.Jayalalitha, Chief Minister of Tamil Nadu on 4.1.1994.
government's cavalier attitude". That apart, several leaders, cutting across the party lines, addressed a joint letter to the Prime Minister on January 27, 1993, highlighting the inimical impact of the Dunkel Draft and demanding setting up of a Joint Parliamentary Committee. Also, around 250 MPs and certain prominent citizens issued a joint public statement in this regard. All this was, however, to no avail. The Government neither parted with any information nor agreed to reconsider its stance. On the contrary, the Prime Minister went on record stating that the international negotiations were going forward and the Government would not wait for a Parliamentary debate.

Thus, the Central Government went ahead despite stinging criticism and ratified the Final Act. That made the trip of TRIPs quite easy and smooth. That also compelled India to rewrite its IPR regime to comply with the TRIPs. All this, it is asserted, is a flagrant violation of the ethical, constitutional and social ethos of our country.

3.4.1 Constitutionality of India's Entry into the WTO

It is decried, "questions of constitutionality loom large over the legality of India's negotiations of the Uruguay Round because of the well founded allegation that there was a failure on the part of the designated constitutional institutions to consider the full implications of that treaty and / or impact on

101 Supra, n.81, p.39.
102 Ibid.
103 Ibid.
governance, the basic structure of the Constitution and the fundamental rights of the people". 104

The shady way in which the Indian Government entered into the WTO has in its turn raised several doubts about its constitutionality. Jurists, experts in Constitutional Law, prominent citizens et al have voiced their concern about this hasty step. As such, it is asserted, an opinion gained ground that the treaty making power has not been exercised in the way it should have been.

It is observed, thus, in this context: “we live in an age of plenary treaties with totalitarian potential where corporate mite and imperial hegemony manacle humble States, truncate national sovereignties and execute economic colonialism through the invasionary operation of international agreements. Globalisation, Liberalisation and Privatisation – the three euphoric yet malefic ultra-modern mantras – have subjected India and other countries to commercial conquest using, inter alia, the V weapons of GATT and WTO. The legal methodology of treaties legitimises the process of economic exploitation; and international treaty jurisprudence is today a might – right manoeuver to subjugate without arms, nations which are forced to jettison their national sovereignty and abandon their commitment to their people by the diplomacy of signatures. The pen has done without blood what needed a gun before; what once required wars of conquest are accomplished by words of treaties. This signature syndrome drives home the urgency of a study of treaty power vested in the Executive lest people should be enslaved,

104 Id., p.134.
Parliament made powerless and the Constitution subverted by the corruption of treaty jurisprudence.\footnote{105}

The basic criticism against India's entering into the WTO is that it has violated the federal structure of our Constitution which is an inviolable basic feature. It is asserted in the previous paras that the Union Executive entered into the WTO without taking any of the stakeholders, i.e., the Parliament, the President or 'We, the People', into confidence. But, the authorities should bear in mind, "... where freedoms of humans are involved, the old Roman adage must apply in principle: whatever touches us all should be decided by all, at least vicariously."\footnote{106}

The anti-WTO activists in India allege that by not consulting the States and eliciting their opinions, the Central Government has clearly violated the federal structure of our Constitution. Federalism being the basic structure, it is alleged, its violation is violation of the Constitution itself.

Hence, it is said, "our Constitution is federal, not unitary, and any treaty which travesties or tampers with the federal nature and consequential power of the State must be tested on the constitutional anvil. In short, treaty-making power is not a totalitarian authority of the Union subversive of limited sovereignty that resides in various repositories under the Constitution."\footnote{107}

\footnote{106} Ibid.
\footnote{107} Supra n.81, p.127.
It is pertinent to note here that the Supreme Court has evolved the 'basic structure theory' in the Fundamental Rights case, a theory too sacred to be tinkered with. It is observed in this regard: "The Supreme Court, by an original stroke of statesmanship, evolved the basic structure theory .... too inviolably paramount to be truncated even by the constituent power of Parliament".

In *S.R.Bommai v. Union of India*, K.Ramaswamy, J., has observed: "Federalism envisaged in the Constitution of India is a basic feature ..... The State qua the Constitution is federal in structure and independent in its exercise of legislative and executive power.... Democratic form of Government, federal structure.... Judicial Review are basic features of the Constitution".

Obviously, when the Indian Government entered into the WTO without ascertaining the views of the States or of the people, it drew a heavy flak. Hence, it was asserted, "federalism, in my humble view, has been flagrantly violated by the GATT-WTO treaties, with States shattered in their rural economics what with xenophilic open sesame policies and import-export strategies. Constitutional control of treaty technology and total transparency in the process of treaty entry are a safeguard of people's sovereignty".

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109 Supra, n.81, p.2
111 Ibid., p.205.
112 Supra n.81, p.13.
It is also asserted, "...federal fundamental is a basic structure of the Constitution, which means that constitutional morality and law demand recognition of the non-negotiable reality of statehood with autonomy, the inevitable inference being that when the Union does an act trenching upon the provincial sphere, it has to be with the concurrence of the States, otherwise federalism becomes a chimera, a teasing illusion".\textsuperscript{113}

Hence, the position is summed up as follows: "Thus, an international treaty or agreement entered into by the Union Government in exercise of its executive power, without the concurrence of the States, with respect to matters covered by Entries in List II of the Seventh Schedule, offends the Indian Constitutional Federalism, a basic feature of the Constitution of India and is therefore void \textit{ab initio}. The Final Act is one of that nature. This is our \textit{prima facie} opinion on the question whether the Final Act is repugnant to the Federal nature of the Constitution and we strongly urge the Union Government to do nothing which abridges that principle".\textsuperscript{114}

Besides this major criticism, the Entry is attacked from other angles as well. Considering it as violative of the right to life, it is commented, "in view of the ... anticipated effect on the .... self-sufficiency in food, we are of the view that the Final Act will have a direct and inevitable effect on the fundamental right to life enshrined in Article 21 of the Constitution".\textsuperscript{115}

\textsuperscript{113} Supra, n.81, p.133.
\textsuperscript{114} Ibid., p.150.
\textsuperscript{115} Ibid., p.157.
Finally, it is also asserted that India's entry has impinged its sovereignty. Sovereignty has two facets: external and internal.

In *Maganbhai v. Union of India*, the Supreme Court has expressed the view that external sovereignty implies the absence of control of any other State or external power over India and it can acquire foreign territory and cede any part of its territory subject to constitutional limitations if any.

In *Synthetics v. State of U.P.*, the apex Court has observed that the internal aspect means that India has power to legislate on any subject, to promote the health, morals, education and good order of the people subject to the federal set up with regard to legislative competence and other limitations imposed by the Constitution.

It is contended strongly that the Final Act has robbed the Centre as well as the States of their legislative plenary power. It is observed, "The Final Act is comprised of 28 sections and covers subject in virtually the entire economy, *inter alia*, agriculture, investment, intellectual property.... By providing detailed requirements in numerous areas of the domestic economy, the Final Act usurps the legislative power of the Centre and the States to a great extent". Such an usurpation can be seen with reference to all the three Lists of the Seventh Schedule of the Constitution.

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118 *Supra*, n.81, p162.
119 The usurpation can be witnessed in Entries-29, 30, 31, 36, 41, 43, 44, 45, 46, 47, 48 and 49 of List I; 6, 14, 15, 18, 23, 24, 26, 27, 28, 31 of List II; and 18, 19, 20, 21, 26, 33, 34, 36 of List III.
Hence, it is asserted, “in view of the fact that the Final Act deprives the Centre and the States from legislating on such an extensive list of subjects, we conclude that the Final Act constitutes a surrender of India’s sovereignty”.

Thus, it is no exaggeration to say, “GATT 1994 rides rough-shod over federalism in India, ignores the basic structure and the Preambular undertaking of our *suprema lex* and runs counter, in many other ways, to the crimson constitutional provisions, because its vision is not on Indian humans’ happiness but money-making markets made up of 200 million strong middle and upper classes who could be seduced by market-friendly methodology. Marketwise and conquer, man does not matter- that is the logos of the Treaty: economics where humans matter is the social thrust of our Constitution.”

**Conclusion**

It is the case of the detractors of biotechnology that the masquerading multinationals have opened the Pandora’s Box by corrupting the global IPRs regime to suit their interests. This act, they allege, tends to perpetrate the already monopolistic patents system still further, endangering in the process agriculture among others. With India falling prey to their evil designs, it is asserted, its patent system has become too vulnerable to resist the onslaught on agricultural sector. They lament that India had to ultimately allow agricultural patents, though not directly under the Patents Act, 1970, through

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120 Supra, n.81, p164.
121 Ibid., p.50.
the TRIPs-dictated IPR legislations putting the lives of thousands of farmers at stake. It is the contention of the opponents of biotechnology that right from the beginning, India showed a weak-kneed response to MNCs and WTO thereby sacrificing its avowed position on patents vis-à-vis agriculture. Hence, an attempt is made in the ensuing Chapter to delineate the sinister link between the new IPRs regime in India and the choking agriculture as asserted by the anti-biotechnology group.