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Title: Patenting of Biotechnological Inventions in India: A Critical Appraisal

Brief Abstract

Background of the Research

Recent advances in biotechnological research have generated several legal, social and ethical issues. A number of the relevant regulations such as eligibility of inventions as a subject matter of patent, contour of patentable subjects, conditions of patentability, field trial of genetically modified Organism, getting plant protection for new invention relating to new varieties, rights of custodian of germplasm, mechanism of benefit sharing between patentee and owner of genetic resources and getting permission for marketing are a matter of critical analysis. Further, Chapter 16 of Agenda 21 claims that the biotech revolution has a potentiality to affect every aspect of our lives. Moreover, Introduction of recombinant DNA technology has changed the face of biotechnological research and in many sector possibility of genetic modification had created hope for better future. But this sector needs huge money for R&D and corporate players needs guarantee of exploitation.

Considering promises in biotechnological inventions it becomes necessary to ensure balance of rights and interest of all the stakeholders as conceived in the working principles of patent under Patent Act. So that it grows in the manner as conceived under philosophy and jurisprudence of patent system as well as it didn't confront with the any others rights. However, claim of patent under this sector has been opposed by the three groups of persons. First, it was on ground of conflict of subject matter of eligibility as invention that the basic raw material for biotechnological research is collected from the nature. Second it is being conducted in violation of sovereign resource rights principles. Thirdly, many times conduct of corporate houses has given impression that it intended for commercial gain only and it was objected on the ground that it will violate fundamental principle of Human Rights. It was also seen as an instrument of environmental disturbance.

Hypotheses

On the basis of literature survey review following hypotheses has been tested in the present research study:

- The Indian Patent Act 1970 does not explicitly contain all the dimensions related to patentability of biotechnological inventions.
- In India the Patent Act 1970 has not been drafted taking into consideration the technological complexity and every invention are treated at per.

- Patenting of Biotechnological Inventions is in the interest of Social and Economic Development of India.

Findings:

- In India only process related to micro-organism and product thereof is the explicitly patentable subject matter Under the TRIPS Agreement and Under Indian Patent Act.
- In India legislation is silent about the patenting of multi-cellular or higher forms of life, gene or DNA, cells, quenching.DNA Sequence.
- Under MPPP 2005 gene sequence and DNA sequences whose functions are not disclosed do not satisfy the requirement of Industrial Applicability.
- There is gap between Indian practice US, European Union System.

Major Suggestions:

- A separate chapter with respect to biotechnological patenting procedure is required under the Patent Rules 2003.
- An inclusive and exclusive definition of biotechnological inventions needs to be inserted as drafted.
- In section 3 of the Patent Act, an explanation needs to be inserted with a clarification that Animal does not include transgenic animal and plant does not include transgenic plant and transgenic crops.
- Definition of Transgenic Animal and transgenic plant needs to be inserted with Patent Rule.
- Definition of Essential and Non-Essential Biological process like European Union needs to be inserted.

Concluding Remark.

If biotechnology industries have to continue to grow, do create appropriate means for acquisition and enjoyment.