

# THE HINDU

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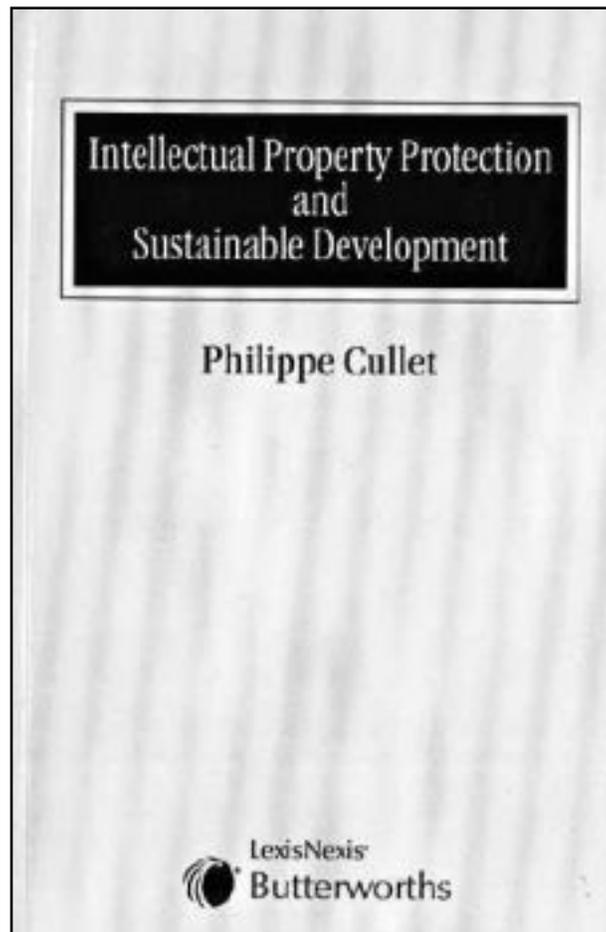
## Patents and development

SIDDHARTH NARRAIN

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Examines development related to the IPR regime within the legal framework

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**INTELLECTUAL PROPERTY PROTECTION AND SUSTAINABLE**

**DEVELOPMENT: Philippe Cullet; Lexis Nexis Butterworths, 14th Floor, Vijaya Building, 17, Barakhamba Road, New Delhi-110001. Rs. 275.**

This book by Philippe Cullet is a timely reminder that there are aspects to the intellectual property rights (IPR) regime that have not been debated seriously and extensively enough. The author has examined in detail developments related to the IPR regime within the national and international legal frameworks and their impact on society, environment and notions of development and human rights.

The author's arguments are based on the premise that since it is difficult to envisage a situation in which the IPR regime can be done away with, developing countries should use the existing framework of IPR to ensure that the rights and livelihood of farmers, tribal peoples and marginalised communities are protected. He argues that in countries like India, the government should enact laws to promote appropriate biotechnologies — genetic engineering that is environmentally safe and socially, economically and culturally acceptable.

### Farmer's rights

Cullet has looked at possibilities within the patent system to address the needs of societies that are largely dependent on agriculture. He has examined the category of farmer's rights that were introduced to create incentives for the equitable sharing of benefits from plant genetic resources. He argues that farmer's rights are intrinsically based on the link between innovation and rights over knowledge, biodiversity conservation, and the sustainable use of agro-biodiversity.

The current patent regime recognises the concern of developing countries on extending IPR protection to an area like agriculture. The Agreement on Trade Related Intellectual Property Rights (TRIPS) provides for a sui generis system to protect plant varieties, the result of a compromise between developed countries in favour of introducing intellectual property rights in agriculture and developing countries, which believe that agriculture cannot be equated to other fields of technology.

In India, the Protection of Plant Varieties and Farmer's Rights Act recognises that farmers, besides being innovators, play an important role in conserving biodiversity. The Act, which was passed in 2001, remains unimplemented because the Plant Variety Authority, that has to be constituted under the Act, is yet to be set up. Cullet points out that, even if implemented, the provisions in the law relating to farmer's rights are unlikely to be effective as farmers would find it difficult to register their varieties even when entitled to it.

### Patents on life forms

The author traces the development of patents on life forms that were the result of legal developments in the U.S. and Europe. The U.S. Supreme Court decision in *Diamond v. Chakrabarty* opened the door of patenting microorganisms and was subsequently extended to genes, proteins, and through recombinant technology, to multi-cellular animals and plants. This blurring of distinction between inventions and discoveries by providing for the patenting of biological material is relevant to India where provisions relating to patenting of microorganisms in the Patent Act, 2005 have been referred to a Technical Expert Committee on Patent Issues.

The author observes that though traditional knowledge has not been perceived to fit into the western paradigm of science, it has contributed heavily to innovation in the intellectual property rights framework. He points out that developing countries have begun to protect traditional knowledge against bio- piracy. It was the intervention of the Council for Scientific and Industrial Research (CSIR) that led to the revoking of the patent on the healing properties of turmeric granted in the U.S. on the ground that the alleged invention was part of public domain knowledge in India.

In this book, Cullet has explored methods by which traditional knowledge could be protected against bio- prospecting from both foreign and domestic entities. Significantly he points out that while there was public indignation against patents on traditional knowledge being granted to foreign individuals and companies, there has been no debate on the need to protect traditional knowledge holders against individuals within the country.

### Bio-safety

The author has addressed the debate on bio- safety in relation to the IPR regime. He observes that while the patent system does not provide for any means of redress if a genetically modified organism released in the environment causes damage, the Canadian Supreme Court has recently held that the mere presence of a genetically modified seed on the land of a farmer, even if he has not purchased the seed, constitutes an infringement of the patent on the seed.

Cullet suggests making the observance of bio- safety regulations a pre-condition of patentability, and extending the liability regime to damage caused by genetically modified organisms. These suggestions are the result of the author recognising that bio- safety includes assessing health and socio-economic impacts of biotechnology, and that IPR need to be linked to sustainable development.

This book does not have any pretensions of being a quick read. Written in matter of fact manner but packed with information, it is a comprehensive text and essential reading for those interested in this subject.

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