

Seed Freedom and Food Democracy

An Open letter by Dr. Vandana Shiva* to Prime Minister Modi and President Obama from democratic, concerned citizens of India and the US:



We, as concerned and democratic citizens of India, and the US, welcome the coming together of two of the largest democracies of the world to work together to protect the rights of their citizens and their biodiversity. Both nations were founded on the principles of freedoms of our people, and the acceptability of colonialism and subservience to Empire.

President Obama, you have been invited by Prime Minister Narendra Modi, to India's Republic day celebrations on 26th Jan, 2015. In 1930, on 26th January, the people of India pledged to demand Purna Swaraj or complete self-rule independent of the British Empire. (Literally translated from Sanskrit, purna, "complete"; swa, "self"; raj, "rule".)

The people of India observed 26 January as Independence Day. The flag of India was hoisted publicly, across India, by Congress volunteers, patriots and the citizens of India. The declaration stated the following:

We believe that it is the inalienable right of the Indian people, as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth.

We believe also that if any government deprives a people of these rights and oppresses them the people have a further right to alter it or to abolish it. The British Government in India has not only deprived the Indian people of their freedom but has based itself on the exploitation of the masses, and has ruined India economically, politically, culturally, and spiritually. We believe, therefore, that India must sever the British connection and attain Purna Swaraj, or complete independence.

We write this letter in the spirit of Swaraj-of Bija Swaraj (Seed Freedom) and Anna Swaraj (Food Democracy), with the hope that your visit to India will enhance and deepen the common freedoms of the people of India and the US, not the freedoms of the Corporations undermining the freedoms of citizens in both countries. Your visit coincides with pressure being put by the US, on behalf of its corporations, to undermine seed freedom in India. Our particular concern is Intellectual Property Rights in the area of biodiversity, seeds, and living biological resources.

On 30 September 2014, the US & India issued a Joint Statement on the occasion of Prime Minister Modi's meeting with President Obama, in the US.

Agreeing on the need to foster innovation in a manner that promotes economic growth and job creation... committed to establish an annual high-level Intellectual Property (IP) Working Group with appropriate decision-making and technical-level meetings as part of the Trade Policy Forum.

We hope that fostering innovation refers to real innovation and not theft from nature or other parts of the world.

Life is not an invention

IPRs expanded to cover living systems and organisms is a distortion of “Innovation” and “invention”. This distortion was introduced by corporations such as Monsanto in the TRIPS(Trade Related Intellectual Property Rights) Agreement of WTO. Corporate influence on Patent Law began with the drafting of the Trade Related Intellectual Property Rights (TRIPS) Agreement of the WTO by the Intellectual Property Committee (IPC) of the multilateral corporations.

James Enyart of Monsanto is on record illustrating just how deeply the TRIPs agreement is aligned to corporate interest and against the interests of nations and their citizens:

“Once created, the first task of the IPC was to repeat the missionary work we did in the US in the early days, this time with the industrial associations of Europe and Japan to convince them that a code was possible....

Besides selling our concepts at home, we went to Geneva where [we] presented [our] document to the staff of the GATT Secretariat. We also took the opportunity to present it to the Geneva based representatives of a large number of countries... What I have described to you is absolutely unprecedented in GATT. Industry has identified a major problem for international trade. It crafted a solution, reduced it to a concrete proposal and sold it to our own and other governments... The industries and traders of world commerce have played simultaneously the role of patients, the diagnosticians and the prescribing physicians.”

The first case in the WTO was initiated by the US against India, to force India to change it's patent laws. Methods of agriculture and plants were excluded from patentability in the Indian patent act to ensure that seed, the first link in the food chain, was held as a common property resource in the public domain and farmers' inalienable right to save, exchange and improve seed was not violated. And only process patents were allowed in medicine. The pharmaceutical corporations which are the same as the biotechnology corporations are seeking absolute monopolies on seed and medicine through patents.

When India amended her patent acts, safeguards consistent with TRIPS were introduced. Article 3 defines what is not patentable subject matter.

Article 3(d) excludes as inventions “the mere discovery of any new property or new use for a known substance”.

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This was the article under which Novartis's patent claim to a known cancer drug was rejected. This is the article that Novartis tried to challenge in the Supreme Court and lost.

Article 3(j) excludes from patentability "plants and animals in whole or in any part thereof other than microorganisms; but including seeds, varieties, and species, and essentially biological processes for production or propagation of plants and animals".

This was the article used by the Indian patent office to reject a Monsanto patent on climate resilient seeds.

While the Indian patent office rejected a Monsanto patent, the US Supreme Court ruled on behalf of Monsanto against a farmer called Bowman who had not bought seeds from Monsanto but purchased soybeans from an Indiana grain elevator. The US Supreme Court ruling creates intellectual property in future generations of a grain or seed. This is biologically and intellectually incorrect because all that Monsanto has done is add a gene for resistance to its proprietary herbicide Round up, to (i) claim ownership of any plant/animal that gene finds it's way into and (ii) to enforce a seed monopoly. Adding a gene of RoundUp resistance does not amount to "inventing" or "creating" a soya bean seed, its future generations and the species the gene pollutes.

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n addition to suing farmers like Bowman, Monsanto has sued farmers like Percy Schmeiser of Canada whose fields were contaminated with Monsanto's Roundup ready canola. Instead of the principle of polluter pays, patents allow Monsanto to work on the principle of polluter gets paid. This has recently happened in the Australia in the case of Steve Marsh. While Monsanto does not have a patent on Bt cotton in India, it goes outside the law to collect royalties as "technology fees". Most of the 291000 farmers' suicides in India since 1995 when WTO came into force are concentrated in the cotton belt. And 95% cotton is now controlled by Monsanto.

Intellectual Property Rights are defined as property in the "products of the mind", including patents. Patents are granted for inventions, and give the patent holder the right to exclude everyone from the use or marketing of a patented product or process. Over the last 2 decades, patent laws have taken a different direction, under the influence of corporations, from protecting the interests of genuine inventions and ideas to ownership of life and control over survival essentials like seed and medicine. Such monopolies are violative of article 21 of the Indian constitution which guarantees all citizens the right to life.

This is why 3(j) in India's patent law excludes essentially biological processes from being counted as an invention.

The TRIPS article on Patents of Life was to be reviewed within four years of the coming into force of the WTO agreement i.e. in 1999. India in its submission had stated "Clearly, there is a case for re-examining the need to grant patents on life forms anywhere in the

world. Until such systems are in place, it may be advisable to (a) exclude patents on all life forms.

The mandatory review of TRIPS has been blocked by the US since 1999. This review must be completed to remove the current IPR distortions.

Biopiracy is not “Innovation”

Biopiracy is another example of false claims to “inventions”. Over the past decade, through new property rights, corporations have gained control over the diversity of life on earth, and people’s indigenous knowledge. There is no innovation involved in these cases; they are instruments of monopoly control over life itself. Patents on living resources and indigenous knowledge are an enclosure of the biological and intellectual commons. Life forms have been redefined as “manufacture”, and “machines”, robbing life of its integrity and self-organisation. Traditional knowledge is being pirated and patented unleashing a new epidemic of “bio piracy”.

1. Patenting of Neem

The patenting of the fungicidal properties of Neem was a blatant example of biopiracy and indigenous knowledge. But on 10th May, the European Patent Office (EPO) revoked the patent (0436257 B1) granted to the United States Department of Agriculture and the multinational corporation W. R. Grace for a method of controlling fungi on plants by the aid of an extract of seeds from the Neem tree. The challenge to the patent of Neem was made at the Munich Office of the EPO by 3 groups : The European Parliament’s Green Party, Dr. Vandana Shiva of RFSTE, and the International Federation of Organic Agriculture and challenged it on the grounds of “lack of novelty and inventive step”. They demanded the invalidation of the patent among others on the ground that the fungicide qualities of the Neem and its use has been known in India for over 2000 years, and for use to make insect repellents, soaps, cosmetics and contraceptives and the neem patent was finally revoked.

2. Biopiracy of Basmati

On 8th July 1994, Rice Tec Inc, a Texas based company, filed a generic patent (Patent No. 5663484) on basmati rice lines and grains in the United States Patent and Trademark Office (USPTO) with 20 broad claims designed to create a complete rice monopoly patent which included planting, harvesting collecting and even cooking. Though Rice Tec claimed to have “invented” the Basmati rice, yet they accepted the fact that it has been derived from several rice accessions from India. Rice Tec had claimed a patent for inventing novel Basmati lines and grains. After protests, and the case in the Supreme Court of India, the U.S. Patent and Trademark Office struck down most sections of the Basmati patent.

3. Syngenta’s Attempt at Biopiracy of India’s rice diversity

Syngenta, the biotech giant, tried to grab the precious collections of 22,972 varieties of paddy, India’s rice diversity, from Chattisgarh in India. It had signed a MoU with the Indira Gandhi Agricultural University (IGAU) for access to Dr. Richharia’s priceless collection of

rice diversity which he had looked after as if the rice varieties were his own children. The mass agitation by the peoples' organisation, farmers' unions and civil liberty groups, women's groups, students' groups and biodiversity conservation movements against Syngenta and IGAU bore result and Syngenta called off the deal.

4. Monsanto's Biopiracy of Indian Wheat

European Patent Office in Munich revoked Monsanto's patent on the Indian wheat variety, Nap Hal. Monsanto, the biggest seed corporation was assigned the patent (No. EP 0445929 B1) on wheat on May 21st, 2003 by the EPO under the simple title, "plants". On January 27th, 2004 The Research Foundation for Science, Technology and Ecology along with Greenpeace and Bharat Krishak Samaha filed a petition at the EPO challenging the patent rights given to Monsanto, leading to the patent being revoked.

5. ConAgra's Biopiracy claim on Atta (Wheat flour)

Atta, a staple food and ingredient within India, is currently under threat from the corporation ConAgra who filed a "novel" patent (patent no 6,098,905) claiming the rights to an Atta processing method, and was granted the patent on August 8th, 2000. The method that ConAgra is claiming to be novel has been used throughout South Asia by thousands of atta chakkis, and so cannot justly be claimed as a novel patent.

6. Monsanto's Biopiracy of Indian Melons

In May 2011, the US company Monsanto was awarded a European patent on conventionally bred melons (EP 1 962 578). These melons which originally stem from India have a natural resistance to certain plant viruses. Using conventional breeding methods, this type of resistance was introduced to other melons and is now patented as a Monsanto "invention". The actual plant disease, Cucurbit yellow stunting disorder virus (CYSDV), has been spreading through North America, Europe and North Africa for several years. The Indian melon, which confers resistance to this virus, is registered in international seed banks as PI 313970. With the new patent, Monsanto can now block access to all breeding material inheriting the resistance derived from the Indian melon. The patent might discourage future breeding efforts and the development of new melon varieties. Melon breeders and farmers could be severely restricted by the patent. At the same time, it is already known that further breeding will be necessary to produce melons that are actually protected against the plant virus. De Ruiter, a well known seed company in the Netherlands, originally developed the melons. De Ruiter used plants designated PI 313970 – a non-sweet melon from India. Monsanto acquired De Ruiter in 2008, and now owns the patent. The patent was opposed by several organisations in 2012.

7. Monsanto's Biopiracy of Climate Resilience

Monsanto applied for blanket patents for "Methods of Enhancing Stress Tolerance in plants and methods thereof" (The title of the patent was later amended to "A method of producing a transgenic plant, with increasing heat tolerance, salt tolerance or drought tolerance"). These traits have been evolved by our farmers over millennia, through applying their knowledge of breeding. On 5th July, 2013, Hon Justice Prabha Sridevi, Chair of the Intellectual Property Appellate Board of India, and Hon Shri DPS Parmar,

technical member, dismissed Monsanto's appeal against the rejection of these patents that claim Monsanto has invented all resilience.

Corporations like Monsanto have taken 1500 patents on Climate Resilient crops. The climate resilient traits will become increasingly important in times of climate instability. Along coastal areas, farmers have evolved flood tolerant and salt tolerant varieties of rice such as "Bhundi", "Kalambank", "Lunabakada", "Sankarchin", "Nalidhulia", "Ravana", "Seulapuni", "Dhosarakhuda". Crops such as millets have been evolved for drought tolerance, and provide food security in water scarce regions, and water scarce years.

To end this new epidemic and to save the sovereignty rights of our farmers and citizens, it is required that our legal systems recognise the rights of communities, their collective and cumulative innovation in breeding diversity, and not merely the rights of corporations. It is the need of the hour to evolve categories of community intellectual rights (CIRs) related to biodiversity to balance and set limits along with boundary conditions for protection. The Intellectual Property Rights as evolved are in effect, a denial of the collective innovation of our people and the seed sovereignty or seed rights of our farmers.

Freedom to save seeds is a fundamental right

In 2004, both India and the US introduced new seed laws that criminalised the saving of traditional/heirloom varieties of all seeds. By outlawing the availability of renewable, open-pollinated seeds, corporations selling non-renewable patented seeds would be able to force everyone, from a large scale farmer to a balcony gardner, to buy only the seeds they sold, ensuring an absolute monopoly.

In India, hundreds of thousands of citizens petitioned the government and worked with the Parliament to roll back the Seed Law of 2004.

India's law titled Plant Variety Protection and Farmers Rights Act 2001 has a clause on Farmers Rights.

"A farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act."

There is no such protection for citizens and farmers of the US. Not only are citizens in the US being denied their right to know what they are eating, they are now being denied their right and duty to save and exchange seed. The Seed Laws of 2004 have been used in Pennsylvania, Maryland, and now, Minnesota, to shut down seed libraries.

Seed saving is the foundation of Swaraj in our times. Seed saving is vital to our ability to address hunger and malnutrition. Seed Saving is vital to bring back taste, nutrition and quality in our food. And without conservation and evolution of the biodiversity of our seeds ,we will not be able to adapt to climate change.

Seed Freedom is an imperative for the poor farmers of India, but also for the equally hard working farmers of the US; and the human species.

And the duty to save seeds is an ethical and ecological imperative.

Patents on life violate the “Ordre Public” or moral order embodied in the philosophy of Vasudhaiv Kutumbhakam, all beings on earth as a family. IP laws need to be subjected to ethical criteria, criteria of justice, and on a clear definition of invention.

Life forms, plants and seeds are all evolving, self-organized, sovereign beings. They have intrinsic worth, value and standing. Owning life by claiming it to be a corporate invention is ethically and legally wrong. Patents on seeds are legally wrong because seeds are not an invention. Patents on seeds are ethically wrong because seeds are life forms, they are our kin members of our earth family.

When the US talks of strong patent laws , it is restricting itself to the corporate interest. On criteria of corporate rights at the cost of nature and people, US laws are strong. On grounds of ethical considerations and social and ecological justice, they are weak.

Corporations are not persons, and an assault on democracy is not free speech

During your first election campaign, President Obama, you had promised you would implement a law for labelling GMO foods. Sadly, \$100 million has been used to defeat labelling laws in California, Washington, Colorado, Oregon. And Vermont which did pass a labelling law is being sued by corporations on the false premise of corporate personhood, and the influence of money as corporate “free speech”. Denying Citizens the Right to Know violates the fundamental principles of Food Democracy.

When the County of Maui in Hawaii voted to be GMO free, Dow and Monsanto sued them, subverting the democratic process which rests on the will of people, not the power of Corporations. This corporate jurisprudence needs to be reversed if human rights and the rights of Mother Earth are to be protected.

Dear President Obama and Prime Minister Modi,

Humanity and the Earth are at a critical juncture. Patents on seeds and seed monopolies have created an ecological crisis of biodiversity erosion, erosion of farmers rights and erosion of people’s freedoms.

It is not India’s IPR laws that need changing but US laws. On criteria of rights of nature and people’s rights, India’s laws are strong. As our democracies deepen their interaction, the citizens of India and the US expect that it will be ethical and ecological values that will lead the dialogue, not the false claims of “invention” by corporations to establish ownership of life on Earth. Ownership and royalty collections are the only reason GMOs are being pushed by corporations. It is imperative that we protect our cultural and indigenous intellectual property from being appropriated for short term profits of a few.

<http://www.sustainablefoodsupply.org/en/seed-freedom-and-food-democracy/>

As citizens, we ask that in each of our countries, you do not dismantle the protections that ensure the ethical fabric of our societies and the fundamental freedoms like saving seeds and knowing what we are eating, in order to allow corporate ownership of nature's bounty through false claims of innovation. We ask that our democratic representatives take the strengths in our legislation (e.g. Article 3(d) and 3(j) of the Indian Patent Act) and multiply our strengths. Working together, we resolve to protect these rights that we have and should have. Prime Minister Modi, we count on you to uphold the science based definitions in India's patent laws that protect the rights of citizens, and play a leadership role to work with President Obama to help correct the distortions in the US IPR system.

We ask that the US not put pressure on India to undo article 3(d) and 3(j), and will instead take lessons from India about how to respect the integrity of living systems and processes, and put the rights of farmers and citizens first. For us seed freedom includes farmers rights to save, exchange, breed, sell farmers varieties of seeds- varieties that have been evolved over millennia without interference of the state or corporations.

Prime Minister Modi and President Obama, let this Republic day in India sow the seeds of Earth Democracy and Vasudhaiva Kutumbhakam, for our times and the future. We hope you show great leadership by working together to strengthen the laws to protect your citizens and countries instead of making it easier for corporations to take control over life-forms for short term profits. Let us build Purna Swaraj for all life on Earth, freedom to grow our food and know our food. Let us work toward a future where our food is our freedom.

Source: <http://navdanya.org/campaigns/478-seed-freedom-and-food-democracy>

* Shiva is an Indian scientist and activist and enjoys international fame with her fight and work for the protection of biodiversity, small scale farmers and sustainable farming practices. In 1993 she received the "Right Livelihood Award", a kind of alternative Nobel Prize.