

Govt arm-twisting ensured Monsanto's business came to a halt, and illegal copies of its seeds have flooded the market

Since Monsanto had told GEAC of illegal seeds over a decade ago, but no action taken to stop this, difficult to argue India is much better than China in terms of IPR theft

Given the government's promise to double farmer incomes, the way seed-tech firm Monsanto has been treated over the past two years is quite astounding. And when all of this led to, in 2016, Monsanto putting a halt to all its new technology in India, you now find illegal copies of its seeds flooding the market! All this when, way back in 2008, Monsanto had written to the government's Genetic Engineering Approval Committee (GEAC) to complain about rip-offs of its technology—at that point, it was still working on getting an advanced version of its Bollgard-II into the country—but no action was taken. Thanks to the lack of action by the GEAC, an estimated 5-10% of India's cotton area is using these rip-off seeds today. As an aside, since farmers are paying Rs 1,300-1,500 per bag for these as compared to the `800 fixed by the government for Monsanto's Bollgard-II technology—the Herbicide Tolerant (HT) cotton seeds that are being ripped off are an advanced version of Bollgard-II—this makes it clear farmers are willing to pay for high quality seeds!

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Monsanto's troubles started in December 2015 when the Centre came out with a cotton seed price order that put a ceiling to the price the seed could be sold for. While Monsanto was selling the seed at Rs 930 per bag, this was lowered to `800 in the Cotton Seed Price Control Order. And while reducing the cost of the biotech seeds, the government ensured the bulk of the cut was on Monsanto's royalty—from Rs 170 or so per bag to Rs 49—making it clear where it believed the problem was.

If it wasn't enough that the seed control order allowed it to fix Monsanto's royalty, the government decided to, in May 2016, put a 10% cap on royalty as a share of the seed price—this didn't affect Bollgard-II whose royalty had been capped, but would affect Bollgard-III and other future versions. However, given the furore this caused and the fact that prime minister [Narendra Modi](#) was going to be travelling to the US, the order was withdrawn and passed off as a mere discussion note. Not surprisingly, in August 2016, Monsanto decided to put on hold its proposal to clear its HT cotton seeds, pending before the GEAC.

During this period, Monsanto was involved in a dispute with one of the seed companies—Nuziveedu—it sold its technology to. For some reason, the government decided to intercede in a purely commercial dispute in the [Delhi High Court](#). And what it said was quite extraordinary. In May 2017, additional solicitor general Tushar Mehta sought to tell the court that GM plants/seeds cannot be patented and that Monsanto was lying when it said it had a patent on Bt cotton seeds, and that the patent was nothing but an attempt to extract monopoly rents.

Normally, a seed-tech firm like Monsanto licenses its genes to seed firms like Nuziveedu, and they use this gene to create their own hybrids. The government argued that while Monsanto had a patent on the gene, once the gene was inserted into a plant by a Nuziveedu, this was no longer covered by the Patents Act but, instead, by the Protection of Plant Varieties & Farmers' Rights Act (PPVFRA)—while a Monsanto could apply for payments for its technology under PPVFRA, this would be lower than royalty under the Patents Act as the PPVFRA Authority has to decide on this; so, from a situation where, quite legally under Indian laws, Monsanto decided royalty rates, it was being forced into a situation where it may or may not get some 'benefit-sharing' under PPVFRA.

Since this government intervention came in after both Monsanto and Nuziveedu had presented their arguments, the Delhi High Court refused to accept the government's voluminous documents and, instead, told it to file a five-page note and said Monsanto would be allowed to object to the arguments made by the government. For reasons that are not clear, the government never went back to the court and no one in the agriculture ministry was forthcoming as to why the government first sought to intervene and, later, tried to distance itself. Possibly, someone may have realised there was not much to be gained since Monsanto had already decided to stop further work in India but, if the government submitted these arguments, the fight might become a larger one of patent rights and could become the stuff of global challenges to Indian law.

All this, in itself, is a sad story of the government strong-arming legitimate business in the country and sends out a strong signal as to why India is still not a good place to do business in for many companies. The fact that the GEAC did nothing for a decade while Monsanto's technology was being ripped off makes it difficult to argue India is much better than China when it comes to intellectual property—government-owned companies may not be ripping off patents, but when a government body fails to prevent it, the difference is difficult to appreciate.