

# INDORE INSTITUTE OF LAW

(AFFILIATED TO D.A.V.V. & BAR COUNCIL OF INDIA, NEW DELHI)

## MOOT PROPOSITION

1. The Democratic Republic of Narmada (hereinafter referred to as DRN) is a multi-racial, multi-lingual, multi-cultural and multi-religious Quasi-federal democratic state. DRN's laws are in Pari Materia with that of India, save and except, DRN has fully implemented its international obligations under Trade-Related Aspects of Intellectual Property Rights (hereinafter referred as TRIPS).
2. The Foreign based agrochemical and biotech corporation Donald Biotech, bought by the German chemical giant Mickey Chemicals in 2018. Ever since the commercial introduction of genetically modified organisms (GMOs) in 1996, Donald Biotech has aggressively pursued its commercial interests on the market through the attempts to flourish the business in the same field. Donald Biotech not only filed for patent protection for its GM plant varieties in various jurisdictions, but also devised and implemented unprecedented systems for the collection of royalties and the surveillance of farmers. It has not shied away from suing farmers, including its own customers, for patent infringement, and has a long list of active involvement into litigation relating to that of patenting and suing infringement of patents. As the architect of the new global proprietary regime, Donald Biotech is at the centre of the lawsuits. In the recent times, agribusiness corporations increasingly use a business model based on licensing fees and royalties rather than on the sale of seeds. Farmers pay a technology fee to corporations in effect buying the new genes in a separate transaction from the seed purchase. In this way, corporations are licensing genes directly to each farmer.
3. Donald Biotech designed and implemented private royalty collection systems adapted to the specificities of each country's crops and agrarian conditions where it was involved in the business of genetically modified organisms and various plant varieties. With a worldwide coverage of market of hybrid seeds and GMOs, Donald Biotech also made its attempts to capture the market of DRN. In DRN, Donald Biotech sublicenses to seed companies the right to introduce its genes into their varieties. DRN's seed companies make a lump sum payment to Monsanto for this. In addition, they also pay and this is more controversial – a percentage of royalties on each packet of seeds they sell. Between 2002 and 2006, when SillyCot (a specialized type of seed for the yields of cotton crop) was on the market, royalties represented a staggering 85 percent of the cost of a packet of cottonseeds. It was also stipulated in the sublicensing agreements that seed companies were only allowed to introgress the SillyCot trait into proprietary hybrid varieties of cotton. The key component of Donald Biotech's strategy is to ensure that farmers would have an

incentive to buy new seeds every season. In short, while DRN has provisions in their respective legislations allowing farmers to save seeds for replanting, the royalty collection systems implemented by Donald Biotech in effect rendered these provisions moot.

4. Donald Biotech filed a lot of patent applications for the protection of SillyCot and a lot of them were denied in various countries on a variety of reasons stated by the Patent Officials but it was never very commonly known in the general public and the ones involved in their due course of business because of the active involvement of Donald Biotech into the various cases and elongated litigation.
5. DRN has seen the escalation of a legal dispute since the fall 2015 over the price of seeds and royalties, or trait fees, for SillyCot I. This conflict had been simmering since the mid-2000s in a number of cotton-growing states, notably the southern DRN state of Parth Pradesh. In 2006, under pressure from farmers' groups, the Parth Pradesh government approached the Monopolies and Restrictive Trade Practices Commission (MRTPC) with a complaint against Donald Biotech. It alleged that Monsanto was engaged in unfair trade practices by charging royalties of up to 85 percent of the cost of a packet of cottonseeds. The Commission ruled in favour of the government and directed it to fix the maximum sale price of a packet of cotton seeds at 850 DRN rupees (down from approximately 1700 rupees) under the Essential Commodities Act. Before this order could be signed and implemented the case was transferred to newly formed Competition Commission of DRN in furtherance of the Competition act of DRN which was *pari materia* to the Indian Competition Law. Meanwhile, it was observed that with the election Veerbhadra party which were in association with a national organization which was against the involvement of the Hybrid seeds and GMOs and the same also got a leverage with the policies of the center. The issue of level playing field could not be settled and there was a fresh complaint filed by the Ministry of agriculture in the Competition Commission of DRN to investigate whether Donald Biotech was abusing its dominant position on the market. Both these cases were clubbed and commission decided in favour of the ministry. Five DRN states followed the lead of Parth Pradesh, triggering a string of litigation by Donald Biotech before various state high courts contending that all the practices in which Donald Biotech was engaged were very much in promotion to the level playing field and were in no way an abuse of dominant position in the relevant market as per the relevant laws prevalent in the country. The State high courts ruled in the favour of Donald Biotech against which appeals were filed in the Supreme Court of DRN. The Order by Competition Commission was also challenged in the Supreme court.
6. In the same month, the conflict between Donald Biotech and its DRN sublicensees – the seed companies that produced SillyCot seeds for the DRN market – escalated when Donald Biotech declared Minnie Seeds (a sublicensee in breach of payment obligations and terminated its sublicensing contract. Minnie Seeds, for its part, argued that Donald Biotech had been illegally charging royalties above the state-stipulated rate. In February 2016,

Donald Biotech filed a lawsuit against Minnie Seeds in the Telly High Court for patent infringement. Minnie Seeds, Donald Biotech claimed, had continued to use the SillyCot technology after the termination of its sublicensing agreement. The High Court gave its decision in the favour of Minnie Seeds and held there is no patent infringement. Donald biotech filed an appeal against this decision of High Court.

7. DRN seed companies lobbied the government to intervene and, in December 2017, the government issued the Cotton Seeds Price (Control) Order, or CSP Order (DRN order 2017). Drawing on the authority of the government to control the prices of essential commodities in the public interest under the relevant act, the CSP Order allowed the Central Government, on the recommendations of a special committee, to fix both the maximum sale price of SillyCot cotton seeds and the percentage of royalties that could be charged. Donald Biotech immediately challenged the CSP Order before the Telly High Court, in particular the provision allowing the government to determine trait fees, on the grounds that it was illegal and unconstitutional. However, the Telly High Court rejected the petition, against which the appeal was filed in the Supreme Court of DRN.

*(All the previous appeals are merged and presented before the Supreme Court of DRN)*