



IMPACT OF PVP LEGISLATION ON FARMERS' RIGHTS IN INDIA: A CRITICAL OVERVIEW

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ABSTRACT:

India is an agriculture country and land of farmers' as the majority of the population in the country sustains on farming as an occupation. India is an innovator in developing clear legal provisions to recognize and protect farmers' rights. The concept of farmers' rights was developed in the result of introduce intellectual property rights in agriculture.

In response to the international development and pressure of intellectual property rights treaties, India adopted sui-generis plant variety protection legislation simultaneously, granting rights to both breeders and farmers'. However, in reality sense farmers' are never become a breeder for their contribution to development of new varieties.

The article clearly address the legal recognition and protection of farmers' rights in India denied on various ground including conceptual and implementation aspects. This article critically overview, PVP legislation in India how it impact on farmers' rights and directly prevents traditional agriculture practices. In view of literature farmers' rights as an approach of struggling against the perceived inequities of intellectual property rights regimes for plant varieties. The commercial model of intellectual property rights has restricted farmers' rights, which have been increasingly delegalized.



KEYWORDS: Farmers Rights, PPVFR Act, Conceptualization, Inadequacies.

1. INTRODUCTION:

Most of the agriculture production and management governed by the traditional farming communities in worldwide continuously by exchanging of seeds, supply of crop materials and sharing of knowledge to generations. Agriculture plays a key role, food security and economy of developing nations with largely rural population depended on agriculture. India is an agriculture country with more than 70% economy depends on agriculture it provides employment, trade and livelihood 65% of Indian population. Significantly, in India, more than 67% of the total farming population constitutes small and marginal farmers. It is also 24.5 per cent of the country's Gross Domestic Product (GDP). [1] Food is the basic component for survival of mankind. Supply of seeds, cultivation, and growing of crops by farmers' play a vital role and enormous contribution to future generation and society of the nations. Farmers' are an imperative role in agricultural production, food security and part of the economic, social and political fabric of the society in developing countries like, India. Agriculture is carried out mostly in the rural areas, where small and marginal farmers' dominate food production and supply by using

traditional agricultural practices. The rural farming communities are contributors of land races and farmer's varieties and in breeding of new varieties.[2]

In India, the protection of plant varieties and farmers rights through IPR system has historically been denied as is reflected in the patents Act of India. The twin rationale for this denial was (a) to guarantee food security by keeping food and agriculture product away patent monopoly. (b) To keep the traditional or indigenous knowledge that passed from generation to generation away from patent monopoly. It was thought that food security is a basic need whose fulfillment should not be governed by private commercial interests. However, international consensus through UPOV and TRIPs agreement have mandated protection of plant varieties either through IPR and patent system or through a *sui-generis* system. Most of the agriculturally developed and developing nations accepted plant variety protection model.[3]

In contrast, India developed its own *sui-generis* legislation the Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001. The inclusion of farmers' rights in the new legislation was a direct result of civil society mobilization and lobbying. It is broadly regarded as one of the most progressive farmers' rights legislation worldwide. Moreover, as discussions of the implementation of the PPV&FR Act are scant and limited in scope for recognizing farmers' rights, this Act implicitly focus on to attract private investment in plant breeding and encourage scientific innovative formal agricultural practices with directly ignore informal traditional agriculture practices.

In view of literature, through assessment of the farmers' rights requires boarding analysis beyond that having technicalities of implementation and complex measures for registration of varieties, sharing of benefits to the beneficiary, which followed plant variety protection authority and it include the broader policies and politics of farmers' rights to genetic resources in India.[4] India thought that UPOV model was not suitable for the agricultural conditions of developing countries for is good for supporting the livelihood of farming communities but will better suit the needs of developed countries.[5]

In view of wider discussion that, seeds of PBR protected varieties are expected to be costly. A majority of Indian farmers have only small and marginal land holding. They lack the financial capability to make high investments in agriculture. Insufficient knowledge about scientific tools, technology, innovation, and the majority of farmers' are illiterate and poor. Many of them cannot reach seed sold at high cost. That means farmers are excluded from the very technology which is created from the very traditional varieties generated and conserved by them. Hence, principles of natural justice, ethics and equity demand entitlement of the right to save, re-sow, exchange, share or sell seed to Indian farmers.[6]

2. CONCEPTUALISING FARMERS' RIGHTS

Farmers right understood are inherent or traditional, as farmers' right to freely access, use, exchange, and sell crop genetic resources are a key dimension of food sovereignty of nations. The development of agriculture, economy, employment, trade, and biodiversity and food security depends on contribution made by the continuously long time traditional farming communities.

The introduction of intellectual property rights in agriculture, as a result the legal recognition of farmers' right came in to existence. There was a long debate among farmers groups, NGO's, agriculturist, activists, for implementation in regard concept of farmers' rights. It is widely acknowledged that the concept is ambiguous and its implementation fraught with difficulties. As a result of the slow progress made in realizing farmers' rights in the last 25 years, a number of researchers, while agreeing with farmers' rights in principle, have grown increasingly critical of their usefulness in practice.[7]

A. Recognition of Farmers' Rights

The legal recognition of farmers' rights was developed partly in reaction to the introduction of intellectual property rights in agriculture. Farmers' rights are therefore closely linked with patents and plant breeders' rights. However, due to a lack of consensus among states, the concept is still being

developed at the international level and the limited recognition at the international level does not include the rights of farmers over their intellectual assets.

Historically, the concept of farmers' rights those arose as result of international debates on the asymmetric benefits derived by donors of plant genetic resources and donors of technology, as well as the lower status ascribed to farmer's activities compared to commercial plant breeding. While commercial plant breeding was increasingly benefiting from the protection offered by plant breeders' rights or other intellectual property rights, there was no system of compensation or incentives for farmers. [8]

B. Farmers Rights under International Law

Farmers' rights were formally introduced in to a binding multilateral instrument at the global level through the International Treaty on Plant Genetic Resources for Food and Agriculture 2001. The FAO treaty expressly recognizes farmers' rights. The development of the legal concept of farmers' rights could be traced back to the International Undertaking on Plant Genetic Resources, 1983. [9]

Historically, there was nothing like a 'legal' conception of a farmers' right, despite customary rights of the farmers being as old as history. A legalized conception of farmers' rights began to be framed in the context of, and within the accumulation of intellectual property rights in plant genetic resources. It began to be argued that the two concerned international intellectual property protection treaties i.e. International convention for protection of new plant varieties (UPOV-1961, 1978, 1991), and Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs-1995) both treaties recognition of commercial plant breeders rights for the develop new varieties and granted exclusive rights to breeder varieties they develop, and disregard customary rights of indigenous and farming communities to their genetic resources and associated knowledge. [10]

In response the international obligation to implement farmers' rights in national legislations met the several challenges. Most of our farmers' and breeders' especially in the developing and underdeveloped countries are lacking awareness on the type of protection or plant variety protection system that is being offered in this connection. One more drawback of the PVP system is subject different protection system widely approaches protection of intellectual rights to plant varieties.

The recognition of farmers' rights under UPOV made it optional rights for their contribution. TRIPs Agreement does not clear about farmer's rights. Both treaties are recognized commercial plant breeders rights. Along with created conflict interest their implementation objective provisions of the ITPGRFA and CBD are inadequate and not supportive, strictly not comply enforce the rights of farmers' in domestic legislations like, India. So, India ratified both CBD and ITPGRFA treaty. ITPGRFA treaty adopt to large extent the idea of the of Biodiversity convention. However, the treaty is silent with regard to farmers' rights over their landraces. In fact, the 'recognition' of farmers' contribution to plant genetic resource, conservation and enhancement does not include any property rights. [11]

Reviewed literature, there is growing concern that a stronger IPR regime may lead to the skewing of research towards only a few commercially important crops perhaps grown predominantly by farmers in well-endowed regions. The expansion of powerful foreign as well as domestic private sector firms aided by biotechnological tools, may legally prohibits farmers from using or exchanging farm-saved seed of protected varieties without paying appropriate royalties. However, it is most likely that developing countries would legislate their national policies to ensure farmers' rights for using and exchanging their own farm-saved seeds of protected varieties. In such circumstances, the private sector may intensify its bias towards developing seeds using the technique of hybridization or inserting terminator genes, as these technologies have built-in protection systems against brown-bag selling or re-use of farm-saved seeds by farmers. [12].

3. Legal Frame work in India

India excluded intellectual property rights in agriculture and there was no legal system of protection of plant breeders' rights or farmers' rights for centuries. 'Common heritage' or the principle of free exchange based on the view that the major food plants of the world are not owned by anyone

and are a part of our human heritage governed genetic resources. Farmers were free to use, share and exchange seeds and since breeders could not acquire plant variety protection, there was no system of benefit sharing or compensation.[14].

India continued from being an importer to achieving self-sufficiency in food. As a result India's move toward promoting agricultural trade was partly prompted by the entry of foreign seed corporations into the Indian market in the early 1980s, which gave rise to demands for IP protection. India as a member of WTO and signatory to the TRIPs Agreement enacted Protection of Plant Varieties and Farmers' Rights Act, 2001, (PPV&FR) is generally perceived as an outcome of the pressures from India's membership in the WTO, as well as entry of foreign corporations into the market. [15]

A. Protection of Plant Varieties and Farmers' Rights Act, (PPV& FR) 2001.

The PPV&FR Act was formulated in the year 2001, for protection of plant varieties in India by integrating the rights of breeders, farmers and village communities. It is therefore very important to understand the impact of this law on the Indian seed industry in general and the farming community in particular. This becomes more important in the context that even today in India. India's PVP legislation addressing both breeders and farmers rights whether it is balancing Act, both or not. However, this Act primarily focus on commercial plant breeder rights and denying farmers rights to their contribution, sustainable use of resources and sharing of knowledge to develop new varieties of plants. [16]. The objective provisions of Act encourage and provide incentive to commercial plant breeders those who involved in scientific innovative formal agricultural practices and disregard informal traditional agricultural practices in India. India choose plant breeder rights system to protect new plant varieties based on UPOV. Particularly the DUS criteria which is complicated and rigid nature of registration of new varieties especially it is very difficult to fulfill the requirements of farmers in India [17].

India was the first country in South Asia to enact *sui-generis* plant variety protection legislation to address both the TRIPs and CBD mandates to protect breeders' and farmers rights.' At the same time, implementation of the Indian provisions of Act is complex, and has led to mixed results. The research data analyze PPV& FR Act, more favored to the commercial plant breeding industry and protecting rights of private seed sector. Many farmers in India mistrustful of any IPR protection for seeds, their quality and price. Moreover, the inflexible difficulties of both seed registration and applications for benefit sharing make these "farmers' rights" difficult for many rural farmers to negotiate or access [18].

4. INADEQUACIES OF LEGISLATION

The legal protection of farmers' rights in India concluded enactment of *sui-generis* plant variety protection legislation. PPV& FR Act is incomplete and not clear for implementation regard rights of farmers and particularly against interest of traditional farming communities. This Act having many shortcoming and impact of farmers rights in India

- 1) Farmers rights:** Farmers' rights and allows farmers' 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 in to force of this Act. However, the farmer is not entitled to sell 'branded seed of a variety protected under this Act. [19]
- 2) Registration of Varieties:** The criterion for registration of extant varieties and farmers, varieties, however is not entirely clear is the Act. The Act proposes that it would be based on DUS [19] as defined by the Authority adopted from UPOV model of plant variety protection which is suited to the agriculturally developed nations.
- 3) Benefit Sharing:** This Act provided sharing of benefits as an instrument to undermine farmers' rights. The Act pays lip service to the idea of royalty payment to farmers' when their varieties are used for breeding new variety through the mechanism of benefit sharing. Instead of farmers' rights being recognized as collective, community rights derived from their having evolved traditional varieties collectively and cumulatively, benefit sharing replaces farmers' rights with rights the seed

industry, with farmers receiving a small payment. Which farmers will be paid and the amount of payment is left to a District Magistrate.

However, given the fact farmers' varieties have been developed by millions of farmers across large geographical regions, it is difficult, even in well-structured system to identify the beneficiaries among them. Moreover, the system of benefit sharing is very unreliable. The benefit sharing is made subject to the commercial utility of the new derived variety. [20]

- 4) **No protection for Farmers against seed Failure:** This Act does not provide any strong protection to the farmers in case of failure of registered varieties. In view of failure of Bt. Cotton, the farmers of Warangal suffered a loss of Rs. 16657 hectare and no compensation was paid to the victim farmer as yet. This protection is very weak and cannot act as deterrent. The frequent seed failure and the suicides of farmers due to the loss of crops demand a severe punishment to the breeder in case of failure of their seeds or propagating materials. But the absence of liability clause and replacement of a locally accessible justice system centralized Authority. [21]

5. CONCLUSION

The notion of farmers' rights as developed in international level at present is at best incomplete and farmers' rights not defined clearly. Further, the concept of farmers' rights is much better suited to offer a response to some broader challenges associated with the introduction of intellectual property rights in agriculture. In view of literature, critically broader analyzed the address of recognition farmers' rights their implementation and enforcement in national legislation their approaches against the interest of farmers' their contribution for the development of new varieties.

Member countries are failed to establish farmers' as breeders for their protection of new varieties. The plant variety protection systems are directly or indirectly restricted informal innovative agricultural practices and especially ignore the rights of farmers' and traditional communities their contribution, conservation, for the development of new varieties. The international treaties concerning protection of plant varieties i.e. UPOV and TRIPs are strictly recognized plant breeders' rights and indirectly undermine rights of farmers' their contribution in different ways.

The concept of farmers' rights was first recognized by international PGRFA treaty. However, obligations to implement such the rights farmers' in their domestic legislations it's left to the member nations. In response to international obligation, India is one of the first countries in the world adopted *sui-generis* plant variety protection legislation simultaneously, granting rights to both breeders and farmers' rights. The existed PPV & F R Act, 2001, was based on UPOV model to recognize only plant breeders' rights. Most of the provisions of this Act draw from UPOV, in reality this PVP model not suitable to the agricultural developing nations.

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