

Farmers' Rights in India:

The International Treaty on Plant Genetic Resources for Food and Agriculture recognizes Farmers' Rights and obliges the countries being Parties to the Treaty to protect and promote these rights. Countries, however, have not yet been able to evolve any consensus on how to define or implement Farmers' Rights. International coordination in this regard is also lacking. These are serious drawbacks that could prevent Farmers' Rights from becoming a realistic and workable mechanism. This report attempts to evolve options for the practical implementation of Farmers' Rights through a case study of India. Over forty stakeholders, including farmers, NGOs, industry and government representatives in India have been interviewed to explore methods to realize Farmers' Rights.

India is among the first countries in the world to have passed legislation granting Farmers' Rights in the form of the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR). India's law is unique in that it simultaneously aims to protect both breeders and farmers. The Indian case assumes immense importance due to the country's lead in establishing a legal framework on Farmers' Rights, its international contribution to negotiations on Farmers' Rights, and the complexities of agriculture in India within which the country is attempting to implement these rights. India's case is also significant as the Indian gene centre is recognised for its native wealth of plant genetic resources.

Agriculture plays a key role in India's economy both from the point of view of employment generation as well as its share in GDP. A recent economic survey expressed concern with the decline in the share of the agricultural sector's capital formation in GDP. The dismal situation in which many farmers find themselves in India today was reflected in a study sponsored by the Government of India, known as the 'Situation Assessment Survey of Farmers' (SAS), which for the first time assessed the situation of farmers in 2003. An alarming trend has been witnessed in India in recent years with rising rates of farmers committing suicide. Newspapers echoing the 'crisis in Indian agriculture' continue to report daily incidents of suicides in various parts of the country. Several different reasons have been put forward as the cause of suicides including: mounting debt of farmers, crop failures due to overuse of pesticides, imbalances of international trade, or social and psychological factors.

Agriculture was generally excluded from intellectual property protection in India and there was no legal system of Plant Breeders' Rights or Farmers' Rights for decades. The Seed Association of India, formed in 1985, has actively promoted the need for plant breeders' rights in the country. With the adoption of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), bilateral and multilateral pressure was also exerted on India to establish intellectual property rights in agriculture. There was enormous protest against implementing TRIPs by non-governmental organizations and farmers' lobbies in the country. The Protection of Plant Varieties and Farmers Rights Act (PPVFR), 2001 arose amidst this controversy. The PPVFR Act initially emerged as a result of the demands of the seed

industry for breeder's rights. A chapter on Farmers' Rights was added to the Act due to pressure by NGOs.

India's PPVFR Act not only upholds farmers' rights to save, use and exchange seeds and propagating material but also attempts to enable farmers to claim special forms of intellectual property rights over their varieties. The Act grants plant variety protection on new varieties (largely modelled on UPOV), extant varieties and essentially derived varieties. Extant varieties include farmers' varieties, varieties in the public domain and varieties about which there is common knowledge. Nine rights can be said to have been given to farmers under the Act including: the rights to save, exchange and (to a limited extent) sell seeds and propagating material, to register varieties, to recognition and reward for conservation of varieties, to benefit sharing, to information about expected performance of a variety, compensation for failure of variety to perform, availability of seeds of registered variety, free services for registration, conducting tests on varieties, legal claims under the Act, and protection from infringement.

The National Biodiversity Act, 2002, based on the Convention on Biological Diversity, regulates access to and use of genetic resources in India. This Act also focuses on benefit sharing, protection of traditional knowledge and prior informed consent. The Geographical Indications Act, the Patents Amendments Act and the Seed Bill also have implications for Farmers' Rights in India. The Seed Bill could restrict farmers' right to sell their seeds, and the Patent Amendment Acts could pave the way for further extensions of patentability in agriculture that may restrict farmers' rights to save, use or exchange seeds. The Geographical Indications Act may enable farmers to claim rights for agricultural goods originating in a specific region, or it could restrict access of farmers to the protected goods depending on the way it is implemented.

A large number of diverse stakeholders influence India's policy on Farmers' Rights. The views of various stakeholders on the importance, barriers and options for implementing Farmers' Rights were compiled and analyzed in this study. Forty-two interviews were conducted among representatives from NGOs and farmer's lobbies, the government, the seed industry, experts and among farmers. Interviews were conducted in various parts of India: New Delhi, Chennai, Hyderabad, Bangalore, Pune and Uruli Kanchan.

Stakeholders across various categories acknowledge the importance of Farmers' Rights nationally and globally. A majority of the respondents expressed that Farmers' Rights must incorporate rights beyond the farmer's right to save, use and exchange seeds. Various issues were addressed as important rights for farmers, such as support for inputs, access to technology and farmer's participation in decision-making. While some favoured the government as the main agency to facilitate benefit sharing, others pointed to the need for NGOs or for an independent agency to promote benefit sharing. The stakeholders place a great deal of responsibility on the Authority established to implement Farmers' Rights in India to overcome the barriers. In addition, stakeholders are looking to the Governing Body of the International Treaty to provide guidance and direction for the implementation of Farmers' Rights.

India's case holds some lessons for developing countries. Two broad approaches to defining Farmers' Rights in India reflect the options facing developing countries: 1) Farmers' Rights as a form of intellectual property rights 2) Farmers' Rights as a development right. The first approach poses Farmers' Rights as a counter to Plant Breeder's Rights and argues that if commercial breeders can acquire intellectual property over their inventions, then farmers' innovations must also be recognized and rewarded. The second encompasses a range of concerns including food security, livelihood rights, social justice and access to resources. India's policy largely adopts the first approach, but also acknowledges the second view. Many respondents to the survey felt that Farmers' Rights should move beyond ownership rights to incorporate development rights. Yet, even among NGOs, farmer leaders, and individual farmers, there were differences regarding the nature of development rights to be addressed. NGOs focused on conservation and access to seeds, while individual farmers pointed to guaranteed prices, electricity, low interest credit and reducing the role of middlemen.

The approach of defining Farmers' Rights as intellectual property rights may provide political rather than economic benefits for developing countries, whereas defining Farmers' Rights as development rights may ensure greater economic/social advantages. While defining Farmers' Rights as a kind of intellectual property rights could provide a tool for negotiating at the global level, it may not be of great utility in ensuring rights for farmers in developing countries. Legal and economic costs of establishing the system, the difficulties of legally claiming rights for farmers, and the limited returns from plant variety protection itself are some of the reasons why IPR-based Farmers' Rights approaches are unlikely to provide significant economic returns to farmers. In addition, developing countries may not gain much from seeking royalty payments for ownership of germplasm and may gain more from effectively utilizing genetic resources. Domestically, there is a need to gradually incorporate more development-oriented rights within the Farmers' Rights framework. Developing countries could attempt to forge a strategy that takes advantage of both approaches by utilizing the IPR type approach as a strategic tool to argue for Farmers' Rights globally, while domestically incorporating greater development oriented rights.

Another important lesson in defining Farmers' Rights is the need to avoid an 'anticommons tragedy'. An 'anticommons tragedy' arises when governments grant too many people rights over a resource with no one having an effective privilege of use. India's PPVFR Act is an attempt to evolve a multiple rights system that could pose several obstacles to useful utilization and exchange of resources. Developing countries need to evolve mechanisms to ensure exchange of agricultural resources as part of Farmers' Rights.

India and other developing countries could explore options to further develop the International Treaty's Multilateral System approach. The International Treaty on Plant Genetic Resources establishes a specified list of crops on which there are agreed rules for access and benefit sharing. In a sense, the Treaty attempts to redefine the principle of common heritage. India could not only support this initiative by making more crops available on the terms and conditions of the Multilateral System, but could also

explore the option of developing a parallel national system which includes crops significant for India's food security. Such systems could provide the means for promoting farmers' and breeders' access to resources.

India's ability to be one of the first countries in the world to forge a national legislation on Farmers' Rights is a significant landmark. India has evolved a unique legislation, but still faces the task of implementation. This process is likely to be fraught with difficulties not only in balancing intellectual property rights with Farmers' Rights, but also in ensuring coordination between various legislations such as the PPVFR and the National Biodiversity Act. It is also evident from the study that no clear agreement exists among the various stakeholders in terms of how to implement the Act. This should serve as a signal internationally that establishing legislations is insufficient to effectively promote Farmers' Rights.

The Governing Body of the International Treaty must now take up the task of establishing clear guidelines for defining and implementing Farmers' Rights. An international movement for Farmers' Rights would have to tread carefully to respect the sovereignty of nations while promoting global cooperation. However, Farmers' Rights must be promoted at the international level and cannot be left only to national governments to design. If each country, under Farmers' Rights, sets up barriers to access of genetic resources, limits exchange of resources, and competes to stake claims over innovations, the implications would be severe for farmers.

The Farmers' Rights movement has witnessed a long and chequered history. An international mechanism is urgently required to promote some level of consensus on defining and implementing these vital rights. If the global community does not face up to the challenge of unambiguously articulating Farmers' Rights, what has been achieved so far in the battle to establish these rights may be lost. Such a loss would be heavy for farmers in India and other developing countries who need Farmers' Rights to protect their livelihoods, secure their access to resources, protect their rights to seed, and, above all, lift them out of poverty.