

Farmers' Rights Movement and the Convention on Biological Diversity

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Abstract: *Farmers' Rights as a political concept emerged for the first time in the early 1980's to highlight the unremunerated innovations of farmers which were the basis of all modern plant breeding. The developed nations want to monopolise plant genetic resources. While the less - developed nations despite having more plant genetic diversity at their disposal, favour keeping plant resources in the public domain, preferring protection for traditional knowledge and farmers rights over monopoly rights for private interests. The Convention on Biological Diversity has been one of the responses of the world community to conserve the ecological basis of biological production through biodiversity conservation. It encourages countries to develop their own policies and programmes to conserve and sustain the resources within their own borders. The Convention on Biological Diversity makes provisions for the protection of farmers' rights and national rights to biodiversity. It encourages bilateral contracts between member states, where governments or corporations exploiting biological resources should provide compensation for the exploited resource and share benefits which arise from developing the resource.*

Keywords: Farmers Rights, Convention on Biological Diversity, Developed world, developing world

1. Introduction

Farmers' Rights as a political concept emerged for the first time in the early 1980's with Pat Roy Mooney and Cary Fowler coining the term to highlight the valuable but unrewarded contributions of farmers to plant genetic resources for food and agriculture.¹ The idea was to bring to light the unremunerated innovations of farmers which were the basis of all modern plant breeding. With the green revolution, people started using modern methods of production that led to a significant increase in the yield percentage. Specialized high - yielding varieties of crops were developed by using and modifying the genes obtained from traditional plants. In this way, the modern agriculture sector garnered a lot of profits but these profits did not flow back to the traditional sector from where they actually originated. Seeing the rise in profits, farmers have converted their traditional methods of agriculture to modern agricultural techniques. All this has led to the erosion of the traditional sector which is the original provider of raw materials for the modern agricultural sector. This whole scenario depicts the biodiversity problem of the loss of crucial genetic diversity in pursuit of maximum productivity.

A conflict of interests regarding plant monopoly rights and intellectual property rights exists between the developed countries of the north and the developing and under - developed countries of the South. Developed Nations such as U. S., European countries and Japan have a vested interest in promoting strong plant monopoly rights because they are a large source of revenue and their companies invest heavily in plant research and innovation.² The developed nations want to monopolise plant genetic resources. While the less - developed nations despite having more plant genetic diversity at their disposal, favour keeping plant resources in the public domain, preferring protection for traditional knowledge and farmers rights over monopoly rights for

private interests.³ This resistance for plant monopoly rights in the under - developed world stems from both heritage and experience. Countries opposing plant monopoly rights have a strong common heritage culture where the knowledge of cultivation and farming techniques has been passed down through generations. Thus, individual monopolization of that knowledge is seen as wrong.⁴ Also many plant monopoly rights prevent farmers from freely collecting and exchanging their farming practices.

Since, the majority of the world's biodiversity is situated in the South; the North has been exploiting and monopolizing the South for decades. The under - developed world's biodiversity, instead of being regarded as the common property of the local communities or the national property of the state, is considered as the common heritage of mankind. The developed world, sells the modified biodiversity back to the under - developed world as high - priced and patented seeds and drugs. As Jack Kloppenberg, has observed, "Whereas germ plasm flows out of south as the 'common heritage of mankind' it returns as a commodity".⁵ After centuries of biodiversity rich south, giving free access to its resources to the north, the south is now not willing to have its biological resources taken for free and sold back to them at exorbitant prices as improved seeds and drugs. From the South's point of view, it is considered unjust, that their biodiversity be treated as 'common heritage of mankind' and the patented and priced biological commodities of the North developed from the south's own resources be treated as the private property of the North. The issue of patents was central to the debate of germ plasm over the equity issue. Researchers and scientists from the developed world were revolutionalising their agricultural practices by altering the genetic structure of plants and looked towards the

¹ Fowler, Cary, *Unnatural Selection, Technology, Politics and Plant Evolution* (Switzerland: Gordon & Breach, 1994), p. 192.

² Biber-Klemm, Susette and Cottier, Thomas, *Rights to Plant Genetic Resources and Traditional Knowledge: Basic Issues & Perspectives* (U.S.A.: CABI Publishing, 2006), p. 115.

³ Heller, M., *The Gridlock Economy: How Too Much Ownership Wrecks Markets, Stops Innovation and Costs Lives* (New York: Basic Books, 2008), p. 57.

⁴ Aoki, Malthus, Mendel & Monsanto, "Intellectual Property and the Law and politics of Global Food Supply: An Introduction", *Journal of Environmental Law and Litigation*, Vol. 19, No. 2, p. 19.

⁵ J. Kloppenberg, *Seeds and Sovereignty: The Use and Control of Plant Genetic Resources* (U.S.A.: Duke University Press, 1988), p. 10.

developing world for primitive germ plasm. They assumed the germ plasm of the South as a common resource and hence used it freely for further research and development. The North used the genetic resources of the South to produce genetically altered seeds for the international market and then patented them for their own gains. These patented seeds were considered the private property of the North and sold back to the South at exorbitant prices. Further, these genetically altered seeds often needed expensive additives like pesticides and chemical fertilizers that were both financially and environmentally costly.

In the mid - 1980's, this unequal exchange of biological resources between the developed world and the Third world was finally challenged in the Food and Agricultural Organisation. FAO discussions led to what is termed as the 'seed wars'. While the seeds of the farmer's in the third world were considered as the common heritage of mankind, the seeds from the seed industries of the north, due to breeder rights were patented and treated as private. The third world argued, that if the plant breeders had rights of ownership, control and compensation due to their laboring to develop a new variety, the third world also had rights since, it is they who have developed and safeguarded the biodiversity that the corporations of the north, use as raw materials.

For many years there have been discussions within the FAO, concerning the appropriate policies for the management of germplasm. One main concern is the distribution of the world product from global agriculture. Different varieties of genes come from different parts of the world into research organizations, where they are then converted by scientists into high - yielding varieties of seeds. The distribution of profits from the global proceeds of agriculture is perceived to be unfair because much of the material supplied to the gene bank was derived from less developed countries which practiced traditional methods of agriculture and when these countries wanted to convert to modern techniques, then, they had to pay a high price for the seeds which actually originated from their own soil. This was because of the plant breeder rights that gave exclusive marketing rights to the developers of the newly improved seeds. But, the genes, that were with the IARC gene bank network were held under a free access scheme, where they were made available to anyone requesting it for agricultural research and development. This dual treatment between the raw germplasm from developing countries and improved germplasm from the developed countries created a great controversy within the FAO general assembly which resulted in the adoption of the International Undertaking on Plant Genetic Resources (IUPGR), in which the developing world agreed to recognize the legitimacy of the concept of plant breeders rights in return for the creation of farmer rights. Farmers' rights were observed through the creation of an international gene fund for the conservation and utilisation of plant genetic resources. This gene fund was used to reward farmers with programmes beneficial to all.

Farmers' rights as defined in the text of the International Undertaking on Plant Genetic Resources of the Food and Agricultural Organisation of the United States mean "rights arising from the past, present and future contributions of

farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity."⁶

Farmers' rights as a movement grew out of the dissatisfaction of a number of groups regarding the waning power of farmers to control farming methods and the lack of compensation for their contributions to plant genetic diversity.⁷ It sought to recognize that the world's germplasm had resulted from thousand of years of selective breeding done by farmers. According to the Farmers Rights Project initiated by Dr. Regine Anderson, "realizing farmers rights means enabling farmers to maintain and develop crop genetic resources as they have done since the dawn of agriculture and recognizing and rewarding them for this indispensable contribution to the global pool of genetic resources.

The problems that initiated the movement can be summarized as:

- Plant Monopoly Rights - Protection of plant resources is a complex web of overlapping legal mechanisms which emanate from different national and international governing bodies. Along with intellectual property rights, the developed countries have developed aggressive plant monopoly systems to reward plant innovations. U. S. A. has the most extensive protection system for agricultural biotechnology in the world, with both patented and sui - generis protection schemes. As a result a lot of patents have been gathered around many of the world's most useful and valuable plant resources. It is true that monopoly rights do increase innovations but they also stifle them. Firstly, plant monopoly rights prevent many innovators from entering heavily monopolized areas as they cannot afford to pay the licensing fees required to enter into such a populated monopolized areas. Secondly, plant monopolies stifle innovation by reducing the available biodiversity and plant variety through farmer cross - breeding. The numerous federal and state monopolization systems have effectively barred farmers to further develop commercial plant varieties.
- Breeder Rights Overpowering Farmers Rights - Proponents of breeders rights argue that plant monopoly rights are the most successful way to development. The financial motivation of monopoly rights has led plant breeders to grow breeds that meet the demands of the global community, thereby, increasing the efficiency, availability and nutritional value of food and medicinal produce. On the other hand, farmers' rights proponents argue that breeder rights are a source of inequity, systematically taking away plant resources and revenue from the developing world. Farmer's rights thus act as a counterweight to plant breeder rights, compensating the

⁶ Shiva, V., "Agricultural Biodiversity, Intellectual Property Rights and Farmers Rights", Economic and Political Weekly, Vol. 31, No. 25, 1996, p. 1625.

⁷ Patel, Kirit, *Farmers Rights over Genetic Resources in the South: Challenges and Opportunities in Intellectual Property Rights in Agricultural Biotechnology* (U.S.A.: CABI Publishing, 2004), p. 95-96.

upstream input providers who make downstream innovations possible.⁸

- The main elements of farmers' rights discussion can be classified as:

Balancing Breeders Rights - The initial concern of farmers' rights proponents was that breeders rights would not be detrimental to the practices of farmers to plant, use, modify, share and reuse new plant varieties. These practices were the contribution of farmers to conservation and innovation in plant genetic resources and as a result, should be protected. Farmers' rights were seen as an end to achieve this.

- **Reward to Farmers'** - Recognition and reward are a great form of encouragement and so it is understood that the contribution of farmers to the global genetic pool should also be recognized in practical ways. Measures like free exchange of plant genetic resources, sharing of research results and training farmers for new farming techniques were suggested. Benefit sharing formed an integral part of the discussion. Some suggested that benefit - sharing should be on a bilateral basis while some argued that this would not be feasible because of the nature of exchange of plant resources over the decades.
- **Conservation Of Plant Genetic Resources and Related Knowledge** - It was felt that apart from balancing breeder rights, more direct measures were required which would enable farmers to continue to act as innovators and custodians of plant genetic resources. Therefore measures to conserve plant genetic resources and related knowledge were seen as important. These measures were considered as a crucial element of farmers' rights, important for present and future food security.

International Fund - It was agreed that an international fund for farmers would be established, which would provide the necessary funding for farmers. It would support farmers in the conservation and development of new plant genetic resources, and also reward them for their contributions to food and agriculture.

The International Treaty on Plant Genetic Resources for Food and Agriculture was adopted at the thirty - first session of the FAO. It entered into force on 29th June 2004. Its objectives are the conservation and sustainable use of these resources, fair and equitable sharing of benefits arising from their use in harmony with the CBD principles for sustainable agriculture and food security. The treaty aims to ensure that plant genetic resources for food and agriculture would be preserved, explored and made available for plant breeding and scientific purposes. In the Preamble to the International Treaty, the contracting parties affirm that the past, present and future contributions of farmers to the conservation, improvement and exchange of plant genetic resources form the basis of farmers' rights. Farmers' right focuses on:

- The right to produce, modify and market plant varieties and their products
- The right to access different plant varieties and the right to plant and exchange seeds of commercial varieties

- The right to be compensated for the use of their plant varieties in the development of a new, modified commercial product by another third party
- The right to have a say in decision - making processes related to acquiring, modifying and using plant genetic resources.

Legally Binding Provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture:

Section 13.3, states that, farmers who contribute to maintaining plant genetic resources for food and agriculture were to receive benefits that arise from the Access and Benefit Sharing System established under the treaty.

Section 18.5, states that, funding priority would be given to the implementation of the agreed plans and programmes for farmers in the developing world, who conserve and sustainably utilize plant genetic resources for food and agriculture.

Article 9, of the treaty is very important for implementing farmers' rights, but it is not legally binding. It states that the responsibility for implementing farmer's rights rests with the governments of sovereign states. Certain measures for the protection and promotion of farmers rights like, protection of relevant traditional knowledge, participation in decision - making, equitable benefit - sharing and the right to use, modify, sell and exchange farm - saved seeds are suggested. But these suggestions are not legally binding and the governments are free to use them at their own discretion as and when the need arises.

The Convention on Biological Diversity has been one of the responses of the world community to conserve the ecological basis of biological production through biodiversity conservation.⁹ CBD was the first legally binding international treaty which addressed the problem of conservation, sustainable use of resources and equitable sharing of benefits derived from the utilization of biological resources.

The CBD recognizes plant biological materials as the sovereign property of the states. Article 3, of CBD states that, "States have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

It encourages countries to develop their own policies and programmes to conserve and sustain the resources within their own borders. Hence, the onus of preservation falls on the biologically rich countries, which are mostly developing nations. The developing countries are financially lacking and so CBD entails the developed countries to provide financial support to the developing countries and share benefits with them, especially with nations whose natural resources they

⁸Helfer, L., "Regime Shifting: The TRIPS Agreement and New Dynamics of International Intellectual Property Lawmaking", Yale Journal of International Law, Vol. 29, 2004, p.37.

⁹ Shiva, Vandana, "Agricultural Biodiversity, Intellectual Property Rights and Farmers Rights", Economic and Political Weekly, Vol. 31, No. 25, 1996, p. 1622.

use (Article 20). CBD encourages bilateral contracts between member states, where governments or corporations exploiting biological resources should provide compensation for the exploited resource and share benefits which arise from developing the resource.

The Convention on Biological Diversity makes provisions for the protection of farmers' rights and national rights to biodiversity. In the preamble the convention states that the contracting parties recognize "the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitable benefits arising from the use of traditional knowledge, innovations and practices, relevant to the conservation of biological diversity and sustainable use of its components".

Article 10 (c) of CBD states, "each contracting party shall as far as possible and as appropriate, protect and encourage customary use of biological resources in accordance with traditional culture practices that are compatible with conservation or sustainable use requirements".

Article 18.4 of CBD states, "the contracting parties shall in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies in pursuance of the objective of this Convention".

Article 15, Access to Genetic Resources and Article 16, Transfer of Technology of the CBD address the goals of the farmers' rights movement by providing guidelines for agreements on biological resource sharing. Further, Article 8 (j), Traditional Knowledge, Innovations and Practices lends support to the third and fourth element of the farmers' right agenda, namely, Right to Compensation and Right to participate in PGR policy.

Article 8 (j) requires that states, "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices."

Realizing farmers' rights is now considered as a vital means to stop genetic erosion and ensuring food security. Without them, the farmers will lose their freedom. If there would be no political mechanism to limit monopolies in agriculture, hunger and famine would be widespread. Farmers' rights counterbalance inequities in the world.

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