



Question of Seed Sovereignty

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This article is based on PepsiCo case, and needs of seed research, that appeared in The Hindu Business Line on 13th June 2019. It talks about the bigger picture of PEPSICO Inc vs farmers controversy (Regarding the violation of patent of FC5: A variety of potato).

PepsiCo Inc. had filed a lawsuit against Indian potato farmers in Gujarat for **violating patent law**. PepsiCo accused farmers of cultivating a variety of potato called FC5, which is under patent. According to PEPSICO, only it can supply the seed of FC5 variety and only to its contract farmers and buys their produce, no other farmer is supposed to use the seeds without permission of PepsiCo.

After much of a public clamour criticising PepsiCo, it eventually dropped the charges against the farmer but the issue raised a broader question of seed sovereignty and honouring of contract farming.

What are the implications of PepsiCo vs Farmers issue?

- **It highlights 3 fundamental questions:**
 1. **The vulnerability of Indian farmers against big corporate**
 2. **Poor implementation of contract farming rules**
 3. **India's intellectual property rights regime.**
- **The vulnerability of Indian farmer against big corporate**
 - In India, farmers mostly are often found in such conflicts with corporate, because:
 - Most farmers are below or marginally above poverty and uneducated. So they are simply not aware of the laws pertaining to the complex matter like a patent.
 - Farmers follow certain practices like saving and resowing of seeds, exchange of seeds and sourcing of seeds from the market.
 - Apart from that, farming in India is not very profitable due to lack of reach and infrastructure, this makes farmers subject to such harassment at the hands of

corporate.

- **Poor implementation of contract farming rules.**

Contract farming in India many times results in dishonouring of contract.

Reasons for such dishonouring:

- - Lack of institutional mechanism for dispute redressal on matters of quality and other terms of the contract.
 - Uneducated farmers.
 - No uniform policy for contract farming
- **The role of APMCs:** Designated as an authority for registration and dispute settlement in most states, the APMCs themselves are marred by corruption and administrative inefficiencies, this jeopardizes the contract enforcement.

What is Contract Farming?

- Contract farming is an agricultural product that can be carried out based on a pre-harvest agreement between a food processing unit or exporter and farmers or farmer organisations.
- Contract farming provides a win-win situation for both farmers and corporate
 - Farmer: It assures them of price guarantee irrespective of market volatility.
 - Corporate: It assures them of quality produce.
- In India contract farming formalized by '**Model Agriculture Produce Marketing Act 2003**', but since agriculture is a state list subject, therefore contract farming is not uniform.

What are the advantages of contract farming?

- Contract farming addresses the problem of low investment in agriculture and ensures a supply of quality inputs, technical guidance and management support for farmers.
- It provides an assured market and a pre-agreed sale price for produce, makes it easier for farmers to access cheaper institutional credit.
- MSP's in India are not backed by assured government procurement, and thus price volatility is not checked. So when market prices fall below MSP, contract farming can be instrumental in securing incomes for farmers.

India's intellectual property rights regime.

- According to **Seeds act 1968:** Seeds are outside the ambit of IPR, it is Sui-generis right of the farmer.
- **According to the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR Act)**
 - **Section 39 of the Act** allows farmers to save, use, sow, re-sow, exchange,

share and even sell farm produce including seed of a protected variety. But when it is sold, it cannot be packaged and branded as such.

- The **Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act** allows protection of plant varieties for some years if they are found to be distinct, uniform and stable.
- Thereby the PPVFR Act seeks to protect the rights of farmers and communities using plant varieties with desirable traits, which they have conserved over the years.
- India is the only country which has provided for the farmers to use, multiply, share informally or sell formally any protected variety, as long as they do not brand it and sell it. But these laws are compliant with WTO's TRIPS(Trade-Related Aspects of Intellectual Property Rights)
- But the major issue is farmer doesn't even know what is IPR.

Way forward

- Research is the key to progress. Climate change, new pests and diseases, abiotic stresses, changing food baskets of people, increasing incomes and similar factors require the development of new varieties as the older ones do not meet the new demands.
- Educate farmers through Promotion of agricultural extension services like Kisan Call Centres, Kisan Vigyan Kendras.
- Promote Farmer Producer Organizations
- Encourage states to adopt the Model Contract Farming Act, 2018.
 - The Act takes contract farming out of the ambit of Agricultural Produce Marketing Committees (APMCs).
 - It proposes to set up the alternate dispute redressal mechanism.
- Litigation must be taken as the last resort to settle the dispute
- No one, including farmers, should be allowed to break contractual obligations. Contract farming enables value-added agriculture, which brings better quality products to the consumer and better price realization to the farmer depends on contract farming.
- Contract farming must mandatorily incorporate the provision of crop insurance to protect the farmer.

Though Indian government is under pressure from global trade regime to enforce strict IPR regime but a strict IPR policy is not advisable in Indian Agriculture since India is an agrarian economy and a strong IPR will lead to creating a monopoly of a certain company in some commodity(like case of Monsanto in Bt cotton), which will certainly not be in India's national interest.

PepsiCo case is an opportunity for our courts to interpret the PPV&FR Act and our Contract Act and give a direction which could set the tone for our future of contract farming with proprietary varieties

Drishti input:

Indian farmers face the double whammy of IPR on one hand, and dishonouring of contract on the other hand, against the big corporates, despite favourable legislation. Comment.
