

FARMERS' RIGHTS UNDER ATTACK BY DECISION TO JOIN UPOV

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In August last year, Parliament passed a law granting strong and proactive rights to the Indian farming community. This Farmers Rights law of 2001 is the only one of its kind in the world so far. It has been praised by all developing countries and many developed countries too since it is the only law in the world which has granted such strong protection to its farmers, at a time when the forces of globalisation are threatening agricultural communities across the world.

Barely a year later, even before the law has been implemented, there is news that the Agriculture Ministry have recommended to the government that rather than have this kind of law, India should become a member of the international platform called Union for the Protection of New Plant Varieties (UPOV). UPOV is a developed country platform, which has no mention of farmers' rights. It is a platform for granting and protecting the rights of Breeders, which today means corporate breeders like Monsanto.

International reactions to India's efforts to join UPOV are already coming in. The International Federation of Seed Industries has said it will not agree to the Farmers Rights provisions if India wants to join UPOV. The attorneys of large seed corporations, who have started reacting to India's application to UPOV, have pointed out that the Indian Farmers Rights will not be accepted by UPOV members and will have to be changed substantially if India wants to become a member. UPOV itself has made it clear that India's Farmers Rights would not be acceptable. In fact at a recent meeting of the CGIAR, a senior UPOV official made the remark that India's Farmers' Rights was "fit only for the dustbin" as far as UPOV was concerned.

1. It needs to be clearly understood that it is impossible to maintain the pro-farmer provisions of the Indian Act and be a member of UPOV at the same time.

2. It is crucial therefore that a decision on a matter of such far-reaching consequences should only be taken after a thorough discussion in Parliament.

SOME DETAILS ON WHY INDIA SHOULD NOT JOIN UPOV

1. Joining UPOV will be a setback for Indian agriculture and undo the gains we have made in the recently enacted legislation, the Plant Variety Protection and Farmers Rights Act, 2001
2. There is no requirement under WTO/ TRIPS to join UPOV . UPOV is not even mentioned in the treaty text, which only requires some kind of effective protection for the breeder of a new variety.
3. The Indian Plant Variety Protection and Farmers Rights Act, 2001 provides effective protection to plant breeders and fulfils WTO obligations. There is no need to join UPOV.

4. UPOV was set up by private plant breeders (corporations) to protect Plant Breeders Rights. They set up UPOV to protect private investments being made in the US and Europe in the sixties and after.
5. UPOV has no notion of Farmers Rights. That is not its mandate. Farmers in the developed world are not demanding any Farmers Rights.
6. UPOV is suited to the needs of agriculture in the west. It is totally out of tune with ours and has no provisions to protect our vulnerable sectors.
7. India has enacted a good law providing explicit and proactive rights for farmers. These include,
 - The *right to sell seed*, even of a protected variety, to other farmers.
 - *Protection for farmers' varieties* by registering them.
 - *Farmers' permission mandatory* before using his variety for breeding work
 - *Royalty has to be paid to the farmer* for using a farmer's variety to breed a high yielding variety
 - *Compensation has to be paid to the farmer* if the breeders' seed was of poor quality and led to crop failure.
 - The farmer is *protected against the terminator technology* because the Indian law forbids its use.
 - None of these conditions would be permissible under UPOV.
8. The decision to join UPOV goes clearly *against the directions given by Parliament* when it enacted the PVP Act last August, with its well defined, proactive Farmer's Rights. Parliament sent a clear signal against UPOV when it passed the Act containing the kind of rights, which are not permitted under UPOV.
9. The Indian law has been praised as a development and farmer friendly legislation that succeeded in using the flexibility of the TRIPS provisions with intelligence. An important feature of the Indian law has been precisely, its sidestepping UPOV and charting a new course. Many developing countries, encouraged by the Indian legislation are using it as a model for their own *sui generis* legislation.
10. Developing a *developing country alternative to UPOV* is crucial. Developing countries oppose UPOV and would be happy to join any non- UPOV platform that was floated.

Civil societies and governments have presented alternatives, which should be discussed.

11. Gene Campaign has proposed an alternative called Convention of Farmers and Breeders – CoFaB. The UNDP Human Development Report (1999) describes CoFaB as *“a strong and coordinated international proposal, which offers developing countries a far better alternative to European legislation, by focusing on the need to protect farmers rights and food and nutritional security goals of their people”*.
12. The OAU has proposed a Model Law for biodiversity and Plant Varieties. The Bonn meeting of the Conference of Parties of the CBD has identified aspects of sharing benefits with farmers and local communities.
13. All these can be the starting points of framing a developing country alternative to UPOV and protecting Farmers Rights and Breeders Rights at the same time.

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