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## RIGHT TO FOOD

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I hate to take you away from blood and gore and cloaks and daggers and I know that what I am going to say is going to be boring compared to what has been said in the earlier session. But it is very important and because it is so important and so new, it is important that the judiciary is familiar with this material because these kind of international developments and their outcomes in the form of national legislation is going to have a direct impact on the food security and livelihood options of marginal people.

The international developments that are taking place now are primarily from within the World Trade Organisation (WTO), many of them adverse, many not negotiated well and many that we are fighting to regain some lost ground.

These are the:

- Trade related aspects of Intellectual Property Rights
- Agreement on agriculture
- Agreement on Sanitary and Phyto Sanitary measures
- Technical Barriers to Trade

All of them are going to impact on the food security of the country. Other treaties, which are more 'friendly' as compared to those coming out of the WTO, are:

- The International Treaty on Plant Genetic Resources (ITPGR) – This is negotiated in the Food and Agriculture Organisation (FAO)
- The Convention on Biological Diversity

Both of these provide for granting rights to communities and farmers that we have to now translate into national legislation.

Trade Related Intellectual Property Rights (TRIPS) covers

- Copy Rights
- Trade Marks
- Patents
- Sui Generis systems
- Geographical Indication
- Industrial Design
- Processes
  - \* Biological
  - \* Microbiological

India has chosen a sui generis system for protecting plant varieties (that is seeds).

The other factors that will impact on agriculture and therefore food security are the clauses contained in the provisions for protection based on Geographical Indication (GI). This could allow us to protect products like Basmati Rice and Darjeeling Tea but at the moment protection under GI is extended only to wines and spirits like Champagne wine and Scotch whiskey.

**SOME OF THE MOST IMPORTANT LAWS THAT ARE TO BE CONSIDERED:**

These are the four major legislations that we have formulated after the coming into effect of the WTO:

1. The Protection of Plant Variety and Farmers Rights Act 2001
2. Geographical Indication of Goods Act 1999
3. Patent Amendment Act 2000
4. Biological Diversity Act 2002

The Protection of Plant Variety and Farmers Rights Act includes a whole chapter on Farmers Rights. This has to be emphasized because India's is the only legislation in the world to include farmers rights. It is a very hard won right. Gene Campaign has been central to fighting for these rights and these rights are under threat right now by an action taken by the Executive and the Union Cabinet without consultation with the Parliament.

The Geographical Indication of Goods Act is an act which will protect products like basmati rice, Darjeeling tea, ratnagiri mangoes, kolhapuri chappals and likewise.

The Patent Amendment Act (PAA) 2000 has undergone one amendment in 1999, another in 2002 and a third amendment is pending. What we need to be vigilant about in the case of the PAA what will constitute patentable subject matter. One of the problems that have arisen out of the WTO and the TRIPS chapter is the fact that biological material, seeds and genetic material will now become patentable subject matter. This has not been the case in Indian legislation; this has not been the case in other legislation in the developing world because of the crucial nature of bio-resources to agriculture and to traditional healing methods. These subjects were kept out of the patent purview. Since they were essential to the needs of rural and tribal communities.

We now have to make laws to comply with what we have accepted in TRIPs. The laws on bioresources will impact on medicinal plants and on crop varieties, therefore they will have an impact on traditional healing and agriculture and who will control the seed.

80% of India still relies upon traditional healing and we do not want medicinal plants and indigenous knowledge under the purview of the Patent Act. We have seen what happened to the turmeric case. We will have to be vigilant that we legislate for ourselves here in the interest of our communities.

The Biological Diversity Act 2002 is an Act that is going nowhere. It is a badly framed Act and is going to create chaos and confusion. But it is an Act that could have had good clauses, like protection of the rights of local communities and of the biodiversity they conserve.

In the WTO when we accepted the TRIPS provisions, we did not accept patent on seeds. This did not happen on its own accord. There was tremendous civil society pressure against seed patents. Finally what we accepted and what we have legislated is the sui generis option.

India's sui generis law is called the Protection of Plant Variety and Farmer's Rights Act 2001. It provides rights to both plant breeders and farmers. In any sui generis legislation, it is the nature of the breeders rights and the farmers rights that you are going to grant and how you are going to implement this which will have a direct bearing on self reliance in agriculture and therefore on food security. If you are going to give very strong breeders rights you are shifting control into the hands of the corporate sector, since today's "breeders" are often corporations. The corporate sector in India is not developed so the corporate sector that we are talking about is the Multi-National Corporate Sector. If you give balancing rights to farmers then you still enable farmers to continue to be viable seed producers. I hope you realize that in this country the largest seed producer is the farming community. 85% of the over 60 lakh tons of seed required by Indian agriculture annually is produced by the farming community. Distributed all over the place, in various regions, in various states, well adapted seeds for the local agriculture are produced by farmers. That is why the seeds work. And that is why seeds from MNCs seldom work because they centralize their production. So it very important how you frame farmer's rights and how you frame breeder's rights. The central issue being that farmers must continue to have rights over the seed.

Thanks to the struggle of civil society there has been a stronger emphasis on farmer's rights in the Indian legislation. We have to fight to keep these rights intact as these rights are already under attack by the international community and the present government unfortunately seems to have succumbed to those pressures.

There is a lot of IPR used in agriculture and we need to be aware of that. IPR violations will come to you to adjudicate on and as judges will have to take decisions. There are copyrights that are being used in making hybrids. Hybrid seeds are not that prevalent today. They are less than 10% of the seeds but they are increasing and violation of copyrights by hybrids is something that lawyers and judges will have to deal with in the coming years. You will have to be familiar with this material to see what rights you will recognize. You will have trade secrets, another form of IPR that will be applied in agriculture increasingly. You will have trademarks, as in the case of Basmati, and consequently the passing off incidents of Texmati and Kasmati.

The question of patents is being applied to genes, cell lines, microorganisms, machines and equipment software and processes. These subjects will also have to be dealt with.

As I said earlier food security depends on the scope of breeder's rights and farmer's rights granted by legislation. The granting of these rights will also influence our ability to maintain genetic diversity in the field. We cannot hope to have food security if there is not sufficient diversity in the genetic material that we still continue to plant. Genetic material cannot be stored away in gene banks only and we feel secure that it is being taken care of somewhere. Genetic variety in the field is all the variety of crops that we have been growing and which is getting lost because of the growth of high yielding varieties and hybrids. But the kind of rights you will grant in law will help to either conserve genetic diversity or diminish it.

With respect to Farmer's rights, I want to emphasize that the very special aspect of the Indian law is that it allows the farmers the right to sell the seed that is protected under the Act. This Act allows the farmer to sell seed under local conditions, that is even protected by breeders rights. Currently this right is under attack, as we will see later.

### **WHY IS IT IMPORTANT FOR FARMERS TO HAVE THE RIGHT TO SELL SEED**

Because a strong farmer's right allows the farmer to be self-reliant and thus ensure food security for the community and ultimately for the nation. Food is security integral to national security.

### **OTHER KINDS OF FARMER'S RIGHTS PRESENT IN THE LEGISLATION**

- Protection Against Innocent Infringement -- In the case of inadvertent use of the breeder's packaging.
- Benefit Sharing – when farmer's varieties are used by breeders then farmers have the right to be compensated. According to the Indian Act, revenues for use of farmer's varieties have to be paid into a National Gene Fund.

Breeder's rights in the legislation are strong. Fines and penalties are heavy for violating breeder's rights. This shows that the Indian legislation does not only deal with farmer's rights but also with breeder's rights.

Our legislation also has rights for researchers who can continue to use varieties for research even if they are protected by a Breeder's Rights. If researchers cannot continue to create new varieties because somebody has an IPR on the parent material then we are not going to be self reliant in food.

### **INDIAN LEGISLATION UNDER THREAT**

After the enactment of the legislation on farmers rights -- the only one of its kind in the world -- the Cabinet approved that India become a member of UPOV. The UPOV is an international platform where only breeder's rights are regulated. There is no notion of farmer's rights and the Indian Government has applied for membership to UPOV! Gene Campaign has filed a Writ Petition in the Delhi High Court against this move.

This is absurd. We have gone eight long years into drafting a law and given ourselves farmer's rights and then this government has chosen to apply for membership to a platform that does not acknowledge farmer's rights.

Gene Campaign had organized a press conference in Geneva after the government's decision to join UPOV. UPOV made it clear that they had told the Indian Government that farmer's rights would have to be diluted if they wanted UPOV membership. This is where the matter rests. This is the threat that I was talking about. The vigilance on farmer's rights is central to attain food security for ourselves and our ability to secure the rights of the farming community and their livelihood basis.