

Biodiversity Protection, Farmers and Breeders Right

Prof. Padmavati Manchikanti, Prof. Narendran Thiruthy | IIT Kharagpur

Lecture 31 : Farmers' Rights - Other Country Model

In the earlier lecture, we had taken up the aspect of the UPOV and brief details about the UPOV Convention. And as was noted earlier, there are countries which are still not part of the UPOV. While the protection of breeder rights has been expanded, the notion of and the need to protect farmer rights continues to be an important area for international discussions. It is in this context that we will take up the lecture 31, where we will briefly discuss the context of farmer rights and how despite the development of new varieties with respect to breeder rights, we need to continue to ensure farmer rights are also regarded well. These are the concepts that we will cover in this lecture. What is the position of farmer rights? We will take up a comparative approach of looking at some of the rights which are enumerated in the legislations and in some cases, it is available in general.

So, this is what brings in interesting aspect with respect to reviewing some of the legislations in countries. These are the keywords for the lecture. The need for recognizing farmer rights can be understood from the point of view that farmers subsistence and the contribution to food is a very important area. And hence, farmers form a very important aspect of the economic, social and political fabric of a society.

It is particularly so to emphasize that developing countries have the national economy largely dependent on agriculture. And ensuring farmer rights is vital in order to ensure their livelihoods, food security, and sustainability. It is relevant therefore, to consider the international treaty for plant genetic resources for food and agriculture in this context. So, when we look at the context of the UPOV, we are looking at the changing position from the recognition of farmer rights to at some stage curtailing of farmer rights from the point of view of greater availability of breeder rights over material which is harvested and beyond. So, if farmers need to continue to develop and sustain, the rights to seeds are important.

Farmers have also been breeders for generations and therefore, their right to register varieties need to be recognized. The livelihoods of farmers are always under a threat because of not only the vagaries of the environment, today the initial stocks that are developed are farmer lines and many of these are used as initial varieties in cases of hybrids. So, the need to recognize rewards, recognition in terms of compensation, these form an important part of the discussion with respect to farmer rights. And farmers are important contributors to the development of crop genetic resources along with breeders.

While we take up some of the selected countries for the discussion with respect to Asian nations, the recognition of farmer rights under the international treaty for plant genetic resources and for food and agriculture becomes very relevant especially article 9.

With respect to the compliance or ratification with respect to several conventions or treaties, the Asian context is a little different. The approach of ratification to the TRIPS agreement needed to be looked at from the point of view of the extended timelines provided to the developing countries and the least developed countries. On one hand to implement the IP legislations with respect to the forms of IP and also look at the context of plant varieties. Close to the time is the time when some of these countries are also become member countries to the Convention on Biological Diversity. So, identifying which is the most effective protection and what are the things feasible with respect to that, obviously, is a national policy consideration.

So, therefore, post the TRIPS agreement, we see sui generis provision being utilized by many countries to recognize farmer rights. Now, few Asian countries also became member countries to the UPOV and so, therefore, started implementing the UPOV. And as we see in the current times, a lot of free trade agreements are being looked at between the developed world, the countries with respect to the European Union or the US and some of the developing countries. And any insistence of the need to recognize breeder rights brings in a need for joining the UPOV of 1991 or rather implementing that. That means, there is greater protection for breeders compared to that of farmers.

So, therefore, this brings in the diversity with respect to how farmer rights are recognized. It is worthwhile to examine the International Treaty for Plant Genetic Resources for Food and Agriculture from the Article 9 perspective which deals with farmer rights. The role of farmers in the contribution and not only farmers also recognizing the efforts of local communities world over for contributing to the crop genetic resources and the diversity forms the basis of food and agriculture world over. So, the responsibility of realizing farmer rights with respect to the plant genetic resources was with the national governments and it is important to understand the needs and expectations of these communities and prioritize goals with respect to keeping in view farmer rights. By protecting and promoting them in the context of the protection of traditional knowledge relevant to food and agriculture, right to equitably participate in the sharing of benefits.

We will take up some of the countries as we go forward to look at what is this aspect of benefit sharing, right to participate in the decision making when it comes to matters related to conservation and sustainable use of plant genetic resources for food and agriculture. And in any case, for the farmer whose livelihood is completely dependent on the crop, the ability to save, use, exchange and sell farm saved seed or propagating material must be

allowed. Again, many countries have this as the main part of it in their legislation. In some countries, the requirement for the permission from the breeder has been kept as a necessary condition. So, we come to the context of looking at how the term farmer has been looked at in some of the legislations.

For instance, if you look at farmer under the Indian legislation, Indian Plant Variety Protection Act, farmer is someone who is cultivating crops, also is involved in the direct supervision, is involved in the conservation and preservation with many others with respect to wild species traditional varieties and is involved in the selection identification. Now, if one goes to the looks up the Malaysian plant variety protection legislation, the notion of farmer is given as under section 2, one who cultivates crops, one who is also involved in cultivating crops by direct supervision and one who conserves and preserves severely or jointly the traditional varieties. Now, in this case, small farmers have been also recognized as small farmer means a farmer whose farming operation do not exceed the size of holding as prescribed by the government, governmental representative. Indigenous people have also been recognized as part of the farmer. In the Philippines Plant Variety Protection Act, farming communities, farming organizations have also been.

So, we see an interesting dimension of the definition of farmer with respect to some of these legislations. In the case of the Malaysian Plant Variety Act, also we have the definition of small farmer. For instance, in many other cases, though there is no specific connotation of farmer, the rights of farmers are also nevertheless considered. We have other legislations, for instance in the case of Philippines, community intellectual property rights are recognized, wherein farmers are also recognized under this particular aspect of it. So, this is where we see an interesting dimension of looking at the notion of farmers in each of these legislations.

So, generally when we look at the aspect of farmer rights, we are looking at the ability of the farmer to continue the activity of cultivation unhindered, the ability of the farmer to seek compensation, benefit sharing, and also be able to register varieties. This is where we see certain commonalities and differences in some of the legislations. For instance, if you look at the right to farm saved seed, the Malaysian Thai and the Philippine and the Indonesian legislations do not specifically look at the context of saved seeds, but it is available as an exception. And exceptions are limited to certain context in some cases. Now, in the case of Thailand, for instance, if you look at section 33, subsection 4 of the Plant Varieties Protection Act 1999, Thailand, this recognizes the right of farmers to cultivate and propagate the protected new plant varieties.

But it restricts it to only in the case of where the breeder material can be used up to only three times the quantity. So, there is a restriction on to what extent you can actually utilize.

Non-commercial purposes have been recognized, and they will not amount to violation of the breeder rights. Farmers are allowed to save seed, exchange seed, for limited purposes of livelihood they can commercialize, but cannot use the brand name. So, this is where we see that a lot of the exceptions are beneficial to the farmers.

Now, right to register varieties. Farmers can also, farmer is also a breeder. Farmer groups can register varieties. And if you look at for instance the Thai legislation under section 43, farmers as a group, cooperative or community have a right to register a domestic plant which is locality specific. This is how you look at the... And in another case, if you look at the context of section 44 of the same legislation, someone who is on behalf of the community, a sui generis person can also register a local plant variety.

So, this is where we see the... But of course, it is a, there is also a requirement for submission with respect to details of that in terms of how the variety has been used, all those details have to be submitted. So, in India we also have the context of where farmer varieties can also be submitted and there is no fee for the farmer variety submission. So, under the farmer variety several varieties have been registered. So, this is where we see the context of the right to register available. The right for reward and recognition is what we look at from the context of farmer rights.

Farmers have been involved in the conservation and sustainable utilization of the plant genetic resources. In fact, plant variety protection legislation is one which is a little different from other intellectual property legislations because here conservation is one of the very important motives. The legislation is also promoting the context of conservation intrinsic to the protection. So, the contribution of farmers to conservation of plant genetic resources needs to be recognized and there are awards available. For instance, in the case of India we have plant genome saviour community recognition.

There are several individual farmers who have been cultivating and protecting certain land races and some very important medicinal plants. So, that needs to be also recognized. Now, from the point of view of making available varieties for breeding, the role of farmer becomes very necessary and this is where the right for to reward and recognition assumes a lot of importance. It is also important to take into consideration the role of the farmer with respect to the contribution to the plant breeding programs. So, initial varieties which are farmer developed are used in several breeding programs.

So, the farmer also has the right to the information on the performance of the initial varieties in the breeding. And since farmer at the end is also using some of those varieties, if there is under performance of the hybrids, then farmer should also be able to be compensated because of the non-performance because expectedly there is a specific

output, but the breeder variety is not giving that kind of an output which will mean that the farmer will lead will have lesser crop and that may really affect the livelihood. So, the expected performance under given conditions, those conditions need to be also looked at from the point of view of looking at the. And so, the claiming of the compensation is with respect to those output characteristics. So, the gene fund is what is available in several legislations from where the farmer can derive benefits as it is and also claim compensation, wherever the variety does not perform to the promised level.

So, several initial varieties are being used in breeding programs and any number of times the initial variety is used, it is all because these were the ones which are developed by the farmer. So, today we see a lot of improved new varieties. The beginning point was that it was initially a farmer variety. Therefore, the right to derive benefits in the form of benefit sharing is a very important aspect provided under several laws. This may come specifically in the form of a specific provision in many cases.

In other cases it is part of the national gene fund. In many other cases for instance if you look at the Thai legislation, it does not mention benefit sharing, but there is a profit sharing agreement which is one which is relevant there. The percentage of the profits could accrue to either the individual farmer or to the community. And this is spelt out in the case of section 5 of the Philippines intellectual property protection act. This is again relevant even for the context of plant varieties.

It is at this stage, it is important to mention that often it is the information in relation to the plant variety in the form of traditional knowledge which becomes a very important base for the breeder to develop the variety, the cultivation characteristics, the modes, the techniques all of those. So, that information is a very important information which the breeder is obtaining from the farmer variety. It is not only the disclosed information, but also the undisclosed use of traditional varieties. If and ever the initial lines that are used for breeding program, they may be discovered at a much later stage, but nevertheless the right for compensation is available even for the undisclosed information in relation to. So, therefore, this is where you see the reach of the right for the farmers to claim compensation.

For instance, section 41 of the Indian legislation is relevant. It is not only important to look at the rights from the point of view of continuing practice in terms of cultivation, benefit sharing, claim for compensation, but the need for adequate availability of material becomes also relevant. Because plant breeder rights come under the fore of intellectual property rights and they become exclusive rights, though there are farmer privileges certain activities do not come under the purview of farmer privileges in which case that could lead to adverse consequences in the process of not being available to the public. And this is where the context of compulsory licensing must be looked at. So, it is possible

that we may not have reasonable quality, quantity of seeds and there may be excessive pricing, which in which case the primary part of the farmer community would be affected and their needs would not be met.

Taking into consideration these aspects, the legislations also provide for a scenario of compulsory licensing, where on grounds of public interest compulsory licensing is available. So, in cases where for instance if you look at the Philippines Act, if the reasonable requirements of public are not met and here it is very interesting that specifically they talk about medicine or any for food preparation if it is not available, then this can invoke a compulsory licensing. In the case of Philippines, the state court can also grant compulsory licensing. So, we see this part of it also as part of the legislations. Farmer should have the ability for approaching the court without on their own.

The right to access legal services, free legal services is one of the very important thing which is available in several legislations. For instance, if you look at section 44 of the Indian legislation, plant variety protection legislation, farmer is exempted from paying any fees with respect to approaching the authority, the plant variety protection authority, the tribunal or a high court. In fact, for farmer variety also DUS testing fee is not required. Interesting to note is the Philippines legislation where free distribution of the plant variety gazette is given to the small farmers to as a means of making them more aware of how breeders are developing the varieties and where they need to be understanding the role of farmer rights. Right to be protected against lawsuits is also one of the important ones carved out in several legislations.

So, you may have heard of several cases where farmers have been part of lawsuits because of breeders asserting their intellectual property rights. You do see variation in how the jurisdictions have dealt with on asserting on one end the aspect of intellectual property protection enhancing that. In many other cases, farmer exceptions have been realized because the legislation specifically provides for and this is where it is very relevant that once the legislation provides for then the safeguards are available for interpretation. In many other cases, the fabric of the legislation is such that from interpretative value we are able to look at the exceptions nevertheless. So, to conclude when it comes to farmer rights, we take the international treaty for plant genetic resource of food and agriculture as the important standpoint which recognizes the entire scope of farmer rights from the point of view of the role in conservation to also there the role of farmers in relation to development of varieties.

Farmer is self a breeder. So, when we talk about farmer rights, we are also talking about farmers also have developmental rights in relation to varieties. The farmer rights context from the definitional issue tells us that farmer is not just an individual, but farmer is also

a part of the collection collective right paradigm and communities have been also part of it. This emphasis is very relevant because of the context of traditional crop varieties, plant and management, the wild races and land races. Of the few countries that we have looked at today, we see on a comparative basis how the context of farmer rights from the several rights. There are commonalities, there are variations, there are also differences and countries that have signed up with UPOV 1991 curtail some aspect of the farmer privilege.

So, the nature and scope of farmer rights varies and in the developing context of farmer rights as we see the relevance of looking at farmer rights from the perspective of the international cooperation that is either member countries to UPOV or because of free trade agreements there is also a need to relook at the context of the domestic legislation. These are the few references for the lecture. Thank you.