

Impacts of Corporatisation of Agriculture on Farmers' Right to Land and Seed Protection in West Bengal in 1996-2006

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CERTIFICATE

This is to certify that Sri Diganta Biswas has pursued research on the topic entitled *"Impacts of Corporatisation of Agriculture on Farmers' Right to Land and Seed Protection in West Bengal in 1996-2006"* under my supervision for more than two years and fulfilled the requirement of the Ordinances relating to the Doctor of Philosophy of the University of North Bengal. He has completed his work and the thesis is ready for submission. To the best of my Knowledge and belief, the thesis contains the original work done by the candidate and it has not been submitted by him or any other candidate to this or any other University for any degree previously. In habit and character the candidate is a fit and proper person for award of Ph. D. degree.

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LIST OF ABBREVIATIONS

AIA	Advance Information Agreement
APEDA	Agricultural and Processed Food Export Development Authority
BT	Bacillus Thuringiensis
CV	Contingent valuation
CAC	Codex Alimentarius Commission
CBD	Convention on Biological Diversity
CBD	Convention of Biological Diversity
CIPR	Collective Intellectual Property of Mankind
CIR	Community Intellectual Rights
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CNPPA	Commission on National Park and Protected Areas
CP	Cartagena Protocol
DBT	Department of Biotechnology
DLC	District Level Committee
EPA	Environmental Protection Assessment
EPA	Environmental Protection Agency
EU	European Union
FAO	Food and Agricultural Organization
FDA	Food and Drug Administration
GATS	General Agreement on Trade and Services
GATT	General Agreement on Tariff and Trade
GE	Genetically engineered
GEAC	Genetic Engineering Approval Committee
GEO	Genetic Engineered Organism
GM material	Genetically Modified material
GMOs	Genetically Modified Organisms
IBSC	Institutional Biosafety Committee

IFOAM	International Federation of Organic Agriculture Movement
IIRD	Institute for Integrated Rural Development
LMOs	Living Modified Organisms
MNCs	Multi National Corporations
MNEs	Multi National Enterprises
NBA	National Biodiversity Authority
NWDB	National Wasteland Development Board
OECD	Organization for Economic Cooperation and Development
OPV	Open pollinated variety
OPVS	Open pollinated varieties
RCGM	Review Committee on Genetic Manipulation
RDAC	Recombinant DNA Advisory Committee
SBCC	State Biotechnology Coordination Committee
SE	Substantial Equivalence
SPS	Sanitary and Phytosanitary Measures
TBT	Technical barriers to Trade
TNC	Trans National Corporation
TRIMs	Trade Related Investment Measures
TRIPs	Trade Related Intellectual Property Rights
UPOV	Union International pour Protectiona des Obtentions Vegetales or The International Union for the Protection of New Varieties of Plants.
USDA	U.S. Department of Agriculture
WALMI	Water and Land Management Institute
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
WTP	Willingness to pay

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INTRODUCTION

Literally, the word '*corporate*' means an entity which is legally united into one body or more commonly large business groups. The term corporation means, "An entity that has a legal personality, i.e. it is capable of enjoying and being subject to legal rights and duties and possess the capacity of succession"¹ or a "body of persons (in case of a corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of its' members."² Corporatisation refers to the formation of State Corporation or Private Corporations. Agriculture is one of the most important sectors of our economy not only because; this sector is the supplier of our basic needs viz. food, clothing and even shelter. In West Bengal, agriculture contributes 27% of GDP while industry shares only 22%.³ Here nearly 60% of the people are dependent on agriculture which is causing the backwardness of the state from the point of revenue generation in the state. While the states like Gujarat is graduating from the industrial estates to Special Economic Zones and to Special Investment Regions similar to the industrial belts in China and Japan, in West Bengal corporatisation has been a very difficult issue to address by the government.

However, Indian agriculture remains a key sector especially in rural India and has the potential for reducing poverty and hunger in the rural areas. Since agriculture is the mainstay of our economy, this provides a cushion. Although the primary agricultural activities, as a share of the total economy, are gradually declining with agriculture contributing only 17% of the GDP in 2007- 08⁴,

¹ Oxford Dictionary of Law, 5th Edition 2002; Oxford University Press, at pg. 125.

² Halsbury's Laws of England, 4th Edition, 2005, LexisNexis Butterworths, Vol.9 para.1201,

³ Dhruba (DJ) Chakraborty, "Silent Transition: Look East for better business": The Times of India: 27th February, 2009, at pg. 1.

⁴ The Times News Network: The Times of India: 31st May, 2008 at pg. 16.

agriculture continues to support nearly 50% of employment in rural areas and also shares 13% of the total Indian export.⁵ Yet in agriculture and allied products segment, India is among the world leaders. In Bengal, agriculture contributes 27% of GDP while industry shares only 22%.⁶ The state of West Bengal being characterised with the fragmented land holding on the one hand and ever increasing cost of agricultural production on the other, the State needs to industrialise for its economic turnaround.

Traditionally agriculture is considered as a life line of a country's economy both as a means livelihood and providing food security to the nation. After independence at one point of time India was not self sufficient on food and hence the import of food was a primary concern of the government. Now India has become self independent in agriculture has been able to achieve food security. But unfortunately, across the country, a total of 1.82 lakh farmers have committed suicide between 1997 and 2007, driven to despair by a lack of basic infrastructure like power, irrigation and access to markets and for their inability to pay back the loans. About 8 million farmers have quit farming between 1991 and 2001. Often the buyers set up special economic zones or industrial units on such land which get tax sops and subsidised land, power and water. Today, in India, including west Bengal, nearly 60% of the population is dependent on agriculture⁷. The agricultural sector in India, as well as Bengal suffers from the following defects-

- 1. Lack of remunerative prices for their produces:** The farmers due to their lesser bargaining power and the domination of the middlemen are not getting the remunerative prices for their produces.

⁵ Suresh Chandra Babu, 'More Supportive Policies', The Annual Survey of Indian Agriculture, 2004; New Delhi.

⁶ Dhruva (DJ) Chakraborty: Silent Transition: Look East for better business, The Times of India: 27th February, 2009, at pg. 1.

⁷ Ibid

2. **Non fixation of support price:** There is a huge risk in agriculture. If there is a high yield the farmers do not get proper price, likewise if the production is low, then again there is loss.
3. **High Cost of Production:** The cost of production is increasing while there is no significant increase in the price of the agricultural commodities. The highly perishable nature of the produce along with the lack of storage, grading, packaging, transportation and marketing infrastructures have further added their plight.
4. **Lack of microfinance:** The big farmers are able to get loans from banks, small and marginal farmers still depend on money lenders.
5. **Lack of interest of the educated youth in farming:** Educated youth of the farming families are becoming less interested in agriculture. The farmer parents also do not encourage their children in taking up agriculture as livelihood.

For decades the small and marginal farmers are suffering the arbitrary, ruthless market mechanism of agricultural commodities. At this, most of the agriculturists today consider farming as a matter of subsistence. The farmers are exploited by the hands of the land sharks, fertilizer lobby, insecticide lobby, hoarders and wholesalers, Panchayat and political leaders including agricultural officers, officials of Benfed, Nafed and other agricultural set ups. The malnourished, poverty stricken, emaciated farmers are forced to discard their traditional livelihood for comparatively secure urban destinations and are taking up marginal jobs like tailoring, masonry, painting, welding, soil digging, iron making, erecting mobile towers, wiring electric networks, driving, rickshaw pulling etc. The plight of women is dreadful. They receive a raw deal from the powerful state and private machineries with no one to guard them against unscrupulous traders. The labour pattern in the industrially

developed states like Punjab, Haryana, Delhi, (where agricultural productivity is good along with the industrial activities) show that there is loss of interests agricultural work and more and more people are taking up non-agricultural activities. So there is paucity of manpower and farmers are dependent on the migrant farm labourers from Bihar, Jharkhand and Uttar Pradesh. Even that supply of migrant labour is now reduced due to the Rural Employment Guarantee Scheme. Due to the above reasons the government is planning to bring down the number of people dependent on agriculture from 60% to 30% in next 20 years. To add to this is fact that in India agriculture is overwhelmingly dependent on the weather⁸.

To make agriculture a profitable sector corporatisation of agriculture including institutionalisation and commercialisation of the system, farmer's right to land, easy availability of seed, fertilizer, electricity, water, and opportunity for micro-financing are perhaps the best options available.

CORPORATISATION OF AGRICULTURE

Corporatisation of agriculture is a very recent phenomenon. It is a process of globalising agriculture. India is now considered as one of the top global destinations for the investment in agricultural sector. Agriculture is not just the food producing machine it is the main source of livelihoods of the nation and as such an instrument for eradication of poverty. So there is a huge pressure on Agricultural Sector and the experts are of the opinion that in order to lower the pressure on agriculture livelihood of people should be raised through an increment of per capita income. Create safety nets for the agriculturists for protection lesser return from agricultural commodities, lack of proper marketing, storage of commodities, unpredictable climatic conditions etc. In order to

⁸ Reported in The Hindu: 24th November; 2008 at pg. 14.

boost the economic of scale, small and medium farmers, home science and commerce graduates and scientists can group together forming agro-clinics and help the farmer in his business ventures. Secondary and tertiary sectors employment should be generated raise income.

FARMER'S RELATIONSHIP TO LAND

The transition from village to township and from agriculture to industry is the inevitable stages of development. If we study the flow of civilization the feudal system collapsed when industrialisation started in Europe. Developing countries like India and China, burdened with about one- third of the world's total population need rapid industrial development so that jobs are available to maximum number of people. The relationship between land and human being is as old as the cultivation. The nomadic people did not feel the need of taking land in his control. As man learnt agriculture, the need to be in control of land was felt. Even today the genesis of the structure of power and authority in rural India can be traced to land. Land provides the basic necessities like food, clothing and shelter. There is an ever changing relationship between land, power and people. The value of land is ever increasing and requires little renewal and replacement. Due to this basic utility, economists consider land as a special kind of property. Land reform has proved to be a major instrument of social transformation, especially in an economy based on feudal and semi feudal production relationships. India has all the potentials to become a modern industrial giant. India has a large number of eminent scientists, engineers and technicians; immense raw material reserves and a huge population that can serve as a market which can serve the purpose of industrialisation in the state. Corporatisation of land means the transferring of lands to the

corporate houses for the purpose of setting up of their projects. Presently, West Bengal too is passing through a transitional phase between feudal agricultural society and modern industrial society. Widespread unemployment has necessitated the government to generation employment which cannot be done without industrialisation. To set up industrial units land is necessary. The state of West Bengal has nearly 13.5 million acres of farmland. Following a special address to the national executive members of the Federation of the Indian Chambers of Commerce and Industry delivered by the West Bengal Chief Minister Mr. Buddhadeb Bhattacharjee, presently even if all the industrial investment proposals before the government are implemented, only one lakh acres of the 1cror 35 lakh acres of agricultural land in the state need to get converted for industrial use which is less than 1% of the land used for agricultural purposes.⁹ Out of this large tract of farm land about 84% are now owned by farmers. This has necessitated acquisition of land necessary for setting up big industry. Without acquisition of land by the state it is almost impossible to set up industry.

RIGHT TO SEED

A farmer possesses the inherent rights to till, rear and produce. Production includes the production of crops and plants as well. Use of seed is integral to agriculture. Traditionally the farmers had been producing or collecting seeds after the harvesting was over. A farmer is not merely a cultivator but also a conservator of all agricultural gene pool. They assert their right to seed through the Community Intellectual Rights (CIRs). With the growing concern regarding security against crop failure, diseases and pest attacks, ways to increase agricultural production and achieve food security was explored. Thus the concept of GM crops came in. However, with

⁹ Reported on The Hindu: 27th November, 2008 at pg.10.

the norms of UPOV; TRIPs and TRIMs under the WTO the framers' right over seed is facing tough challenge against the breeder's right backed by the corporate bodies. The concept of corporate activities in seed sector originates in the west. After the Plant Patent Act, 1930 in the USA the seed industry started flourishing. This line of approach has been adopted by other countries as the time elapsed. However, for farmers the right to seed is a positive right and not a negative one. It is a fundamental right, not a concession.¹⁰

THE HYPOTHESIS

With the above circumstances as the background the hypothesis of this work is that a great number of investment options have opened before the State of West Bengal. To accommodate such offers of investment the land reforms policy of this State faces challenges of land acquisition where the right of the farmer to land is taking a back seat. Yet equal attention must be given to the food sector. The State is required to balance the two conflicting interests of sufficiency of food through optimising the agricultural sector and development through encouraging investment from the corporate sector. The right of the farmers to produce and use traditional seeds is under challenge. Breeders working under the umbrella of MNCs are constantly modifying the world's germplasms in their laboratories and there is mounting pressure on the farmers to use such seeds which are highly sensitive as well as expensive than the traditional one. Thus agriculture in India generally and that in West Bengal in particular faces grave challenges.

THE METHODOLOGY

The present research has been both traditionally theoretical and also empirical. Documents and materials relating to legislative initiatives by the Governments at the Union and the State of West Bengal, census reports, governmental documents, articles, press

¹⁰ Vandana Shiva, Agricultural Biodiversity, Intellectual Property Rights and Farmer's rights, Economic and Political Weekly, June 22, 1996, pg 1622.

reports, books, journals, and the various reports of the Committees and Commissions were studied to understand the situation. Data were collected from the Ministry of agriculture both at the State and Central Governments. Statistics were collected from the UNDP projects and other agencies.

Along with this, empirically, information were gathered from the villagers, Panchayat members, and officials of district administration, Scientists and Agricultural Universities.

Field survey was conducted on the basis of the structured questionnaires in the district of Hoogly, East Midnapore, South 24 Parganas, Burdwan, Uttar Dinajpur, Dakshin Dinajpur, Jalpaiguri and Coochbehar. In the district of Hoogly and East Midnapore, South 24 Parganas, Burdwan the impact of corporatisation was looked into and in the districts of Uttar Dinajpur, Dakshin Dinajpur, Jalpaiguri and Coochbehar the traditional system was studied.

THE CHAPTERS

This thesis is divided into seven chapters. The 1st chapter deals with Corporatisation of agriculture: Concept, growth, and perspective in which the concept of agriculture as is understood within the legal framework is discussed and also reference made to its future in the backdrop of corporatisation under the post WTO regime. Chapter 2 is the brief overview of the farmer's rights within the Indian legal framework deals with Rights of the Farmers. Chapter 3 is the Legal framework relating to land: A brief overview which deals with a very important aspect of land i.e. land reform and acquisition of land. The relationship between Acquisition and corporatisation of land and it's impact on Farmer's Right to land is examined under Chapter 4. Acquisition and corporatisation of land gives rise to the issue of displacement, resettlement, and rehabilitation. These matters are dealt with under chapter 5 and deals with Policy relating to these issues of resettlement and rehabilitation and it's impact on Farmer's Right to land; 6th Chapter deals with Impact of corporatisation of

seeds and its impact on farmer's right to seed. Seed is an integral part of agriculture. In Conclusions and suggestions the overall understanding of the issues relating to agriculture and corporatisation is laid down.

As such, the problem is how to balance the rights of the farmers on land which they initially established with due priority and the setting up the new industries. The state is now facing twin questions, on the one hand, if the state doesn't allow the land demands made by these concerns they obviously will quit and the state will lose investment, revenue, employment opportunities of its citizens and others and on the another front if the state acquires land then, it will cause the shrinking of agricultural lands, marginalisation and unemployment of farmers, increase in unskilled labour and shortage of food production in the State. In such cases the persons having lands will however be able to manage their lives but what will be the case of the landless labourers of who mostly are illiterate and unskilled or no skill without cultivation. The question is whether a counter land reform is called for.

The WTO Agreement on Agriculture requires removal of subsidy on agriculture. Under Indian conditions this poses severe problems to the small farmers. As such, farmers' movements are taking place from 1992. An example is the 'Bija Satyagraha'- a non cooperation movement. The Patent Ordinance and recent policies on agriculture has led the suicide of as many as 16000 farmers in the year 2004¹¹. The changing dimensions of the rights of farmers and its conflict with the interests of the corporate houses in the age globalisation as compared to the earlier under the Indian legal framework is the focus of study under this section.

¹¹ *Ibid*

CHAPTER-I

CORPORATISATION OF AGRICULTURE: CONCEPT, GROWTH AND PERSPECTIVE

Indian agriculture remains a key sector especially in rural India and has the potential for reducing poverty and hunger in the rural areas. Although the primary agricultural activities are gradually declining as a share of the total economy with agriculture contributing only 17% of the GDP in 2007- 08¹², agriculture continues to support nearly 50% of employment in rural areas and shares 13% of the total Indian export.¹³ In Bengal, agriculture contributes 27% of GDP while industry shares only 22%.¹⁴ Corporatisation of agriculture is a very recent phenomenon.

The word corporatisation means forming a body of many individuals. The French word '*corporalis*' relates to human body. Corporatisation of agriculture, therefore, indicates formation of a body corporate solely for agriculture.¹⁵ Literally, the word corporate means an entity which is legally united into one body or more commonly large business groups. The term corporation means, "An entity that has a legal personality, i.e. it is capable of enjoying and being subject to legal rights and duties and possess the capacity of succession"¹⁶ or a "body of persons (in case of a corporation sole) which is recognised by the law as having a personality which is

¹² The Times News Network: The Times of India: 31st May, 2008. at pg. 16.

¹³ Suresh Chandra Babu: 'More Supportive Policies': The Annual Survey of Indian Agriculture, 2004; New Delhi.

¹⁴ Dhruva (DJ) Chakraborty: Silent Transition: Look East for better business: The Times of India: 27th February, 2009, at pg. 1.

¹⁵ Oxford Advanced Learner's Dictionary; 6th Edition 2000; Oxford University Press at pg.279

¹⁶ Oxford Dictionary of Law; 5th Edition 2002; Oxford University Press at pg. 125

distinct from the separate personalities of its' members."¹⁷ The various important features of corporatisation of agriculture-

- i. Commercialisation of agriculture
- ii. Involvement of private investment
- iii. Organisational frame work with the homogeneity of activities
- iv. Improved Product Quality
- v. Competitiveness in price
- vi. Infusion of Modern technologies

Corporatisation per se would not be so bad if the farmers in India united to form a corporate body and took care of all aspects of agriculture from tilling to marketing - such as machines, seeds, water, electricity, fertilizers, pesticides, market support price, storage, export-import et al. But that is not what is taking place in the name of corporatisation. Corporate houses having interest in food processing and exporting are forming corporations to control the crop; they produce hybrid- high yielding seeds which crop only once. Thus, the activities of these corporate houses strike at the root of farmer's freedom to agriculture and allied activities.

DEVELOPMENT OF THE IDEA OF CORPORATISATION IN INDIA

The very idea of corporatisation is backed by the theory of neo-liberalism which holds that the world would be a much better if there are no government owned trading enterprises.¹⁸ Privatization became a more dominant economic trend (especially within the United States and the United Kingdom) during the 1980s and '90s.

¹⁷ Halsbury's Laws of England, 4th Edition, 2005, LexisNexis Butterworths, Vol.9 para.1201.

¹⁸ P. Murphy, "What is Corporatisation: The Voice of the Pensioners and Superannuates of the NSW", <http://www.cpsa.org.au>, uploaded during March- April 2004; at pg. 12, visited on 3rd March, 2006 at 3.15 P.M.

People with accumulated a bulk of resource became interested to invest them for the purpose of setting up of industrial units in corporate style. Traditionally, agriculture was not financially viable and not much investment was made in this sector.

PRE GREEN REVOLUTION ERA: Historically, the idea of corporatisation had been pioneered by the British in India through corporate activities in some cash crops like jute, tea etc. As the technological know-how's advanced, newer technologies evolved machines that replaced manual power with mechanical power. The matter of Corporatisation of agriculture based on crops or locations started in the year 1839 when the Assam Tea Company was set up in London to institutionalise the cultivation of tea.

GREEN REVOLUTION: Corporatisation of agriculture in India can be seen as the second stage of the Green Revolution¹⁹. Under Green Revolution a shift took place from using the traditional mode of cultivation to a technology based cultivation which is similar to the one contemplated under corporatisation of agriculture. The period of mid- 1960s was a very significant from the point of view of agriculture. This phase experienced the outstanding yield as a result of the development of the High- Yielding Varieties (HYV) of seeds coupled with proper irrigation facilities and extensive use of fertilisers, pesticides and insecticides. This new 'agricultural strategy' was put into practice for the first time in India in kharif season of 1966 and was termed as High Yielding Varieties Programme (HYVP). However, this programme was restricted to only five crops, viz- wheat, rice, jowar, bajra and maize. It cannot be denied that the green revolution improved the productivity with the help of modern farm practices, but at the same time, it

¹⁹ Vandana Shiva, "The Threat of Globalisation of Agriculture", at papadop@peak.org available at <http://www.hartford-hwp.com/archives/25a/007.html> visited on 3rd March, 2006 at 3.05 P.M.

aggravated poverty as unequal and unfair contracts locked small farmers in new form of bondage.²⁰

POST GREEN REVOLUTION- THE WTO ERA: Agriculture has been a highly debatable issue in the post liberalisation phase. The Uruguay Round of GATT advocated for the infusion of private foreign corporations into the sector. Backed by the industrialized nations, now the demand is for total freedom of investment as a right. Corporations want the right to enter and establish themselves with 100% equity, and total freedom to repatriate profits. They could buy farmers' land, set up plantations and fisheries and also undertake livestock rearing. These corporations thus become the only beneficiaries of free trade with no duty for ensuring food for all. As Senator McGovern of the US Senate had stated, *'Food security in private hands is no food security at all' because corporations are in the business of making money, not feeding people.'*²¹

Globalisation as evolved in early 90's camouflaged the corporatisation of agriculture by creating a jargon about competitiveness, market access, aggregate measure of support which hides the emergence of corporate monopolies, the dumping of subsidized products, and the growth of corporate subsidies. These policies have pushed farm prices downwards and costs of production upwards. Withdrawal of subsidies in the input sector and the deregulation of the seed and input sector has worked together to raise costs of production and push farmers into a debt trap. As such, the Government of India announced the first National Agricultural Policy on July 28, 2000 which ultimately suggests the corporate control on agriculture.

²⁰ Ibid

²¹ Globalisation of agriculture and rising food insecurity, available at <http://www.twinside.org.sg/title/food-cn.htm> visited on 3rd May, 2008 at 9.28 PM.

The National Agricultural Policy: - The National Agricultural Policy, in addition to these, focused the followings-

1. consolidation of holdings all over the country on the pattern of the north- western states
2. redistribution of ceiling surplus lands and wastelands among the landless farmers, unemployed youth with initial start up capital
3. tenancy reforms to recognise the rights of the tenants and share croppers
4. Development of base markets for increasing the size of the holdings and making legal provision for giving private lands on lease for cultivation and agri business, updating and improvement of land records, computerisation and issue of land pass books to the farmers and recognition of women's right in land.

However the present trend of corporatisation targets various other crops. Huge investments are pouring into the agro sector after the VII Five Year Plan. The agriculture sector has now caught the investor's imaginations in India. The process of corporatisation of agriculture includes-

1. Setting up of industries based on agricultural products.
2. Consolidation of land holding.
3. Modernisation of industry and the multiplication of agricultural outputs;
4. Improvement of productivity by increasing the incentives on invested capital in the agricultural sector;
5. Reformation of agro industry.
6. Advanced use of commodities through food processing.
7. Meeting the need of agro based industries after satisfying demand for food.

8. Faster decision-making with least Government intervention.
9. Introduction of integrated, modern farm management practices and the building up of efficiencies.
10. The efficient use of the available tools like easy flow of credit, risk management practices and benchmarking.

THE CONSTITUTION OF INDIA AND CORPORATISATION OF AGRICULTURE

The preamble of our Constitution declares India to be a "*Sovereign, Socialist, Secular, Democratic Republic.*" In *re Berubari*²² case, the Supreme Court has laid down that the Preamble is the key to open the mind of the makers, and shows the general purposes for which they made the several provisions in the Constitution. So, according to the Preamble of the Constitution, India is a socialistic country wherein the principle of democratic socialism prevails. Generally, the term socialism implies a system of government in which the means of production is wholly or partly controlled by the state. In democratic socialism underlines the idea of welfare state which aims to prevent exploitation and free competition without destroying the individual initiatives and without detriment to political freedoms. In *Excel Wear v. Union of India*²³ the Court held that the addition of the word 'Socialist' might enable the courts to lean more in favour of nationalisation and the state ownership of an industry. But as long as private ownership is recognised and an overwhelming proportion of the economic structure will not be welfare oriented. Again, in *D.S. Nakara v. Union of India*²⁴, the Supreme Court has held that the basic framework of socialism is to provide a decent standard of life to the working people and especially provide

²² AIR 1960 SC 845.

²³ AIR 1979 SC 25.

²⁴ AIR 1983 SC 130.

security from cradle to grave. This envisages economic equality and equitable distribution of income. This is the type of socialism that is to be established in India. The 42nd Amendment, 1976 of the Constitution inserted the words "*Sovereign, Socialist, Secular, Democratic Republic*" into the Preamble. Thus socialism is implicit in the preamble and the Part IV, the Directive Principles of state Policy, particularly Article 39 (b) and (c) of the Constitution are the Charters of the social and economic liberties of the people.

Corporatisation of agriculture is a concept which embodies the capitalistic ideals of the entry of the corporate bodies and thereby to commercialise the sector. Commercialisation is the other name of multiplication of profit. Agricultural sector is one of the most important sectors of our economy not only because it provides food, clothing and basic needs but also because the number of people engaged in this sector is much higher than any other sectors. Agriculture is a state subject. Under Article 246, List-II, Entry 14 it is so provided that- agriculture, including agricultural education and research, protection against pests and prevention of plant diseases. Again Entry 30, List II provides the regulation of money- lending and money lenders; relief of agricultural indebtedness. Finally, Entry 32, List II provides for the incorporation, regulation and winding up of corporations other than specified in List I²⁵ and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co- operative societies. Thus, the issue of corporatisation of agriculture may be addressed as a state subject.

²⁵ Art. 246 of the Constitution, Entry 42 & 43, list I.

CORPORATISATION OF AGRICULTURE: THE WEST BENGAL SCENARIO

There is no single legislation to control the issue of corporatisation of agriculture in West Bengal because the government of West Bengal has not taken the decision of corporatising agriculture here. Agriculture being a state subject, the State legislature is free to make legislations on this head. Simultaneously, there are certain issues related to agriculture on which the Parliament passed legislations.

THE SEEDS ACT, 1966: The most important legislation recognising the corporate entry and its regulation in agricultural sector is the Seeds Act, 1966. Under Section 5 of the Act, if the Central Government, after consultation with the Central Seed Committee, is of the opinion that it is necessary or expedient to regulate the quality of seed of any kind or variety that is to be sold in different States or areas, then it may do so. Section 7 of the Act is regarding sale of seeds of notified varieties. Section 8, of the Act deals with establishment of Certification Agency both at the State and Central Level. Section 8(a) of the Act, deals with the constitution of the Central Seed Certification Board. Section 9 is about the procedure of the Granting Certificate by the Certification Agency. Section 10 deals with the power of revocation of certificate. State Governments may under Sections 12 & 13 of the Act appoint Seed Analysts and Seed Inspectors and define the areas within which he shall exercise the jurisdiction. Restrictions may be imposed on the export and import of seeds of notified varieties under Section 17 of the Act. Section 19 and 21 impose punishments to the persons or companies contravening any provisions of the Act.

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**THE PROTECTION OF PLANT VARIETIES AND FARMER'S
RIGHTS ACT, 2001:** The Protection of Plant Varieties and Farmers'

241108



Rights Act, 2001 was enacted, inter alia, to recognise the role of farmers as cultivators and conservers of the country's agro biodiversity through a mechanism of incentives. The Act aims to achieve the objectives like-

- (a) Stimulation of investment for research and development, both in the public and private sector.
- (b) Facilitation the growth of the seed industry, and
- (c) Recognition and protection of the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available the plant genetic resources for the development of new plant varieties²⁶.

The Act recognises the concept of benefit sharing under Section 26 on a variety of seed registered under Section 24 of the Act. Section 27 requires the breeder to deposit such quantity of seeds or propagating material including parental line of seeds of registered variety in the National Gene Bank. Section 30 provides the researcher's rights. Section 39 provides the recognition of the farmer's right over his developed breed through registration of the breed and entitling him to save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a protected variety. However, the farmer is not entitled to sell branded seed of a protected variety. Section 43 of the Act denies a breeder the authority to produce sell, market or otherwise deal with a variety of seed produced by another farmer except with the consent of that farmers or group of farmers or community of farmers who have made contribution in the preservation or development of such variety.

THE PLANTATIONS LABOUR ACT, 1951: The Plantation industry in India is among the largest private employers in India. It is spread

²⁶ Section 2(za) of the Plant Varieties and farmer's Rights Act, 2001.

across the States of Assam, Kerala, Tamil Nadu and West Bengal. This is an organised corporate sector. The Plantations Labour Act, 1951 applies to any land used or intended to be used for growing tea, coffee, rubber, cinchona or cardamom or any other plant which measures 5 hectares or more and in which 15 or more workers are employed on any day of the preceding 12 months. The Act under Section 4 empowers the state government to appoint the chief inspector of plantations and other persons to be inspectors subordinate to the chief inspector. Under Sections 5&6 he is entitled to enter, inspect and examine and make inquiries to ascertain whether the provisions of this Act are being observed in any plantation. Section 19 of the Act prescribes, to work hours for the workers. The Act also mandates that women and children can be employed only between the hours of 6am and 7pm unless permitted by the State Government²⁷. Section 30-31 provides the rules regarding leave etc. The worker is entitled to average daily wages including D.A., cash value of food and other concessions, if any allowed to him by the employer. Women workers are entitled to maternity allowance and benefits under the Maternity Benefit Act, 1961²⁸. The Employers are under obligation to maintain a register of accidents and notify the authorities of any accident where a plantation Worker suffers death or body injury and he is unable to report for work for forty eight hours or more²⁹.

THE DANGEROUS MACHINES (REGULATION) ACT, 1983: The Act Under Section 2 declares in the public interest that the Union should take under its control the industries engaged in the manufacture or production of power threshers or any other machines which are intended to be used in the agricultural or rural

²⁷Section 25.

²⁸ Section 32

²⁹ Ibid

sector and which are of such nature that any accident in the course of operation thereof may cause its operator death, dismemberment of any limb or other bodily injury.

THE MINIMUM WAGES ACT, 1948: The Minimum wages Act, 1948 is a very important legislation as it empowers the appropriate Government, Central or State to fix minimum rates of wages payable to employees³⁰. Section 4 of the Act deals with the components of Minimum Wages. Section 22E provides protection against the attachment of assets of employer with government.

THE CONSUMER PROTECTION ACT, 1986: Farmer is a consumer of seeds, manure and other necessities for agriculture. The Consumer protection Act, 1986 gives protection against any good or service regarding their quality, quantity and the aggrieved persons can get the remedy against the breach of this.

THE LAND ACQUISITION ACT 1894: The Land Acquisition Act 1894 is one of the most important statutes in regard to land. The Act under Section 4 empowers the appropriate Government to acquire a land if needed or likely to be needed in any locality for any public purpose or for a company a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Section 5A deals with the hearing of objections. Section 6 of the Act requires that such land must be for public purpose or for a company and no such declaration shall be made unless the compensation to be awarded for such property to be paid by a company, or wholly or partly out of public revenues or

³⁰ Defined as persons “employed for hire, reward to do any work, skilled or unskilled, manual or clerical, etc. in the scheduled employments”.

some fund controlled or managed by a local authority. Section 23(1) of the Act is speaking about the procedure for the determination of compensation. In case the proposed land is to be used by a company, under Section 41 of the Act the relevant Company has to make an Agreement with the relevant state Government and under Section 42 of the Act such agreement shall have to be published in the Official Gazette as soon as possible by the Government. In addition to these existing provisions, due to the adoption of the National Policy on Rehabilitation and Resettlement, 2007 certain amendments to the Land Acquisition Act, 1894 are supposed to come which includes-

- Provision for acquisition of land for companies to be deleted.
- Government shall acquire land for private companies only when private requiring bodies acquire atleast 70% of the land requirements through direct purchase, then only the Government will acquire remaining 30% area.
- The ambit of persons interested proposed to be redefined for inclusion of tribal and other traditional forest dwellers also.
- Compensation of the land is to be calculated at the market value.
- Provision for solatium to be enhanced from the existing 30% of the market rate to 60% of market rate in cases of normal acquisition and 75% in case of urgent acquisition.
- Compensation will be given within timeframe before actual displacement.
- Bar on jurisdiction of civil court for providing speedy compensation to the displaced person.
- Land acquired for a purpose remains unutilised for a specified time, would revert to Government.

- In case of transfer of acquired land, 80% of the net unearned profit would be shared with the original land owners on their legal heirs.

THE WEST BENGAL LAND REFORMS ACT, 1955: The Act recognises the continuation of right of cultivation of a bargadar³¹ even after his death under Section 15 A and Section 17(4) states that no bargadar shall be entitled to cultivate more than 4 hectares of land. Section 21D mandates the entry of the name of the bargadars in respect of every raiyat in the record-of-rights. Under Section 39 the Government may, on the representation of a raiyat in any area, or on its own motion, acquire lands in any area on payment of compensation to that raiyat. Section 40 deals with the redistribution of land to the raiyat whose land have been acquired, in such a manner as it thinks fit.

THE WEST BENGAL AGRICULTURAL PRODUCE MARKET (REGULATION) ACT 1972: The Act seeks to regulate the buying and selling of the agricultural produces by establishing markets for agricultural produce in the state. The State Government under section 3 may by notification declare any area to be a market area. Under section 4 the State Government may by notification declare any area to be a market yard and sub market yard within which purchase and sale of such agricultural produce can be regulated. Section 5 of the Act is regarding the establishment of the Market Committee for every market area which is a body corporate having perpetual succession. The officers or employees of the market committee enjoy the power to inspect, search or seize any record, agricultural produce from any vehicle, boats or any conveyances if he has the reason to believe the due is not paid by him. Section

³¹ Section 2(2) of the West Bengal Land Reforms Act, 1955.

20(xi) of the Act inter alia prescribes for the application of the market committee fund for fostering co- operative marketing societies in the procurement and the organisation of profitable disposal of produce particularly the produce belonging to the small and marginal farmers³². Section 36 is for the constitution of the West Bengal State Marketing Board. Under Clause 3, sub- section G of Section 36 the Act prescribes that the West Bengal State Marketing Board Fund may be utilised inter alia, for the following purposes-

- Better marketing of agricultural produce,
- Marketing of agricultural produce on co- operative lines and assisting the co- operative marketing societies in the procurement of produce belonging to small and marginal farmers and their disposal,
- Taking of steps to stop distress sale in conjunction with other agencies, State or Central,
- Provision for transport and storage facilities,
- Provision for transport and storage facilities,
- Participation in any scheme designed to augment and improve production and the betterment of agricultural produce,
- Acquisition, establishment or management of the retail markets, periodic hats and fairs located in market areas
- Imparting education on marketing and agriculture,
- Construction of godowns.

³² Under this Act, small farmer means a farmer who possesses more than two hectares but less than four hectares if he is a member of any of the Scheduled Tribes and more than one hectare but less than two hectares in other cases, of land, either as an owner or as a raiyat or as a share- cropper and marginal farmer means a farmer who possesses not more than two hectares if he is a member of any of the Scheduled Tribes and one hectare in other cases, of land, either as an owner or as a raiyat or as a share- cropper.

THE WEST BENGAL UTILIZATION OF LAND FOR PRODUCTION OF FOOD CROPS ACT, 1969: The Act provides for the requisitioning of land with a view to better utilization for the production of food crops for meeting the shortage of food grains in the state. The Act under Section 3 speaks for the power to requisition land by the Collector. The Collector may by order in writing, requisition any land if he is of the opinion that such land is suitable for the production of food crops and is likely to be utilised during the current or the ensuing agricultural season provided that no land which forms part of any homestead or cremation or burial ground or of any place of worship shall be requisitioned under this Section. Such requisition shall be made for such period, not extending beyond the agricultural year in which the order under sub-section (1) is made, as may be specified in the order. Section 5 provides the provision regarding the utilisation of land. As soon as possible after the Collector is in possession of any land requisitioned under Section 3, he shall, by order in writing, make over possession thereof for such period not exceeding beyond the current agricultural year as he thinks fit to any person utilising such land for the production of such food crop as may be specified in the order. In making over such possession of any land under sub-section (1), the Collector shall whenever possible give preference to persons who own no land or own less than 0.8094 hectare of land and who are residents of the locality where such land is situated and who intend to bring such land under personal cultivation³³. A person to whom possession of any land has been made over under sub-section (1), shall be entitled to do in, on or with respect to, such land all things necessary for utilization of such land for the production of such food crops as may be specified in the order issued under the said sub section³⁴. It shall not however be

³³ Section 5 (2)

³⁴ Section 5(3)

deemed to confer on any person the status of a tenant or to confer on him any transferable right³⁵. Section 6 of the Act is dealing with the Delivery of produce of its money value to the Collector. Under this, any person to whom possession of any land has been made over under sub- section (1) of Section 5 or who has been allowed to continue to remain in possession of such land under Clause (a) of Section 10 of the Act shall-

(a) deliver to the Collector or to any officer authorised by the Collector in this behalf thirty- five percent of the gross produce from such land for any agricultural season or pay its money value to be determined by any Collector in such manner as may be prescribed and

(b) after the expiry of the period for which possession has been made over to him under sub- section (1) of Section 5 or he has been allowed to continue to remain in possession under Clause (a) of Section 10, give back possession of such land to the Collector or to any officer authorised by the Collector in this behalf and in default of his doing so the Collector may take possession thereof by force, if necessary.

If such person fails to deliver the produce or money value thereof referred to in Clause (a) of sub section (1) within such time as may be fixed by the Collector in this behalf, the money value shall be recoverable as a public demand³⁶. when any land is requisitioned under Section 3 of the act, "person interested" shall be paid compensation at the rate of twenty- five percent of the gross produce from such land for the period for which such land has been requisitioned, or it's money value determined under Section 6³⁷. However, in case of the total failure of crop from such land or if for any reason such land has not actually been utilised, the amount of

³⁵ Section 5 (4)

³⁶ Section 6 (2)

³⁷ Section 7

compensation per annum shall be at the rate of three percent of the market value of such land on the date of the order of requisition³⁸. The term 'persons interested' includes all persons claiming an interest in compensation to be paid on account of the requisition of land under the provision of this Act and a person shall be deemed to be interested in an easement affecting the land.

The COMPANIES (AMENDMENT) ACT, 2002: The Company Act, 1956 is a very important piece of legislation in this regard. Originally, under the Companies Act, 1956 even if there was no reservation regarding the entry of corporate bodies into the agriculture, the Central and State governments as well as the corporate bodies were not showing much interest in this sector. After the emergence of the WTO especially after TRIMs this sector is gradually opening up before the corporate bodies.

COMPANIES (AMENDMENT) ACT, 2002: this is a very significant step towards Corporatisation. In this amendment, the insertion of new Part IXA titled as 'PRODUCER COMPANIES'³⁹ empowers the Registrars of Companies to convert the primary produce⁴⁰ co-

³⁸ Ibid

³⁹Section 581A (l): "Producer Company" means a body corporate having objects or activities specified in section 581B and registered as Producer Company under this Act.

⁴⁰Section 581A (j): "Primary Produce" means- (i) produce of farmers, arising from agriculture (including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products), or from any other primary activity or service which promotes the interest of the farmers or consumers; or (ii) produce of persons engaged in handloom, handicraft and other cottage industries; (iii) any product resulting from any of the above activities, including by-products of such products; (iv) any product resulting from an ancillary activity that would assist or promote any of the aforesaid activities or anything ancillary thereto; (v) any activity which is intended to increase the production of anything referred to in sub-clauses (i) to (iv) or improve the quality thereof.

operatives into companies. As per the Act, any ten or more individuals, each of them being a producer⁴¹ or any two or more Producer institutions, or a combination of ten or more individuals and Producer institutions, desirous of forming a Producer Company having its objects specified in section 581B and otherwise complying with the requirements under the Act may apply before the Registrar of the Companies for incorporation of the same.⁴² The Company so formed, shall have the liability of its Members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and be termed a company limited by shares.⁴³ These companies are to deal with the producers with objects⁴⁴ under Section 581B of the Amendment Act. Under the Act, the Board may⁴⁵, subject to the provisions made in articles, provide financial assistance to the Members of the Producer Company by

⁴¹Section 581A (k): "Producer" means any person engaged in any activity connected with or relatable to any primary produce.

⁴² Section 581C (1);

⁴³ Section 581C (3);

⁴⁴ The Producer Company shall relate to all or any of the following matters, namely: - (a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit, (b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members; (c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members; (d) providing education on the mutual assistance principles to its Members and others; (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members; (f) generation, transmission and distribution of power, revitalization of land and water resources, their use, conservation and communication relatable to primary produce; (g) insurance of producers or their primary produce; (h) promoting techniques of mutuality and mutual assistance; (i) welfare measures or facilities for the benefit of Members as may be decided by the Board; (j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner; (k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.

⁴⁵ Section 581ZK. The Companies (Amendment) Act, 2002.

way of- credit facility, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months. However, loans and advances, against security specified in articles to any Member is repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances.

CORPORATISATION OF AGRICULTURE: NEED OF THE DAY

Though agriculture sector involves a vast population and provides the livelihood to them; a shabby picture emerges due to several reasons. A large number of rights still remain unrecognised in this sector. The only organised sector that is associated with plantation also is not properly regulated because it is largely in the private sector. In addition the rapid urbanization, sustained income growth, improvement in infrastructure, increasing women in workforce, development of storage facilities better access to information on the variety of foods and their quality, changing life style and consumer preferences, and food habits and the development of transport services and market liberalisation, the technological changes have added to the necessity of corporatizing the agricultural sector which has already started significantly through the appearance of the corporate capital with an ambition to invest in the retail sector. Corporatisation in Agriculture involves a tremendous impact on agriculture as it invites-

- i. **INSTITUTIONAL INVESTMENT:** One of the most important features of Corporatisation is the involvement of private investment. Corporatisation involves institutional investment. Investment is defined as "a commitment of funds made with the expectation of some positive rate of return."⁴⁶ An investor has various alternative avenues of investment for his savings to

⁴⁶ Donald E. Fischer and Ronald J. Jordon: Security Analysis and Portfolio Management; 5th ed. Prentice- Hall of India, New Delhi, 1994, pg.2

flow it. But all investments are characterised by features like- Return; Risk; Safety and Liquidity. The objective of the investor is to minimise the risk involved in investment and maximise the return from the investment. In fact, investments are made with the primary objective of deriving a return. Each segment of the agriculture sector needs to be made viableindicating sufficient quantum of funds at right time and cost needs to be made available. Depending upon the different risk factors for different segments, finance will be the major facilitator of the value chain.⁴⁷

- ii. **MODERN FARM MANAGEMENT PRACTICES:** Corporatisation definitely invites the latest technological advancements in the field to maximise the profit. It will evolve many long-term benefits: *better allocated efficiency, higher private investment, an increase in output, income and exports, and a higher multiplier effect, leading to the creation of wealth in rural India.* Today, it is a proved that the farmers, be it the small and marginal, can meet the qualitative requirements of market if adequate support in terms of infrastructure and training. Increasing demand for standards and quality control requires that small farmers follow strict food safety procedures in selecting and processing their produces for market. Under corporatisation, the relevant corporate body will facilitate farmer's access to inputs like high-yielding seeds and plant breeds, better quality fertilisers and pesticides. Not only these, the corporate investment will try to raise agricultural productivity by creating critical infrastructures like pre and post harvest treatment. Again, it will develop efficient storage and transport infrastructure and thus will cut down waste and

⁴⁷ Sharad Mistry, Three Day Seminar in Mumbai on the Corporatisation of Agriculture, statement made by Chanda Kochhar, the General Manager, ICICI, Indian Express Newspaper, 25th January 2000.

remove the spectre of distress sales. In addition to these, they will render credit facilities. Corporatisation of agriculture will emphasise the supply of quality goods. It will involve the modern technologies in efficient way which will lead to quality goods. There will still remain the yield, price and market risks. But the corporate bodies can help in reducing such risks.⁴⁸ Since the profit is shared between the farmers and the firm that enters into the contract, profit for the farmer can be maximised through the input saving technologies.

iii. **COMPETITIVENESS:** Corporatisation will result into the competitiveness on point of price. Under this system, the farmer will provide land and labour. The corporate sector will provide other inputs and marketing. The banker will provide credit. A corporate entity will enter into a contract with the farmer to purchase his produce at a pre-determined price and undertake the marketing of the produce in both domestic and export markets. As such, competitiveness on point of price definitely will come from the end of the buying the agriculture-commodities directly from the farmers and at the time of selling the same to the consumers. At this end, multiplicity of the corporate bodies as well as farmer co-operatives will be playing a great role in determining the price of the commodities.

iv. **SUPPLY CHAIN MANAGEMENT:** One of the most important features of corporatisation of agriculture is the supply chain management. Agriculture involves many activities like field activities, marketing of agriculture commodities. Under corporatisation, the relevant corporate body will facilitate farmer's access to inputs like high-yielding seeds and plant breeds, better quality fertilisers and pesticides. It will develop

⁴⁸ Dr. Suresh Chandra Babu, Yield, price, risk, limiting factors: The Hindu Survey of Indian Agriculture, 2007 at pg. 14.

efficient storage and transport infrastructure, cutting down waste and removing the spectre of distress sales. Most importantly, corporate bodies will force the stake holder's move towards 'quality related pricing'. Beginning with better quality of raw materials, improvements in the supply chain including primary grading; sorting; as also handling or preservation will result. Again, the development of food retailing will inevitably result in the establishment of backward linkages with agriculture and food processing.⁴⁹ If the supply chains are so reduced the marketing costs and margins and the farmers are provided with quality inputs, improved technologies, credit, information, and risk mitigating instruments, these will benefit the farmers especially small and marginal holders.⁵⁰

v. FINANCE, CROP INSURANCE AND MARKETING:

Corporatisation of agriculture will emphasise the supply of quality goods. It will involve the modern technologies and produce quality goods. Like West Bengal in most of the parts of India, farmers are unable to produce quality agricultural commodities.⁵¹ The reason in most of the cases is the shortage of credit which forces them in bondage of local money lenders. The farming class is dependent on nature and market conditions for the sale of their production and the nature for harvest and yield.⁵²

The issue of microfinance needs to be adequately addressed by the rural credit institutions. Forming co-operatives is one way to make small farmers credit worthy for organised farmer- run supply chains. Some of the states like Tamil Nadu; Haryana are

⁴⁹ Mr. G. Chandrashekar: Profound changes in retail area: The Hindu Survey of Indian Agriculture at pg.5

⁵⁰ Dr. Mangala Rai and Dr. A. K. Bawa: Profitability a key determinant: The Hindu survey of Indian Agriculture, 2007; pg. 24.

⁵¹ Suprakash Chakraborty: Ananda Bazar Patrika; 22nd September 2007 at pg.7

⁵² Dionne Bunsha: Harvest to death: Frontline September 8, 2006 at pg.13.

taking initiatives on this line e.g. the state of Tamil Nadu has written off Farmers' Co-Operative Loans of worth Rs. 7000 crores in the year 2006⁵³. Very recently, the Central Government has declared near about 70 thousand crore loan waiver to the small and marginal farmers who took loans from the nationalised banks but no policy has yet been framed to repay loans on behalf of the farmers taken from the money lenders. The corporatised agricultural system under which the relevant corporate bodies made statutorily responsible in facilitating the credit to the farmers tied with them, then this problem may be solved.

Crop insurance, can be a way out which by far, refers to all types of insurance which are required by the agriculturalists. In a limited sense, it connotes the insurance of crops and livestock against agricultural risks such as, draughts, floods, epidemics etc.⁵⁴ In addition to this, other financial institutions long term help is urgently required to the farming class so that they can get rid of the situation and get encouragement to have a better yield.

A corporate entity will enter into a contract with the farmer to purchase his produce at a pre-determined price and undertake the marketing of the produce in both domestic and export markets. Most importantly, retailing of agricultural commodities through corporate bodies will force the stake holder's move towards 'quality related pricing'. Storage is one of the biggest challenges to the farmers even today. For a country as large as India and a large farm output, warehousing facilities are very inadequate. Temperature control and inventory management are the two issues which need to be focussed upon.

⁵³ www.tn.gov.in visited on 20th Sept.2006.

⁵⁴ O.P. Gupta and P.N. Abrol: Dictionary of Commerce: Anmol Publications; New Delhi 1996 at pg. 19

Transportation is another challenge. Efficient, less expensive and specific transportation including appropriate material handling equipments, cold chains and refrigerated vans are the need of the hour. Organised retailing will help in reducing the wastage that currently characterizes farm production. While the demands for food products continues to boom on the supply side, with the entry of large corporate Houses may help the issue.

Small farmers who are the majority in the farmer's community are more prone to risk and their effective participation in regional and global market requires a mechanism that could absorb such risks. Connecting with the corporations that perform vertical coordination through contracting arrangements can help in reducing such risks.⁵⁵ Crop insurance has a major role in this regard.

vi. BETTER PRICE OF COMMODITIES: On corporatisation the, sector will become an organised sector. The agriculture sectors, being an unorganised one, the farmers are not in a position to make organised claim of their rights and cannot make a move to protect their interests and legitimate dues. Being socially and economically disadvantaged they have poor bargaining power. Corporatisation will regulate through contracts the sale of the commodities at pre-fixed prices, which will offer better protection to the farmers.

vii. PROTECTION OF THE INTERESTS OF THE FARMERS: Various labour legislations will be directly enforced in the agro sector if corporatisation of the sector takes place and the farmers will have greater bargaining power and remedy in case of violation of their rights. The corporate body under which the farming activities will be conducted, it will have to satisfy the

⁵⁵ Dr. Suresh Chandra Babu: Yield, price, risk, limiting factors: The Hindu Survey of Indian Agriculture, 2007 at pg. 14.

Triple Test⁵⁶ which includes i. systematic activity; ii. relationship of employer and employee and iii. the farmers will have a greater say on the production and distribution of goods:

DEFECTS IN CORPORATISED AGRICULTURE

Corporatisation of agriculture is not an unmixed blessing. The corporatisation of agriculture, which was being pushed as a successor to the Green Revolution of the 1960s and '70s, is leading to new poverty for small farmers, as unequal and unfair contracts lock them into a new form of bondage.

Liberalisation of agriculture: - The corporatisation of agriculture demands the liberalisation of agriculture. Liberalisation of agriculture can be effected by external and internal liberalisation. Fertilizer imports, deregulating domestic manufacture and the distribution of fertilisers, removal of subsidies on irrigation, electricity, credits are all the examples of external liberalization which is supposed to provide an enabling environment for transnational agriculture- business corporations to take over the market and pose a threat to the very survival of Indian farmer. Freeing agriculture from external inputs like chemical fertilisers, pesticides, making transition to sustainable agriculture, based on internal inputs for ecological sustainability, are examples of internal liberalisation which has the effect of freeing the farmer from debt traps and fear of dispossession. It means freeing the peasant from landlessness, ensuring inalienable and equitable water rights and holding on to local means of production.⁵⁷

⁵⁶ Bangalore Water Supply v. A. Rajappa, AIR 1978 SC 548.

⁵⁷ Vandana Shiva: The Threat of Globalisation of Agriculture; Available online: Micheal P, papadop@peak.org dt. 26th Aug, 1997.

Landlordism: - The Corporate farming in its complete sense of the term suffers from all the defects associated with Landlordism.⁵⁸ Under this system the production is carried on with the help of the workers who are hired and with the extensive use of mechanisation. The capitalist or the corporate personnel appointed by them take all related decisions in relation to production while the workers have no role to play in the control and the management of the farm e.g. the system of farming of tea, coffee, rubber and sugarcane in India.

Farmers at the mercy of the Corporate Houses: - Farmers in the Indian state of Punjab contracted by Pepsico to grow tomatoes received only 0.75 rupees per kilo, while the market price was 2.00 rupees. First the farmers rejected Pepsico and now Pepsico has abandoned Punjab, selling its tomato processing plant to a subsidiary of Levers.⁵⁹ But this picture is slowly changing with the successful demonstration of several corporations those are working with the small holders to connect them with domestic and global markets.

Profitability as priority concern: The single pointed agenda on profitability leads to the increased and indiscriminate use of chemicals, not only through the traditional methods, but also through genetic engineering, it promotes the undermining of water and soil fertility and damage biodiversity. Not only this, a centralized, chemical intensive, industry oriented production and distribution system linked with green revolution model is undemocratic, wasteful, and unsustainable and puts profitability above everything else. The emphasis is on trade rather than sustainable means of domestic production.

⁵⁸ Prof. Gangotri Chakraborty, Land Reforms and Corporatisation of Agriculture: NUJS 2006; at pg. 15

⁵⁹ Vandana Shiva, Threats of globalisation of agriculture: 26th august 2002. available at <http://www.hartford-hwp.com/archives/25a/007.html> visited on 3rd March, 2006 at 3.05 P.M.

Issues of food security: Food security is another grey area of concern under this system. If the corporatisation is not properly regulated, i.e. private corporate bodies are not controlled involved in this sector, then the private corporate bodies to maximise profit will not pay due attention in protecting the interests of the common people.

Concentration therefore, should be on the internal liberalisation of agriculture, which is more democratic and sustainable if a small farmer centred agricultural system is encouraged; it will mean localization of agriculture. This will involve a shift from external inputs to internal inputs and rebuild local food security and thereby national food security. Inevitably there will be a shift from monoculture to crop diversity.

Corporatisation and privatization, has been proved to be a failure in a number of occasions.

Farmers will be employees and not entrepreneurs: Indian agricultural sector is characterized by the involvement of nearly 60% of the people. If this sector is corporatised and privatized, the farmers will be under direct or indirect employment of the corporate concern and will become liable to lose their jobs for various reasons. The result will add to the burden of unemployment in the country, poverty will increase and the farmers will lose their moorings. It is also not certain that a fair and equitable profit sharing will take place

Profiteering without Social Security dragnet: Profit making motive of the corporate houses will lead to a situation where it will supersede social security, social justice and several other interests of the farming class.

Lack of transparency: When a corporate body has inequitable policy or plan and is contractually obliged to follow the same the content of the contract is never made public.

Experimentation with corporatisation has taken place in many third world countries. Many of the models have been found to have fallen short of the desired result.

SOME INTERNATIONAL MODELS OF CORPORATISATION

CHINESE MODEL OF AGRICULTURAL REFORM: - Under this system, the country, very recently, has taken up a project to modernise the same which mainly aims to increase the income of the farmers twice by 2020. It includes, inter alia⁶⁰-

1. No letting up in promoting grain production,
2. Raising of Minimum Purchasing Price for grains on the basis of increase in the price index of the essential commodities which has already been introduced,
3. Increment of subsidies for production, Stabilising the price of agricultural commodities to adjust agricultural infrastructure,
4. Promoting and integrating agriculture with modern entrepreneurial and industrial look,
5. Stepping up agricultural product safety work, improving infrastructure and stepping up agricultural product safety work.

PHILIPPINES MODEL OF AGRICULTURAL REFORM: - In Philippines, the P.O. (Peasants' Organisation) and Non-governmental Organisation are operating in each of the designated provinces held numerous discussion on the mechanics of

⁶⁰ Madan Ghosh: Reported in the Ganashakti: 27th December, 2008 at pg. 04.

collaborating, for the first time in 1986, on a large scale project on the ground. This collaborative and participatory model is popularly known as TriPARAD model. They met with officials from the National through to the regional and local levels- Officials whose support was seen as essential for the success in implementing the programme. This involved several key government agencies, such as the Department of Agrarian Reform (DAR); the Department of Environmental and Natural Resources (DENR); which is responsible for public lands; the Department of Agriculture (DA), which is responsible for support services and the Land Bank for financing. A Technical Advisory Committee of NGOs and the Pos representatives, together with several major university research institutes which helped to guide the programme implementation at each phase, was also set up at national level. The three groups- Pos, NGOs, and government- institutionalized working relationships and partnerships to carry out a concerted, community based agrarian reform, including joint training activities for government and NGO field workers.

ETHIOPIAN MODEL OF AGRICULTURAL REFORM: In Ethiopia, a transitional government came into power in 1991 in the wake of a protracted and destructive civil war. With Washington supporting both sides in the Eritrea-Ethiopia border war, US arms sales spiralled. The bounty was being shared between the arms manufacturers and the agribusiness conglomerates.⁶¹ Patterned on the reforms adopted in Kenya in 1991, agricultural markets were wilfully manipulated on behalf of the agribusiness conglomerates. The World Bank demanded the rapid removal of price controls and all subsidies to farmers. In turn, the markets for farm inputs

⁶¹ Michel Chossudovsky: Genetically Modified Seeds Imposed on Farmers in Developing Countries Trigger Famine and Social Devastation Sowing the Seeds of Famine in Ethiopia: <http://chora.virtualave.net/famine-seeds.htm> visited on 05.05.2009 at 2. 30 pm.

including fertiliser and seeds were handed over to private traders including Pioneer Hi-Bred International which entered into a lucrative partnership with Ethiopia Seed Enterprise (ESE), the government's seed monopoly.⁶² The reform agenda focuses on liberalization and privatization in the fertilizer and transport sectors in return for financing fertilizer and truck imports.⁶³ While the stocks of donated US fertiliser were rapidly exhausted; the imported chemicals contributed to displacing local fertiliser producers. The same companies involved in the fertiliser import business were also in control of the domestic wholesale distribution of fertiliser using local level merchants as intermediaries.

In 1997, the Atlanta based Carter Centre - which was actively promoting the use of biotechnology tools in maize breeding - proudly announced that "Ethiopia had become a food exporter for the first time".⁶⁴ Later on, the US surpluses of genetically engineered maize which were banned by the European Union were being dumped on the horn of Africa in the form of emergency aid. US grain surpluses peddled in war-torn countries also served to weaken the agricultural system. Some 500,000 tons of maize and maize products were "donated" in 1999-2000 by USAID to relief agencies including the World Food Programme (WFP) which in turn collaborates closely with the US Department of Agriculture. At least 30% of these shipments (procured under contract with US agribusiness firms) were surplus genetically modified grain stocks.⁶⁵

⁶² Pioneer Hi-Bred International, General GMO Facts, http://www.pioneer.com/usa/biotech/value_of_products/product_value.htm#, visited on 05.05.2009 at 2. 37 pm.

⁶³ "Mission to Ethiopia, Concept Paper: Back to The Future", United States Agency for International Development (USAID), Washington, June 1993.

⁶⁴ Carter Center, Press release, Atlanta, Georgia, January 31, 1997.

⁶⁵ Declan Walsh, America Find Ready Market for GM Food, *The Independent*, London, March 30, 2000, p. 18.

During the 1998-2000 famine, lucrative maize contracts were awarded to giant grain merchants such as Archer Daniels Midland (ADM) and Cargill Inc.⁶⁶ Moreover, part of the "food aid" had been channelled under the "food for work" program which served to further discourage domestic production in favour of grain imports. Under this scheme, impoverished and landless farmers were contracted to work on rural infrastructural programmes in exchange for "donated" US corn. Meanwhile, the cash earnings of coffee smallholders plummeted. Whereas Pioneer Hi-Bred positioned itself in seed distribution and marketing, Cargill Inc established itself in the markets for grain and coffee through its subsidiary Ethiopian Commodities.⁶⁷ This ultimately locked more than 8 million people in Ethiopia - representing 15% of the country's population into "famine zones". Urban wages have collapsed and unemployed seasonal farm workers and landless peasants have been driven into abysmal poverty.⁶⁸ Again, boosted by the border war with Eritrea and the plight of thousands of refugees, the influx of contaminated food aid had contributed to the pollution of Ethiopia's genetic pool of indigenous seeds and landraces. In a cruel irony, the food giants were at the same time gaining control - through the procurement of contaminated food aid - over Ethiopia's seed banks. According to South Africa's Biowatch: "Africa is treated as the dustbin of the world...To donate untested food and seed to Africa is not an act of kindness but an attempt to lure Africa into further dependence on

⁶⁶ Ibid

⁶⁷ Maja Wallegreen, "The World's Oldest Coffee Industry In Transition", *Tea & Coffee Trade Journal*, November 1, 1999.

⁶⁸ Michel Chossudovsky: *Genetically Modified Seeds Imposed on Farmers in Developing Countries Trigger Famine and Social Devastation Sowing the Seeds of Famine in Ethiopia*: <http://chora.virtualave.net/famine-seeds.htm> visited on 05.05.2009 at 2. 30 pm.

foreign aid."⁶⁹ For the more than 700,000 smallholders with less than 2 hectares that produce between 90 and 95% of the country's coffee output, the deregulation of agricultural credit combined with low farmgate prices of coffee had triggered increased indebtedness and landlessness, particularly in East Gojam popularly known as Ethiopia's breadbasket.⁷⁰

So, Corporatisation through public initiative and its delicate balance with private bodies is the best answer between profitability and public welfare of the agriculture sector.

INDIAN MODELS FOR THE CORPORATISATION OF AGRICULTURE

Golden Triangle Model: - Corporatisation of agriculture can also have many long-term benefits. This system can be illustrated through the "Golden Triangle Model."⁷¹ Under this system; the farmer will provide land and labour. The banker will provide credit in which the corporate body will facilitate credit by acting as a guarantor and performing other spade-works on behalf of the farmer for his financial needs. The corporate partner will also provide the modern technologies; undertake the post-harvest activities and marketing which will lead to quality goods. Thus in such a supply chain management system, the farmer adds his land,

⁶⁹ Maja Wallegreen, "The World's Oldest Coffee Industry in Transition", Tea & Coffee Trade Journal, November 1, 1999.

⁷⁰ Michel Chossudovsky: Genetically Modified Seeds Imposed on Farmers in Developing Countries Trigger Famine and Social Devastation Sowing the Seeds of Famine in Ethiopia: <http://chora.virtualave.net/famine-seeds.htm> visited on 05.05.2009 at 2. 36. P.M.

⁷¹ Nirmal Sandhu: Corporatisation of Agriculture needed at <http://tribuneindia.com/1998/98oct17/agro.htm#3> visited on 3rd April, 2007 at 5.42 P.M.

skill of farming and labour. The corporate sector provides inputs and marketing. The banker provides credit. Under the system, a corporate entity will enter into a contract with the farmer to purchase his produce at a pre-determined price and undertake the marketing of the produce in both domestic and export markets. In order to make the venture a success, the corporate sector needs to invest in critical areas like better inputs and more efficient systems of management and investment.

Concept of the Special Agricultural Zones: - Setting up of Special Agricultural Zones is another important tool to achieve the balance among the increasing pressure of population, job creation, meeting the demands of the consumers, industrial houses. It will also address the question of protection of prime agricultural lands with a focus to build infrastructures like roads, markets and storage facilities in one area and thereby prove farming profitable again. Conservation farming and the care and enhancement of the ecological foundations essential for sustainable agriculture will be bottom line of the SAZ. These agricultural zones should be run like a co- operative, with farmers retaining ownership of their land and acting as stakeholders. This will help to launch an Ever Green revolution, leading to enhancement of productivity in perpetuity without ecological harm. It will help to attract and retain youth in farming by making agriculture both intellectually stimulating and economically rewarding. The system should be so devised that the farmer's co- operative would help to administer the Special Agricultural Zones (SAZ), with the government acting as facilitator. Together, the state and co- operative would determine what additional facilities are needed like- storage, cold storage, cold chains, fish farming, horticulture and also packaging etc. Famous agricultural scientist and the father of Indian Green Revolution, M. S. Swaminathan, has said that "the aim of the SAZ is to conserve

prime farm land for farming and to bring about convergence among all ongoing government programmes.”⁷² The aim of Special Agricultural Zones (SAZs) is to conserve prime farm land for farming and to bring about convergence among all ongoing government programmes, like the Rashtriya Krishi Vikas Yojna, the National Food Security Mission and the National Horticultural mission.

Uttarakhand Model of SAZ: - The Uttarakhand government has already got the ball rolling. The government is also planning to create specialised cultivation areas based on climate and soil condition and the main crops to be grown there. Each zone will have state sponsored water management facilities, including rainwater harvesting, better management of surface, rain and ground water and focus on recycling of gray water and treating of waste water. Inputs like seeds, fertiliser and credit will be provided in a single window, at subsidised rates, either directly by the government through Kisan Banks or in collaboration with the private agencies. The logistical infrastructures like, highways, marketing, better access to markets will help the farmer make more from his produce.⁷³

CORPORATISATION OF AGRICULTURE IN BENGAL

In the midst of the crisis of recession and increasing insecurity about food, it is important to boost up the agro sector. It will only be possible if the existing and available technology is put to optimal use need maximum utilisation of resource like water fertiliser, seed, electricity etc. and strengthen applied research while ensuring value addition and better post-harvest management.

⁷² Reported in The Hindustan Times, Kolkata: 24th March, 2009 at pg.01.

⁷³ Reported in The Hindustan Times, Kolkata: 24th March, 2009 at pg.01.

The price safety net is one of the most important tools which insulate the peasants from the sharp fluctuations in the prices of their commodities in the market, be it domestic or international. The middlemen purchase the crop before the officials reach at the marketing centres. They have a strong hold on the weekly haats⁷⁴ of rural Bengal.⁷⁵ In this way, the wholesalers and agents dominate the markets and reap huge monetary benefits. The farmers don't get remunerative prices for their produce on one hand and cannot get employment on the other due to large scale unemployment. Displaced from known trade and vocation the farmers migrate to urban areas as landless labour. The number of farmer's suicide recorded in the country is 69,064 in last four years i.e. one farmer commits suicide every 30 minutes.⁷⁶ But, agriculture has recorded an average of nearly 4% growth for last five years and there has been four years of bumper harvests plus a 40% rise in the minimum support prices of food grains over last two years.⁷⁷ Hence, a system is necessary to introduce wherein the peasants are able to obtain subsistence profit from their commodities. In which the State and the corporate bodies have an important role to play for fixing the retail prices.

Interestingly, a large number of corporate bodies are interested in running business on agricultural commodities. Earlier, under the West Bengal Marketing Board could only regulate procurement and sale of agri- produce in the State⁷⁸. The West Bengal Marketing Board is now set to create a regulated corporate entry in the field of marketing of agricultural commodities. Earlier, the direct purchase of agricultural commodities from the 46 regulated

⁷⁴ Haat is a rural makeshift market place in Bengal. It has no corresponding English or Hindi substitute. The Hindi word for market is mandi.

⁷⁵ Santanu Basu: Between theory and practice: The Statesman NB Extra, 13th February, 2009 at pg. 01.

⁷⁶ Reported in The Hindu: 26th March, 2009 at pg. 10.

⁷⁷ Reported in The Times of India: 27th March, 2009 at pg. 14.

⁷⁸ Reported in The Agricultural Produce Marketing and Control Act, 1954

markets and 150 sub markets of Bengal by corporate firms was not allowed. But to pave the entry of retail chains like Reliance Fresh, Spencer's and Metro in agricultural produce, the Amendment of the West Bengal State Agricultural Produce Marketing (Regulation) Act, 1972 was needed. Hence, a note prepared by the agri-marketing department suggested the state government inter alia, to grant licences 'allowing the purchase of agriculture produce by an establishing private yard' directly from farmers and the yard would be allowed to process, trade and export the product.⁷⁹ In a recent case filed by the solicitor firm Fox and Mondal⁸⁰ regarding the corporate entry in the area of the marketing of agricultural commodities, the Calcutta High Court ordered the Police to give security and even post police pickets in the relevant establishments of the Keventors' Fresh Group from protection against the vandalism by group with vested interest. This judgement led the other corporate bodies in the same line like Reliance Fresh to enjoy the same protection in their outlets. Earlier these bodies were compelled to close their shops in the city against the agitation raised by several political and vested interest groups.

CORPORATE MODELS IN BENGAL FOR AGRICULTURAL PRODUCE MARKETING: Corporate model of marketing of agricultural produces approved in West Bengal are as under-

Frito-Lay Model of participatory farming⁸¹: Frito-Lay had introduced a partnership farming concept with contracts spelling out the technology, seeds, fertilisers and inputs to be provided by the company. It also provides output specifications and the price

⁷⁹ Reported in The Statesman: 1st August, 2008 at pg. 01.

⁸⁰ Reported in The Ananda Bazar Patrika : 6th August, 2008 at pg. 03.

⁸¹ Rohit Khanna: Bengal eyes partnership model in farming to get Central funds; (<http://www.financialexpress.com/news/bengal-eyes-partnership-model-in-farming-to-get-central-funds/211085/> visited on 22nd May, 2008 at 12 noon.)

at which the produce will be purchased from the farmers. In the partnership farming model, the banker can claim the amount from the insurance firm rather than rescheduling the loan or offering a moratorium in case of crop failure.

Reliance Model⁸²: Among the private corporate bodies Mukesh Ambani's Reliance Retail Limited entered into the agri- retail mart by joining hands with the Keventor Group. They received the APMC Licence from the State Agriculture Marketing Board on 2nd August, 2008. It is a three- tier model which includes the setting up of - (a) Distribution Centre; (b) Retail outlet and (c) Rural Business Hub for 18 districts of the state, 36 in total. In the proposal laid down before the state government the Reliance authority asked for 100 acres of land for each distribution centre; 10 acres for each retail outlet; and 10 acre for each rural business hubs, a total of 1800 acres of land. Under this system, the company will reach directly to the farmers and avail the crops to the end users. Hence, they will be able to cut down the intermediaries existing in the system.

Bengal Fresh Model: In a bid to play a larger role in the procurement and grading of agricultural commodities, the Bengal Marketing Board plans to float a joint venture brand 'Bengal Fresh' with private affiliates so that the farmers can go for a better bargain with the corporate bodies. Under the present scheme the corporate bodies floating a joint venture with the state run marketing board will get this licence for procuring, processing, packaging and selling of agricultural produce under the Bengal Fresh Brand. The board will not have any stake in the business except providing the logistic and administrative support to expedite the process. The board will also monitor the storage, grading and packaging of materials before it lends the Bengal

⁸² Reported in The Times of India: 4th August' 2008; at pg. 4.)

Fresh tag. Marketing will be done mostly by the partner company with the packaged products being made available to malls and traditional shops. Under the system the farmers to be involved are mostly the small and marginal ones who come to the local market-regulated or private or those under municipalities and panchayats with their daily produce which will be collected and stored into the existing facilities of the private partners and the farmers will get a comparative price advantage in this process that will accommodate the existing retail traders.⁸³

Confed Model⁸⁴: The State government is planning to set up Shopping Malls for agricultural commodities in each district under the banner of the West Bengal Consumers Co- Operative Federation Limited (Confed) to deal in varieties of agricultural commodities. This organ has the necessary co- operative infrastructure of wholesale procurement of the agricultural commodities in bulk quantities at a reasonable price directly from the farmers and to sell them directly. This measure is expected to save the poor farmers from forced selling of agricultural commodities at a lower price especially when the market of that commodity is dwindling.

'Swarojgar' Model: The government is planning to form a Self-Help Corporation to procure and distribute the agricultural and non- agricultural commodities on behalf of the government. Under the plan, the government has allocated Rs. 100 crore, to be supplemented by an additional 300 crore from the market as its share capital contribution towards the setting up of a new marketing corporation for the procurement and supply of various commodities at fair price. The said corporation will be allowed to raise its fund from market if necessary. The Draft Plan regarding this proposes two systems:

⁸³ Reported in The Times of India: 13th July, 2008 at pg. 04.

⁸⁴ Reported in The Ananda Bazar Patrika: 14th March, 2008 at pg. 13.

- i. State Control System:** - In the first category, if the state holds more than 50% of the share, then automatically, the state will control the corporation.
- ii. State Supervision System:** - If a private corporate body having experience of procurement of agricultural and non- agricultural commodities holds 50% or more shares then, the state will look after the day to day dealings of the body and if it violates the norms of the contract, the state will have the power to look into the matter and take necessary action.⁸⁵

Finally, the government has formed the Corporation 'Swarojgar' to deal with the agricultural and non- agricultural commodities at Block level. The said corporation will purchase the commodities from the SHGs and common people and train people to professionally deal from procurement to sale. The government has declared to give 5% subsidy in Bank loan to such SHGs.⁸⁶

FDI & Agri- Retail Sector: Fearing that foreign direct investment will out the indigenous marketing chain in agri retail sector, the government has imposed certain restrictions. The state has already allowed 100% FDI in retail sector through German multinational the Metro Cash and Carry.

Metro Cash and Carry - However, the State Government has imposed certain conditions on Metro Cash and Carry⁸⁷:

- a.** The company cannot go for contract farming even as the Central guidelines to change the APMC Act provides for it.
- b.** Farmers will produce crops on their own. Corporate Houses cannot influence the farming process while procuring vegetables or crops.

⁸⁵ Reported in The Ananda Bazar Patrika: 19th October, 2008 at pg. 04.

⁸⁶ Reported in The Ananda Bazar Patrika: 2nd March, 2009 at pg. 11.

⁸⁷ Reported in The Times of India: 8th October, 2008 at pg. 04

- c. The Metro Officials have to send their stock statements to the Marketing Board regularly.
- d. There must have to be the APMC Licence of the buyer from Metro while no provision is there for ceiling on the purchase of commodities from the outlet of them. For Bangalore this is at least Rs. 1000/-.

At this, the Metro Officials assured the government that it would deal only in wholesale supply of vegetables and staples to the hoteliers. But in Punjab, the said international leader in self-service business to business wholesale company, METRO Cash and Carry has not faced many restrictions. There, the Government signed the Memorandum of Understanding (MoU) to set up whole sale centres to deal exclusively with the professional business customers like small retailers including grocery stores, hotels, restaurants and caterers sourcing vegetables, fruits and other fresh items directly from local farmers eliminating the middlemen from the supply chain.⁸⁸

Contract farming in Bengal: - In West Bengal, corporate farming started in 2002 for the first time with the operation of the 'Patwa Agro Farms'⁸⁹ for sweet corn project near EM Bypass which involved 40 farming families. The cultivation took place with the seed supplied by the corporate body and the harvest was sold to the same corporate body. Under this project, the corporate body also took up conservation and packaging of the same. Another instance of contract farming in Bengal is the of Airbridge Green⁹⁰ company's initiative of setting up of factory of producing Bio-Diesel at Domjur. Here the company entered into a contract with some of the farmers of Birbhum and Hoogly Districts to supply the Zatropha seed to run the production.

⁸⁸ Reported in The Hindu: 23rd February, 2009 at pg. 05.

⁸⁹ Reported in The Ananda Bazar Patrika: 17th April; 2008 at pg. 05.

⁹⁰ Reported in The Ananda Bazar Patrika: 2nd February; 2009 at pg. 03.

Thus, in West Bengal, a regulated corporate entry in agriculture has three basic objectives-

Firstly, Control and regulation of entry of big corporate houses in the agriculture sector;

Secondly, In order to give relief to its farmers from the exploitation of middlemen the state is getting involving in joint ventures with private bodies for procurement, processing, packaging and selling of agricultural produce;

Thirdly, Regulating the private entry in the agri- retailing with APMC licence;

Fourthly, the government is on the way of rolling down parallel retailing of agricultural commodities chain to have control and maintain the price of agricultural commodities so that the private corporate bodies cannot have arbitrary control over the right of pricing of the agricultural commodities;

Fifthly, Allowing FDI only in the whole sale supply of vegetables and staples to the hoteliers, caterers, and restaurant owners in large quantities purchasing the same through the West Bengal Marketing Board as constituted under The Agricultural Produce Marketing and Control Act, 1954 under the B- 2- B model (Business to Business Model).

Under this drive it is expected to be the most effective instrument for achieving the goal of higher prices for the farmers. It will bar the corporate bodies from entering into contract farming. But, under this system, attention is to be paid so that the small and marginal farmer's interests are protected. Attention must also be paid to the issue of insurance⁹¹ pension. Presently, the old farmers

⁹¹ Regarding the health insurance, the Central Government has already announced a comprehensive plan i.e. Rashtriya Swasthya Bima Yojna which will provide cashless health insurance cover upto 30,000/- for the families of the unorganised sector workers below poverty line. Again the NABARD (National Bank for Agriculture and Rural Development) in collaboration with the LIC has launched the Janashree Bima

above the age of 60 years are getting a sum of Rs. 500/- as old age allowance through their the respective Panchayats as a part of the old age allowance scheme of the government⁹² To make this sector really profitable and attractive, for the farmers due attention is to be paid on the followings-

- Availability of soil and water testing facilities.
- Farmer-Scientist interaction in rural areas through broadband connectivity and educating the farmers with necessary IT skills through NGOs, SHGs and Cooperatives.
- Formation of Special Agricultural Zones (SAZ) to protect the farmlands from further encroachment by industries and business houses.
- Dissemination of information regarding the latest technological and scientific updates to the farmers like weather forecast⁹³, market demands, and giving lessons on high- tech farming to the farmers at free of cost⁹⁴, so that they could make a decent earning even from small land holding.

Yojna for women of self- help groups between 18- 60 years under which the policy holder will be required to pay Rs. 100 per year as premium while the Central government's social security Fund will pay Rs. 100/- as premium. In case of a natural death of a policy holder, her family will get Rs. 20,000/-. However in case of accidental death, the family will be given Rs. 75,000/-. Moreover, Rs. 100/- per month will be given as scholarship if the policy holder's child is studying in classes IX- XII. The West Bengal State Co- Operative Bank in collaboration with the National Insurance Company has entered into a master policy contract on 30th April, 2008 which enables the farmers having the Kisan Credit Card to enjoy the accidental claim upto Rs. 50,000/- Again, the state has also introduced in which the premium will be paid by the government against which the respective farmer will have a coverage of Rs. 20,000/-,

⁹² The Ananda Bazar Patrika: 17th November, 2008 at pg. 10.

⁹³ Like the e- Chaupal system by the ITC,

⁹⁴ This may be with the help of may be by the State Agricultural Department in co- ordination with the various departments, research organisations, Agricultural Universities, NGOs and agencies associated with the agricultural development. The ATMA Model [The Agriculture Technology Management Agency] in Haryana may be a guide on this line.

- Voluntary consolidation of their scattered land holdings so that they could manage farm activities well and to group themselves into Co- operatives or Self Help Groups for value addition and marketing of coarse grains, vegetables, flowers and fruits.
- Adequate cold storage chain facilities
- Establishment of specific commodity hubs.
- Better linkages (through roadways, railways, and cargo exclusively for perishable goods).
- Dedicated ports for agro and food processing etc.

Better achievement may take place if the following is followed:

- a. Compulsory registration of the name of the small and marginal farmers, agricultural labourers and patta holding people involved in agricultural works with the local panchayats.
- b. Priority of the local people in the process of procurement, transportation, grading, processing, packaging.
- c. Procurement of crops to be done in presence of the Officials of the Revenue Department and Department of Agriculture who will be responsible for fixing the price of such commodities centrally and uniformly in the state.
- d. Report of such dealings should be directly sent to the District Officials on daily basis.
- e. Establishment of rural BPO centres and introduction of the E-Auction to establish contact with the companies involved in the trading outside instead of selling locally when the local market has fallen and the farmers are supposed to suffer loss.

In West Bengal, recently a controversy arose regarding the granting of licence to the corporate bodies like Reliance, Spencers, Metro Cash & Carry in the agricultural retail sector. However, the concerns

like Metro Cash & Carry have already started its operation. Along with it recently M.K Jalan's *Keventor Agro* has launched an integrated cold chain facility along with food processing unit in the state. Another concern naming '*Picasona*' is on the way of its emergence.⁹⁵

PROPOSED MODEL

Marketing of agricultural produce is the most important activity for the farming community, particularly for those who are small producers and have small surpluses for marketing. To protect the interests of farmers, the Government has promoted organized marketing of agricultural commodities through a network of regulated markets. However, studies indicate that the intuitions of regulated market have achieved limited success, as these markets restricted development of direct and free marketing, smooth raw material supplied to agro- processors, information exchange and adoption of innovative marketing systems and technologies. Thus, the issue of corporatisation of agriculture should be so designed, under which, the Government should hold majority of the share after forming a Corporate Body and involve the persons interested to cultivate vested land among whom the people with patta will get priority. Attention should be given to the small and marginal farmers and gradually, the entire farming community may be brought under the umbrella of such corporate body. The Government may:

- a. Frame its own policy;
- b. Control the supply of seeds and other necessities like water, manures, equipments with proper testing and the

⁹⁵ Reported in The Ananda Bazar patrika: 7th October, 2009

- arrangement of training the people with modern techniques of cultivation⁹⁶ wherever necessary;
- c. Can facilitate credits⁹⁷
 - d. Can initiate direct purchasing of raw agricultural commodities at a price fixed by the experts duly sending the same in the form of short messaging service in local languages through the mobile service providers or displaying the same at convenient places in the open market through the State run Agricultural Commodities Marketing Board/ so formed Corporate Body⁹⁸ and supply the same to the purchasers, be it big private investors (Corporate Bodies) or Retailers in the open market;
 - e. Can monitor the storage, grading and packaging;
 - f. Can regulate the price of the commodities;
 - g. Control the payment by the way of cash or kind to the labour and;
 - h. Can regulate the supply of the crops through Public Distribution System;
 - i. Provide the existing logistic and administrative support;

⁹⁶ In this regard the School of Agriculture at the *Indira Gandhi National Open University* is developing e- tools in agricultural extension and education which is expected to fill the knowledge gap among the researchers, professionals and small farmers through *national community of agricultural educators and researchers* regarding integrated pest management, integrated nutrient management and post harvest value addition. This project aims at helping farmers to grow more crops and reduce stress on environment. (Reported in *The Hindu*: 8th October, 2009 at pg. 03.)

⁹⁷ In China, there's 0% credit is given to the farmers (the statement of Prof. M.S. Swaminathan recorded by Nirendra Dev and published in the *Statesman* on 8th August, 2009 at pg. 05.)

⁹⁸ In this regard the strategy laid down under the WB Land Reforms Act, 1955 under the provisions of Share of Produce u/ Sec. 16 of the Act by a bargadar may be followed.

- j. Regulate seed insurance,⁹⁹ crop insurance¹⁰⁰, health insurance¹⁰¹ for the farmers, so that the government can render reasonable benefits to the marginal and small farmers.
- k. Regulate insurance facilities e.g. life insurance,¹⁰² pension above the age of 60 years and Provident Fund¹⁰³ and medical facilities including insurance (Rashtriya Swastha Bima Yojna for the BPL families) for the farmers.
- l. Link the local bodies to render various social services in agriculture under various schemes like- *National Rural Guarantee Schemes, National Rural Health Mission; Sajal Dhara; Sarva Siksha Mission; Indira Abas Yojna.*

While, the private investors may be involved in the following:

- i. Consultancy,

⁹⁹ 'Pilot Scheme on Seed Crop Insurance' (This Scheme was introduced from Rabi crop 1999- 2000 to protect seed breeders/ growers in the event of failure of seed crops. The scheme covers seed crops of paddy, wheat, maize, soyabean etc.)

¹⁰⁰ 'Rashtriya Krishi Bima Yojana' (This was introduced in 1999- 2000. Under it, the small and marginal farmers are entitled to a subsidy of 50% of the premium charged); 'Farm Income Insurance Scheme' (This was introduced from Rabi Crop 2003- 2004. It provides income protection to the farmers by insuring both production and market risks. Presently this scheme covers only wheat and paddy.); 'Varsha Bima' (The Varsha Bima was introduced in 2004. it covers anticipated shortfall in crop yield on account of deficit rainfall.)

¹⁰¹ 'Krishi Shramik Suraksha Yojana' this scheme was launched in 2001 and provides life insurance protection, periodical lump sum survival benefits and even pension to those who are between 18- 50 years.

¹⁰² Recently the State has jointly started the "Aam Aadmi Bima Yojna" (having coverage of Rs.30,000/- in case of natural death, Rs. 75,000/- in case of accidental death; Rs. 75,000/- in case of loss of limb in addition to which a monthly scholarship of Rs. 100/- for each of two students from each family if they are studying from class 9- 12 in collaboration with the Central Government through LIC for the landless farmers in the state. Reported in the Bartaman, 16th October, 2009 at pg. 07.

¹⁰³ West Bengal is the first state of India which introduced the Provident Fund Scheme on 1st April, 1998 for the Landless labourers.

- ii. Technological inputs, technical assistances and other necessary technical information like information on weather,¹⁰⁴
- iii. Integrated farm management practices like treatment of soil, infusion of modern tillage practices, efficient water and pest management, practically training the farmers, monitoring of farm practices,
- iv. Grading,
- v. Processing,
- vi. Packaging,
- vii. Storage,
- viii. Transportation,
- ix. Distribution and
- x. Marketing of such commodities

In addition to this, the Government should appoint the Agricultural Labour Inspector at panchayat level to monitor the followings-

1. the conditions of work and protection of workers while engaged in their work, such as working hours, weekly rest, safety, health and welfare,
 2. The employment of women, children and young persons and other connected matters and the treatment of them. The Minimum Age Convention 1973 adopted at the General Conference of ILO may be considered as a guiding principle,
- As per the requirement of the ILO¹⁰⁵, the following categories of persons working in an agricultural undertaking may be made a subject of inspection-

¹⁰⁴ Recently the Indian Agricultural Research Institute (IARI), in collaboration with the Department of Science and Technology (DST) has turned to NGOs to reach their technologies to farmers. Reported in The Hindu: 19th October, 2009 at pg, 3

¹⁰⁵ Article 5; the Labour Inspection (Agriculture) Convention, 1969.

- Tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers
- Persons participating in collective economic enterprise, such as members of a co- operative society
- Members of the family of the operator of the undertaking as defined by national laws and regulations

In order to achieve more success under this plan the following steps may be taken-

1. Compulsory registration of the names of the small and marginal farmers, agricultural labourers and patta holders involved in agricultural works with the local panchayats.
2. Priority of the local people in the process of procurement, transportation, grading, processing, packaging.
3. Procurement of crops should be done in presence of the Officials of the Revenue Department and Department of Agriculture who will be responsible for fixing the price of such commodities centrally and uniformly in the state.
4. Report of such dealings should be directly sent to the District Officials on daily basis.
5. Establishment of rural BPO centres and introduction of the E-Auction to establish contact with the companies involved in the trading outside instead of selling locally when the local market has fallen and the farmers are supposed to suffer loss.
6. Again, the Punjab model of setting up of AGRI FOOD BIOTECHNOLOGY PARK (Agri Food Cluster) may be a good step.¹⁰⁶

¹⁰⁶ Reported in The Times of India: 16th March, 2009 at pg. 06.

7. Looking at the State's future demand of cereal, vegetables and cash crops, identification of fallow and degraded land should be converted for cultivation purposes as soon as possible. Cultivation of cash crops such as pulses, oilseeds and cotton should be encouraged.

Suggestions for achieving desired results

- a) The states to establish integrated body to establish integrated facility for marketing of agricultural produce.
- b) Curtailment of excessive bureaucratization of markets is necessary for healthy growth of such markets.
- c) To benefit the farming community form new market access opportunities, the internal agricultural marketing system in the country needs to be integrated and strengthened to encourage the development of competitive agricultural markets in the private and co-operative sectors,
- d) Deregulation of marketing system to promote private investment in marketing infrastructure.
- e) A policy shift in favour of farm cooperatives with the complementary support of inputs from public institutions and a reliable system of assured credit at reasonable rates of interest, are very important.

This tripartite model of corporatisation suggests that for the purpose of agriculture, land must be avoided from being corporatised but must be consolidated and must be used for as much as possible multi cropping purposes. No mono- cropping should be encouraged. For setting up of an industrial house the land acquired should be handed over on lease to the relevant corporate bodies. Finally, necessary amendments should be brought on the relevant laws e.g. the Factories Act, 1948; the Maternity Benefit Act, 1961; the Equal remuneration Act, 1976; the Employees State Insurance Act, 1948; the Workmen Compensation Act, 1923. It is

important to introduce agricultural tribunal to address the conflicts arising in the inter- relationships between the farmers as well as the other interests groups for smooth enforcement of the relevant laws on this point. The following issues are to be addressed to enforce the agrarian democracy-

- Peasant participation;
- Peasant's ownership over land, machinery and equipments;
- Competition among farmers;
- Consumer co- operatives;
- Women's share in reconstruction;
- Increased acceptance of responsibilities;
- Social security through insurance;
- Education in the new order.

Thus, to conclude, the group operation of farming activities will characterize the economies of scale in resource management; consolidation of inputs, collective sharing of risks where risk is high and market for insurance is imperfect. The framers are challenged with fragmented landholding; insufficient governmental assistance, limited credit flow entrapping them to money lenders, losing their traditional right of using their seeds, uncertain weather and market conditions. They are also subjected to eviction from their land. These issues for a long time have been the cause insecurity to the farmers. The productivity index of the unorganised private farm sector of the developed countries and that of the third world countries having greater productivity than India shows that retailing of food and grocery i.e. agricultural products through corporate bodies helps to bring about a great transformation in the country's moribund farm sector by attracting private investment to improve production, productivity and quality which may be driven to higher production, improved quality and more efficient supply chain. Corporatisation of agricultural sector is expected to improve the

marketability of the farm produce and generate remunerative price and thereby ensure mutually beneficial relationship with the small and marginal farmer by assisting them in improving their productivity and profitability through timely input and improved quality management. So, Corporatisation through public initiative and its delicate balance with private bodies is the best answer between profitability and public welfare of the agriculture sector.

CHAPTER-II

RIGHTS OF THE FARMERS: A BRIEF OVERVIEW

".....the real heroes of India's success story are our farmers."¹⁰⁷

Agricultural sector is one of the most important sectors of our economy not only because it provides food, clothing and basic needs but also because the number of people engaged in this sector is much higher than any other sectors. The farmers¹⁰⁸ through their hard work ensure the food security of the country. Presently nearly 60% of the country's population is depending upon it. The farm sector contributes about 18% (17.9 % in 2007-08 and 17.1% respectively in 2008- 09)¹⁰⁹ of the country's overall Gross Domestic Product, grew at an average of 3.7% in the last four years of the UPA Government. However, in the in 2008- 09¹¹⁰ this sector projected the growth rate of 2.6%. This encouraged corporatisation of Indian agriculture through the imposition of structural adjustment by the World Bank and IMF and the trade rules of WTO as embodied in its Agreement on Agriculture and TRIPs Agreement in 90's decade. Thus, the earning of livelihood of most of the farmers has become difficult at the instance of the

¹⁰⁷ Pranab Mukharjee, During the presentation of interim budget of India for 2009-10.

¹⁰⁸ The term "FARMER" refers to a person actively engaged in the economic and/or livelihood activity of growing crops and producing other primary agricultural commodities and will include all agricultural operational holders, cultivators, agricultural labourers, sharecroppers, tenants, poultry and livestock rearers, fishers, beekeepers, gardeners, pastoralists, non-corporate planters and planting labourers, as well as persons engaged in various farming related occupations such as sericulture, sericulture, and agro-forestry. The term will also include tribal families / persons engaged in shifting cultivation and in the collection, use and sale of minor and non-timber forest produce. National Policy for Farmers, 2007 at pg.4.

¹⁰⁹ Advanced Estimate Released by the Central Statistical Organisation, Reported in The Statesman, 10th February, 2009 at pg. 1.

¹¹⁰ Advanced Estimate Released by the Central Statistical Organisation, Reported in the Hindu: 10th February, 2009 at pg. 16.

withdrawal of subsidies in the input sector, withdrawal of price support and procurement guarantee, and subsidies being given to trading corporations. Still, the number of persons engaged in agriculture is increasing continuously though they occupy the lowest rung in the rural ladder. Mostly, the farmers¹¹¹ are unorganised, seasonal workers; and are dependent for their livelihood on personal labour. They may be categorised into four types¹¹²:

- (a) Landless labourers who are attached to the land lords;
- (b) Landless labourers who are personally independent but who work exclusively for others;
- (c) Petty farmers with tiny bits of land who devote most of their time working for others; and
- (d) Farmers who have economic holdings but who have one or more of their children and dependents working for other prosperous farmers.

The problem of landless labour is the most serious problem in the rural sector. Their plight is the paucity of agricultural jobs and rural indebtedness.

Rights of the farmers can be categorised into- *acquired rights, constitutional rights and statutory rights.*

ACQUIRED RIGHTS

Acquired rights or rights by prescription arise out of practices from immemorial time either through custom, usage or convention. For example, an uninterrupted enjoyment for 20 years is considered to be enough to acquire a right to light and air. The Farmers engage themselves in farming which mainly includes the tilling, sowing, reaping and production of crops and have an inherent right over it

¹¹¹ Section 2(k), The Plant Varieties and Farmer's Rights Act, 2001

¹¹² Rudder Datt & KPM Sundharam, Indian Economy, S. Chand & Company, New Delhi; 2004 at pg.625.

as they have continued such works from the time immemorial. Such rights are:

i. Rights over seed:- For farmers the right to seed is a positive right. A farmer is not merely a cultivator but also a conservator of all agricultural gene pool. They assert their right to seed through the Community Intellectual Rights (CIRs). This right is discussed in detail under the Chapter dealing with farmer's right to seed.

ii. Rights over land and water: - Agriculture is not possible without land and water. After the invention of agriculture, people started the same initially on the banks of the any river because they used to believe that the land on the bank of river is fertile and there was availability of water. A farmer has the right over land and water as for the purpose of cultivation these are the most fundamental necessity. The farmer's right to land is discussed in detail under the chapter dealing with land.

iii. Right of Farming:- A farmer has a right to farm the land which he owns or which he is engaged to till. Farming includes-

Ploughing: Agriculture is a highly labour intensive sector. Mechanised ploughing mostly used by farmers with large holdings but small farmer still uses manual power for ploughing. Power tilling has led to a situation where the large farm owner has ceased to employ labour for manual ploughing which adversely affects the livelihood of the small, landless and marginalised farmer.

Sowing and other allied activities: Once the land is prepared, the next task the farmers has, is the sowing of seeds. As the sowing of seed is completed, then another phase of works starts i.e. the looking after the growth of the produce and the adding up of fertilizers, weeding spade or small spud, arranging for water supply, administering of pesticides, and other necessities.

Choice of crops: A farmer has the right to choose his crops. Since the time immemorial he has been enjoying the right to choose the crops which he is to cultivate. Corporatisation of agriculture seems

to have encroached upon this right. The corporate bodies entering into the agricultural sector follow the model of contract farming. Under this system, the farmers are contracted to undertake the farming of selective food crops or cash crops like flowers etc. The corporate activities in the field of agriculture, in the present system, definitely limit the choice of farmers regarding farming. Such limitation destroy diversity of crop and adversely affect multi-cropping and the fertility of soil.

Reaping & Harvesting: Farmers have the rights over the reaping the harvests. After the successful cultivation is over, the farmers' livelihood is managed through the harvest. Poor harvest leads to the plight of poverty. The condition of the small and marginal farmers in such a situation is graver. They even have to starve. Again at many times it is seen that the farmers cannot reap the harvest because of the oppression of the moneylenders.

CONSTITUTIONAL RIGHTS

Constitution as fountainhead of all laws and rights also incorporates farmer's right. Some of the rights are named rights and others are there by inference. They are:

Right to life and livelihood: Right to livelihood is an important constituent of the right to life under Art.21 of the Constitution. The term life under Article 21 means something more than mere animal existence. The term livelihood has not been defined in the constitution but it has been interpreted under the term right to life and personal liberty under Article 21. In *Pavement Dwellers Case*¹¹³ the five Judges of the Supreme Court held that the word life in Article 21 includes the right to livelihood also. The Court categorically declared that if the right to livelihood is not treated as a part of the right to life, the easiest way of depriving a person of

¹¹³ *Olga Tellis vs. Bombay Municipal Corporation*, AIR 1986 SC 180.

his right to life would be to deprive him the means of livelihood. Articles 39(a) and 41 require the state to secure to the citizen an adequate means of livelihood and the right to work. It would be sheer pedantry to exclude the right to livelihood from the content of right to life.

Right to life, in a civilised society, implies the right to food; water; decent environment; education; medical care and shelter. These are the basic human rights known to any civilised society.¹¹⁴ Right to life has no meaning in a situation of extreme poverty and destitution. This right can be protected where one has a "life" and "livelihood" as defined under the Constitution.

For the farmers earning their livelihood has become increasingly difficult and leads to frequent commission of suicides. Suicide of farmers is the extreme manifestation of the agrarian distress. It may, therefore, be submitted that poverty has inverse relationship with the right to life under Art. 21. The Bombay High Court's judgement in a PIL case filed by the Indore based *All India Biodynamic and Organic Farming Association*¹¹⁵ in December 2004 held "Occurrence of suicides on such a large scale by cultivators of the soil raises constitutional questions that travel beyond emotive appeal."

2. Right against exploitation¹¹⁶: The Constitution protects the individuals against exploitation not only from the State but also private citizens. It imposes a positive obligation on the state to take steps to abolish the evils of 'traffic in human beings' and begar and other similar forms of forced labour wherever they are found. In addition, the ILO has adopted farm conventions and two recommendations on the prevention of forced labour. The Forced Labour Convention, 1930, and the Abolition of Forced Labour

¹¹⁴ Chameli Singh vs. State of U.P. (1995) 5 SCC 482.

¹¹⁵ Anupama Katakam: Judicial rap: Frontline; 8th September; 2006 at pg. 26&27

¹¹⁶ Article 23, Constitution of India.

Convention, 1957, deal directly with the subject of forced labour. The word 'force' was interpreted by P. N. Bhagwati, J in *Peoples Union for Democratic Rights v. Union of India*¹¹⁷ stating that "'force' includes not only the physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage". In agriculture the exploitation of farmer's especially marginal and small farmers is quite evident. The paradox is that the farmers who feed the nation do not get two square meals a day. A well organised system of corporatised agriculture may be a remedy.

3. Right to equality with special emphasis to intergenerational equality:- Article 14 of the Indian Constitution embodies the idea of equality before law and equal protection of laws. Rule of law requires that no person shall be subjected to harsh; uncivilized; or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.¹¹⁸ This right clearly falls under Art.6 of the International Covenant on Civil and Political Rights, 1966; Articles 3 & 25 of the Universal Declaration; & Article 12 of the Covenant of the Economic, Social & Cultural rights as these are the basic requirements of qualitative life.

4. Right to education: - Right to education is now a named fundamental right¹¹⁹. In agricultural sector a glaring problem is the lack of literacy. The farmers for generations have not availed of the formal education and have preferred to work on their land because it helped to reduce labour payment. There is lack of awareness

¹¹⁷ AIR 1982 SC 1943.

¹¹⁸ *Rubinder Singh vs Union of India*. AIR 1983; SC 65.

¹¹⁹ Article 21A, The Constitution of India.

regarding their rights. Immediate steps are necessary to mitigate the situation.

5. Right to social security and social justice: - Although these rights are not fundamental rights, they are, nevertheless fundamental to governance of the country. Social security and social justice are the important areas and Articles 38 & 39 of the Constitution embodies the concept of Social Security and Social Justice. The concept of "Distributive Justice" which includes social justice connotes inter alia, the removal of economic inequalities, rectifying the injustice resulting from the dealings and transactions between the unequal in the society.¹²⁰ This sector being unorganised, the rights of the workers including children and women are not recognised as they are in the organised sector. There is non applicability and even gross violation of the Maternity Benefit Act, 1974, the Employees State Insurance Act, 1948, the Minimum Wages Act and even the Equal Remuneration Act, 1961. It is essential to amend the relevant laws so that the benefits can be extended to these sections of people. Corporatisation

Article 38(1) provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice social, economic and political shall inform all the institutions of national life. This directive only reaffirms what has already been said in the Preamble according to which the function of the republic is to secure to all its citizens social, economic and political justice. The State must follow policies for securing economic justice¹²¹. Under Clause (b) of Art 39 the Central and the State Governments have banned and then abolished the old institution of Zaminders, Jajirdars etc. and made the tillers of the soil real owners of the land. Again, states enacted

¹²⁰ Central Inland Water Transport Corporation v. Brojo Nath Ganguli, (1986) 3 SCC 156.

¹²¹ Article 39

legislation regarding the ceiling area. In *Gujrat Agriculture University v. Rodhot Labhu Prachar*¹²² the Supreme Court observed that the Government is the guardian of people and is obliged under Article 38 of the Constitution to secure a social order for the promotion of welfare of the people and to eliminate inequality.

The state is required to make provision for securing just human conditions and for maternity relief¹²³. It is very difficult to achieve in unorganised sector like agriculture. If the agriculture sector is institutionalised, then only it will be possible to achieve. Article 43 of the Constitution provides the provision regarding the living wage of the workers in the words, the state shall try to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and in particular, the state shall endeavour to promote cottage industries on an individual or co- operation basis in rural areas. Here it is interesting to note that the provision refers to a 'living wage' and not 'minimum wage'. The concept of living wage includes in addition to the bare necessities of life, such as food, shelter and clothing, provisions for education of children and insurance etc. Article 43- A requires the state to take steps, by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. Article 47 imposes duty upon the state to raise the level of nutrition and the standard of living of its people and the improvement of public health. In addition to these Art 46 enjoin the state to promote with special care the education and economic interest of the weaker sections of the people. As such, the National Commission on Rural Labour, 1991 proposes the followings-

¹²² Air 2001 SC 706

¹²³ Article 42

- To create and / or strengthen infrastructure of irrigation, drainage, and flood control and rural electric supply as well as introduction of dry farming technology, which will result in increasing agricultural productivity and employment;
- To undertake employment generation programmes which should aim at absorbing the excess supply of labour for agricultural operations and these, in turn, will raise the income of agricultural labourers. Enforcement of minimum wages and social security are the essential components of such employment generation programmes.
- To provide the farmer with house sites and homesteads not only to meet their basic needs but also to enable households to take up supplementary land – based activities like poultry, dairy etc.
- To provide for security of employment for agricultural labourer, prescribed hours of work payment of prescribed hours of work, payment of prescribed wages and machinery for the settlement of disputes. The legislation should also make enabling provisions to prepare schemes for welfare and social security measures.
- The Commission again recommends a separate department of Rural Labour at the Central and the State levels with the functionaries below the State level as well.
- The Commission endorses the provision for enabling formation of trade unions and agricultural labourers to carry on their activities under applicable laws.
- The Commission recommends the establishment of Agricultural Labour Welfare Fund to provide assistance to women agricultural labourers for maternity leave for two surviving children, old age pension and death and injury compensation.

6. Right to just and human conditions of work: - Article 42 under the Chapter- IV of the Constitution under the Directive Principles of state policy directs the state to make provisions for securing just and human conditions and of maternity relief. According to, Art. 21 of the Constitution a person has the right of life means something more than just physical existence. A person has right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter and facilities for reading, writing, and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human beings.¹²⁴ Again the Labour Inspection (Agriculture) Convention, 1969 as convened by the ILO under Article 6(1) prescribes the enforcement of legal provisions relating to conditions of work and protection of workers while engaged in their work, such as provisions relating to working hours, weekly rest, safety, health and welfare, the employment of women, children and young persons and other connected matters, in so far as such provisions are enforceable by labour inspections.

7. Right to living wage: - According to Article 43 of the Constitution, the state is to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial, or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and in particular, the state shall endeavour to promote cottage industries on an individual or co-operation basis in rural areas. This provision also refers to a living wage and not a minimum wage. The concept of living wage includes in addition to the bare necessities of life such as food, shelter and clothing, provisions for education of children and insurance etc. Again, Article 47 imposes a duty upon the state

¹²⁴ Francis Coralie v. Union Territory of Delhi; AIR 1978 SC 597

to raise the level of nutrition and the standard of living of its people and the improvement of public health.

8. Rights to information and the use of advanced technologies: The farmers, the backbone of Indian economy, must be made aware of the latest technologies and they must be encouraged to use them in the process of cultivation. Part- IV of the Constitution¹²⁵ further directs the state to take steps to *organise agriculture and animal husbandry on modern and scientific lines*. At this, the ILO¹²⁶ has emphasised the training of agricultural workers, social services in agriculture, Co- operatives and Compulsory school attendance.

9. Right to market the produces: - Every farmer has their inherent right to market the farm produce. They enjoy the right to trade, commerce, and intercourse throughout the territory freely under Article 301 of the Constitution while Article 19(1)(g) is a fundamental rights which empowers every citizen to carry on any trade, business or profession. To facilitate the farmers the scheme of setting up of Agro Processing Zones (APZs) was introduced in 2002- 2007 National Agricultural Policy. As many as 45 Agriculture-Export Zones (AEZs), has been notified in various parts of the country.¹²⁷ The minister for commerce and industry proposed an association of corporations with proven credentials in the implementations of AEZs in order to regulate productivity and quality agro- products, leading to accelerated exports.

10. Right to get remedy with special emphasis to right to rehabilitation: - Right without remedy is nothing but a mirage. The maxim *ubi jus ibi remedium* relevant in this context. Right to remedy is a fundamental right under Article 32. In addition to these, Article 39-A directs the States to ensure that the operation

¹²⁵ Article 48 the Constitution of India.

¹²⁶ ILO Recommendation No. 133 concerning labour inspection in agriculture on 25th June 1969.

¹²⁷ Export- Import Policy 2003- 2004, The Telegraph, 10th March, 2003

of the legal system promote justice, on the basis of equal opportunities and in particular, provide free legal aid, by suitable legislation or schemes. To ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities. The issue of agrarian crisis is one of the burning topics of the day. In *Neeraja Chaudhary vs. State of M.P.*¹²⁸ a bonded labour case, it was held that it is the plainest requirement of Articles 21 and 23 of the Constitution that the farmers so situated must be suitably rehabilitated and failure on the part of the state to ensure the proper rehabilitation may be treated to the gross violation of the human right.

C. STATUTORY RIGHTS

There is no uniform central law to protect and regulate rights of the farmer and agricultural labourers. There are some rights which are applicable to them under various statutes. There are the-

1. Rights over farming: -. The West Bengal Land Reforms Act, 1955 is a great tool for the recognition of the farmer's right over farming. It deals with the right of the Bargadar¹²⁹ to cultivate the farm to which they are hired and the continuation of their right farming even after their death¹³⁰. The section prescribes, where a bargadar, cultivating any land, dies at a time when cultivation of such land by the bargadar was continuing, the cultivation of such land may be continued by the lawful heir(s) of the bargadar. A bargadar may be terminated¹³¹ if:

1. If a bargadar, without any reasonable cause failed to cultivate the land, or
2. has used it for any purpose other than agriculture; or

¹²⁸ AIR 1984 S.C. 1099

¹²⁹ Section 2 (2), West Bengal Land reforms Act, 1955.

¹³⁰ Section 15 A, the West Bengal Land Reforms Act, 1955.

¹³¹ Section 17

3. the land is not been cultivated by the bargadar personally;
or
4. That the bargadar has failed to tender deposit to the full extent of the share of produce as required by the Act¹³².

Section 17(4) says, no bargadar shall be entitled to cultivate more than 4 hectares of land. Again, Section 21D mandates regarding the making of entry of the name of the bargadars in respect of every raiyat in the record- of- rights.

A farmer may be a person not having his sufficient lands or he may not own land for doing cultivation. But the WB Land Reforms Act, 1955 makes an arrangement for distributing lands for cultivation. Section 49 of the Act is a prominent example to this. Under this, the Government shows respect to the persons interested in farming without any premium being charged for it to the persons who are residents of the locality where the land is situated, and who together with other members of their family, own no land or own less than 0.4047 hectares of land used for the purpose of agriculture, one half of the lands cultivated by them as bargadars being taken into account for the purpose of calculating the aggregate of such land, and subject to the condition that, in the case of agricultural land such person intends to bring the land under personal cultivation.¹³³ Right of Farming includes the following rights as well.

2. Acquisition of land and the Rights of the land holders (Farmers):- One of the most controversial issue is the acquisition of land by the government for the setting up of SEZ or for the setting up of an industry. Under Section 3 of the SEZ Act, 2005, a SEZ may be established under the Act, either jointly or severally by the Central Government, State Government, or any person for the manufacture of goods or rendering services or for both or as a Free

¹³² Section 16 (2) & (4)

¹³³ Section 49(a) of the WBLR Act, 1955.

Trade and Warehousing Zone. Interestingly, the Act doesn't speak about the policy for the acquisition of land and the scheme for the compensation on acquisition of land. However, the Central Government may prescribe the requirements for the establishment of a SEZ, regarding the minimum area of land, and other terms and conditions subject to the approval of the Board. Regarding the acquisition of land the most important legislations is the Land Acquisition Act, 1894. Under this Act, the following rights of the land holders are addressed by the state-

- Publication of the government's notification regarding the need to acquire the specific land in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the service of public notice by the Collector at convenient places in the said locality¹³⁴. Section 5 of the Act is dealing with the payment of damages. Section 5A of the Act deals with the hearing of objections. Section 6 of the Act requires that such land must be acquired for public purpose or for setting up a company and no such declaration shall be made unless the compensation to be awarded for such property is paid by the company, or wholly or partly out of public revenues, or some fund controlled or managed by a local authority.
- The court on objection by the interested person to determine compensation shall consider the followings-
 - (a) the market value of the land on the date of the publication of the notification under Section 4(1);
 - (b) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

¹³⁴ Section 4

(c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

(d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property movable or immovable in any other manner, or his earnings;

(e) If in consequence of the acquisition of the land by the Collector the person interested is compelled to change his residence or place of business the reasonable expenses, if any, incidental to such change, and

(f) The damage, if any, resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land¹³⁵. The Ac, in addition to the market value of the land as above provided by the Court shall in every case award a sum of thirty percent on such market value in consideration of the compulsory nature of acquisition¹³⁶.

- In case the proposed land is to be used by a company, under Section 41 of the Act the relevant Company has to make an Agreement with the relevant state Government and under Section 42 of the Act such agreement is to be published in the Official Gazette as soon as possible by the Government.

In addition to these existing provisions, due to the adoption of the National Policy on Rehabilitation and Resettlement, 2007 certain amendments to the Land Acquisition Act, 1894 are expected which includes-

- i. Provision for acquisition of land for companies to be deleted.

¹³⁵ Section 23(1)

¹³⁶ Section 23(1)

- ii. Government shall acquire land for private companies only when the private bodies acquire at least 70% of the land requirements through direct purchase, then only the Government will acquire remaining 30% area.
- iii. Inclusion of tribal and other traditional forest dwellers in the definition of "persons interested" Compensation of the land is to be calculated at the market value.
- iv. Enhancement of provision for solatium from the existing 30% of the market rate to 60% of market rate in cases of normal acquisition and 75% in case of urgent acquisition.
- v. Compensation to be given within time frame before actual displacement.
- vi. Bar on jurisdiction of civil court for providing speedy compensation to the displaced person.
- vii. Land acquired for a purpose remains unutilised for a specified time, would revert to Government.
- viii. In case of transfer of acquired land, 80% of the net unearned profit would be shared with the original land owners on their legal heirs.

3. Rights over the crops: The right of farmer over their produce is one of the basic rights. The West Bengal Land Reforms Act, 1955 is recognises this right even to the bargadars¹³⁷ who are cultivating the land of some other person. Under the Act, the produce from a land cultivated by a bargadar shall be divided between the bargadar and the person whose land he cultivated-

1. In the proportion of 50: 50, in a case where plough, cattle, manure and seeds necessary for cultivation are supplied by the person owning land and
2. In proportion of 75: 25, in all other cases.¹³⁸

¹³⁷ Section 2(2) of the West Bengal Land Reforms Act, 1955

¹³⁸ Section 16(1) of the West Bengal Land Reforms Act, 1955

This can be affected with the proper valuation of the produce insuring crops from draught or other natural calamities on the other. But the farmers on one hand are suffering from lack of proper crop insurance policy and get the proper value of his produce as because of his poor bargaining capacity. Marketing of agricultural commodities is governed by the state specific Agricultural Produce Market Committee Acts. The government should take initiatives to fix the price and must statutorily impose restrictions so that the middlemen may not buy the farm produces at a price less than the price the government fixes. Along with this, the farmers must be aware so that they don't sell their produces at a lesser price fixed by the government and the government must monitor the situation with vigil eyes.

4.Plantation works and farmers: - The Plantations Labour Act, 1951 applies to a corporatised sector of plantation and as such the plantation labour is part of an organised sector unlike the farmers who are unorganised. This act is mentioned throughout the course of this work to understand and draw a parallel between the two sections within the agricultural sector.

The Act applies to land used or intended to be used for growing tea, coffee, rubber, cinchona or cardamom or any other plant which measures 5 hectares or more and in which 15 or more workers are employed on any day of the preceding 12 months. The Act recognises the following rights of labour-

- Working hours and leave: - Section 19 of the Act prescribes, to work forty-eight hours a week for Adult workers and twenty seven hours a week for adolescent or child workers. *Maximum hours of work are 9 hours a day and 54 hours a week; the worker is entitled to overtime wages at twice the rates of ordinary wages. He/she also has a right to one weekly holiday. Working on a holiday or the day of rest of the worker will entitle worker for double the wages as in overtime work.* Again, no

worker shall work for more than five hours before he/she had an interval for rest for at least half an hour. In addition, a woman resuming her work after delivery is entitled to two breaks daily for nursing her child till the child is fifteen months old. This is in addition to the regular rest interval. The Act also mandates that women and children can be employed only between the hours of 6am and 7pm unless permitted by the State Government [Section 25]. Section 30-31 provides that an adult worker is entitled to one day paid; leave for every twenty days of work. A Child or adolescent is entitled to one day paid leave for every fifteen days. Half or more than half day's work is counted as full days' work. This earned leave excludes holidays.

- Wages: - The worker is entitled to average daily wages (including D.A., cash value of food and other concessions, if any, allowed to him by the employer). Maximum earned leave that can be en-cashed is 30 days. If the Employer terminates the services of the worker who has to his credit earned leave, then he shall pay the worker the average daily wages in respect of the leave not taken. In addition to these every worker is entitled to sickness allowance, provided this is certified by a qualified medical practitioner. Women workers are entitled to maternity allowance and benefits under the Maternity Benefit Act, 1961 [Section 32]. Again the Employers are under obligation to maintain a register of accidents and notify the authorities of any accident where a plantation Worker suffers death or body injury and he is unable to report for work for forty eight hours or more [Section 32].

Section 4, empowers the state government to appoint for the state a duly qualified person to be the chief inspector of plantations and other persons to, be inspectors subordinate to the chief inspector to monitor any part of plantation at any reasonable time and take statements on any person.

5. Rights of protection against the Dangerous Machines¹³⁹: -

The Dangerous Machines (Regulation) Act, 1983 under Section 2 declares in the public interest that the Union should take under its control the industries engaged in the manufacture or production of power threshers or any other machines which are intended to be used in the agricultural or rural sector and which are of such nature that any accident in the course of operation thereof may cause its operator death, dismemberment of any limb or other bodily injury.

6. Rights of Minimum Wages: - The agricultural workforce, however, has been among the most exploited workforce. Their wages are amongst the lowest when compared to other workers and their working and living conditions most dismal. The Minimum wages Act, 1948 is a very important legislation as it empowers the appropriate Government, Central or State to fix a minimum rates of wages payable to employees (defined as persons "employed for hire, reward to do any work, skilled or unskilled, manual or clerical, etc.) in the scheduled employments. Employment is the system wherein there exists the employer¹⁴⁰ - employee relationship. Since the employer-employee relationship does not exist among the farming community including the landless farmers who work on other peoples land or those who work as agricultural labour, this Act is not applicable to the farming sector.

7. Right against Bonded labour: - The Act aims at the abolition of bonded labour system with a view to prevent the economic, social and physical exploitation of the weaker sections of the people. The Act under Section 4 mandates the abolition of the Bonded Labour System. Section 5 further directs any custom or tradition or any contract, agreement or other instrument by virtue of which any person, or any member of the family or dependent of such person,

¹³⁹ Section 3(c) The Dangerous Machines (Regulation) Act, 1983.

¹⁴⁰ Section 2(e), The Minimum Wages Act, 1948

is required to do any work or render any service as a bonded labourer, shall be void and inoperative. Under section 9 of the Act, the creditors are not to accept any payment against the extinguished debt. Section 8 affords protection to the freed bonded labourers from eviction from his homestead. Section 14 deals with the various functions of the Vigilance Committees as constituted under Section 13 of the Act inter alia which the Committees are to provide for the economic and social rehabilitation of the freed bonded labourers; to co-ordinate the functions of rural banks and co-operative societies with a view to canalising adequate credit to the freed bonded labourers are most significant. Sections 16, 17, 18, 19 and 23 of the Act are dealing with the offences and punishments to be imposed upon the offenders be it an individual or a company.

Bonded labour is said to have been abolished in India, but in remote villages of many States it is still in existence. In West Bengal farmers bonded to a land have been made bargadars under the Land Reforms Act.

8. The West Bengal Land Reforms Act, 1956:- In West Bengal has passed the West Bengal Land Reforms Act 1955. The Act is a great support to the persons involved in agriculture. Under this Act, the farmer's rights are:

- Consolidation of holdings: - The Act deals with the Consolidation of lands comprised in plots of land and Co-operative Farming Societies. The Government may acquire lands in any area on payment of compensation to the raiyat or the owner when the lands comprised in the plots of land in such area should be consolidated¹⁴¹. Section 40 deals with the redistribution of land to the raiyat whose land has been acquired, in such a manner as it thinks fit ensuring that each

¹⁴¹ Section 39

raiyat gets a plot of land comprising of the same area, and as far as possible, lands of the same quality and value as before the consolidation. Co- Operative Farming Societies may be formed under the Act¹⁴².

- *Distribution of lands to the landless agricultural labourers: -*
The State Government, without any premium being charged for it, may distribute land in such manner as may be prescribed, to persons who are the residents of the locality where the land is situated, and who do not own land or own less than 0.4047 hectares of land for the purpose of agriculture or cultivate them as bargadar in case of agricultural land, or to persons having no homestead land of his own, intends to construct a dwelling house thereon on such other terms and conditions as may be prescribed¹⁴³.
- **Right to hold the land: -** Land reforms are connected with the right to life and livelihood of a huge rural population in India. So long as this population is tied to the soil, they will toil and increase its growth. In West Bengal the WB Land Reforms Act, 1955 under Section 14S the Government has the power of vesting of land in excess of ceiling area¹⁴⁴. However, the Government reserves the authority to determine ceiling area in special cases under Section 14Q. Thus, any person can enjoy or hold land below the ceiling area.
- **Use of agricultural land for the specific purposes:-** Section 4(4) of the West Bengal Land Reforms Act, 1955 states the plot of land of a raiyat excluding his homestead, shall vest in the State free from all encumbrances if he has without any reasonable cause ceased to keep the land or any substantial part thereof under personal cultivation or has failed to utilise

¹⁴² Section 43

¹⁴³ Section 49(1), West Bengal Land Reforms Act, 1955.

¹⁴⁴ Ceiling area means the extent of land which a raiyat shall be entitled to own. (Section 14K (a) of the WB L.R. Act, 1955)

the land consistently with the original purpose of the tenancy or for any purpose directly incidental thereto for a period of three consecutive years.

- Right to continue the agricultural works in the specific land which one cultivates:- Section 15 A permits the continuation of right of cultivation on bargadar's¹⁴⁵ even after his death. Section 17 of the West Bengal Land Reforms Act, 1955 suggests the conditions for the termination of a bargadar under certain circumstances:
- After the Section a bargadar, if has without any reasonable cause failed to cultivate the land, or has used it for any purpose other than agriculture; or the land has not been cultivated by the bargadar personally; or the bargadar has failed to tender deposit to the full extent of the share of produce¹⁴⁶ No bargadar is be entitled to cultivate more than 4 hectares of land¹⁴⁷. A person lawfully cultivating the land of another person shall be presumed to be a bargadar in respect of such land if such person is not a member of the family of the other person whose land he cultivates¹⁴⁸. Name of the bargadars in respect of every raiyat must be entered in the record-of-rights¹⁴⁹.

9.Rights recognised under The Kerala Agricultural Workers Act, 1974:- Among the state laws providing for the agricultural labourers, the Kerala Agricultural Workers Act, 1974, is considered to be most comprehensive. The Act specified maximum working hours of the workers and appointment of Conciliation Officer for the settlement of the disputes whose higher forum was the Collector

¹⁴⁵ Section 2(2) of the West Bengal Land Reforms Act, 1955.

¹⁴⁶ Section 16,(2),(4)

¹⁴⁷ Section 17(4)

¹⁴⁸ Section 21B

¹⁴⁹ Section 21D

and Agricultural Tribunal. Under the Act an agricultural worker¹⁵⁰ has been given the following nature of securities under the Act.

- Preferential treatment to one already working in the land:-Under Section 7(1) of the Act, it has been made mandatory for the land owner not to employ any agricultural worker other than the agricultural worker who has worked on the same land during the previous agricultural season, provided that where there are permanent workers of the land owner, such worker shall be given preference over other agricultural workers.
- Right against termination: -If any worker has worked on the land of a land owner during three consecutive agricultural seasons, he should not be denied employment merely on the ground that he has not worked during the previous agricultural season for reasons beyond his control. If the agricultural worker is not available or the number of such agricultural workers available is less than the number required by the land owner, the land owner shall be free to employ other agricultural workers. However, the land owner shall not be under an obligation to employ any agricultural worker:
 - a. who doesn't offer himself for employment, or
 - b. who is more than 65 years of age in case of male or 60 years of age in case of female worker,
 - c. who is incapacitated and is unable to do works, and
 - d. who has intentionally caused damage to crops belonging to the land owner or caused any other loss to the landowner.
- Agricultural Workers "Provident Fund": - The Act also provides that the government shall form a scheme and establish a fund known as Agricultural Workers "Provident Fund" wherein both

¹⁵⁰ Section 2(f), The Kerala Agricultural Workers Act, 1974.

the land owner as well as agricultural worker have need to contribute at the rate of 5% of the wage.

It would be indeed a step forward if these provisions were incorporated under the West Bengal Land Reforms Act.

10. The West Bengal Agricultural Produce Market (Regulation) Act 1972: The Act seeks to regulate the buying and selling of the agricultural produces by establishing markets for agricultural produce in the state. The Act inter alia aims at proper regulation of marketing of agricultural commodities so that the interests of the small producers are safeguarded. Section 20(xi) of the Act inter alia prescribes for the application of the market committee fund for fostering co- operative marketing societies in the procurement and the organisation of profitable disposal of produce particularly the produce belonging to the small and marginal farmers¹⁵¹. Section 36 is provides for the constitution of the West Bengal State Marketing Board. Under Clause 3, sub-section G of Section 36 the Act prescribes that the West Bengal State Marketing Board Fund may be utilised inter alia, for the following purposes-

- Better marketing of agricultural produce,
- Marketing of agricultural produce on co- operative lines and assisting the co- operative marketing societies in the procurement of produce belonging to small and marginal farmers and their disposal,
- Taking of steps to stop distress sale in conjunction with other agencies, State or Central,
- Provision for transport and storage facilities,

¹⁵¹ Under this Act, small farmer means a farmer who possesses more than two hectares but less than four hectares if he is a member of any of the Scheduled Tribes and more than one hectare but less than two hectares in other cases, of land, either as an owner or as a raiyat or as a share- cropper and marginal farmer means a farmer who possesses not more than two hectares if he is a member of any of the Scheduled Tribes and one hectare in other cases, of land, either as an owner or as a raiyat or as a share- cropper.

- Provision for transport and storage facilities,
- Construction of godowns.
- Participation in any scheme designed to augment and improve production and the betterment of agricultural produce,
- Imparting education on marketing and agriculture,

FARMER- LAND RELATIONSHIP: A WEST BENGAL SCENARIO

Land is a key asset for the rural and urban poor. It provides a foundation for economic activities and the functioning of market (for example credit) and non- market institutions (for instance local government and social networks) in many countries. In the course of development virtually everywhere, the need to sustain larger populations or to make use of economic opportunities associated with trade requires investments in land. The failure of developmental policies relating to land necessarily leads to land grabbing, conflict. Resource dissipation, in extreme circumstances, can undermine society's productive and economic potential.

A farmer has a number of rights associated with the land as it is directly associated with the providence of his livelihood. These rights are as under-

i. Right to hold the land: - After the abolition of the Zamindari system, through the legislations like the Zamindari Abolition Act, the Estate Acquisition Act, and the government started recognising the farmer's rights over the land through the Land Reforms Act. Land reform, in narrower sense, means the distribution of surplus land to small farmers and land less, accrued as a result of the implementation of the ceiling on agricultural holdings.¹⁵² Land reforms are connected with the right to life and livelihood of a huge rural population in India. So long as this population is tied to the

¹⁵² Prof. Gangotri Chakraborty: Land Reforms and Corporatisation of Agriculture: NUJS 2006; at pg.1

soil, they will toil and increase the growth. The moment they are ousted they will pick up weapons of war as it directly affects the right to livelihood and shelter of the people which inter alia is a positive fundamental right as recognised under Art. 21, Constitution of India. The ceiling laws allow a large number of people to hold and cultivate land in the interest of social justice. The Supreme Court has by evolving the doctrine of prospective overruling in *Golak Nath*¹⁵³ case held valid the first, fourth, and seventeenth amendments in contravention to Art. 13(2). The validity of ceiling laws enacted in furtherance of the Directive Principles as contained in Art. 38, 39(b), 39(c) have been upheld by the Supreme Court. In West Bengal the WB Land Reforms Act, 1955 under Section 14M(1) prescribes the ceiling area¹⁵⁴. Section 14S the Government has the power of vesting of land in excess of ceiling area. However, the Government reserves the authority to determine ceiling area in special cases under Section 14Q. Section 39 of the West Bengal Land Reforms Act, 1955 deals with the power of the government to acquire land which at the same time suggests the redistribution of the land of same or nearly same area of land after acquisition under section 40 of the Act. In addition to this, the Act under Section 42 speaks of the recovery of the excess value of allotted land.

ii. Right not to enjoy the land beyond a limit: -The WB Land Reforms Act, 1955 under Section 14M (1) prescribes the ceiling area¹⁵⁵. Under this, the ceiling area shall be- (a) in the case of a raiyat, who is an adult unmarried, 2.50 standard hectares¹⁵⁶; (b) in

¹⁵³ I.C. Golak Nath v. State of Punjab: AIR 1967 SC

¹⁵⁴ Ceiling area means the extent of land which a raiyat shall be entitled to own. (Section 14K (a) of the WB L.R. Act, 1955)

¹⁵⁵ Ceiling area means the extent of land which a raiyat shall be entitled to own. (Section 14K (a) of the WB L.R. Act, 1955)

¹⁵⁶ Standard hectare means- (i) in relation to an agricultural land equivalent to- (a) 1.00 hectare in an irrigated area, (b) 1.40 hectares in any other area; (ii) in relation to any land comprised in an orchard, an extent of land equivalent to 1.40 hectares; (iii) in

case of a raiyat, who is the sole surviving member of a family, 2.50 hectare; (c) in case of a family consisting of two or more, but not more than five members, 5.00 hectares; (d) in case of a raiyat having a family consisting of more than five members, 5.00 hectares, plus 0.50 hectare for each member in excess of five, so, however that the aggregate of the ceiling area for such raiyat shall not, in any case, exceed 7.00 standard hectares; (e) in the case of any other raiyat, 7.00 hectares. However, the Government has the authority to determine ceiling area in special cases under Section 14Q. Section 14S the Government has the power of vesting of land in excess of ceiling area. In regard to this, the (Amendment) Act, 1981 played a significant role which aimed to advance the cause land reforms by breaking concentration of land as material resources of the community and the means of production and by distributing the ceiling surplus land among the landless and the poor rural people of the state to sub serve the common good.

iii. Right to use the agricultural land for agricultural purpose:

- Section 4(4) of the West Bengal Land Reforms Act, 1955 states the plot of land of a raiyat excluding his homestead, shall vest in the State free from all encumbrances except when such land is under usufructuary mortgage under section 7 of the Act under an order of the prescribed authority made in the prescribed manner if the following conditions are satisfied-

- he has without any reasonable cause ceased to keep the land or any substantial part thereof under personal cultivation or has failed to utilise the land consistently with the original purpose of the tenancy or for any purpose directly incidental thereto;
- a period of three consecutive years or more from the date on which this Act comes into force or of the date on which he

relation to any other land, an extent of land equivalent to 1.40 hectares. (Section 14 K (f) of the WB L.R. Act, 1955).

came into possession of such land, whichever is later is elapsed for not using the land with the original purposes;

- he has not let out the whole or any part of the plot of land;
- he has not engaged a bargadar for cultivating any part of his plot of land.

iv. Right to continue the agricultural works in the same land which one cultivates: -

Section 17 of the West Bengal Land Reforms Act, 1955 suggests the conditions for the termination of a bargadar. After the Section a bargadar, if has without any reasonable cause failed to cultivate the land, or has used it for any purpose other than agriculture; or that the land is not been cultivated by the bargadar personally; or that the bargadar has failed to tender deposit to the full extent of the share of produce as required by sub- section (2) or subsection (4), as the case may be, of section 16. The Act under Section 17(4) says no bargadar shall be entitled to cultivate more than 4 hectars of land. Under Section 21B a person lawfully cultivating the land of another person shall be presumed to be a bargadar in respect of such land if such person is not a member of the family of the other person whose land he cultivates. Section 21D mandates regarding the making of entry of the name of the bargadars in respect of every raiyat in the record-of- rights. The West Bengal Land Reforms (Amendment Bill), 2006, includes provision of allowing the sale of 50% of barga land after giving the rights of the other 50% to the bargadar.

v. Right against the indiscriminate acquisition of land: -

Corporatisation of land or corporate control of land especially, the farm land has become a great problem. For the setting up of industrial units land is indispensable. Acquisition of land is the application of the doctrine of '*eminent domain*'¹⁵⁷ which is implicit

¹⁵⁷ The doctrine of eminent domain after Ramnath Aiyar's Law Lexicon includes, "The right of the state or sovereign to its or his own property is absolute while that of the subject of citizens property is not paramount. The citizen holds its property subject

under Article 300-A of the Constitution. However, reckless use of right of eminent domain because of the deletion of right of property from the chapter of fundamental rights by the 44th amendment of the Constitution is not proper. For the first time, the Supreme Court in *Chiranjit Lal Chowdhury vs. Union of India*¹⁵⁸ held that the doctrine of eminent domain is a right inherent in every sovereign to take an expropriated private property belonging to individual citizens for public use and that no property can be taken unless the law which authorises such expropriation contains a provision for the payment of compensation in the manner as contained in the Art. 31(2). In *Kameswar Singh's case*¹⁵⁹, the Supreme Court held that the payment of compensation though not an essential element of the connotation of the term eminent domain is an essential element of valid exercise of such power. In *Biswambhar Dayal's case*¹⁶⁰, the Supreme Court held that after the 44th Amendment Act, as it stands, the application of the doctrine of eminent domain which inheres in Art. 300- A, with its owner's consent would be exercised by the authority of law and not by any executive fiat or order. In *Bhag Singh v. Union Territory of Chandigarh*¹⁶¹ the Supreme Court through Bhagwati CJ held that, where the land is acquired under the Land Acquisition Act, it would not be fair and just to deprive the holder of his land without payment of the true market value when

always to the right of the sovereign to take it for public purpose.” Again, it has also been stated that the sovereign power vested in the state to take private property for public use providing first a just compensation thereof the superior right to apply private property for public use. A superior right inherent, and exercise of the sovereign power or upon delegation from it whereby the subject matter of rights of property may be taken from the owner and appropriated for general welfare. In Black's Law Dictionary, the eminent domain principle is defined as “the power to take private property for public use by the State, Municipality and private persons or corporations authorised to exercise functions of public character”.

¹⁵⁸ AIR 1951 SC 41

¹⁵⁹ *Kameswar Singh v. State of Bihar* AIR 1954 Pat. 91

¹⁶⁰ *Biswambhar Dayal v. State of U.P.* AIR 1982 SC 33

¹⁶¹ (1985) 3 SCC 737; AIR 1985 SC 1576.

the law in so many terms declares that he shall be paid such market value. Again, in *Jilubhai's case*¹⁶², the Supreme Court laid down that when the properties are acquired by the state to establish an egalitarian social order, it is not necessary for the state to provide the just equivalent for exercising the power of eminent domain. After the Land Reforms Act, 1894, the state has the authority to acquire land to give space to corporate bodies through uprooting or displacing the private owners of land mainly farmers as they have the control over most of the lands. West Bengal, inter alia, is a vastly populated states where near about 70% of the people are dependent on cultivation. Since 2005, the investment boom in West Bengal is a continuous phenomenon.

vi. Right to compensation for displacement and rehabilitation on acquisition: - In India, originally, the framers of the Constitution included the right to property as fundamental right u/ Art. 19(1)(f). Moreover, along with it Article 31 provided for the compulsory acquisition of property. Article 31 under Clauses (1) & (2) as originally stood, made a further guarantee which according to the interpretations of the Supreme Court in *Subodh Gopal*¹⁶³ & *Bela Banerjee*¹⁶⁴ that for the compulsory acquisition of property u/ Art.31(2) just compensation was required to be paid. Land is acquired under the Land Acquisition Act, 1894 is the most important instrument. Under Section 23 of the Act, it specifies the matters to be considered in determining the compensation¹⁶⁵ which includes,

- i.* the market value of the land on the date of notification;
- ii.* a sum of 30% solatium on the market value of the land to be acquired

¹⁶² *Jilubhai Nanbhai Khachar vs. State of Gujrat* AIR 1995 SC 142

¹⁶³ AIR 1954 SC 92, (1954) SCR 587.

¹⁶⁴ AIR 1954 SC 170.

¹⁶⁵ Compensation in terms of property sought to be acquired means equivalent in terms of money of the property compulsorily acquired according to relevant principles which must be appropriate to the determination of compensation.

- iii. the damage sustained by the person by reason of
 - standing crops or trees;
 - severing such land from his other land
 - injuriously affecting his other property movable or immovable in any other manner, or his earnings
- iv. the reasonable expenses (if any) incidental to the change his residence or place of business
- v. the damage if any resulting from the diminution of the profits of the land

But, still the land losers, on acquisition, suffer a lot as the scheme of compensation has some drawbacks. At this, the proposed Amendment on the Land Acquisition Act and the National Rehabilitation and Replacement Policy, 2007 may improve the situation.

vii. Ancillary rights associated with lands: - The genesis of the structure of power and authority in rural India can be traced to land. Due to this basic utility, economists consider land as a special kind of property. In addition to the rights already discussed, the followings may again be related with land-

- **Right to livelihood:** - Among the fundamental rights enshrined under the Constitution the right to livelihood is one of the most important positive fundamental rights addressed under Art. 21. After *Pavement Dwellers case*¹⁶⁶, the Supreme Court held that no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41 require the state to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer

¹⁶⁶ *Olga Tellis vs. Bombay Municipal Corporation*, AIR 1986 SC 180.

pedantry to exclude the right to livelihood from the content of the right to life. In *D.K. Yadav v. J.M.A. Industries*¹⁶⁷ the Supreme Court held that right to life enshrined under Article 21 includes right to livelihood. Article 21 clubs with life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. There is an ever changing relationship between land, power and people. In West Bengal, through 'Operation Barga' in late 70's the land reform has been a great success as it distributed the lands among the poor and landless to secure them from the end of livelihood. Today, with the growing demand of land of the corporate bodies for setting up of their projects, at the relevant state governments acquisition drive applying the doctrine of '*eminent domain*', through the Land Acquisition Act, 1894 is dangerous from the end of livelihood of the displaced persons. The Act of 1894 provides for the payment of compensation with one time lump sum payment and lacks a proper and systematic scheme of rehabilitation and replacement costs to the people so displaced. Mostly, the people dependent on land are illiterate and have no other skill to earn livelihood. At this, displacing them without ensuring the proper means of livelihood at the sake of corporate will of is not only unjust, but immoral and gross violation of right to livelihood at the same time.

- **Right against forced eviction:** - The UN Commission on Human Rights has recognised forced eviction as a gross violation of human rights.¹⁶⁸ The General Comment No. 7 of the Committee on Economic, Social and Cultural Rights, has

¹⁶⁷ (1993) 3 SCC 258

¹⁶⁸ UN Commission on Human Rights resolution 'Forced Evictions', E/ CN.4/ 1993/77.

defined forced eviction as- "*the permanent or temporary removal against the will of the individuals, families or communities from their homes or land, which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.*" Despite international human rights provisions, brutal forced evictions are carried on by states in the name of development. Singur and Nandigram are cases to the point. However, very recently, in India, the public auditing system for the Reliance Group's Mumbai Special Economic Zones (SEZ) has been initiated by allowing the farmers and affected people to present their cases before an eminent panel comprising of the dignitaries from different fronts of the society.¹⁶⁹

- **Right to shelter:** - Right to shelter is another significant fundamental rights addressed under Art. 21 of the Constitution. Right to life is not restricted to mere animal existence. It means something more than just the physical existence.¹⁷⁰ Right to shelter is one of the most significant fundamental rights addressed in the Constitution under Art. 21. In *Chameli Singh v State of U.P.*¹⁷¹ the Supreme Court has held that in any organised society, the right to live as human being is not ensured by meeting only the animal needs of man. Right to life guaranteed in any civil society implies the right to food, water, decent environment, education, medical care and shelter. The Court also held that right to shelter includes adequate living place, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation

¹⁶⁹ The Hindu: 16th September, 2009 at pg. 12.

¹⁷⁰ Francis Coralie v. Union Territory of Delhi; AIR 1978 SC 597.

¹⁷¹ (1996) 2 SCC 549.

IMPACTS OF CORPORATISATION ON FARMER'S RIGHTS

Corporatisation of agriculture has both positive and negative features.

POSITIVE FEATURES: - Corporatisation of farming as an idea has been developed in recent times. In this type of farming, capitalists, corporations or syndicates hold large areas of land and manage them like modern enterprises. The business capital in such cases is supplied by one or a few persons or by many persons and the farm runs like a joint stock company. Sometimes it is called corporate farming.¹⁷² Traditionally, the farmers use to control this sector. But during the British regime, in India, a trend of controlling the farmers by the persons foreign to agricultural activities started when the Englishmen started canalizing the capital to farm to encourage farmers of undivided Bengal to cultivate indigo. This may be considered as birth of contract farming in India especially in Bengal which finally led to the compulsion and oppression for the non cultivation of the same crop. Later on it extended to tea and some other cash crops. In India, the following types of farming prevail -

a. Family farming: - Family farming is a traditional type of farming under which land held by a person is cultivated exclusively by the members of the family without engaging the outside labourers or engaging the least number of labourers.

b. Co- operative farming: - The concept of co- operative farming is not a new one. From the time immemorial, mutual aid at the time of harvesting, weeding and other farm activities has been common. The 'Phad system' of Kohlapur and 'Gallshi system' of Andhra Pradesh represent two traditional systems of Co- operative farming. However, formal agricultural co- operatives didn't come into

¹⁷² Prof. Gangotri Chakraborty, Land Reforms and Corporatisation of Agriculture, NUJS 2006; at pg. 15.

existence until 19th century.¹⁷³ These co- operatives were created mostly by private initiatives and were mainly the service type of co- operatives and didn't involve joint farming. At this, the interest of group farming began to grow in various circles in 1940's. Gandhi also favoured the system of joint farming. As a matter of policy, co- operative farming was first to be considered in 1944, by the Advisory Board of the Imperial Council of Agricultural Research. Almost simultaneously the subject received attention in the plan of Economic Development, formulated in 1944. After independence, The Agrarian Reform Committee, 1947 advocated for a scheme of co- operative joint farming. Again the publications of the Reserve Bank of India (1949) and the Ministry of Agriculture also supported co- operative farming. Later on the First to Third Five Year Plans, the issue was greatly discussed. However, the Fourth Plan (1969-74) indicated a slackening of interest of the Central Government in co- operative farming. Thus, with the Fourth Plan, in March, 1969, the programme for co- operative farming was dropped as a central scheme and was transferred to the State Plan sector.

c. Contract farming: - Contract farming as encouraged by the corporate houses in India is of recent development as a part of retail boom in food and grocery. This system is aimed to have the direct dealing with growers and disintermediation to cut the long supply chain to ensure the assured supply of different varieties with premium quality. It is expected to provide win- win situation for both the farmers and the large corporate or business houses engaged in the sphere as it has the following positive effects-

i. Income and work security to the farmers: - Where there is work, there is money and thus food. In India, over sixty percent of our population depends on crop and animal husbandry, fisheries, forestry and agro processing for their livelihood. In India, over 80%

¹⁷³ Prof. Gangotri Chakraborty, Land Reforms and Corporatisation of Agriculture, NUJS 2006; at pg. 19.

of farming population are small and, marginal farmers (i.e. less than 2 hectares of land per capita). Again, among these small and marginal farmers 80% of 115 million farming families own one hectare or less cultivated land¹⁷⁴ where hunger, malnutrition etc. Are persisting. The country has a considerable experience in successful contract farming both in the private and public sectors. In the private sector, good examples are in tobacco and sugarcane while in the public sector, a good example is the relationship that exists between FCI; NAFED and like organisations which ensure that farmers get the minimum support price announced by the government for rice wheat and other commodities. Although successful implementations are few, with appropriate legal mechanisms it can increase employment in rural areas, among the farmers of small holding farmers who has surplus household, labour and among the landless workers. As such, the government of West Bengal besides encouraging the agriculture- based industries is stepping towards the commercialisation of agriculture which as is perceived by the government will increase the income of the small and marginal farmers.

ii. Credit facility: - It is perceived that the private sector participation in the small holding agriculture for producing, processing and marketing high value commodities can be a 'win-win' situation. The provision to small holders either by the private sector or by connecting them to financial institutions lends a hand to new groups of small holders to undertake cultivation of high value commodities for retail market. The farmers under contract farming may get a guarantor in the lending process in the form of corporate houses.

ix. Use of modern scientific knowledge in proper manner: -

The small and marginal farmers use unscientific methods

¹⁷⁴ Prof. M. S. Swaminathan, Preventing Unequal Social Bargain, The Hindu Survey of Indian agriculture; 2007 at pg. 11.

behind cultivation and thus the productivity is lessened. Extensive research on natural resource management as carried out e.g. All India Wheat Improvement Programme¹⁷⁵ have resulted in some promising technologies such as zero tillage, raised bed planting, residue management and weed management. It is proved that if investment is laid on fertility imbalances then the constraints those arise out of mineral imbalance, restricted irrigations, and salinity are likely to crop up with further intensification of agriculture. For their own interests they are expected to infuse latest technologies to address the issues like better seeds to risk sharing programmes e.g. drought,¹⁷⁶ blight or pests attacks and flood like situations which distresses the farmers to which the government machinery has not yet been successful. The Corporate houses will pump private investment into seed multiplication, adopt of new technologies, train the farmers to use these techniques, store, transport, process, and develop wastelands regarding which the government alone cannot progress far. Through corporatisation, since the profit is shared between the farmers and the firm that enters into the contract, profit for the farmer can be maximised through the input saving technologies.

iv. Quality control of the produce: - With the rapid urbanisation and so many other factors. The consumer preferences are changing. Consumers prefer the organic foods and value added food items.

¹⁷⁵ Dr. B. Mishra, Quality Based Procurement, The Hindu Survey of Indian Agriculture, 2007, at pg. 35.

¹⁷⁶ In recent times being fed up with fourth successive year of draught and government's apathy to their woes, thousands of farmers of Chhattapur block of Palamau district of Jharkhand have launched a signature campaign seeking 'mercy killing' from President Pratibha Patil. (Reported in The Statesman on 29th June, 2009 at pg. 01). Again, in Bundelkhand, farmers being forced to sell houses, land etc. are being driven to sell or mortgage their women to stay afloat. (Reported in the Times of India: 10th September, 2009 at pg. 11).

Thus, today, a close link between the quality lab and grain market has become important. The factors those influence the quality of the produce need to be monitored. In addition to these, crop management practices including water, fertiliser, choosing of variety must be supervised. Increasing demand for standards and quality control requires that small holding farmers follow strict food safety procedures in selecting and processing their produces in the market. The small holders have shown that they could meet the quality requirements of markets if adequate support in terms of infrastructure and training is given to monitor the quality standard. In the absence of such support system they are unlikely to benefit from the food and grocery retail boom.¹⁷⁷

x. Higher return: - Contract farming is again is expected to be beneficial from the point of yielding higher return as it has the capacity to achieve increased farm productivity. The government is inclined towards the commercialisation of agriculture which is expected to satisfy two pronged objectives viz. The increasing of the productivity of the traditional crops to satisfy the food security of its citizens and, to increase the income of the small and marginal farmers in the state.

vi. Reduction of storage hazards: - Storage is one of the biggest challenges to the farmers even today. For country of this size and farm output, warehousing facilities are inadequate. Temperature control and inventory management are the two areas which need focussed attention. Transportation is another challenge. Efficient, less expensive and specific transportation including appropriate material handling equipments, cold chains and refrigerated vans are the need of the hour. Organised retailing will help in reducing the wastage that currently characterizes farm production. While the

¹⁷⁷ Dr. Suresh Chandra Babu, Yield, Price, Risk limiting factors: the Hindu Survey of Indian Agriculture, 2007 at pg.15.

demands for food products continues to boom on the supply side, with the entry of large corporate houses is expected to address the issue.

xi.Reduction of marketing hazards: - Under corporatisation the relevant corporate entity will enter into a contract with the farmer to purchase his produce at a pre-determined price and undertake the marketing of the produce in both domestic and export markets. Most importantly, retailing of agricultural commodities through corporate bodies will force the stake holder's move towards '*quality related pricing*'. Beginning with better quality of raw materials, improvements in the supply chain including primary grading; sorting; handling and preservation will be result. The development of food retailing will inevitably result in the establishment of backward linkages with agriculture and food processing.

xii.Cutting off the middlemen: - Persons engaged in production do not access the market directly. There are agents who pick up the produce at nominal price and sell the product in the market at a very high price. As a result the farmer gets only a marginal profit and the agent gets high profit. Corporatisation is expected to allow the farmer to sell directly which will give him the whole profit.

xiii.Optimum utilisation of commodities: - Contract farming under the supervision of the corporate houses will lead to optimum utilisation of the commodities. The major benefits will accrue from the reduction in the transportation and marketing costs. Quality control will lead to higher marketability. An estimated 30% of fresh produce is wasted because of inadequate post- harvest facilities while 10% of grains is said to be lost on farm.¹⁷⁸ The corporate activities in

¹⁷⁸ Mr. G. Chandrashekar, Profound changes in retail area, The Hindu Survey of Indian Agriculture at pg. 6.

the area will help in reducing the wastage that currently characterizes farm production. A study on Contract farming in vegetables and milk in India has shown that the contract producers obtaining as much as 75- 100% higher profit over the independent producers.¹⁷⁹ The study also found no significant difference in the contract of and open market price.

xiv. **Corporatisation of marketing of agricultural produces:-**

Organized retailing has come to India very recently. Presently, India is one of the top five global destinations for retail investment.¹⁸⁰ The responsible corporatization of agriculture and careful monitoring by the relevant government is expected to foster all the benefits of contract farming. With improved marketability and remunerative price¹⁸¹ to the farmers it is expected to ensure better living to the farmers as a whole. Most importantly, retailing of agricultural commodities through corporate bodies will force the stake holder's move towards '*quality related pricing*'. Development of food retailing will inevitably result in the establishment of backward linkages with agriculture and food processing. However, if the retail boom is to benefit the farmers, three possible developments are needed viz.-

Direct marketing by the farmers and thereby limiting the intermediaries;

Establishing value addition activities like cleaning, grading, packing, primary processing and storage should take place the farm

¹⁷⁹ Dr. Mangala Rai and Dr. A. K. Bawa, Profitability a key determinant, The Hindu survey of Indian Agriculture, 2007; pg. 22.

¹⁸⁰ Mr. G. Chandrashekar, Profound changes in retail area, The Hindu Survey of Indian Agriculture at pg.5.

¹⁸¹ Mr. G. Chandrashekar, Profound changes in retail area, The Hindu Survey of Indian Agriculture at pg.5.

and link up the facilities to retail chains and thus generating rural jobs, and

Scattered, small and marginal farmers should be organised to form farmers association/ rice groups/ self help groups to ensure that they are not exploited by the retail chain organizations.

NEGATIVE FEATURES: - Due to the special corporate drive spearheaded by the MNCs in the field following consequences are perceived, -

Replacement of the traditional agri inputs with chemical inputs: Such chemical seeds men are intensifying the chemical approach so as to combine their traditional sales of pesticides with their new interests in seeds. Thus, where they are able to push their traditional seed sale, their pesticides will automatically be sold out otherwise they will fall prey of diseases. Such corporate breeding strategies being not conducive to the traditional farmers, it cannot be translated into an overall societal benefit for all. Over emphasis to the commercial exploitation of bio resource may cause the depletion of a particular species and some other related ones.

Capital intensive approach to agriculture: - As the seed has been touched by the MNCs the agriculture is gradually becoming capital intensive. Now the breeders¹⁸² are rewarded while the farmers are prevented even from to sale the seeds of protected varieties instead of older varieties. The seeds so developed, susceptible to diseases can give a good yield only under ideal conditions. The seed producers having the control over the supply of their varieties is fixing higher price for such seeds. The farmer's rights of sell; reuse and develop seeds and plant materials are going to be hampered¹⁸³. Thus, agriculture is becoming a capital

¹⁸² A breeder is a person who bred several successful varieties.

¹⁸³ Dr. (Mrs.) Harpal Kaur Khera; Patents and suigeneris system for the protection of plant varieties: A threat to food security and health care; CILQ 2000, vol. 13, pg 190

intensive sector where the small and marginal farmers will have no place unless a significant and well organised system is devised at the farming sector.

Food insecurity: - Trade liberalisation is supposed to bring benefits to national agricultural economies. However, the beneficiaries are neither farmers nor governments of the Third World. This freedom to trade has mainly benefited the giant grain traders like Cargill and Continental. They are buying wheat at \$60 to \$100 per ton from India and selling it at \$230-240 per ton on the international market, making a neat \$130-170 profit per ton, while India is losing \$100 million in exports because of the concentration of power in the hands of five merchants of grain.¹⁸⁴ The corporations are the only beneficiaries of free trade and they are not in the business of ensuring food for all. The central government-controlled food distribution system run by the Food Corporation of India depending on long-distance transport had its flaws, but these flaws can hardly be corrected by replacing it with an even more central corporate-controlled food system which promotes the export of Indian food grains and then imports food at high social, economic and political costs to people and the country.

Less diverse crops in the market: - Everywhere across the world, less food is being produced and less diverse food is being grown, and less is reaching the poor and hungry. Fewer farmers are finding a place in agriculture and even privileged consumers have no food security in the sense of access to safe and nutritious food. Food-growing land is being diverted to non-food crops such as flowers or luxury commodities such as shrimp. Food production has been greatly undermined by trade liberalisation policies. Farmers are being displaced on a massive scale and natural resources are being over exploited. Corporatisation of agriculture which is being

¹⁸⁴Globalisation of agriculture and rising food insecurity, Available at <http://www.twinside.org.sg/title/food-cn.htm> visited on 5th May, 2008 at 9.42 PM.

pushed under trade liberalisation as a successor of the Green Revolution is on the way to lead new poverty for small farmers as unequal and unfair contracts lock them into new form of bondage.

CHAPTER- III

LEGAL FRAMEWORK RELATING TO LAND: AN OVERVIEW

"All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights"

-Vienna Declaration and Programme of Action (1993)

The relationship between land and human being is as old as cultivation. The nomadic man did not feel the need of taking land in his control. As man learnt agriculture, and for this land is the utmost necessity, people started to have the land in his control. In this process, stronger persons could bring more land in his control and the weak as the history advanced became landless labourers. Even today the genesis of the structure of power and authority in rural India can be traced to land.

There is an ever changing relationship between land, power and people. The value of land is ever increasing and requires little renewal and replacement. Due to this basic utility, economists consider land as a special kind of property. Today land reform has been proved to be a major instrument of social transformation, especially in an economy based on feudal and semi feudal production relationships. Corporatisation of land means and includes the transferring of lands to the corporate houses for the purpose of setting up of their projects. Today all the state governments are inviting the industrialists to set up their projects in their states.

PART- I

THE CONCEPT OF LAND

Definition: Land is defined as as '*massuages; lands, tenements, heriditaments, of any tenure*¹⁸⁵. The term Massuage is substantially equivalent to a house. Tenement is a large idea used to pass not only lands and other inheritances, but also offices, rents. Heriditament is the largest of all kinds, be it corporeal or incorporeal, real, personal or mixed. The word 'land' is used in the same sense as 'immovable property'¹⁸⁶. 'Immovable property' has been defined as not to include 'standing timber, growing crops and grasses'¹⁸⁷. Land is said to include things attached to earth the Act of 1894¹⁸⁸. However, the Act doesn't contemplate the acquisition of things attached to land without the land itself. It is only the land including the rights which arise out of it and not merely some subsidiary right which is capable of acquisition under the Act. The taking of property which merely injures a franchisee but doesn't interfere with the exercise of it; and it doesn't entitle the owner of the franchisee to compensation for damage to the franchise.

The expression land as discussed under Sec. 3(a) of the Land Acquisition Act, 1894 includes benefits to arise out of land and things attached to the earth or permanently fastened to or anything attached to earth. Under the West Bengal Land Reforms Act, 1955 under section 2(7) land means land of every description and includes tank, tank- fishery, homestead, or land used for the purpose of livestock, breeding, poultry farming, dairy or land comprised in tea garden, mill, factory, workshop, orchard, hat,

¹⁸⁵ Section 3 of the General Clauses Act, 1845

¹⁸⁶ Section 3 (25) of the General Clauses Act, 1897

¹⁸⁷ Section 2(b) of the Indian Registration Act of 1908 and Section 3 of the Transfer of Property Act of 1882 (as amended in 1929)

¹⁸⁸ Sec.2 (a), Land Acquisition Act, 1894

bazaar, ferries, tolls or land having any other sairati interests and other land together with all interests, and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth; under the definition, the term homestead shall have the same meaning as in the West Bengal Estate Acquisition Act, 1953.

Location in the Constitution: - According to the Constitution, etymologically, "Land that is to say, rights in and over land, land tenures including the relation of land lord and tenant, and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural loans; colonization"¹⁸⁹ the same list deals with the duties in respect of agricultural land¹⁹⁰. The government is empowered to legislate on custody, management and disposal of property (including agricultural land) declared by law to be evacuee property¹⁹¹ and acquisition and requisitioning of property¹⁹². Land reform has proved to be a major instrument of social transformation, especially in an economy based on feudal and semi feudal production relationships. The Directive Principles of state policy further provides that *the state* shall strive to minimise the inequalities of income and eliminate inequality in status, facilities and opportunities¹⁹³ and requires that the distribution of ownership and control of the material resources of the community to the common good¹⁹⁴ and to ensure that the operation of economic system doesn't result in the concentration of wealth and means of production to common detriment which includes land. Land being a fundamental factor of production may be acquired by

¹⁸⁹ List II; Entry 18. The Entry 18 of List II, seventh Schedule, Art.246

¹⁹⁰ Entry 47

¹⁹¹ Entry 41

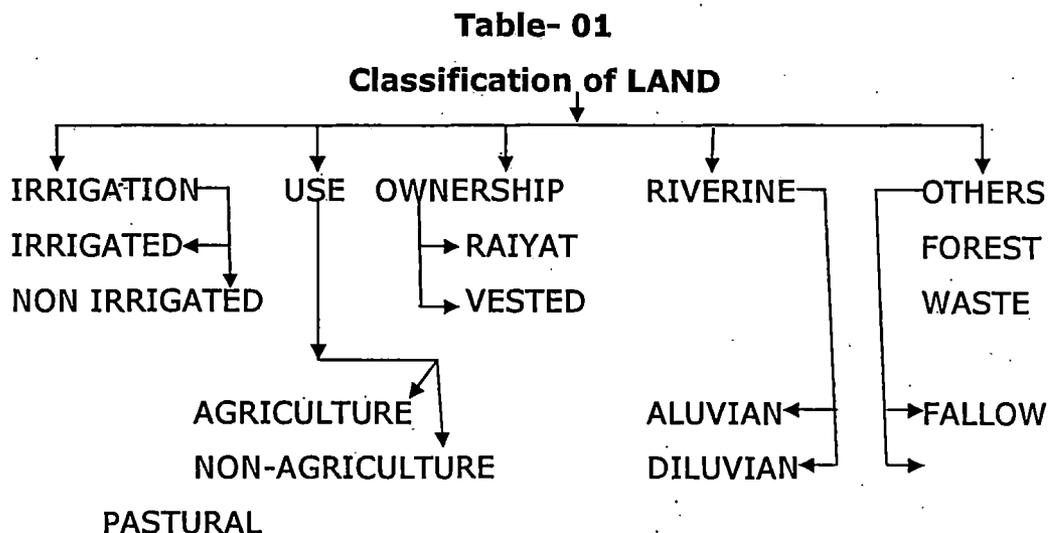
¹⁹² Entry 42

¹⁹³ Art.38

¹⁹⁴ Art.39 (b)

government for private holding for public purposes.¹⁹⁵ The Constitution provides, "where any law makes any provision for the acquisition by the state of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the state to acquire any portion of such land as is within the ceiling applicable to him under any law for the time being in force..... unless the law relating to acquisition of such land provides for payment of compensation at a rate which shall not be less than the market value thereof"¹⁹⁶.

Classification of land:- Land can be classified on the basis of the followings-



Irrigated land: - 'Irrigated area' means an area specified as such by the State Government, by notification in the Official Gazette, being an area which is, or is in the opinion of the State Government capable of being irrigated, at any time during the agricultural year commencing on 1st day of Baisakh, 1377 BS or thereafter, from any state canal irrigation project or State power driven deep tube well or shallow tube well or any other state irrigation project or state

¹⁹⁵ State of Maharashtra v. Basantibai M. Khetan (1986) 2 SCC 516.

¹⁹⁶ Art. 31- A

river lift irrigation project¹⁹⁷. Under the Act of 1955, the Revenue Officer has the power to determine an area to be irrigated area.

Non irrigated land: - The land not falling under section 14K (2) of the WB Land Reforms Act, 1955 and not determined as an irrigated area by the appropriate authority as irrigated area under Section 14 N.

Agricultural land: - Agricultural land means land ordinarily used for purposes of agriculture or horticulture and includes such land, notwithstanding that it may be lying fallow¹⁹⁸ for the time being.¹⁹⁹ Such land is used for agricultural works.

- Mono Crop cultivable lands
- Duo or Bi- crops cultivable lands
- Poly or Multi- crops cultivable lands

Non- agricultural land: - Non- agricultural land means land other than agricultural land or other than land comprised in a forest.²⁰⁰

Waste land: - Waste land means any land classified in the record-of- rights published under the Bengal Tenancy Act, 1885, as nutan patit, puritan patit, layek patit, gar layek patit or layek jungal and includes any land or water area which in the opinion of the State Government, has not been adequately used for production of crops or fish for a continuous period exceeding two years but does not include land, forming part of, any homestead, farmhouse, burning or burial ground or any place of worship.²⁰¹

Raiyati land:- It means a person or an institution holding land for any purpose whatsoever. (Section 2(10) of the WB Land Reforms

¹⁹⁷ Section 14K (d) of the West Bengal Land Reforms Act, 1955.

¹⁹⁸ Fallow land is cultivable but has not been used for the purpose of cultivation.

¹⁹⁹ Section 2(a) of the West Bengal Acquisition and Settlement of Homestead Land Act, 1969.

²⁰⁰ Section 2(f) of the West Bengal Acquisition and Settlement of Homestead Land Act, 1969.

²⁰¹ Section 2(5) of the Waste Lands (Requisitioning and Utilization) Act, 1952.

Act, 1955). However, the term raiyat²⁰² means a person who holds land for the purposes of agriculture.

Vested land: - The definition of vested land has not been given under the WBLR Act, 1955. Any land owned by a raiyat in excess of the ceiling area²⁰³ applicable to him shall vest in the State free from all encumbrances. Such land is considered as vested land. Again, any land if acquired by the state for public purposes or for a company under the Land Acquisition Act, 1894 becomes the vested land under the Act.

Alluvial land: - It is the land gained by gradual accession to a plot of land whether from the recess of river or sea and shall vest in the State and the raiyat who owns the plot of land shall not be entitled to retain such land as accretion there to²⁰⁴.

Diluvial land: - It is such type of land which has been swayed away by the river or sea. Initially such types of land had been described under Section 11 of the West Bengal Land reforms Act, 1955 but, this provision has been omitted by the Amendment Act of 2000 w.e.f. 7. 8. 1969.

Excepting these types, lands may be categorised under the following heads-

- *Forest land:* - The land notified by government orders as Reserved Forest (RF), Protected Forest (PF), and Private Protected Forest (PPF). These lands are generally governed by the Forests Acts (Central and State).
- *Pastoral land:* - The land marked for the purpose of animal grazing and fodder growing in every village.
- *Fallow land:* - Fallow land is the land which is cultivable but for various reasons is not cultivated regularly, and thus not

²⁰² Section 2(j) of the West Bengal Acquisition and Settlement of Homestead Land Act, 1969.

²⁰³ Section 14 M 14 Q & 14 R of the West Bengal Land Reforms Act, 1955.

²⁰⁴ Section 12, The West Bengal land reforms Act, 1955.

assessed for revenue on a regular basis. Fallow lands are of two types-

- a. **Permanent Fallow:** - This is the land which is cultivable, but not used for taking crops for a long period of time and thus not assessed for revenue.
 - b. **Current Fallow:** - This is the land which is cultivable, but in a particular year not used to take crops, hence not assessed for that particular year.
- *Land not available for cultivation:* - Such lands may be cultivable, but since it is marked for specific non- agricultural purposes like schools, market, place, roads, playground, jungle jhari etc. not available for agriculture.
 - *Non- Cultivable Wasteland:-* The land which is not fit for cultivation and thus not assessed for revenue purpose is called a non- cultivable wasteland. Generally, it is referred to as 'Wasteland' or 'Banjar'. These lands are rent free.

The definition of the term 'land' in the land acquisition Act, 1894 is not exhaustive. The Act lays down that 'expression land includes benefits arising out of land, and things attached to earth or permanently fastened to earth.' The word 'includes' indicates that restriction intended to lump together in one single term i.e. land- several things of particulars such as soil, building, on it, in charge on it and other interests in it- which all have separate existence capable of being dealt with either in mass or separately, such exigency of each case arising under the Act may require.²⁰⁵ Thus, it is clear that definition of land will include superstructure, if any, existing upon it. For the purpose of the Act, therefore, land includes buildings, and also trees and standing crops.²⁰⁶ This definition is wider than that of immovable property under the Transfer of Property Act, 1882. Significantly, mines and minerals beneath the

²⁰⁵ Government of Bombay v. Isufali Salebhai (1910) 34 B.Om.618.

²⁰⁶ Province of Sind v. Hari Kishan Dass Gulabari AIR 1940 Sind 58.

land are also included in the definition of land under the Land Acquisition Act, 1894. It has also been observed according to the land Acquisition Act, land does not merely mean a firm land but also land covered with water and in calculating market value of land, benefits derived from such water should also be taken into account.²⁰⁷ Property right affects the economic growth in a number of ways like²⁰⁸,

- Secured property right increases the incentives of households and individuals to invest and often also provides them with better credit access; something that not only helps them make such investments but will also provides an insurance substitute in the event of shock.
- In the un-mechanised agriculture, the operational distribution of land affects output, implying that a highly unequal land distribution reduces the productivity.
- Secured land tenure also facilitates the transfer of land at low cost through rentals and sales, improving the allocation of land. It also supports the development of financial markets. Without secured rights the land owners are less willing to rent out their land, which may impede their ability and willingness to engage in non- agricultural employment or rural- urban migration.

Acquisition of land is a major instrument for development for public purpose. If the contention of right to livelihood or right to shelter or dignity of person is given credence; no land can be acquired under the Land Acquisition Act, 1894. The proper balance may be attained through the payment of proper resettlement and rehabilitation programme. Successful resettlement and rehabilitation programme is difficult to achieve for a number of reasons. Displacement causes

²⁰⁷ Nalinakshya Bose v. Secretary of State (1907) 5 CLJ 62 (N).

²⁰⁸ Klaus Deininger: Land Policies for Growth and Poverty Reduction; World Bank's Policy Research Report: A co publication of the World Bank and Oxford University Press, First Published in 2003; at pg. 24.

a psychological trauma that may be difficult to measure in terms of conventional indicators. It is usually accompanied by a prolonged period of transition; full of economic and social uncertainties. The outcome of resettlement programme varies significantly based on the way it is designed and administered. If designed properly and on the basis of a policy, a resettlement programme can be implemented as a regular development programme.

PART- II

LAND REFORMS

India has an uneven distribution of land. Land reform means, in narrower sense, distribution of surplus land to small and marginal farmers and the land less farmers. The UN Food and Agricultural Organization (FAO) organized a World Conference on Agrarian Reform and Rural Development (WCARRD) in Rome in July, 1979 wherein 145 members participated. Para 8 of the Declaration Programme of Action states that 'Sustained improvement of rural area requires fuller and more equitable access to land and water and other natural resources; widespread sharing of economic and political power'. This is known as the Peasant's Charter. In 1974, the World Bank claimed that the redistributive land reform can go a long way towards solving the problem of rural poverty and without which it would be difficult to see much headway being made to reduce poverty in the rural areas. In the same year, the Bank's guidelines for lending to developing countries explicitly stated that the countries where increased productivity can effectively be achieved only subsequent to land reform, the bank will not support projects which do not include land reform. However, the dwindling interest in pursuing agrarian reforms began in 1980's in the

operational ideologies of major Western Countries at 'international institutions'.²⁰⁹

The land reform entails a redistribution of productive assets that would in turn result in a redistribution of income and an improvement in the living standards of the poor, particularly in terms of food security, while not reducing aggregate output over the long term. Basically, land reform is connected with the right to life and livelihood of a huge rural population in India. The land reform measures as adopted in India since independence focus to the major areas like.- (i) *abolition of intermediaries* (Zamindari system in case of Bengal); (ii) *security of tenancy and regulation of rents* (the system of bargadars in Bengal), and (iii) *imposition of ceiling and redistribution of ceiling surplus land among the land less*. It also aims to- *increasing agricultural productivity and doing social justice*. Thus, in brief, through land reform the dependence and unequal social relations that historically existed between landlord and tenant are altered, and a better balance of social, economic, and political power becomes possible. Land reform has divested large landowners who owned huge estates of 10,000 to 20,000 acres of land yet the distribution of ownership holding has remained unequal with 71% of the land being owned by nearly 24% of the land owning households, while, as many as 873 lakh small

²⁰⁹ The policies of Ronald Reagan as US President and of Margaret Thatcher as the British Prime Minister brought a radical move towards the economic growth and support for market forces, especially business interests, while also reducing government intervention except in order to assist big business. Thus, the support for such programmes as the redistribution of private land was quickly put on the sidelines. At this, the third world countries being faced with worsening problems of debt repayments, inflation, balance of payments deficits, and the structural adjustment policies abandoned/ forced to veer away from agrarian reforms. As economic globalization widened and deepened, the consolidation of lands by corporate bodies, especially TNCs for high value export crops means that there is all the more reason for support for agrarian reform to weaken.

and marginal farmers own less than two hectares of land each.²¹⁰ As per the 1991 census, there are seven crores of rural landless labourers eking out of bare existence. Their number is on the increase with 20 lakhs of being added every year.²¹¹ The ineffective land reform is at the root of such a situation.

LAND REFORMS AND INDIA

India inherited a semi-feudal agrarian system. The ownership and control of land was highly concentrated in a few landlords and intermediaries whose main intention was to extract maximum rent, either in cash or kind, from tenants. The land reforms in India have not been very effective. . As a result, agricultural productivity suffered and oppression of tenants resulted in a progressive deterioration of their plight. According to a publication of the Food and Agricultural Organisation (FAO), in India, redistribution of only five percent of farm land coupled with improved access of water, could reduce rural poverty levels by 30%.²¹² But still, the number of utterly poor people in India is about the same as the entire population of the country in 1947. The landless and the near landless (those with less than half an acre of land) make up 43 per cent of rural households in India.²¹³

The Constitution (49th Amendment) Act 1983 was enacted by the Parliament in August, 1984 which put 14 land reforms laws in the Ninth Schedule of the Constitution to provide the immunity to these measures from being challenged in the court of law. The Constitution (81st Amendment) Bill, 1994 was passed in 1995.

²¹⁰ Sanjay Upadhyay & Vidheh Upadhyay: Handbook on Environmental Law: Environment Protection, Land and Energy Laws; Vol.- 3, First publication in 2002, Lexis Nexis Butterworths, Noida; at pg 380.

²¹¹ Id.

²¹² Prof. Gangotri Chakraborty: Land Reforms and Corporatisation of Agriculture: NUJS 2006; at pg.

²¹³ Patralekha Chatterjee: Land Reform in India Necessary but not Sufficient to Fight Poverty; [http\ www. Land Reform in India.mht](http://www.LandReforminIndia.mht) visited on 26th August, 2008.

placing land reform laws in the Ninth Schedule. However, the move towards land reform has not been fully successful due to absence of required forthcoming political will in the country.

Table- 02

LAND REFORMS UNDER FIVE YEAR PLANS

A bird's eye view of Five Years Plans regarding land reforms is given below.

SL	FIVE YEAR PLAN	STRATEGIES PLANNED
1	I	<ul style="list-style-type: none"> • Land Policy that reduces disparity of wealth • Elimination of intermediaries • Elimination of exploitation • Fixing of ceiling
2	II	<ol style="list-style-type: none"> 1. Left the issue to the States as the subject of land reforms finds place in List II of the Constitution. 2. Increase agricultural production
3	III	<ul style="list-style-type: none"> • Serious balance of payment problem • Removal of impediments to increased agricultural production arising out of skewed agrarian structure • Elimination of exploitation and social justice in the agrarian system.
4	IV	<ol style="list-style-type: none"> 1. Food security as its central theme 2. Reviewed the progress of land reforms 3. Emphasis on traditional and small scale sectors as important contributors to economy
5	V	<ul style="list-style-type: none"> • Better treatment of land reforms • Direct anti- poverty programmes

		<ul style="list-style-type: none"> • Recommendations of the task force on Agrarian Relations, 1972 were incorporated
6	VI	<ol style="list-style-type: none"> 1. Concern over slow progress of land reforms 2. Observed unsatisfactory implementation of land ceiling laws 3. effective land reforms programme 4. States to implement their own reform
7	VII	Similar strategy
8	VIII	Nothing much on land reforms
9	IX	Nothing much on land reforms

In May, 1955, the Planning Commission set up a panel on land reforms under the Chairmanship of Gulzarilal Nanda to review the progress of land reforms in the country. The Committee made the following recommendations viz.-

- i. There should be an absolute limit to the quantum of agricultural land which an individual may hold to meet the following objectives-
 - a. to meet the wide spread desire to possess land
 - b. to reduce the inequalities in ownership and use of land
 - c. to reduce the inequality in agricultural income
 - d. to enlarge the sphere of self employment
- ii. Induction of capital investment of land
- iii. Encourage of personal cultivation
- iv. Ending the uncertainty in land sector and
- v. Providing work and security to the landless

This apparently the only serious thought that was given to land reforms apart from those mentioned under the five year plan.

LAND REFORMS AND THE PROVINCES

The national guidelines were formulated at the Chief Minister's Conference on ceiling on 23rd July, 1972 which emphasised basically aimed at-

- (i) the lowering of the level of ceiling;
- (ii) Family rather than individual had been declared as a unit for the application of ceiling.

In 1972- 73 lowering of land ceiling took place by most of the states and legislations in pursuant to them had already been passed in almost all the states providing for a ceiling on land holdings. For example²¹⁴,

Table-03
Ceiling Limit in Some States

SI	STATES	CEILING AREA
1	UTTAR PRADESH	12.5 acres
2	PUNJAB & HARYANA	30 standard acres
3	WEST BENGAL	25 acres
	KARNATAKA	18 standard acres

In Haryana the ceiling has been lowered to 18 acres for perennially irrigated land capable of producing two crops a year, 27 acres for irrigated land capable of producing only one crop and 54 acres of dry land. During the past two decades or so, the state of Karnataka tried to confer occupancy rights to tenants. Many state governments have banned agricultural tenancy but concealed tenancy exists. Many of the affluent states like Punjab and Haryana show a growing tendency towards 'reverse tenancy' in which large farmers lease land from small and marginal ones. In UP, as in many other parts of the country, former feudal lords still own hundreds of

²¹⁴ K.K Dewett, J D Varma, M L Sharma, Indian Economy, S. Chand and Company Ltd. New Delhi, at pg. 402.

acres of land.²¹⁵ However, the success story of land reform is Operation Barga in West Bengal.

LAND REFORMS IN WEST BENGAL

The operation was launched in 1978. It led to the emergence of 1, 500 000 share croppers. West Bengal's tenancy law provides the recorded share croppers permanent and heritable rights as a part of ensuring the social security to them. The state of Bengal was showed the highest rate of growth of 6.5% for agriculture as a result of land reform, while the rate of growth for India was a mere 3%.²¹⁶ The population density in West Bengal is very high and due to well planned land reform the land holding is mostly with the common people. The land is fertile and irrigation facility is adequate. Recently, The Government of West Bengal brought out a comprehensive "Status Report on Land Use" on the basis of data²¹⁷ collected by the Department of Land and Land Reforms. The total area under different categories of land use in the State in 2003-04 was 8.687 million hectares. The share of the net sown area reported is about 63 per cent in the State (46 per cent in India). Interestingly, the extent of land currently under non-agricultural uses is higher in the State than in the rest of the country. The comparative data show that the share of land under non-agricultural use in the State in 2003-04 was 18.5 per cent, as against 7.7 per cent for the rest of the country. The share of fallow land,

²¹⁵ Patralekha Chatterjee: Land Reform in India Necessary but not Sufficient to Fight Poverty; <http://www.inwent.org/E+Z/zeitschr/de202-8.htm> visited on 26th August, 2008 at 6.39 A.M.

²¹⁶ Globalisation of agriculture and rising food insecurity available at <http://www.twinside.org.sg/title/food-cn.htm> visited on 3rd may, 2008 at 9.28 PM

²¹⁷ Suhrid Sankar Chottopadhyay: Another land row; Frontline; Vol. 24, Issue 01: : Jan 13- 26, 2007.

uncultivable land and pastures in the State is only 1 per cent (17.6 per cent in India) and it is classified in four categories: fallow, cultivable wasteland, permanent pasture and other grazing land, barren and unculturable. This small area is concentrated mainly in the districts of Birbhum, Bankura, Paschim Medinipur (West Medinipur), Darjeeling and Bardhaman (mainly the coal-mining blocks). Still, Land Reform in Bengal is a continuing process. It is quite evident from the data as presented by the Minister for Land Reforms in the Bidhan Sabha in recent times. The record is as under²¹⁸.

Table- 04

LAND ACQUIRED UNDER LAND REFORMS AND DISTRIBUTED

YEAR	Acquired in acres	Distributed in acres
2005- 06	2322	8136
2006- 07	4135	10848
2007- 08	3750	10953

Thus, the table shows that, in each last three years, the extent of land acquired by the state government for industrial and infrastructural purposes were a fraction of the agricultural land distributed under land reform (and this does not even include the extent of homestead land distributed). Even in 2006- 2007 when acquisitions peaked, the extent acquired was 4135 acres, and the extent distributed under land reform was 10, 848 acres which is about 2.62 times the extent acquired for industry and infrastructure.

Effects of Operation Barga: In 1978, the government launched Operation Barga, a programme that has now recorded the names of

²¹⁸ Source: The Land and Land Reforms Department, Government of West Bengal. (as on February 15, 2008) published in the Hindu on 22nd August, 2008.

approximately 15 lakh bargadars²¹⁹ and educated them about their cultivation rights, thereby raising their economic and social status. Through the policy of Operation Barga and the surplus land distribution among the marginal, poor and backward castes over the years have created a kind of cushion against farmers taking their own lives because of the fear of money lenders or landlords taking away all the produce. The state changed the landlord-bargadar relationship in two fundamental ways,-

- The bargadar rights were made hereditary and thus perpetual regarding the rights of cultivation²²⁰.
- The state guaranteed that the bargadar's right over the receiving of a fair share of the crop²²¹.

Though this change in the tenancy in the state has brought some degree of economic stability among farmers, it has hardly cured the malady²²². The reasons behind this may be summarized as under-

- high landmass-population ratio (the highest in the country),
- small and highly segregated land holding patterns,
- lack of state's agricultural infrastructure,
- only 50% of agricultural land under irrigation²²³,

²¹⁹ <http://www.Vantagepoint.org.in/operationbarga/operationbarga.html> as visited on 26th August, 2008

²²⁰ Section, 15A of the West Bengal Land Reforms Act, 1955.

²²¹ 16 of the West Bengal Land Reforms Act, 1955 75 per cent if the bargadar provides the non-labour inputs and 50 percent if the landlord provides those inputs.

²²² Did Operation Barga save Bengal farmers
<http://www.financialexpress.com/news/didoperationbargasavebengalfarmers/162221/>
as visited on 28th August, 2008 at 3.09 PM

²²³ Id.

- failure to develop agri-industrial markets for farm produce,
- land erosion and river siltation

The transition from village to township and from agriculture to industry is the inevitable stages of development. Agriculture is not just a food producing machine, but the backbone of livelihoods. Literally, the word agriculture means, the science of farming²²⁴. The primary sense in which the term 'agriculture' is understood is 'agar' i.e. field and cultra- cultivation of field and if the term is understood only in that sense agriculture would be restricted only to cultivation of land in the strict sense of the term meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. It also includes the subsequent operations.²²⁵ It also includes horticulture²²⁶; animal husbandry, dairy farming, pisciculture and poultry farming²²⁷.

India is a agriculture dominating nation and West Bengal is not an exception. Land has been distributed among the landless people as a part of land reform but no proper mechanism has yet been devised to ensure that the land so given is purposefully utilized for agriculture. Unfortunately, the farmers suffer when the production is high. Agricultural commodities are of perishable in nature which requires proper storage, processing and marketing. Thus, suffering of the farmers on excess production may be considered as the government's failure. In India, agriculture is considered as a means

²²⁴ Oxford Advanced Learner's Dictionary of Current English: Oxford University Press; Sixth Edition, 2003 at pg. 25.

²²⁵ Income Tax Commissioner v. Benoy Kumar AIR 1957 SC 768: 1957 SCJ 740: 1958 SCR 101; Income Tax Commissioner v. Jyotikana AIR 1958 SC 19: 1958 SCJ 166; W. T. Officer v. Court of Wards AIR 1977 SC 113; Union of India v. R. C. Jain AIR 1981 SC 951.

²²⁶ Income Tax Commissioner v. Benoy Kumar AIR 1957 SC 768: 1957 SCJ 740: 1958 SCR 101.

²²⁷ Section 2(a); The Agricultural Refinance Corporation Act, 1963.

of sustenance, but has not been seen from commercial eyes. Thus, to reduce sufferings of the farmers' food processing industries along with various other are needed to set up which will lessen the risks on over production and at the same time to reduce the cost of production for crops modern agricultural appliances are to be applied.

Thus whatever be the situation, in the absence of proper planning resulting in the eviction of farmers from their land which has sustained them from generations which many a time seems to be unbearable to them due to many reasons like the passion for land as it feeds, maintain their families, past experience regarding acquisition and compensation etc. The demands for land in different spheres of development have brought to the fore the need to reform and update the systems of land statistics in West Bengal and needs to initiate the following programmes stated in the report²²⁸: -

- The government must establish an information system on the land based on annual plot-by-plot verification of land tenure, land use, irrigation and cropping. It has been estimated that such a database can be built over five or six years, and the government will organise the administration and the arrangements for a changeover to such a system of consolidated land records in the near future.
- The government must initiate a programme to create a land bank. District administrations have been asked to provide information on vacant land in the state in the first instance and on significant and unused tracts of land in the private sector in the next instance.

²²⁸ Status Report on Land Use: Government of West Bengal: Published in the Front line: Vol. 24, Issue 01: : Jan 13- 26, 2007.

- The Government of West Bengal will start to evaluate scientifically the demand for land in the State for different development activities. Evaluation will be made, in particular, of the demand for land for cultivation and related activity over a five-year and a 10-year period.

PART III

ISSUES RELATING TO ACQUISITION OF LAND

Land is a fixed asset. It cannot be further extended. Acquisition²²⁹, literally, means something that somebody buys to add what they already own, usually something valuable. Thus acquisition of land means the buying of land for some purpose from the land owners. Under the Land Acquisition Act, 1894, the land is acquired by the state for 'public purpose'. Acquisition of land causes displacement of people. In *Chameli Singh v. State of Uttar Pradesh*²³⁰, the Supreme Court held that "in every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The state exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose." Again, in *New Riviera Co-operative Housing Society v. Special LAO*²³¹ dismissing the proposition of the land owners that such acquisition of land will deprive them of their livelihood, the court held that since the Land Acquisition Act provides for the payments of solatium and other monetary benefits for deprivation of rights of enjoyment of property,

²²⁹ Oxford Advanced Learner's Dictionary of Current English: Oxford University Press; Sixth Edition, 2003 at pg 11.

²³⁰ (1996)2 SCC 549.

²³¹ (1996)1 SCC 731.

therefore any contention that it will deprive their livelihood is unsustainable. Land and property owning *project affected people* (PAP) are inherently the focus of any compensation and rehabilitation policy/ packages.²³² The marginal groups both in terms of their political location and their property ownership status find it difficult to gain recognition as groups deserving a share in the resettlement and rehabilitation process. However, people in an area where a project is yet to come having some economic and social relations with those directly affected by the project lose markets; community resources; and social networks which are not compensated properly.

Land is essential to establish new industries. Land may be corporatised on acquisition by the state by handing over the same to the corporate bodies. Land is a matter which is dealt with under the State List of the Constitution. For meeting of the corporate demand on acquiring land by the government, is definitely going to displace the people at large and supposed to hamper the traditional occupation of people and create problems regarding shelter, bread

²³² The Narmada Dam has been a very significant case. It has revolutionised the issue of compensation for acquisition of land and the issue of rehabilitation and resettlement of the oustees/ displaced people. This is again significant as it required the acquisition of land in multiple states viz, Gujarat and Maharashtra. In Maharashtra, the project- affected persons belonging to 'land- less', 'encroachers' and major sons and daughters (who were more than 18 years as on 1st Jan, 1987) categories found themselves marginalised by the resettlement policy announced by the government which failed to recognise or only partially recognized their claim to an allotment of agricultural land. Understandably, if the composition of the agitating groups are analysed, most of those seeking project- affected person status consist of these marginal groups who are not directly affected, but who can gain something if the scope of the definition of affected person is expanded. However, this tendency is directly linked to the policy entitlements declared by a particular state, and if these are not perceived to be adequate, there would be an all out attempt to resist displacement.

etc. Acquisition of land²³³ for corporatisation may be with the following objectives-

- Acquisition for consolidation of holdings on agricultural purposes,
- Acquisition for setting up of units by corporate bodies.

Acquisition for the consolidation of holdings for agricultural purposes: The acquisition for the purpose of consolidation of land holding is an important step towards the corporatisation of agriculture which has been conferred to the state under Section 39 of the West Bengal Land Reforms Act, 1955 which at the same time suggests the redistribution of the land after acquisition under section 40 of the Act. The acquisition for the purpose of consolidation of holding is welcome and it should be undertaken by the relevant authority at least in every five years as it reduces the cost of production of a crop as produced by a farmer.

Acquisition for setting up of units by corporate bodies: Acquisition of land for Corporate Bodies is another area of discussion. Under the Land Acquisition Act, 1894 the state can acquire land²³⁴ if the intention is satisfying the public purpose clause or for a company. Interestingly, the term public purpose has not been defined in the Act, nor any limitation regarding what is likely to prove useful to the public: both matters left to the discretion of the local government.

Doctrine of Eminent Domain: The doctrine of "Eminent Domain" as developed in the United States²³⁵ is the authority in this direction under which the acquisition can be done on payment of compensation as a condition to exercise the right to expropriation. As pointed in Halsbury's laws of England- "*when parliament has*

²³³ It means the act of getting something or something that somebody buys to add what they already own. Acquisition of land is therefore means, the act of getting or buying land by somebody.

²³⁴ Section 4, The Land Acquisition Act, 1894.

²³⁵ The 5th Amendment Act of the Constitution of the USA.

authorised compulsory acquisition of land, it is invariably provided for the payment of money compensation to the person, deprived of his interest in it." It rests upon the famous maxim '*salus populi est suprema lex*²³⁶ and *necessitus publica major est quam private*²³⁷.

Originally, the framers of the Constitution included the right to property as fundamental right under Article 19 (1) (f) of the Constitution. Article 31 provided for the compulsory acquisition of property. The Supreme Court in *Dwarakadas Srinivas v. Sholapur Spinning and Weaving Co. Ltd.*²³⁸ and in *State of West Bengal v. Subodh Gopal*²³⁹ while interpreting clauses (1) and (2) of Article 31, held that whenever there is any substantial deprivation of property, the question of compensation would arise. In *State of West Bengal v. Bela Banerjee*²⁴⁰ the Supreme Court went a step forward and held that for the compulsory acquisition of property under Art.31(2) just compensation equivalent to the market value of the property was required to be paid. It led to the Constitution 4th Amendment Act, 1955 which provided that no law providing for compulsory acquisition or requisition "shall be called in question in any court on the ground of compensation provided by that law is not adequate and the question of compensation was left to the judgement of the parliament and its adequacy was not left open to be questioned by the court of law." Later the Supreme Court held that²⁴¹ even under the amended Article, compensation meant equivalent of the property taken with its existing advantages and potentialities. In these cases, the Supreme Court also refused to vest the Parliament with unfettered power to determine compensation by the abuse of

²³⁶ The welfare of the people is the paramount law.

²³⁷ Public necessity is greater than private.

²³⁸ AIR 1954 SC 119.

²³⁹ AIR 1954 SC 92.

²⁴⁰ AIR 1954 SC 170

²⁴¹ *Vajravellu Mudaliar v. Collector* AIR 1965 SC 1017; *Metal Corporation* AIR 1967 SC 637; *State of Gujarat v. Shantilal Mangaldas* AIR 1969 SC 634.

legislative process. In *R. C. Cooper v. Union of India*²⁴² (Bank Nationalisation Case) the Supreme Court per majority held that even after 4th Amendment, compensation under a particular class of property sought to be acquired meant equivalent in terms of money of the property compulsorily acquired according to relevant principles which must be appropriate to the determination of compensation." After the judgement of *Bank Nationalisation Case*²⁴³ the Constitution by 25th Amendment Act, 1971 substituted the word, "compensation with amount" in clause (2) under Article 31. Thereafter, the validity of 25th Amendment Act, 1971 was challenged in *Keshavananda Bharati*²⁴⁴ case where the Supreme Court held that the principles laid down under Art. 31 are the general guiding principle applicable to all persons and transactions in fixing the amount which may include the consideration of social justice following the relevant directive principles, particularly in Arts. 39 (b) and (c). In addition to these, the court also held that the amount of the adequacy should be determined on the basis-

- How the amount has to be given otherwise than in cash is not amenable to judicial review.
- The quantum of the amount cannot be a matter of judicial review
- The principles to determine the compensation must be relevant to the consideration and must not be illusory.

However, by the 44th Amendment Act, 1978 the whole Article 31 was deleted from the Constitution and clause (f) of Article 19(1) was also omitted. Consequently, the right to property as fundamental right had been gone away with Article 300-A which only reintroduced Art.31(1) and read as- '*No person shall be deprived of his property save by the authority of law*'. The right to

²⁴² AIR 1970 SC 564

²⁴³ R.C.Cooper v. Union of India (1970) 2 SCC 298.

²⁴⁴ AIR 1973 SC 1461

property thus has been shifted from the category of the fundamental rights to the general category having a constitutional legal right without having the protection as a fundamental right. However, in *Jilubhai Nanbhai Khachar*²⁴⁵ case the Supreme Court has made it clear that when the acquisition is made under the Land Acquisition Act, 1894 and other Acts, the liability of state to pay the just compensation continues even after the deletion of Arts.19 (1) (f) and 31 of the Constitution and relegating the right to property as a constitutional right by incorporating Article 300-A of the Constitution.

Jurisprudentially, Constitutional Rights are superior to that of the Statutory Rights. Thus, a right to acquire property is subject to fundamental right. In the decision of *State of Rajasthan v Basant Nahata*²⁴⁶ the Supreme Court has held that a statutory interdict would be opposed to one's right to property as envisaged under Article 300A of the Constitution. Similarly, in the judgement of *ICICI Bank v SIDCO Leathers*²⁴⁷ the Supreme Court held that while enacting a statute, Parliament cannot be presumed to have taken away a right to property and that right is a constitutional right. It ruled that deprivation of the legal right existing in favour of a person cannot be presumed in construing a statute. It is in fact the other way round and thus, a contrary presumption shall have to be raised. The Apex Court in the *Chairman, Indore Vikas P 'hikaran v Pure Industrial Coke and Chemicals Ltd.*²⁴⁸ referred to Article 17 of the French Declaration of Human and Civil Rights 1789 and the Universal Declaration of Human Rights, 1948, adopted by the General Assembly and held that the property right is also incorporated within the definition of human rights. The Court also held that even the claim of adverse possession has to be read as in

²⁴⁵ AIR 1995 SC 142

²⁴⁶ AIR 2006 SC 3401.

²⁴⁷ AIR 2006 SC 2088.

²⁴⁸ (2007) 8 SCC 705.

consonance with human rights. Very recently, in the judgement of *Lachhman Dass v. Jagat Ram*²⁴⁹ the Supreme Court held that the human right flows from the right to property under Article 300A of the Constitution.

India is a social democratic republic. Property when is seen in the context to its nature retains its basic feature of being fundamental to a person's life. The life and freedom of action of a person is very closely intertwined with the economic activities that it is difficult to separate life from property. According to Hegel, "*if emphasis is placed upon needs, than the possession of property appears as a means to their satisfaction, but the true position is that, from the standpoint of freedom, property is the first embodiment of freedom and so is in itself a substantive end.*"²⁵⁰ In *Kharak Singh v. State of UP*,²⁵¹ the link between right to life and personal liberty with property has been recognised and applied for the first time. However, in *Chameli Singh v. State of Uttar Pradesh*²⁵², the Supreme Court held that "in every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The state exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose." In *New Riviera Co-operative Housing Society v. Special LAO*²⁵³ dismissing the proposition of the land owners that such acquisition of land will deprive them of their livelihood, the court held that since the Land Acquisition Act provides for the payments

²⁴⁹ (2007) 10 SCC 448.

²⁵⁰ G Hegel (Tr. T.M. Knox), *Philosophy of Right* 20 (1958) cited by Bhat, P. Iswara in *Journal of Indian Law Institute*; Vol. 38, (1996) at pg. 114.

²⁵¹ AIR 1963 SC 1295.

²⁵² (1996)2 SCC 549.

²⁵³ (1996)1 SCC 731.

of solatium and other monetary benefits for deprivation of rights of enjoyment of property, therefore any contention that it will deprive their livelihood is unsustainable. Thus, following the above judicial pronouncements, it may be assumed that, if the solatium and other monetary benefits are provided to the project affected peoples (PAP), then deprivation of property may be tenable. In this regard, the package of compensation must not compel a project affected person to live a life not merely of physical existence or lead a life of mere animal existence because after *Maneka Gandhi*²⁵⁴ and *Francis Coralie*,²⁵⁵ the Art. 21 embody the right to live with minimum human dignity.

Legislations regarding Acquisition of Land: - The acquisition of land is done according to the Land Acquisition Act, 1894. Under the Act, 1894 the state is entitled to acquire land²⁵⁶ for public purpose clause or for a company. Land is a matter which is dealt with under the State List of the Constitution. The issue of the corporatisation of land has not been discussed under any Act.

(i) The Land Acquisition Act, 1894:- The Land Acquisition Act, 1894 has been proved to be one of the most significant legislation regarding the acquisition of lands. Land is acquired by the government under the Act of 1894 or any other special or local Acts by virtue of Item no. 4 of List II of the Constitution. The law of land acquisition derives its legitimacy from the juridical principle of the power of Eminent Domain of the state - a power by which the state enjoys "sovereign control over all property in a state, with the right of expropriation". The Land Acquisition Act of 1894 confers upon the Central and State governments this power to acquire land "for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition". Since

²⁵⁴ *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

²⁵⁵ *Francis Coralie v. Union of India* AIR 1981 SC 746.

²⁵⁶ Section 4, The Land Acquisition Act, 1894.

the Act finds a place in the Concurrent List of the Constitution²⁵⁷, various State governments have made necessary amendments in the respective State laws, the latest being a large-scale amendment in 1984 by the Central government. The process of land acquisition starts with a government notification with due publicity of the government's intention to acquire land in a certain locality²⁵⁸. This is followed by a public inquiry²⁵⁹ against objections; a formal declaration of land acquisition by the State government²⁶⁰. The Collector is authorised to invite claims to compensation and, after due inquiry, make an award of compensation²⁶¹. To acquire a land under the Act, 1894, the followings are needed to be satisfied-

- A certificate of existence of public purpose by the Government for acquisition of land is required if the property is acquired under some other Special Acts which doesn't provide for such certificate directly or by implications.
- When such Special Acts provides methods of assessing compensation, it is not necessary to take proceedings under the Act.
- It is not necessary for Railway Authorities to take proceedings under this Act because of the powers given under Sec.7 of the Indian Railways Act though they are subjects to any enactment as to the acquisition of land, yet there is nothing in this Act cutting down the powers specified in Sec.7.
- When the operation of an Act is inducted by special provisions in a subsequent Act, the subsequent amendments of the first Act doesn't operate on the latter Act unless otherwise expressly provided.

²⁵⁷ Entry 42.

²⁵⁸ Section 4

²⁵⁹ Section 5A

²⁶⁰ Section 6

²⁶¹ Section 11

The Act I of 1894 aims at promoting important public interest -*salus populi suprema lex*- which subordinates private interests on speedy payment of compensation which was originally irrelevant prior to the Amendment Act 38 of 1923. Any presumption or rule of construction or of convincing unless just and equitable cannot be applied to compulsory acquisitions of land. Under this Act, following kinds of acquisitions are covered-

- For public purpose (Sec. 6)
- For industrial concern not being a company²⁶² (Sec. 38A)
- For companies for the erection of dwelling houses etc. for workmen [Sec. 40(1) (a)]
- For companies engaged in work for public purpose [Sec. 40(1) (aa)]
- For companies for some work likely to prove useful for public [Sec. 40(1) (b)]
- For public purpose primarily and on behalf of a company (Sec. 6 & 40)
- for railway or other companies with which the appropriate government is bound by agreement to provide land (Sec. 43)

As per Section 40 of the Act, the appropriate government shall not give its consent unless it is satisfied, either on the report of the Collector under sub- section (2) of Section 5A or by enquiry held under sub- sections (2) and (3) of Section 40:

²⁶² According to clause (e) of Section 3 of the Act, the expression 'company' means-

- (i) a company as defined in Section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc) of Section 3 of the Land Acquisition Act;
- (ii) a society registered under the Societies Registration Act, 1869 or under any corresponding law for the time being in force in any state, other than a society referred to in clause (cc) of the Act;
- (iii) a co- operative society within the meaning of any law relating to co- operative societies for the time being in force in any state, other than a co- operative society referred to in clause (cc) of the Act.

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for public purpose, or

(b) that such acquisition is needed for the construction of some work which is likely to prove useful to the public.

Acquisition for Public purpose: - The sovereign power of every state has the authority to appropriate for purposes of public utility lands situate within the limits of its jurisdiction. Now, the time has come to define the term public purpose. Interestingly, the term public purpose has not been defined in the Act, nor any limitation regarding what is likely to prove useful to the public: both matters left to the discretion of the local government. Under Sec.3 (f)]²⁶³ the expression 'public purpose' includes-

- The provision of village sites, or the extension, planned development or improvement of the existing village sites;
- The provision of land for town and rural planning;
- The provision of land for planned development of land from public funds in pursuance of any scheme or policy of government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development on plan;
- The provision of land for a corporation owned or controlled by the state;
- The provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of

²⁶³ The Land Acquisition Act, 1894.

the implementation of any scheme undertaken by the government, any local authority or a corporation owned or controlled by the state;

- The provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by the government or by any authority established by the government for carrying out any such scheme, or with the prior approval of the appropriate government, by a local authority or a society registered under the Societies Registration Act, 1860 or under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to the co-operative societies for the time being in force in any state;
- The provision of land for any scheme of development sponsored by Government, or with the prior approval of the appropriate Government, by a local authority;
- The provision of any premises or building for locating a public office.

However, the term public purpose does not include acquisition of land for companies. Land can be acquired for the companies under Sec. 3 (e) of the Act of 1894. The expression company means-

- a company as defined under Section 3 of the Company's Act, 1956; other than a Government Company referred to Clause(cc).
- a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a state, other than a society referred to in clause (cc).
- a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any state, other than a co-operative society referred to in clause(cc).

Regarding the law of acquisition for a company to be followed the followings are most important-

- After the notification is issued u/sec.4 for acquisition of land for companies, which must be relatable to public utility, any officer of the company is firstly authorised to make necessary survey u/sec.4(2).
- As the survey is complete, the company will place the report of same before the appropriate government. Thereafter, if the appropriate government is satisfied as to the existence of public purpose and the necessity of the company and gives consent, only then the company will be asked to execute the agreement as laid down in Sec.41 and then the steps of acquisition is initiated.
- Such agreement shall have to be published in the official gazette.
- Such a company must not transfer the land in any manner without the previous consent of the appropriate government.
- Lands for private company cannot be acquired excepting for the purpose of erecting dwelling houses for workmen employed or for amenities connected therewith.
- In case of an industrial concern not being a company and owned by one or more individual and ordinarily employing not less than one hundred women, may have land acquired for the purpose of erecting dwelling houses for their workmen, or for providing amenities directly connected therewith.
- All costs of acquisition must be paid by the company.

Again, the words public utility as used in Art. 226(6) as inserted by the 42nd Amendment Act have a narrower meaning than the words public purpose. Public utility means works or projects like telephone, telegraph, railways etc. which is useful and available to all sections of the public irrespective of caste, creed, community or colour and not merely to a section of the community. But when the

purpose serves, even a section of the public, it is public purpose e.g. if a project is carried out say for Harijans²⁶⁴. In *State v. Ranganatha Reddy*²⁶⁵ the Supreme Court held that a purpose is public if the legislature has declared to be such and the decision of the legislature must be treated with consideration which is due to a co-ordinate department of the Government of the state. However, after, *R. Umrammal v. State*²⁶⁶, the expression public purpose is to be liberally construed and a property can be acquired to satisfy the commercial needs of the government. The Supreme Court has also indicated that the public purpose broadly would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally, the executive would be the best judge to determine whether or not the impugned purpose is public purpose or not²⁶⁷. In *Delhi Chemical and Pharmaceutical works v. Union of India*²⁶⁸ the Delhi High Court commented, as the government is the sole judge to decide as to whether the land is required for public purpose and the court cannot substitute its own views. Following the same the Supreme Court in *Gandhi G.N. Sankari Samity v. State of Rajasthan*²⁶⁹ held that the court cannot go into a comparative utility of public purpose and if there be a public purpose to acquire the polo ground, the same cannot be challenged. In *Gadadhar v. State of W.B.*²⁷⁰ the Calcutta high court gave a formula to decide whether a purpose is public or not-

- whether the purpose benefits the community at large or a section thereof and

²⁶⁴ *State of Bombay v. Ali Gulshan*. AIR 1955 SC 810

²⁶⁵ AIR 1978 SC 215: (1977) 4 SCC 471

²⁶⁶ AIR 1986 Mad 63

²⁶⁷ *Srinivasa Co- Operative House Building Society V. Madan* (1994) 4 SCC 675

²⁶⁸ AIR 1971 Del 88.

²⁶⁹ AIR 1994 SC 2329

²⁷⁰ AIR 1963 Cal 565

- whether the government is satisfied about the mode of the acquisition for the declared purpose.

However, if any of the provisions have not been complied with, the declaration is without jurisdiction. In such a case, Art. 226 of the Constitution is applicable. The Hon'ble Supreme Court in *Bajirao T. Cote v. State of Maharashtra*²⁷¹ has held that as the State Government has exercised power under section 4(1) for public purpose and public purpose was mentioned therein, exercise of power cannot be invalidated on account of malafide so long as the purpose is shown and the land is needed or likely to be needed for the purpose subsists at the time of the exercise of power. In *Ravi Khullar and another Vs. Union of India and others*²⁷² the Hon'ble Supreme Court held that the planned development of Delhi for which purpose the land was acquired under Section 4 of the Land Acquisition Act, 1894 is wide enough to include the development and expansion of an airport within the city of Delhi. Thus it cannot be said that the land is actually being utilized for any purpose other than that for which it was acquired. The only difference is that whereas initially the development work would have been undertaken by the Delhi Development Authority or any other agency employed but it, after the constitution of the International Airport Authority of India (IAAI).

Public purpose whether includes company: Although the Land Acquisition Act of 1894 has a separate and slightly different provision for acquisition of land for private companies, the substantive provisions and principles are practically the same; the difference is only in procedural matters. The Supreme Court in *Jage Ram vs the State of Haryana*,²⁷³ has succinctly elucidated the matter "public purpose", as follows: "There is no denying the fact

²⁷¹ 1995 2 SCC 442

²⁷² 2007 AIR 2334, 2007(4)SCR598 , 2007(5)SCC231 , 2007(5)SCALE236 , 2007

²⁷³ AIR 1971

that industrialisation of an area is in public interest and starting of new industry is in public interest. Whether the starting of an industry is in public interest or not is essentially a question that has to be decided by the State government and the declaration is not open to challenge. Unless it is shown that there was colourful exercise of power, it is not open to the court to go behind the declaration." In a case petition filed by *Jat Imran Salim and other Fishermen*²⁷⁴ the Division Bench of the Supreme Court comprising of Chief Justice K.G. Balakrishnan and Justices P. Sathasivam and J. M. Panchal has recently vacated the status quo order on the construction work at Adani Group's Rs. 7400- crore multi- product Mundra SEZ Project promoted by the company in Mundra to come up on 6,000 acre of land in Kutch district. In this case, the petitioners highlighted how the land had been allotted by the state government for making the salt from sea water and for providing jetty in the Mundra port region had been put for private use under the SEZ and the scheme had been sanctioned by the Centre without application of mind. However, the apex court held that the company had not indulged in land grabbing as the acquisition of land was place in accordance with the law after giving a public hearing and paying compensation and premium for rehabilitation. The Supreme Court²⁷⁵ in recent times against an acquisition by the State of Andhra Pradesh has held that acquisition of land by a state government for the development of a project to serve the larger public good would be legal and valid. Dismissing the appeal, the Bench constituted by Justice C.K. Thakkar and Justice D.K. Jain said, "in case of integrated and indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different components and to

²⁷⁴ Reported in the Hindu: 10th July, 2008 at pg. 14.

²⁷⁵ Sooraram Pratap Reddy & Ors. V. District Collector, Ranga Reddy Distt. & Ors., 2008(9) SCC552 , 2008(12) SCALE367.

consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters." Hence, Mr. Justice Thakkar commented, "*if the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the state and the public at large it will serve public purpose.*" The Bench also said, "it is primarily for the state to decide whether there exists public purpose or not. Undoubtedly, the decision of the state is not beyond judicial scrutiny. In the appropriate cases, where such power is exercised mala fide or for collateral purposes or the purported action is de- hores the Act irrational or otherwise unreasonable or the so called purpose is 'no public purpose' at all, a writ can undoubtedly interfere. But except in such cases, the declaration of the government is not subjected to judicial review."

Acquisition of land in urgency: The acquisition of land as a general rule, before exercise of power of eminent domain, law must provide an opportunity of hearing against the proposed acquisition. Even without a specific provision to that effect, general law requires raising of objections by and affording opportunity of hearing to the owner of the property. There may be cases of 'urgency' or 'unforeseen emergency' which may brook no delay for acquisition of such property in larger public interest. The issue of 'Urgency' or 'unforeseen emergency' is falling is covered by sub-sections (1) and (2) of Section 17 of the Act which justifies quicker acquisition in the event of *natural catastrophe*, such as floods and earthquake, for the *construction of railways tracks and roads*. In *Nandeshwar Prasad & Anr. v. State of Uttar Pradesh & Ors*²⁷⁶ the Court held that If the Government intends to acquire land in cases of 'urgency' or 'unforeseen emergency' falling under or covered by sub-sections (1) and (2) of Section 17 of the Act, it is still required to follow

²⁷⁶ (1964) 3 SCR 425,

procedure u/s 5A of the Act before issuance of final notification u/s 6 of the Act. It is only when the Government also makes a declaration under sub-s. (4) of s.17 that it becomes unnecessary to take recourse to procedure u/s.5A of the Act. Very recently, the Hon'ble Supreme Court has directed that there is no scope of acquiring land under this clause other than in case of natural disaster.²⁷⁷ However, recently, considering the process of land acquisition inefficient and a biggest stumbling blocks, the Union Minister for Road transport and Highways Mr. Kamal Nath, urged the Chief Ministers of various states to play a proactive role in the process.²⁷⁸

Consent of the Land Owners for Acquisition: Section 11(2), provides for consensual agreement with landowners.²⁷⁹ However, this procedure does not take away the power of the state and the Collector to acquire land from a few recalcitrant owners in case their obduracy stands in the way of achieving a major "public purpose".

Challenging notification on the basis of public purpose:- The supreme court in *Bajirao vs. State of Maharashtra*²⁸⁰ has held that it is very much clear that when state government exercise power under Sec.4 (1) for a public purpose and the public purpose was mentioned therein, the exercise of such power cannot be invalidated on the grounds of malafide and colourable exercise of power so long as the public purpose is shown and the land is needed or is likely to be needed and the purpose subsists at the time of exercise of power. It has also been pointed out that it is primarily for the state

²⁷⁷ Reported in *The Statesman*: 14th October, 2009 at pg. 04.

²⁷⁸ Reported in *The Hindu*: 11th July, 2009; at pg. 14.

²⁷⁹ Suhrid Sankar Chstopadhyay: Another land row ; *Frontline*; Volume 24 - Issue 01 :: Jan. 13-26, 2007

²⁸⁰ 1995 2 SCC 442: (1995) 1 Andh WR 13 (SC)

government to decide whether there exists public purpose or not and it is not for the Supreme Court or High Courts to evaluate the evidence and come to its own conclusion that it is malafide or colourable exercise of power i.e. the exercise of power serves no public purpose or it serves private- public.

Sale of portion of acquired land to the owner after finalisation of acquisition proceedings: If a land once acquired by the government for public purpose, then that land if some portion remains unused, cannot be allowed to sale back to the original owners. In a case, part of the land is unutilised, it has to be used for some other public purpose or else, such land may be put to public auction and the sum so realised can be better utilised for the public purpose as envisaged in the Directive Principles of State Policy²⁸¹.

Compensation on acquisition of land: - Whatever has to be acquired in every case under the Land Acquisition Act, 1894 is the aggregate of rights in the land and not merely some subsidiary rights such as that of a tenant. There is provision under the Act of 1894 which is aimed at making compensation to all persons interested, but the claim on this head are to be adjusted in the apportionment prescribed under Secs. 29 and 30 and do not fall to be considered till after the court has determined the market value of the land under Sec.23 (1). After Jenkins C.J. in *Babujan v. Secretary of State and the Chairman, Gaya Municipality*²⁸² for the purpose of ascertaining the market value of land the court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it. In *Bombay*

²⁸¹ State of Kerala v. M. Bhaskaran Pillai 1997 SC 2703 : (1997) 5 SCC 432

²⁸² 4 CLJ 256.

*Improvement Trust v. Jolbhai*²⁸³, Batchelor J. commented, "reading the act as a whole I can come to no other conclusion than that it contemplates the award of compensation in this way; first, you ascertain the market value of the land on the footing that all separate interests combine to sale and then you apportion or distribute that sum among the various persons found to be interested." in *Chameli Singh v. State of Uttar Pradesh*²⁸⁴, the Supreme Court held that "in every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The state exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose." In *New Riviera Co-operative Housing Society v. Special LAO*²⁸⁵ dismissing the proposition of the land owners that such acquisition of land will deprive them of their livelihood, the court held that since the Land Acquisition Act provides for the payments of solatium and other monetary benefits for deprivation of rights of enjoyment of property, therefore any contention that it will deprive their livelihood is unsustainable. Thus, following the above judicial pronouncements, it may be assumed that, if the solatium and other monetary benefits are provided to the project affected peoples (PAP), then deprivation of property may be tenable.

The Requisitioning and Acquisition of Immovable Property Act, 1952: The Act provides provisions for the requisitioning and acquisition of immovable property for the purposes of the Union. Section 3 of the Act provides, the competent authority, on satisfaction, that any property is needed

²⁸³ (1903)23 Bom 483; 11 Bom LR 674

²⁸⁴ (1996)2 SCC 549.

²⁸⁵ (1996)1 SCC 731.

or likely to be needed for any public purpose, being a purpose of the Union, and that the property should be requisitioned, (a) shall call upon the owner or any other person who may be in possession of the property by notice in writing to show cause, why the property shouldn't be requisitioned and (b) may by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority, dispose of, or structurally alter, the property or let out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order. Section 4 of the Act empowers the competent authority to take possession of the requisitioned property; section 6 of the Act speaks of the release from requisitioning while section 7 speaks of acquisition of the requisitioned property. The Section 8 of the Act tells about the principles and method of determining compensation. Under subsection (3) of the Act, it says, the compensation payable for the acquisition of any property under Section 7 shall be the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition. In *Brij Narayan v. Union of India*²⁸⁶ the Delhi High Court has held that the power of acquisition u/Sec.7 of the 1952 Act of the requisitioned property is not a general power of acquisition and if public purpose exists on account of circumstances outreach Sec.7 (3) of the 1952 Act, then the appropriate Government can take recourse to Sec.4 of the Land Acquisition Act for the acquisition of such property for public purpose. In *Deep Chand v. Lt. Governor of Delhi*²⁸⁷ it was held that the power of requisition under 1952 Act is to requisition of the property for a public purpose and when the public purpose has ceased to exist the property cannot be used for

²⁸⁶ AIR 1989 Del. 119.

²⁸⁷ AIR 1981 Delhi 162 (DB)

residential purpose when that was not the public purpose for which the property was requisitioned. In such cases the government has to release the property from such requisition. Again, in *H. D. Vora v. State of Maharashtra*,²⁸⁸ the Supreme Court has made it clear that if the government wants to take over the property for an indefinite period of time, the government would acquire the property, but it couldn't use the power of requisition for achieving that object by keeping that property under requisition for an indefinite period. So, after a reasonable period of requisition, the government has to take steps for acquiring the property for a public purpose by invoking Sec. 4 of the Land Acquisition Act. In *T.J. Lalvani v. D.M. Torgal*²⁸⁹ it was held that an order in the absence of a proper speaking order i.e. the purpose for which the land is sought to be requisitioned is a public purpose or not is an abuse and colourable exercise of power. Again, in *A. K. Kalra v. Project and Equipment Corporation of India Limited*²⁹⁰, it was held that when the government has been resorted to the 1952 Act to requisition the property and to keep it under requisition for an indefinite period, in spite of the necessity of a permanent public purpose for which the government should have invoked the provision of the Land Acquisition Act, 1894 is an abuse and colourable exercise of power. In *Jiwani Kumari Paraki v. First L.A. Collector of Calcutta*,²⁹¹ the Supreme Court held that when the government has the power and opportunity to acquire the property or part thereof, upon the fulfilment of the conditions mentioned in Sec. 49(1) of the Land Acquisition Act, then the exercise of power by the government to requisition only with the intention to permanently acquiring in an

²⁸⁸ AIR 1984 SC 866: (1984) 2 SCC 337

²⁸⁹ AIR 1981 Bom 147

²⁹⁰ (1984) 3 SCC 316

²⁹¹ AIR 1984 SC 1707: (1984) 4SCC 612

indirect way depriving the lessee of the compensation payable under the L.A. Act, 1894 in lieu of nominal monthly rent is bad and the government must be held to have acted malafide.

Difference between Requisition and Acquisition of Land: -

The state has the power both of requisition and acquisition subject to one condition, i.e., the property acquired or requisitioned must be for public purpose. Normally the expression 'requisition' is taking possession of the property for a limited period in contradistinction to acquisition. In acquisition, the title passes to the acquiring authority while in the other title remains with the owner, while the possession goes to the requiring authority.²⁹²

The Land Acquisition Act and the Urban Land (Ceiling and Regulation) Act, 1976: When the land which the government contemplated to acquire under the Land Acquisition Act or a bulk of them are likely to be acquired under the Urban Land (Ceiling and Regulation) Act, 1976 and payment of compensation as provided under the Act is to be made, the State Government cannot be compelled to acquire such land under the provisions of the Land Acquisition Act. Under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 it is only upon publication of the declaration under Section 10(3) of the said Act such land shall be deemed to have vested to the state free from all encumbrances with effect from the date, so specified. If before the publication of such declaration the land was acquired under the Land Acquisition Act under Section 4 read with section 17(4) of the Act and possession of land has been taken under Section 17(1) of the Act, any declaration under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 in respect of self same land becomes redundant and the acquisition shall be treated to the one under the Land Acquisition

²⁹² Jiwani Kumar Paraki v. First Land Acquisition Collector, (1984) 4 SCC 612: AIR 4 SC 1707

Act and the compensation has to be paid in accordance with the Land Acquisition Act²⁹³

of sub- section(1) of section 23 of the Land Acquisition Act, 1894.

The Special Economic Zones Act, 2005: With a view to provide an internationally competitive environment for exports, the Government of India announced a Scheme in April, 2000. While the policy relating to Special Economic Zones is contained in the Foreign Trade Policy, incentives and other facilities offered to the SEZ developer and units are implemented through various notifications and circulars issued by the concerned Ministries/ Departments. In order to give a long term and stable policy framework with minimum regulatory regime the Special Economic Zones Bill, 2005 was passed in the Parliament. Section 3 of the Act provides the procedure for making proposal to establish the Special Economic Zones. Under this, a SEZ may be established under the Act, either jointly or severally by the Central Government, State Government, or any person for the ,manufacture of goods or rendering services or for both or as a Free Trade and Warehousing Zone. Any person, who intends to set up a Special Economic Zones, may, after identifying the area, make a proposal to the State Government concerned or directly to the Board of Approval for the purpose of setting up of the Special Economic Zone. The Act also prescribes the provision if the Sate Government intends to set up a SEZ, it may after identifying the area, forward the proposal directly to the Board of Approval for the purpose of setting up of the SEZ. Again, the Central Government may after the consultation with the state Government concerned; without referring the proposal to the Board and after identifying the area suo moto set up and notify the SEZ. Again, the Central Government may prescribe the requirements for

²⁹³Md. Sahid Khan v. State of U.P. AIR 1997 All 20.

the establishment of a SEZ, regarding the minimum area of land and other terms and conditions subject to which the Board shall approve, modify or reject any proposal received by it or regarding the terms and conditions, subject to which the Developer shall undertake the authorised operations and his obligations and entitlements. Unfortunately, the Act is not at all conducive to the interests of the farmers. More surprisingly, the government after having introduced a Bill to amend the existing Land Acquisition Act and announced the National Rehabilitation and Resettlement Policy, 2007 as much as 152 SEZs have got formal approval.²⁹⁴ At this, in its report, the Parliamentary Standing Committee led by Dr. Murli Monohar Joshi, in its report recommended that the government should make its SEZ policy more people friendly, particularly farmer- friendly and no further SEZs should be approved or notified till the new legislation was in place after making all necessary amendments in the existing SEZ Act and Rules thereunder. The Panel also called for a scientific study and independent assessment of the impact of SEZs approved or notified so far, on the farmers whose lands were acquired as well as others, like agricultural labourers and local artisans connected with the acquired land. At the same time the Panel also suggested complete debarment of the use of double- cropped, multi- cropped or irrigated land for the setting up of SEZs.

STATE LEGISLATIONS

The West Bengal Estates Acquisition Act 1956: This Act includes the vesting of all estates and the rights of every intermediary therein in the State free from all encumbrances. Basically, the Act of 1953 was enacted for the abolition of intermediaries and the imposition of ceiling limit for certain types of lands. By virtue of sections 4, 5, 6 and 52 of that Act not only the

²⁹⁴ Reported in The Statesman: 25th October, 2008 at pg. 8

rights of intermediaries, raiyats and under raiyats in the estates but also all the estates were vested in the state free from all encumbrances. Sub sections (1) and (3) of Section 6 made it clear that lands of all descriptions were included in estates which had vested in the states. Under Section 6 ceiling limit, however, was imposed for agricultural and non- agricultural land in khas possession. However, the Act didn't impose any ceiling for other classes of land. The Act of 1953 applied to all classes of land, though the ceiling limit was not applicable to all such classes.

The West Bengal Land Reforms Act, 1955: The Act is speaking about the term vesting not the acquisition of land. Vesting means extension of ownership over the private properties beyond a statutory limit. The WB Land Reforms Act, 1955 under Section 14M (1) prescribes the ceiling area. The Government has the authority to determine ceiling area in special cases under Section 14Q. Again Section 14S the Government has the power of vesting of land in excess of ceiling area. In regard to this, the (Amendment) Act, 1981 played a significant role. However the Amendment Act, 1965 excluded tea gardens from the purview of the Act. Again, with the objective of keeping harmony with the policy of the Central Government, the Amendment Act of 1971 was introduced to put a ceiling in case of family holdings to distribute surplus lands to the landless people. Earlier we saw this under the West Bengal Estates Acquisition Act, 1954 for holding the agricultural lands beyond 25 acres. This amendment imposed ceiling on the extent of land under which an individual raiyat may own lands upto 25 acres. The act imposes limitation on transfer and subletting of land so as to prevent accumulation of lands in a few hands of any land being acquired by non- agriculturists. The Act also introduces rational system of assessment on land, consolidation of holdings, formation of co- operative farms and concessions and facilities on such farms.

Opportunity had been extended to further safeguard the interests of the share- croppers, raiyats and tribal raiyats. Again, the grounds for the termination by a bargadar had been restricted, the security of the tenure of a bargadar in respect of at least 1 hectare of land has been ensured and the right of cultivation by a bargadar has been made hereditary. The Amendment Act, 1981 included inter alia the all classes of lands within the same ceiling limits so that ceiling surplus land of all classes can be utilised for the good of the community and can be distributed among the deserving people. Again, the Amendment Act of 2000 initiated the measures to specify the major modes of use of land so as to prevent conversion of agricultural land into purposes which are not strictly agricultural which again amended section 20- B of the Act of 1955 to facilitate the setting up of industry on any land in which there is bargadar. Again, the proposed West Bengal Land Reforms (Amendment Bill), 2006²⁹⁵ held up in the Select Committee includes the issues like the compulsory mutation of within six months of inheritance or transfer in a bid to update land records; compulsory conversion of land records because in many cases the agricultural land is being used by private promoters for the setting up of housing or industrial units without mutation or conversion in the absence of any law on this point as yet. This Bill also includes inter alia, the provision of allowing the sale of 50% of barga land after giving the rights of other 50% to the bargadar and the settlement of tribal land after giving equivalent land in terms of quantum character in the vicinity.

The West Bengal Land (Requisition and Acquisition) Act, 1948: This Act is applicable for the requisition and speedy acquisition of land. Section 3 of the Act says that if the State Government is of the opinion that land is necessary for the

²⁹⁵ The Statesman: 29th December, 2008 at pg. 10.

purposes of maintaining supplies and services essential to the lift of the community, increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas, or for providing proper facilities for transport, communication, irrigation or drainage or for the creation of better living conditions in urban and rural areas not being an industrial or other area excluded by State government by a notification in this behalf, by the construction and reconstruction of dwelling places in such areas or for purposes connected therewith or incidental thereto the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning: provided that no land used for the purpose of religious worship or used by an educational, charitable or institution shall be requisitioned under this section. Section 4 of the Act provides that where any land has been requisitioned under Section 3 of the Act, the State Government may use or deal with such land for any of the purpose referred to in Sub section (1) of Section 3 as may appear to it to be expedient. Again, the state government may acquire any land requisitioned under Section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub- section(1) of Section 3 [Section 4(1a)]. Again, where a notice as aforesaid is published in the Official gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end [Section 4(2)]. Section 7 of the Act is providing the provisions regarding the payment of compensation against the land requisitioned under section 3 of the Act. As per the said Section, whenever any land is acquired under Section 4, there shall be paid to person interested compensation the amount of which shall be determined by the Collector in the manner and in the manner in

accordance with the principles set out in Sub- Section (1) of Section 23 of the Land acquisition Act, 1894.

The Waste Lands (Requisitioning and Utilization) Act, 1952:

The Act provides for the requisitioning of waste lands for certain public purposes with a view to better utilization thereof and also to provide for certain other matters connected therewith. Under Section 3 of the Act, the Collector, either of his own motion or on application made to him by any person (including a public servant, company, local authority or co- operative or registered society), may, if he is of opinion that any waste land is needed or is likely to be needed for public purpose, by notification in the Official gazette, require all persons interested in the waste land to show cause within such time as may be specified in the notification why the waste land shouldn't be requisitioned under this Act. Section 8 provides for the issue of compensation. It says, where the possession of any waste land is delivered or taken under Section 5, every person interested in such land shall be entitled to compensation for so long as his interest subsists but in no case beyond the date of release of such land from requisition under section 10, the amount of such compensation being determined in the manner and in accordance with the principles set out under sub section 2 and 3 of the Act.

The West Bengal Land Development and Planning Act, 1948:

This Act provides for the acquisition of land for the development of the same for public purposes. Under the Act, Section 4, the State Government may, by notification in official Gazette, declare any specified area specified in the notification to be a notified area if it is satisfied that any land in such area is needed or likely to be needed for any public purpose and the Collector shall cause public notice of the substance of such notification to be given at convenient places

in the locality in such a manner as he may think fit. Section 6 of the Act provides for the declaration for acquisition of land needed for development scheme. Section 7 provides special provision in case of urgency. The Act also provides, after making a declaration under Section 6 and 7 of the Act, the State Government may acquire the land and thereupon the provisions of the Land acquisition Act, 1894 shall, so far as may be apply. Section 8 of the Act provides for the application of the Land Acquisition Act, 1894 subject to the special provision for compensation. However, Section 8(1) provides that if in any case the State government so directs, the Collector may, at any after any declaration is made under Section 6 of the Act take possession in accordance with the rules of any beel, baor, tank or other watery area, or any waste or arable land in respect of which the declaration is made and thereupon such land shall vest absolutely in the State Government free from all encumbrances.

The West Bengal Panchayat Act, 1957: The Act of 1957 provides the provision for the acquisition of land for Gram Panchayats. Section 63 of the Act provides that, where a Gram Panchayat or an Anchal Panchayat requires land to carry out any of the purposes of this Act, it may negotiate with the person or persons having interest in the said land and if it fails to reach an agreement, it may make an application to the District Magistrate for the acquisition of land, who may, if he is satisfied that land is required for a public purpose, take steps to acquire the land and such land shall, on acquisition and on payment of due compensation awarded in accordance with the land under which the acquisition of land was made, shall vest in the Gram Panchyat or, as the case may be, Anchal Panchayat. Interestingly, land, after the Act includes immovable property of any kind and benefits which arise out of land and things attached to the earth or permanently fastened to anything attached to earth.

The West Bengal Utilization of land for Production of Food Crops Act, 1969: The Act provides for the requisitioning of land with a view to better utilization for the production of food crops for meeting the shortage of foodgrains in the state. The Act under Section 3 speaks for the power to requisition of land by the Collector. Under the Act, the Collector may by order in writing, requisition any land if he is of the opinion that such land is suitable for the production of food crops and is likely to be utilised during the current or the ensuing agricultural season provided that no land which forms part of any homestead or cremation or burial ground or of any place of worship shall be requisitioned under this Section. Such requisition shall be made for such period, not extending beyond the agricultural year in which the order under sub-section (1) is made, as may be specified in the order. Section 5 of the Act provides the provision regarding the utilisation of land. As per the very Section of the Act, as soon as may be after the Collector is in possession of any land requisitioned under Section 3, he shall, by order in writing, make over possession thereof for such period not exceeding beyond the current agricultural year as he thinks fit to any person utilising such land for the production of such food crop as may be specified in the order. Sub-section (2) of the Act says, in making over possession of any land under sub-section (1), the Collector shall whenever possible give preference to persons who own no land or less than 0.8094 hectare of land and who are residents of the locality where such land is situated and who intend to bring such land under personal cultivation. The section under Sub-section (3) provides any person to whom possession of any land has been made over under sub-section (1), shall be entitled to do in, on or with respect to, such land all things necessary for utilization of such land for the production of such food crops as may be specified in the order issued under the said sub section. Again, sub-section (4) it provides, nothing in this section shall be deemed

to confer on any person to whom possession has been made over under sub- section (1) the status of a tenant or to confer on him any transferable right. Section 6 of the Act is dealing with the Delivery of produce of its money value to the Collector. Under this, any person to whom possession of any land has been made over under sub- section (1) of Section 5 or who has been allowed to continue to remain in possession of such land under Clause (a) of Section 10 of the Act shall- (a) deliver to the Collector or to any officer authorised by the Collector in this behalf thirty- five percent of the gross produce from such land for any agricultural season or pay its money value to be determined by any Collector in such manner as may be prescribed and (b) after the expiry of the period for which possession has been made over to him under sub- section (1) of Section 5 or he has been allowed to continue to remain in possession under Clause (a) of Section 10, give back possession of such land to the Collector or to any officer authorised by the Collector in this behalf and in default of his doing so the Collector may take possession thereof by force, if necessary. Under sub- section (2) of Section 6, it provides if such person fails to deliver the produce or money value thereof referred to in Clause (a) of sub section (1) within such time as may be fixed by the Collector in this behalf, the money value shall be recoverable as a public demand. Section 7 of the Act provides the provision of Compensation which says, when any land is requisitioned under Section 3 of the act, there shall be paid to every person interested compensation shall be twenty- five percent of the gross produce from such land for the period for which such land has been requisitioned, or it's money value determined under Section 6. but in case of the total failure of crop from such land or if for any reason such land has not actually been utilised, the amount of compensation per annum shall be at the rate of three percent of the market value of such land non the date of the order of requisition. Under the Act, by the term 'persons

interested' includes all persons claiming an interest in compensation to be paid on account of the requisition of land under the provision of this Act and a person shall be deemed to be interested in an easement affecting the land.

The West Bengal Requisitioned Land (Continuance of Powers) Act, 1951: This Act aims to protect the issue of continuance of certain emergency powers in relation to the requisitioned land. The Act under Section 3 provides all requisitioned lands²⁹⁶ shall continue to be subject to requisition until the expiry of the relevant Act and the state Government may use or deal with any requisitioned land for such public purpose and in such manner as may appear to it be expedient. At this, the government enjoys the power to release any land at any time from requisition any requisitioned land. Section 5 of the Act empowers the Government to acquire the requisitioned land for a public purpose by publishing in the Official Gazette a notice. However, sub-section 3 of the Act provides, no requisitioned land shall be acquired under this section except in circumstances like, (a) where any work have during the period of requisition been constructed on, in or over the land wholly or partly at the expenses of Government and the State Government decides that the value of, or the right to use such works should be preserved or secured for the purposes of the State government or (b) where the cost of restoring the land to its determination of the State Government, be excessive having regard to the value of the land at the time and the owner declines to accept release from requisition of the land without payment of compensation for so resorting the land. Section 6 of the Act

²⁹⁶ 'Requisitioned land' means immovable property which at at the commencement of this Act, and is subject to any requisition effected under the rules made thereunder the Defence of India Act, 1939 and continued under the Ordinance and the Act and is held under requisition for any public purpose. [Section 2 (3) The West Bengal Requisitioned Land (Continuance of Powers) Act, 1951].

provides for the payment of compensation which says, in respect of acquisition of land under this Act, shall be the price which the requisitioned land would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and had been sold on the date of acquisition. Again, sub-section 2 provides, in respect of acquisition of land under this Act, shall be (a) the price which the requisitioned land would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and had been sold on the date of acquisition or (b) twice the price which requisitioned land would have fetched in the open market if it had been sold on the date of requisition, whichever is less.

Impacts of land acquisition on farmers

Under the law, government has the power to acquire any kind of property be it land or any property for public purpose following the doctrine of *Eminent Domain*. India is a vastly populated country and so is West Bengal. Here near about 70% of the people are dependent on cultivation. Lands, when acquired according to the provisions of the Land Acquisition Act, 1894 after paying compensation²⁹⁷ against the very land vest in the Government

²⁹⁷ Presently, the award of compensation under the Act of 1894 is given by the Collector on the acquisition of land considering the followings-

- The market value of the land on the date of notification u/ sec.4 of the Act.
- Damages sustained in process of taking possession
- Bonafide loss etc.

But damages likely to be caused after the publication of declaration u/sec.6 or in consequence of the use to which it would be put or any outlay or improvements on, or disposal of the land acquired, made without the sanction of the collector after the date of publication of notification u/sec.4 shall not be taken into consideration. After the award is made by the collector any person may refuse to accept the award and apply to the Collector, who is bound to refer the dispute for determination of the

and afterwards in the company for whom the same have been acquired free from all encumbrances. Acquisition of land is associated with the following conflicting issues -

- Apprehension of inadequate compensation
- Shifting of livelihood pattern
- Uncertainty of Job guarantee
- Fear of losing shelter or place of residence
- Fear of losing balance of food security
- Fear of keeping the land idle after acquisition and there by delaying the enforcement of commitments to the project affected people
- Engulfment of the fertile agricultural lands by industry in the name of development
- Absence of separate policies of acquisition of land for the Urgent and Important projects
- Suffering from mental trauma
- Improper rehabilitation and resettlement policy of the government
- Socio- economic hardship
- Activism of touts/ land sharks in the adjacent areas

Development of state or country should not at the cost of a section of people. Generally, it has been the common picture of every displacement that the displaced people's interest is hardly respected. So, it may be submitted that state needs to pay much interest in the rehabilitation and resettlement matters of the displaced people.

Court of Land Acquisition and any award made by the Land Acquisition Judge amounts to a decree and against which an appeal lies to the High Court. If there is any difficulty in paying the compensation, the Collector can deposit the amount in Court. The claimant can accept the amounts in protest. If the money is lying in the Court, the Court can invest it in proper securities for the benefit of the claimants.

CHAPTER IV

ACQUISITION AND CORPORATISATION OF LAND AND ITS IMPACT ON FARMERS

Acquisition of land goes for the purpose of Corporatisation and for some developmental purposes like the construction of dams, roads, railway tracks etc. Corporatisation of land is taking place for setting up of industrial units and for organised agricultural activities.

Corporatisation and Rehabilitation packages

The government both the Central and the State needs to pay much interest in the rehabilitation and resettlement matters of the displaced people due to various objectives including the corporatisation.

Position in in states other than the state of West Bengal

Rajasthan Experience: - In Rajasthan, the acquisition of land for the corporate houses is done by the state government frequently amending or ignoring the existing laws.²⁹⁸ Till date, three SEZs, two near Jaipur and one in Jodhpur have been operational. In addition to these, five others have received formal approval and ten others²⁹⁹ await formal approval.³⁰⁰ As such, following the '**Jan Adhikar Yatra**' organised by the various social action groups following issues have been addressed by the State.

1. Acquisition of land for SEZs;
2. Forced planting of Zatropa for bio diesel³⁰¹

²⁹⁸ Aseem Shrivastava, A betrayal of democracy; Published in The Hindu Sunday Magazine; 23rd October '2007 at pg. 4.

²⁹⁹ It also includes seven Multi Product Zones (MPZs) about 1000 acres each, five of them in Alwar district.

³⁰⁰ Supra note. 298.

³⁰¹ As much as six million hectares in the state, often as the village commons, falsely construed as waste lands.

3. Removal of restrictions as the sale of land owned by the SC/ST groups;
4. Social security for the workers in the unorganised sector of the economy.

The local economy, according to the farmers, local traders and journalists has been in a state of stagnation for several years. Small trade has actually shrunk. The chief mode of income in the district has been the remittance made by the young workers from the working in West Asia. As much as 80% of the young people from the area have moved to the Persian Gulf states in search of better prospects.³⁰² Thus, in a word, the state in these areas has failed to obtain the economic justice for the poor.

Goa Experience: - Goa has always been known for its tourist attraction. The Special Economic Zones (SEZ) controversy in Goa took a new turn with the Centre scrapping as many as eight SEZ proposals. Amid mounting pressure by anti-SEZ activists in Goa the Centre de-notified all the zones in the state. The protesters fearing the implications of SEZ argued that the zones are going to add on further pressure on the already flimsy infrastructure in Goa and may lead to a weakening of the Goan identity. Moreover they were apprehensive that 'outsiders' would deluge Goa in hunt for jobs thus crunching on the opportunities for locals.³⁰³ This finally has forced the state government to give up plans to develop sixteen economic zones. Now the issue is in the Center's court which is seen trying to find a way out of the controversy. One of the measures proposed to avoid further legal complication is to compensate the three

³⁰² Aseem Shrivastava: A betrayal of democracy; The Hindu Sunday Magazine; 23rd October '2007 at pg. 4

³⁰³ <http://indiabusinessweek.com/Government/Policy/SEZ-controversy-in-Goa.html>; visited on 27th November, 2008 at 5.08 PM.

companies for stalling notified projects that were in the final stages of completion.

Orissa Experience³⁰⁴: - Just on the line of Singur and Nandigram in West Bengal, in Orissa, a controversy arose when the state government of Orissa signed a Memorandum of Understanding (MoU) to the setting up of the Iron and Steel plant by the Korean giant Pohang Steel Company (POSCO). Villagers opposed to the POSCO steel plant are being intimidated by the use of force, including the use of paramilitary troops. For the last two and a half years the POSCO Pratirodh Sangram Samiti a coalition of various groups and political parties have been successfully opposing POSCO's steel plant in Jagatsinghpur. During the statutory public hearings in April 2007, the State stationed 15 platoons of armed paramilitary forces in the area thus silencing the expression of local opposition to the project. The Amnesty International issued a report³⁰⁵ urging the Government of Orissa against the use of force, and to follow the democratic process. Such is the level of distrust between the people and the government that the villagers have installed barricades and check posts around their villages. After due protest erupted in violent form against the project by Orissa Bachao Andolon (OBA), some of the people of Jagatsinghpur, completely turnaround from their earlier stand and agreed to give up their land for the Posco steel plant on January 5, 2008 with the conditions as under-

- A sum of 5% share in the profits of the company.

³⁰⁴ Posco controversy

³⁰⁵ Orissa should avoid forced evictions in Jagatsinghpur, instead consult farmers protesting against displacement," Amnesty International Statement on State force build-up in Jagatsinghpur, Orissa. April 11, 2007. <http://sanhati.com/news/193/posco>, visited on 30th March, 2008 at 4 PM.

- A sum of Rs. 25 lakh per acre for the agricultural lands and Rs. 40 lakh per acre for their homestead land.
- Job guarantee for the land less which include Rs. 1000 monthly allowance to the people above 60 and Rs. 3000 per month fro the families who do not have members eligible for jobs, including the landless who were employed as daily wagers in the betel farms.

Against the demands, the POSCO Authority has announced the package which includes inter alia, the followings-

- (ii) The betel leaf cultivators will get unemployment relief for six months.
- (iii) The other agricultural labourers will get pension.
- (iv) At least one person from the project affected families will get direct or indirect employment.
- (v) The oustees from the vested land will get home in the rehabilitation colony because they will not get monetary compensation against the land which is being owned by the government.

However, the compensation to the original land owners is yet to be decided. Recently, the Orissa Government appealed before the Posco and Arcellor- Mittal authority to employ more than one members of a family in their relevant project and in addition to this before the unit starts production necessary trainings and education to be provided to the local people which at the same time both the Posco and Arcellor Authority have accepted.³⁰⁶

Jharkhand: - In Jharkhand, the land- losers apart from being provided elsewhere with one- tenth of the land acquired get Rs. 1000 an acre every month for 30 years with a cap of Rs. 10,000 a month for an individual.³⁰⁷ Again, the state has prepared a draft

³⁰⁶ Reported in The Ananda Bazaar Patrika: 29th October, 2008 pg. 3.

³⁰⁷ Manas Bakshi, From Operation Barga to Singur, The Statesman; 23rd October, 2008 at pg. 7.

Rehabilitation Package by the Department of Industry, Jharkhand³⁰⁸ which interalia includes-

- (i) The industrial houses willing to invest in the state, are required to pay price of the land as fixed by the relevant Gram- Sabha.
- (ii) The very industrial houses must have to run their factories for at least 30 years and pay landowners Rs. 1000 per annum for each acre of land.
- (iii) The state government will give the misplaced farmer or land loser 50% money from the peripheral developmental tax.
- (iv) The investors give 2% of their benefit to the state government every year, in which, the state gives 1% to the land losers.
- (v) Whatever may be the price of the land, a premium of Rs. 1.5 lakh per 1.5 acres of land acquired will be paid to the land less for 30 years.
- (vi) Within 15 years from the date of the acquisition of the land the project work must have to be accomplished. Again, if the party purchasing the land for setting up of the project is not willing to set up the same and sell it to the third party then, a proposal of purchasing the very land at 80% of the price at which the said land was purchased, is to be given first.
- (vii) The land givers will enjoy the option to invest 50% of the compensation money as the equity of the industry that is set up in the land given by the very person.
- (viii) The homeless persons will get homestead land.

³⁰⁸ Reported in The Ananda Bazar Patrika: 2nd August, 2008 at pg. 09. & The Times of India: 21st October, 2008 at pg.4.

- (ix) In addition to the monetary compensation one person from each family will get job in the relevant project.
- (x) To satisfy the minimum requirement of the land losers, if necessary the owner or in case of his death his nominees will get assistance upto 30 years.
- (xi) Again, from the time of the project to be operationalised, 1% of the net profit will compulsorily have to be spent by the relevant corporate body for the social development of the said locality.

The government is expected to survey the persons badly affected especially those who lost their livelihood due to the land given for the relevant project and will arrange for job alternative livelihood means.

Himachal Pradesh: - The Himachal Pradesh Cabinet³⁰⁹ has given it's approval to a Rehabilitation and Resettlement Plan for various hydro- electric projects being executed by the State- owned Himachal Pradesh Power Corporation Limited. It is aimed at providing the best package to each of the project affected family by improving their quality of life in the project area through a better infrastructure, sustainable income, better skills and to make them a part of the development process, to create goodwill for the organisation for a long- term relationship; to ensure that the rights of individual and society, particularly those belonging to the weaker sections of society are adequately protected; creating employment opportunities for local people through various self-employment schemes or indirect employment in project activities, as also to deliver prompt assistance to the local people in extreme hardships. The plan will be prepared on a socio- economic baseline for each project through independent surveys besides providing 100 units of free power every month to each of the project

³⁰⁹ Reported in The Hindu: 11th January, 2009 at pg. 07.

affected families for 10 years. Again the landless will be entitled to draw a resettlement grant ranging from Rs. 25 thousand - Rs.2.5 lakh as a onetime relief in addition to compensation for the land. In addition to these, the SC and ST families, if settle outside the district would be entitled to an additional resettlement grant of 25%.

Arunachal Pradesh Government in addition to the National Hydro-Electricity Policy, 2008 also announced that if the project affected families do not require so much electricity they will be provided with the cash price of the rest amount of electricity allotted for them³¹⁰.

Uttar Pradesh, for instance, the package announced for farmers losing land for the Ganga Expressway project included offer of shares up to 10% of the value of the land lost.

Andhra Pradesh has the highest number of SEZs (54/222) notified in the country, with the formal approval given to 35 and in principle approval for two others as on 10th July, 2008. These SEZs are expected to generate direct employment for 8,90,900 persons and indirect employment to 16,82, 800. Commenting upon the success of setting up of such a large number of SEZs in the State, the Land Acquisition Officer said they have been successful in convincing people to understand the advantages SEZs provide in an area. In addition to this, they offer Rs. 2 to 3 crore for every acre of non-irrigated land and the land losers get jobs too.³¹¹

In Uttarakhand, the Himalayan Environmental Studies and Conservation Organisation (HESCO)³¹² has launched the unique Kisan Bank system with an aim to satisfy the marginal and landless farmers' monetary and technical needs. Thus, the farmers will be

³¹⁰ Reported in The Ananda Bazar Patrika: 12th July, 2008 at pg. 04.

³¹¹ Reported in The Statesman: 11th July, 2008 at pg. 04.

³¹² Reported in The Hindu: 29th January, 2009 at pg. 03.

able to take need based loans for ploughing; sowing and harvesting with due respect and not get humiliated as often happen when a farmer seeks loans from commercial banks or money lenders.

Position in Bengal

Land acquisition in Bengal is a very touchy issue in West Bengal in recent times.

a. Singur: - Conversion of agricultural land in Singur for the Tata project has been a great controversy in recent times. The Land Acquisition Act, 1894 does not provide a strong component of proper rehabilitation for the oustees from the land which is to be acquired. There was rampant dissatisfaction of the farmers regarding the acquisition which took on a political hue. Eventually the Corporate Body namely the TATAs abandoned the project and the land is still lying unused. A report of the visit in Singur is attached as Annexure.

b. Nandigram- After Singur, another controversy developed regarding the acquisition of land in West Bengal. At the root of the controversy was a notification regarding the acquisition of land for setting up of a Chemical Hub in the area. Experience says, the chemical hubs spread over Asia, such as those in the Port of Rotterdam, Jurong Islands, Sanghai, Dahej in Guujrat have been instrumental in bringing about a socio- economic change in the area by the amount of investments they fetch and their huge employment potential. A violent protest was raised by locally unwilling people for acquisition. A report of the visit is attached as Annexure.

c. Rajarhat: - Land prices in Rajarhat, under the jurisdiction of the Bhangor- Rajarhat Area Development Authority (BRADA) have increased by leaps and bounds and with global IT majors like

Infosys and Wipro- setting up of shop, land prices have soared like never before. As a result the following consequences are occurring³¹³-

- (a) Ten years ago, a cottah fetched about Rs. 2000 in the fringe areas of Rajarhat. Now that has shot up to Rs. 2- 3 lakh. Naturally, the farmers who have sold off their lands even a year ago feel cheated.
- (b) In many cases middlemen, working for private firms, are buying land from the farmers and selling it to the firms.
- (c) With a number of firms or companies are buying land in several places, those whose lands fall in the middle of these acquired plots are under pressure to sell their lands too just like the *enclosure movement*³¹⁴ in England nearly a century back.
- (d) With the private companies directly acquiring land from the land owners the bargadars and other '*persons interested*'³¹⁵ are peeved. Thus, they would become losers in the process.

Another incident of conflict that has arisen in recent times is the Rajarhat land deal where the Hidco Authority is pressuring the owners to sell back land for only Rs. 8000/- per cottah³¹⁶ when the existing land prices go the stratosphere. Way back in the Eighties,

³¹³ Suman Chakraborty and Caesar Mandal, Land prices hit the roof at Rajarhat: The Times of India: 29th April, 2008 at pg. 05

³¹⁴ **Enclosure** or **inclosure** is the process which was used to end some traditional rights, such as mowing meadows for hay, or grazing livestock on land which is owned by another person, or a group of people. In England and Wales the term is also used for the process that ended the ancient system of arable farming in open fields. Under enclosure, such land is fenced (*enclosed*) and *deeded* or *entitled* to one or more owners. By the 20th century, unenclosed commons had become largely restricted to rough pasture in mountainous areas and in relatively small parts of the lowlands. <http://en.wikipedia.org/wiki/Enclosure> visited on 24th mApril, 2009 at 3.56 PM.

³¹⁵ Section 3 (b): the Land Acquisition Act, 1894.

³¹⁶ Reported in The Times of India: 12th February, 2008 at pg. 04.

some people had bought small plots for Rs. 800/- per cottah here from Hidco. Here they were the early movers in Rajarhat, long before realtors had realized its worth. Being faced with the refusal of the localities to hand over the land at such a cheaper price and the Court's status quo, it is reported that the Hidco Officials are threatening the land owners to not to sanction the building plans, the necessary electricity and water connections etc. in the relevant area. However, the present Land Acquisition Act, 1894 under the expression 'public purpose' empowers the state to acquire land for village sites, provision of land for town and rural planning, provision for land for residential purposes to the poor and landless and people living in rural areas.³¹⁷ More interestingly, citing a Cabinet decision taken way back in the 1990s the HIDCO authority has already acquired nearly 7,000 acres of land for the new town township under the emergency clause in the Land Acquisition Act, 1894.³¹⁸ A report of the visit is attached as Annexure.

d. Andal: Recently, the West Bengal is experiencing a different sort of movement in Andal regarding the acquisition of land. The government required the land both for aerotropolis and coal mining. The people giving up their land for the aerotropolis project organised themselves under the banner of Andal Bhoomi Rakshak Ebong Krishak Sartha Roksha Committee to voice their support for the aerotropolis project and combat any move to excavate new coal mines in the area along with a demand for higher price and better compensation for their land.³¹⁹ In Andal, in the district of Burdwan, in West Bengal, the landowners are willing to directly deal with the Authority instead of any middleman for the fixation of the price of land to be acquired and the compensation cum rehabilitation

³¹⁷ Section 3(f), The Land Acquisition Act, 1894.

³¹⁸ Reported in The Statesman: 14th October, 2009 at pg. 04.

³¹⁹ Reported in The Times of India: 29th December, 2008 at pg. 03

package. The government's proposal of paying between 7.5 lakh and 11.24 lakh per acre depending upon the fertility and location of land.³²⁰ A report of the visit is attached as Annexure.

Reasons Behind Such Severe Protests on acquisition: - For overall development there needs to have a balance between agriculture and industry so that neither the industry, nor the agriculture suffer. Unfortunately, politics, more than economics has come in the way of Bengal's development. This is leading to industry- agriculture dichotomy. There are a number of reasons for such deadly protests in acquiring the lands for setting up of the industrial units which are as under-

- After Operation Barga, there is the absence of large holdings;
- Land is heavily fragmented and distributed among the people;
- The scheme of compensation on acquisition of land is not attractive.

Till recently, as many as 9587 people, are affected due to the acquisition of land for the developmental purposes in the 18 districts of the state have either not received or have refused the compensation money except in Kolkata and in the District of South Dinajpur. One of the major impediments to fair deal is the affected farmer's inability to prove ownership. In order to remedy this situation, the Government of West Bengal in a New Approach (Amendment Policy on Acquisition of land) w. e. f. 6.6.2006 started for readily paying the land losers against the loss of their land on acquisition.

Therefore the major impediments to land acquisition are:

- Absence of land for land policy for the losers of land;
- Lack of consensus behind the setting up of industry³²¹

³²⁰ Reported in The Statesman 11th February, 2009 at pg. 04.

- Lack of political sensitisation.

Thus, after studying these, it may be submitted that the model that the government has been compelled to follow at the wake of the Singur, Nandigram is not beneficial for the original land owners. Consequently, a question rises that 'when the state is keen to facilitate the private corporate bodies to earn hefty sum, why should the original land owners be deprived?' Hence, there is need to be sensitive to the responses of those who lose land and livelihood to projects for industry, housing and infrastructure, knowing that such developmental projects need space. Acquisition of land for setting up of industrial units is one of the most controversial issues.

Steps Taken By The State Of West Bengal Regarding

Acquisition: Although the importance of industrialisation in West Bengal cannot be denied, it is also equally true that acquiring cultivable land from the farmers would be a suicidal move for the State. This calls for sensitive policy planning and advocacy. The Asansol -Durgapur Development Authority³²² (ADDA) has turned down a proposal to set up an IT Park and SEZ on the land of the closed Jessop factory in Durgapur which is spread over 100 acres.³²³ The Calcutta High Court held the acquisition process was faulty and hence ordered to return the land so acquired. The following steps have been taken by the government-

The state government would not acquire any farmland would not acquire any farmland without the consent of farmers.³²⁴

³²¹ Times News Network: Blame Bandhs for Bengal's plight: The Times of India: 2nd January, 2009 at pg. 4.

³²² Reported in The Times of India: 19th December, 2008 at pg. 03.

³²³ Reported in The Ananda Bazar Patrika: 21st November, 2008 at pg. 4

³²⁴ Reported in the Times of India: 19th August, 2008 at pg. 04.

The Policy of Nothing about Us without Us: The corner stone of the policy is to arrive at a consensus on the acquisition of land through discussions with the affected people, including the landowners, sharecroppers and other dependents on the acquired land. The Land Acquisition Manual, 1991 requires the government to feel the pulse of the people, who would be affected by the acquisition and whether they want the project there and what the price of the land should be.

The draft Bill requires the State government to acquire land by emphasising the need for the investor buying the land directly from the land owners. The state's land is highly fragmented. This will force the private investors to enter into endless negotiations. There will be no guarantee of the farmers' getting a remunerative price of land. However, in recent times the government has decided to allow the private corporate bodies to purchase lands directly from the owners. Presently the government has decided³²⁵ not to give land to private companies at throwaway price, not even in case of public- private partnership ventures. Under the new plan, the private partners have to pay 95% of the total valuation of the land to be leased out as salaami³²⁶ and the annual rent for the land would be 0.03% of the land valuation. However, on earlier occasions, the requiring body used to pay only 10% of the price of the land and the rest 90% of the price used to be paid by the body after the acquisition of land is over. This message has been conveyed by the government when the State Health Department floated tenders seeking private partners for setting up of two modern medical hubs on unused land of two health care establishments in Birbhum and Nadia.

The emerging policy is as follows:

³²⁵ Reported in The Statesman: 13th February, 2009 at pg. 01.

³²⁶ Non- refundable advance payment.

- a. The acquiring body/ purchasing body will not acquire land if is being used as residential area or small industries like zari, jewellery, embroidery, light engineering etc. However, if the land so situated remains unutilised, it will be made a subject of acquisition.³²⁷
- b. The government is preparing the land map for every district in the state. Initially it is engaged with the preparation of map for five districts viz. - Burdwan, Birbhum, Bankura, West Midnapur and Purulia. This map is expected to describe the nature of land for example agricultural,³²⁸ non-agricultural, vested land, mine or minerals etc.
- c. The government has decided not to acquire the fertile agricultural land³²⁹ for the purpose of setting up of corporate units. New industries can come only on lands identified as fallow, mono- crop and where cultivation is dependent solely on rain water. Under very exceptional circumstances such lands may be acquired if it falls in the alignment of the construction of railway tracks and roadways but for this adequate compensation is to be paid. In the absolutely unavoidable event for which an equal acreage of fallow land will be converted into double- crop land with the necessary irrigation facilities to ensure food security in the state.³³⁰
- d. The state, apart from all these, has taken steps as a part of employment generation- skill up-gradation programmes in collaboration with the ITIs in the state, revival of the sick industries by way of One Time Settlement Scheme³³¹ and to

³²⁷ Reported in The Ananda Bazar Patrika: 11th September, 2008 at pg. 05.

³²⁸ Fertile/ non- fertile; mono- cropping, double cropping or multi- cropping

³²⁹ double and multi- crop land

³³⁰ Reported in The Hindu: 13th Aug' 09 at pg. 5.

³³¹ For example revival of Basumati Paper Mill in the state.

provide mechanism for debt reconstructing and to address or take care of environmental issues.

- e. Another step towards expediting the expansion of the National Highway projects in the state the state government has recently opened separate cell which is vested with the entire process of dealing with the same i.e. from speedy acquisition of land, mutation, change of character of land etc. which in earlier occasions were done by the State Land and Land Reforms Department.³³²

The government has changed the policy of acquisition of land for industrial purpose. In order to reduce the cost of developing infrastructure, encouraging the big industrial houses in the less investment prone districts of the state along with the ancillary and downstream industries it is expected to create an industry friendly environment at the instance of problem of acquisition of land for industries in the state. Under this policy, the government will follow the following steps³³³ -

- The state government will acquire land for big industrial projects in the name of the West Bengal Industrial Development Corporation (WBIDC).
- Acquisition of 15- 20% of more land for the ancillary and downstream projects centring round the main anchor projects e.g. the construction of three steel parks in Purulia adjoining Raghunathpur.
- To create basic infrastructures like rail, road, water electricity etc.

Thus, this policy will woo ancillary investors in a way that both the mother plant gets a readymade buyer and ancillaries benefit from practically nil transportation cost of raw materials.

³³² Reported in The Ananda Bazaar Patrika: 25th October, 2009 pg. 19.

³³³ Reported in The Ananda Bazar Patrika: 18th February, 2009 at pg. 06

EMERGING POLICY OF LAND BANK

This an emerging idea in West Bengal after the State went through severe turmoil relating to acquisition of land in Singur and Nandigram in particular and rest of the State in general. Vesting of land in the hands of the State is permitted under the West Bengal Land Reforms Act, 1955³³⁴ and there is no constitutional bar about this as already discussed in earlier chapter. Now the State proposes to consolidate the fallow and unused land across the State and hold it under its ownership for the purpose of investing it for setting up of industry. The only area of concern is that the state should not re classify land and acquires fertile and residential areas for vesting in the land Bank. Such system of Government holding land and selling plots to develop residential and technical area can be seen in the manner the land is given out in Salt Lake in North 24 Parganas. Similar process has been under taken through acquisition in Rajarhaat in North 24 Parganas, Chandmoni, Kawakhali in the district of Darjeeling.

Once the idea of land bank settles in and the State government formulates very strict criteria and procedure for consolidation of fallow land, unused land, abandoned land, low land, non-profitable land, land held by sick industries or closed down industries, etc. Then future furore over land may be avoided.

In many cases of developmental activities, the state feels the scarcity of land while the promoters of on purchasing land keep those lands unused for long without using after constructing the boundary wall and sell those out when the price hikes and earn huge profit at the instance of building of infrastructures at the expense of the government.³³⁵ It has been reported that in Fulbari and Eastern Bypass near Siliguri, the promoters are holding nearly

³³⁴ Section 15

³³⁵ Reported in the Ananda Bazar Patrika: 2nd February, 2009 at pg. 01.

700 acres of land keeping the same idle. Recently, the state government is preparing a policy to acquire such lands to undertake the developmental activities like the construction of market complex, petrol pump, real estate etc. and also use the sum of profit for the development of the area. This is also part of the emerging land bank policy of the State.

There are 218 closed factories near Barrackpur in North 24-Parganas alone. Huge quantities of lands lying unused in a large number of closed jute mills. The government is planning to re-open these units but there are monetary disputes pending in banks, default in payment of dues to the workers or other parties of trade, High Court Ruling, refusal to the prayers to hand over by the Central Government etc. are the constraints. At this the state has appealed several times the Centre to avail the land of the closed industrial units in the state not free of cost but at reserve price while the Central Government is in favour of auctioning those lands. Again, the government laid a proposal before the Centre to either set up industrial units in the closed factories in the state by itself or hand over to the state government where the state will set up industries. Recently, the inauguration of a garment park, Paridhan, at Canal South Road where the very plot was owned by a National Tannery is a welcome step in this regard.³³⁶

In the last decade we see a significant increase in arbitrary land acquisition by the states in the name of acquisition through the safety valve of "public purpose" from the poor and underprivileged mostly who have the only means of livelihood and handing over the same to the MNCs or builders without offering sufficient compensation. Recently, a PIL has been filed by Sanjiv Kumar

³³⁶ Reported in The Times of India: 3rd March, 2009 at pg. 06.

Agarwal for an NGO, *Good Governance of India Foundation*³³⁷ before the Supreme Court seeking restoration of the right to property as fundamental right of every citizen which today is only a statutory right after 1978 to abolish large holdings of Zamindars and rich and their distribution among the landless peasants. The PIL inter alia seeks the government should initiate measures to put the right to property back in the fundamental right basket.

In West Bengal presently 62.48% of land is cultivable. Here nearly 58.08 lakh hectare of land have been brought under cultivation and moreover till date, 33.60 lakh bigha of land have been distributed among the small and landless farmers.³³⁸ State like Maharashtra, Gujarat, Haryana, Tamil Nadu, Karnataka etc. have prepared plots with infrastructure and services which generally allow them to attract more industries. This system is already in existence in some industrially advanced states like Gujarat, Tamil Nadu, Maharashtra, Andhra Pradesh etc. If implemented properly this system may avoid setbacks to industrialisation.

On the positive side -

- i. The concept of land bank is also important as the government can sketch a plan of land use in the state. If the government prepares the land use plan it definitely will result in the rapid socio- economic development of the surrounding regions as well like it happened in Brazil the city of Curitiba.³³⁹
- ii. As the land is acquired for public purpose without declaring/ knowing the nature of the project the cost of the adjoining land will not escalate.

³³⁷ Reported in *The Times of India*: 1st March, 2009 at pg. 07.

³³⁸ Reported in the *Ananda Bazar Patrika* from 17th- 21 February, 2009 at pg. 01.

³³⁹ KP Bhattacharjee: *Rights and Records-II*; Published in the *Statesman*, 28th March, 2009 at pg. 04.

- b. Allotment of such land to the industrial houses as is uncertain the local people especially the land losers may protest against such acquisition.³⁴⁰
- c. A large chunk of vested land has been given to the people in 'Patta' and the government is not interested to return the land given in 'patta'. The government is not willing to take back the relevant lands owing to several reasons may be for social- political reasons. Hence it requires the acquisition of land for the creation of land bank.
- d. It is difficult to acquire the land for land bank in which the project is to come up in future. The industrial parks in almost each district are suffering from problems. Under this system, no one can guarantee about the time frame within which the industrial houses will set up their units.
- e. There is problem in regard to the supply of water and coal which are the backbone of an industrial house for its operation. But presently, in West Bengal, demand is very high while the supply is less.
- f. Land in Bengal is fragmented. Thus it is difficult to acquire a large tract of land for land bank.

Thus, acquisition of land for land bank should be done slowly and cautiously. It requires sensitisation of people as well as responsible political will.

The state has very recently, started the function of constructing 'Land Bank'. In such Land Banks, mainly two sorts of industrial set up will come. In the first type, big industrial houses or in the second, the government may set up industrial parks after

³⁴⁰ Reported in The Ananda Bazar Patrika: 30 the March' 08 at pg. 06. There are a large number of projects which have not started yet still the land has already been acquired a long ago. For example, the acquisition of nearly 400 acre of land for Modular Food Park at Dankuni in Hoogly keeping in mind to set up potato processing units over there. Still the same is lying idle.

developing the necessary infrastructures in such lands.³⁴¹ Outlining the revised plan, the West Bengal Finance Minister Dr. Ashim Dasgupta commented³⁴² 'to solve the problem of procuring land for industries relatively infertile land' would be purchased 'at a fair price' after consulting with the farmers and paying proper compensation.

It is submitted that while acquiring land for land bank, the government must be sufficiently attentive regarding the rehabilitation and employment issues it would get a good public response. Recently the state of Punjab is also walking in the same path to create land bank in the state.³⁴³

LAND FOR LAND POLICY

When people whose main skill is agricultural and suddenly uprooted, there are only two ways to rebuild lost livelihoods. Either they get good quality alternative agricultural land³⁴⁴ and other natural resources that they can harness with the skill and knowledge they possess, or they must be provided alternative productive assets with potentially attractive markets and granted sufficient material support and cushion of time to acquire the necessary new skills by which he can survive. The latter will however take away the farm and they will no longer be farmers. Till date, there is no legal provision or any scheme regarding the allotment of land in lieu of acquired land. Thus the government is not compelled to allot alternative land in lieu of acquired land.

The general response has been to obtain alternative site through court. In *New Review Co- Operative Housing Society v. Special LAO*³⁴⁵ the Supreme Court held that principle cannot be extended

³⁴¹ Reported in *The Ananda Bazar Patrika*: 11th March, 2009 at pg. 10.

³⁴² Reported in *The Statesman*: 21st March, 2009 at pg. 01.

³⁴³ Reported in *The Hindu*: 7th October, 2009 at pg. 03.

³⁴⁴ Cultivable land and support systems

³⁴⁵ (1996) 1 SCC 731.

as a condition in every case. The *Indigenous and Tribal Populations Convention, 1957* organised by the ILO provides³⁴⁶ that where as exceptional measures tribal groups are removed from their land, they should be provided with lands of quality at least equal to that of lands previously occupied by them. It goes on to state that they should be compensated for any "resulting injury or loss" seems very relevant. The Supreme Court in *Jagram v. Union of India*³⁴⁷ has held that in the absence of any scheme for the allotment of alternative sites to the person displaced from their holdings, the landowner cannot claim allotment of alternative land in lieu of the acquired land. In *S. Gurdayal Singh v. Ludhiana Improvement Trust*³⁴⁸ the Supreme Court again reiterated the principle that unless there is any express scheme and the same is in operation, then the alternative sites for commercial purpose cannot be given to the persons whose land has been acquired for public purpose.

Regarding the compensation especially the 'land for land' demand the Supreme Court in recent cases against the argument that new piece of alternative land of equal quality should be given to those dispossessed from land due to acquisition for public purpose, has been asserted. The most forceful pronouncement of the Supreme Court made on this issue was in *Karjan Jalasay Yojna Assargrasth Shakhar Ane Snagharsh Samity v. State of Gujarat*³⁴⁹. Here the case of displacement of the people arose out of the submergence caused by the construction of the dam across the river Karjan. The Court held-

firstly, simultaneously with taking possession of the acquired land from any person in occupation of it, such person shall be provided either alternative land of equal quality but not exceeding three

³⁴⁶ Section 12, ILO Indigenous and Tribal Populations Convention, 1957.

³⁴⁷ 1996 Supp (4) SCC 615.

³⁴⁸ AIR 1997 SC 2573: (1997)5 SCC 138.

³⁴⁹ AIR 1987 SC 532.

acres in area and if not possible, the alternative employment where he would be assured a minimum wages.

Secondly, no possession of any part of the acquired land shall be taken from any person unless and until he is either provided with alternative land or alternative employment which is not temporary in character so that he and the members of his family do not remain without means of sustenance; and

Thirdly, if for any reason the state government is not able to provide alternative land or arrange for alternative employment, the state government will subject to the same exception, pay to the head of the family at the latter's place of residence compensation equivalent to minimum wages of every fortnight during the period of alternative land or employment is not provided.

In the Narmada Hydro- Development Corporation (NHDC)³⁵⁰ case regarding the oustees of the Omkareshwar Project the Division Bench of the Madhya Pradesh High Court comprising of the Chief Justice A.K. Patnaik and Justice Ajit Singh citing the judgements of the Supreme Court in the first and Second Narmada Bachao Andolon Cases, and in the N.D. Jayal Tehri dam case, the High Court has stated that it is a fundamental right of the oustees under Article 21 of the Constitution to be made better-off after displacement, directed the State Government to allot land with a minimum of five acres of irrigable land. The High Court also directed that every adult son of a cultivator must be allotted land even if he is not a title holder. Again, it permitted even those oustees who had been given cash compensation to claim land allotment on their returning 50% of the compensation amount.

In recent times, one of the most successful rehabilitation and resettlement programme has been implemented in Narmada region.

³⁵⁰ Reported in the Hindu: 08th April, 2008 at pg. 13.

Here, at the instance of the construction of the Narmada Dam, in 1984, the affected people³⁵¹ selected a government forest land site at Parveta in Gujarat, about 25 miles from their original village where, about 175 families were shifted and initiated activities to bring the land under cultivation. Though the people had some problems with the land, they were happy with the policy that affected a generous entitlement of a minimum of five acres of agricultural land for each family, regardless of their landholding status. It was the first time in India that such a liberal policy was formulated for a large scale project. However, the major bottleneck in resettlement implementation in Maharashtra was the difficulty in finding sufficient agricultural land for resettling all the project affected persons interested in relocating to Maharashtra. After initial opposition to the proposal to release a patch of degraded forest lands of 2700 hectares at the Southern foothills of Satpura ranges of that land for resettlement by the Department of Environment and Forests of the Government of India, the proposal was finally accorded special approval by the highest decision making authority in the country i.e. the Council of Ministers in May, 1990. It demonstrates the commitment of the Government of Maharashtra to successful resettlement and rehabilitation in Maharashtra. At this, the Narmada Bachao Aandolan, an NGO came out with a comment that it will result in the destruction of the 'last good patch of forests' in the Satpura range in Dhaule District. At this, the State Government pleaded with the Central government to release forest lands at Taloda for resettlement, a rare exception to the general rule by which it is extremely difficult to obtain forest land for any purpose. At this, the Morse Committee, appointed by the World Bank, the chief financier of the project presented a report on the basis of which in 1993 the World Bank withdrew its support citing

³⁵¹ Mainly from the first submerged village, Manibeli.

huge human and environmental concerns. Simultaneously, the mission also prescribed a list of actions for each state and the Narmada Control Authority to clear policy-related bottlenecks in resettlement and improve implementations. Consequently, the then Prime Minister of India in Aug, 1993 accepted almost all the recommendations made by the mission which led the far reaching policy changes in Maharashtra, e.g. land entitlement of landless project affected people raised from 2 acre to 2.5 acres of agricultural land; the land development costs at the resettlement sites fully at the cost of the government; availing of the subsistence allowance for first five years after resettlement was instituted, on the lines of the existing provisions in Gujarat. These policy changes had tremendous impact on the resettlement programme in Maharashtra. Nearly, 400 families took possession of agricultural lands at the resettlement site during the next three months, as compared to about 100 in the entire previous year.

DOCTRINE OF EMINENT DOMAIN v. OPEN MARKET POLICY

The Land Acquisition (Amendment) Bill, 2007³⁵² and the National Rehabilitation and Resettlement Bill, 2007³⁵³ have not yet received the seal of the Rajya Sabha or the assent of the President. These Bills have raised a serious question about handing over the state's right of 'eminent domain' to 'market orthodoxy' in the era of liberalization. Presently, the Land Acquisition Act, 1894 empowers the state to acquire land for public purpose as well as for a company. Interestingly, the Bill does not permit acquisition of land for companies but the government may acquire land for private companies only when private companies acquire at least 70% of the

³⁵² Passed by the UPA government on 26th February, 2009.

³⁵³ Ibid

land requirements through direct purchase, then only the Government will acquire the remaining 30% area. The price of the land will be in the open market and if the landowners are organized, courageous, cautious and confident regarding the price they stand to gain. According to Prof. Amartya Sen, land acquisition should be the last weapon and the same should be very sparingly used by the state for corporate bodies.

It is submitted that If land is allowed to be purchase by private companies, land holders may neither get the correct price nor be rehabilitated. Minimizing the scope of acquisition of land by government may lead to the following situations-

- The land in West Bengal is highly fragmented and most of the land is cultivable. Due to the land reform, in West Bengal land is not only in the control of the owners but other interest groups like bargadars.
- The importance of the government's intervention in land acquisition is for the sake of industrialisation. If the government doesn't go for land acquisition, the farmers themselves would do the same, and in most haphazard manner as possible³⁵⁴ and as the farming class of people doesn't have the necessary bargaining power, they will not be able to evaluate the potentiality of the land which indirectly will affect the interests of them. It may also happen that in the prospective area another competitive industrial body may purchase the land in some other name to halt the project.
- If the industrial bodies and investors directly deal with private land owners, they have to deal with the issue of transfer of

³⁵⁴ Surajit C Mukhopadhyay, The Study- The Politics of Land Acquisition in West Bengal; Published by The Centre for Studies in Social Science, Calcutta. Reported in The Times of India: 20th April, 2007 at pg. 04.

title of small parcels of land with dozens, sometimes even over hundred owners which will give birth to many of problems.

- Government's intervention is needed for better package of rehabilitation and replacement for not only owners but also for the other interest groups like, bargadars, agricultural workers in the very land or in a word '*persons interested*'³⁵⁵ who are also displaced and basically are illiterate, have less bargaining capacity and hence vulnerable.
- The government's involvement ensures some concrete rehabilitation plan with enhanced price land and an emphasis on alternative livelihood security for non-owners and

³⁵⁵ *Persons interested*:- [Sec.3(b)]- The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act and a person shall be deemed to be interested in land if he is interested in an easement affecting the land or cultivates the land or any portion of it as a '*bargadar*' and after it.

Explanation: A bargadar is a person who, under the system is generally known as '*adhi*', '*barga*', or '*bhag*' cultivates the land of another person on condition of delivering a share of the produce of such land to that person.

A 'person interested' may be categorised as-

- Purchaser before the vesting of land in the state under the Land Acquisition Act if person interested
- Beneficiary of acquisition, if person interested
- Government company, if person interested to challenge the award
- Owner
- Government, if person interested
- Limited interest of Hindu widow
- Reversioners
- Shebait of deity
- Trustees and beneficiaries
- Mortgagor and mortgagee
- Attaching creditor
- Intending purchaser
- Lessee
- Lessee holding over, a person interested
- Tenant
- Statutory tenant
- Persons acquiring interest by long user
- Tenants- at- will

unrecorded sharecroppers and the persons interested with land.

- In the absence of state in land dealing a land broking class will take birth which will deprive the original landowners from his legitimate dues and the government will fail to act as the regulator to protect the small and marginal farming class.
- It is true that if the state doesn't acquire land obviously the government can escape much controversy and at the same time will lose the control over land. This may lead to leaving the lands idle, without using the same for years as they will enjoy the ownership over the land they directly purchased from the owners of the land. Presently, the land acquired by the government if allotted to a corporate body is left without working for a certain period the said land may be taken back by the state. Though the Proposed Amendment Bill the Land Acquisition Act, 1894 is also provides the provision containing a land acquired for a purpose remains unutilised for a specified time, would revert to Government, still there is possibility of misusing the land by the very corporate bodies.
- Recently, the government as per the policy decision after constituting the '*land use board*' the land and land reform department is preparing '*land use map*' with all details including water bodies, mono- crop land, double crop land, irrigated land, forest covers and the national and state highways as well as waste land for industry of each mouza, each block in a district. The land use map is to be prepared in Bankura, and four more districts of Burdwan, Purulia, Birbhum and West Midnapore in the first stroke. However, the map for Bankura district is ready now.³⁵⁶

³⁵⁶ Reported in The Statesman: 11th Aug, 2009 at pg. 04.

- If the private corporate bodies acquire land for their own interests directly from the owners of the land there will be absolute possibility of a well organized land broking system sponsored by the corporate bodies.

Under the present Land Acquisition Amendment Bill, 2007 provides, 'any other purpose useful to the general public for which 70% of the land has been purchased by a person through negotiation, but the remaining 30% is yet to be acquired' is a dangerous provision because the expression 'a person' includes "any company or association or body of individuals whether incorporated or not" and being empowered by this provision, *any realtor, speculator, private companies or by land mafia gang* under the cover of a respectable name. They may invest capital in purchasing land in the name of setting up of the unit but prior to the lapse of time they may sell out the same and earn huge profit out of the same by artificially increasing the price of the very land as when an industry is proposed to set up its unit then the price of the land goes up at a rocketing pace. No provision is there, as yet to stop this.³⁵⁷

- At the same time, the state will loose control to secure agricultural lands and hence the food security of the state will be at stake and everything will go silently. The state must not allow such initiative to come into force.
- The government has declared reservation of 10% of the seats for at least one of the members of the land loosing families for projects. In this regard recently, the Bengal Aerotropolis Projects limited (BAPL) has an agreement with the West Bengal Technical Department under which the 5000 family

³⁵⁷ D. Bandyapadhyay: The Corporatised state- 1: Published in The Statesman: 4th August, 2009 at pg. 06.

members (one from each family) of land loosing families will be trained.³⁵⁸

Considering the above propositions, it is submitted that by allowing the corporate bodies to enjoy the ownership over the land for setting up of their units will be unwise. The government in recent times has declared that the state will not acquire the land as chosen by the industrialists. It will create a land bank. Moreover, the state will let the industrial houses to purchase land directly from the farmers. It is further submitted that the government should allot land for industrial houses on lease for a period of time as they think fit and through this, it should secure a certain percentage of share in the proposed company which will allow the state to earn revenue for the government exchequer which at the same time will allow the government to find the means of supporting the displaced people at least for one generation because the displacement leads to huge loss to the oustees and the relevant corporate body may be compelled to undertake community development programmes in the adjoining areas and thus, play a role as referee to balance the differences in economic and political power between a massive corporate entity and a small farmer.

DOCTRINE OF SUSTAINABLE DEVELOPMENT v. DISPLACEMENT OF FARMERS ON ACQUISITION OF LAND

For an overall development, there needs to have a balance between agriculture and industry in a way in which, neither the industry, nor the agriculture suffer. Development means an act of improving by expanding or enlarging. It is a continuous process by which value is added to the existing level of economic condition of a country. The right to development cannot be treated as a mere right to economic betterment Nor can it be limited to simple

³⁵⁸ Reported in The Ananda Bazar Patrika: 1st August, 2009 at pg. 03.

construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights.³⁵⁹ Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development. Therefore the adherence to sustainable development principle is a sine qua non for the maintenance of the symbolic balance between the rights to environment including agriculture and development. Weighty concepts like intergenerational equity, public trust doctrine and precautionary principle which are declared as inseparable ingredients of environmental jurisprudence could only be nurtured by ensuring sustainable development."³⁶⁰ Today with the widespread commitment on the term 'sustainable development' there is criticism of differing goals, strategies and opinions. The idea of sustainable development has been applied to both global and local issues. The sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs. It implies the handing down to successive generations not only man-made wealth but also natural wealth in adequate amounts to ensure continuing improvements in quality of life.³⁶¹ Therefore it is necessary to formulate a comprehensive rehabilitation and resettlement policy

³⁵⁹ Partha Pratim Paul, Application Of Sustainable Development Principle In Himalayan Region By Supreme Court Of India; Paper presented in the national Seminar on Science, Technology and Development in the Himalayas; Org. by the Centre for Himalayan Studies, University of North Bengal, held on 23rd and 24th March, 2009.

³⁶⁰ N.D. Jayal case

³⁶¹ Brundtland Commission, 1986.

for displacement to sustain the development and not at the cost of the oustees.

The recent *Rehabilitation and Resettlement Policy 2007* is very significant which inter alia speaks of three basic norms, i.e. minimisation of:

- (a) The displacement of people due to the acquisition for projects;
- (b) The total area of land to be acquired for the project, and
- (c) The acquisition of agricultural land for non- agricultural use for the projects.³⁶²

It has been the common picture of every displacement that the displaced people's interests are hardly respected. The *Sardar Sarovar Project in the Narmada Valley, on survey*³⁶³, shows most of the sites lacked amenities like access to markets and employment opportunities, proximity to affordable and cultivable land, trees, clean water, pastures and drainage. No family received land as mandated by the R& R Policy, the government provided them some cash compensation against the fixed property lost which was grossly insufficient to help families make productive investments. No family was found who had been able to rebuild its lost livelihood even after 3- 5 years of displacement. Most farmers lost substantial farmland could not purchase at best a small fraction because the cash compensation was much below the market rate. Pulling out from a project at the protest and continuous violence is undesirable. This is very much painful and agonising. For setting up of industrial units the nature of the land is needed to be converted.

In the last decade there has been a significant increase in illegal acquisition by the states in the name of acquisition through the safety valve of *public purpose* from the poor and underprivileged without offering sufficient compensation. Large scale

³⁶² The Rehabilitation and Resettlement Policy 2007; para 1.4; pg 34.

³⁶³ Rahul Pndey, Skewed development, The Statesman, 11th December, 2008 at pg. 7.

displacements caused by the construction of innumerable SEZs is exposing a long term food insecurity claiming enormous fertile land mass in India. Hence, a socially acceptable rehabilitation policy is the only imperative to this direction. Such displaced people especially the peasants will have to be provided with alternative farmland to rehabilitate them as a community.

Judicial Response: - In the absence of any law on Rehabilitation of the displaced people, the judiciary has responded well in a number of cases to grant relief and rehabilitation to the oustees by giving logical corollary and wide interpretation of Art.21 to recognize the right to mean more than mere survival and mere animal existence. In *Nazir Ahmed v King Emperor*³⁶⁴ the Privy Council held that to acquire land the authority must show sensitivity of mind and it should be done with utmost legal sanctity. In *B.D. Sharma v. Union of India*,³⁶⁵ it was ruled that the overreaching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of the oustees. They should be rehabilitated as soon as they are uprooted. Further, the court provided a time frame by which the rehabilitation must be complete: before six months of submergence. In this regard, the package of compensation must not compel a project affected person to live a life not merely to physical existence or lead a life of mere animal existence because after *Maneka Gandhi*³⁶⁶ and *Francis Coralie*,³⁶⁷ the Art. 21 embody the right to live with minimum human dignity. Again, Article 21 includes the right to livelihood also.³⁶⁸ On this issue, the Supreme Court has held that if the right to life is not treated as a part of

³⁶⁴ [6] AIR 1936 PC 253

³⁶⁵ 1992 Supp (3) SCC 93.

³⁶⁶ *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

³⁶⁷ *Francis Coralie v. Union of India* AIR 1981 SC 746.

³⁶⁸ *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180; (1985) 3 SCC 545.

right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41 require the state to secure to the citizen an adequate means of livelihood. In *D. K. Yadav v. JMA Industries*,³⁶⁹ the court held Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced into animal existence. But, in a number of occasions it is seen see that the poor always get a raw deal from the politics of a market driven economic paradigm. The broad contours of this story are the same all over the globe wherever the profit and growth objectives of big capital come into conflict with the livelihood rights of the economically weak, landless labourers, small farmers and artisans in villages, tribals in forests, fishing communities in relevant regions and city based vendors and workers living in slums and other low income areas. Such people are constantly denied their right of livelihoods when they come in the way of commercial projects that demand large- scale acquisition of land, water, minerals, forests and other natural resources. This is how the capital driven market works. The present statutory instruction is to pay the market value of the land in addition to which solatium etc are to be paid. At this point the determination of market value of land is a very significant issue. The judiciary on this issue is not silent on this point. In *Atma Singh (died) through LRs. & Ors v. State of Haryana & Anr*³⁷⁰ the expression 'market value' was a subject-matter of consideration in this case. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in

³⁶⁹ (1993) 3 SCC 258.

³⁷⁰ 2008 AIR 709 , 2007(12) SCR1120, 2008(2) SCC568 , 2007(14)SCALE109, 2007(13) JT473

most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz., a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality³⁷¹ of the acquired land should also be taken into consideration. In *C.E.S.C. Ltd. Vs. Sandhya Rani Barik & Ors.*³⁷² The court held that while determining the amount of compensation, one should attempt to find out the just and reasonable compensation without attempting any mathematical precision in that regard. For the purpose of assessing compensation, the efforts should be to find out the price fixed for the similar land in the vicinity. The difference in the land acquired and the land sold might take on various aspects. One plot of land might be larger, another small, one plot of land might have a large frontage and another might have none. There might be differences

³⁷¹ Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. *Atma Singh (died) through LRs. & Ors Vs. State of Haryana & Anr* 2008 AIR 709 , 2007(12) SCR1120, 2008(2) SCC568 , 2007(14) SCALE109 , 2007(13) JT473

³⁷² 2008 AIR 2873, 2008(10) SCR137 , , 2008(9) SCALE647 , 2008(7) JT485

in land development and location. There might be special features which have to be taken note of and reasonably considered in the matter of assessing compensation. In *Lucknow Development Authority Vs. Krishna Gopal Lahoti and Ors*³⁷³ the court held that the amount of compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. The element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made: (i) *when sale is within a reasonable time of the date of notification under Section 4(1)*; (ii) *it should be a bona fide transaction*; (iii) *it should be of the land acquired or of the land adjacent to the land acquired*; and (iv) *it should possess similar advantages*. It is only when these factors are present; it can merit a consideration as a comparable case. Later on in *State Of Haryana Vs. Gurbax Singh(Dead) By Lrs. & Anr. etc*³⁷⁴ the subject matter of the case was the quantum of compensation payable for the lands acquired from Villages Ratgal, Sunderpur and Palwal. The Division Bench marginally increased the compensation from Rs.99,668/- per acre to Rs.1,25,000/- per acre. The Division Bench justified this increase by observing that there was continuous rise in the prices of land; that though the two transactions were in respect of the small pieces of lands. At this, the Court held that there is nothing wrong in this and, therefore, the appeals filed by the Government of Haryana against the marginal increase are dismissed. Again, in *Madishetti Bala Ramul*

³⁷³ 2008 AIR 399 , 2007(11)SCR921 , 2008(1)SCC554 , 2007(12)SCALE685 , 2007

³⁷⁴ 2008(11) SCC65, 2008(8)SCALE521 , 2008(6) JT659

(D) *By LRs Vs. The Land Acquisition Officer*,³⁷⁵ two notifications were issued separately. Here on the issue of determination of the value of the land acquired the Court held that as the second notification was issued, the first notification did not survive. Valuation of the market rate for the acquired land, thus, was required to be determined on the basis of the notification dated 23.12.1991. The earlier notification dated 16.03.1979 lost its force.

Thus the court has not come yet with the concrete determinants of the market value of the land to be acquired. The factors for determining the value of land differ with states. In West Bengal, one of the important factors of determining the value of land is whether the very land is no cropping, single cropping, double cropping or multiple cropping. Hence a comprehensive mechanism needs to be devised to reduce the pains to be suffered by the displaced people. In *Narmada Bachao Andolan v. Union of India*,³⁷⁶ it was observed that rehabilitation is not only about providing just food, cloth, or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is thus a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitation locations. Further, in *N.D. Jayal and Another v. Union of India*,³⁷⁷ the court held that the right to development encompasses in its definition the guarantee of fundamental human rights. Thus, the courts have recognised the rights of the oustees to be resettled and right to rehabilitation has been read into Article 21. Very recently, in a significant ruling, a division bench constituting *Justices Mr. Altamas Kabir and Mr. Cyreese Joseph* the Honb'le Supreme Court

³⁷⁵ 2007(7) SCR222 , 2007(9)SCC650 , 2007(8)SCALE184 , 2007(8) JT180

³⁷⁶ AIR 2000 SC 3751.

³⁷⁷ (2004) 9 SCC 362.

in some land owners of Narwana in Haryana's Jind district observed that, a right under Section 5 (A) of the land Acquisition Act is not merely statutory but also has the flavour of the Fundamental Rights under Articles 14 and 19 of the Constitution. Again, noting the urgency clause in Section 17 of the Act, under which the concerned land owners can be denied the opportunity to file objections to the proposed acquisition, can be pressed into service only in exceptional circumstances, the apex court directed the land acquisition collector- cum- district revenue officer of Jind, to consider the objections to be filed by the land owners and dispose of the same within a month and then the government would be at liberty to take the appropriate consequential steps after the disposal of the objections.³⁷⁸

Therefore there is an urgent need to set up clear policy for rehabilitation in general and farmers in particular in the event of acquisition of land.

³⁷⁸ Reported in *The Statesman*: 17th October, 2009.

CHAPTER V

POLICY OF RESETTLEMENT AND REHABILITATION AND ITS IMPACT ON FARMER'S RIGHT TO LAND

Awareness about the issue of resettlement is developing intentionally due to the efforts of concerned institutions and individuals across the world. The focus is on evolving the basic principles that could be adhered to in a resettlement programme, regardless of project locations. It is certainly realized that the specific policies and programs would vary according to countries and region's physical and financial resources as well as the socio-political system within which the programme is implemented.³⁷⁹ However, policies and programs framed for fairly similar geo-political units can have substantially different impacts depending upon the implementation.

THE U. N. INITIATIVE

- 1. United Nations Guiding Principles on Internally Displaced Persons, 1998:** - The United Nations has declared a Guiding Principles on Internally Displaced Persons, 1998 provide protection against arbitrary displacement; offer a basis for protection and assistance during displacement. Principle 6(C) of the same prohibits the arbitrary displacement in cases of large-scale development projects. Still, the subject was gradually faded into oblivion until 2003 when the draft National Rehabilitation Policy was notified by the NDA government. This policy came into effect in February, 2004 as the National Policy on Rehabilitation Policy on Rehabilitation and Resettlement for Project Affected Families. At this, the National Advisory Council being unsatisfied with this sent its own revised policy draft to the government. The bureaucracy then brought out a revised version

³⁷⁹ Ed. William P fisher, Towards Sustainable Development, Struggling over India's Narmada River; M.E. Sharpe Armonk, New York, London, First published in 1995 at Pg. 261.

of the 2003 Policy in 2006 which has become the National Rehabilitation and Resettlement Policy, 2007. On this issue, again, the Parliament has brought the Rehabilitation and Resettlement Bill, 2007. and the Land Acquisition (Amendment) Bill, 2007 which includes 'land for land', to the extent Government land available in their resettlement areas;³⁸⁰ preference for employment in the project to at least one person from each nuclear family subject to the availability of vacancies and suitability of affected person.³⁸¹ Now let's have a look over these steps of the government.

2. **The United Nations Comprehensive Guidelines on Development Based Displacement, 1997:** - The present the United Nations Comprehensive Guidelines on Development-Based Displacement, 1997 emphasises that States should secure by all appropriate means, including the provision of security of tenure, the maximum degree of effective protection for all persons under their jurisdiction against the practice of forced evictions from their homes and/or lands and common property resources they occupy or are dependent upon, thus eliminating or limiting the possibility of an individual, group or community residing or working in a particular dwelling, residence or place. In this regard, special consideration should be given to the rights of indigenous peoples, children and women, particularly female-headed households and other vulnerable groups. These obligations are of an immediate nature and are not qualified by resource-related considerations.³⁸² The UN Guidelines also says that the states should ensure that eviction impact assessments are carried out prior to the initiation of any project involving all

³⁸⁰ Clause 7.4. 1 The Rehabilitation and Resettlement Policy, 2007.

³⁸¹ Clause 7.13.1 The Rehabilitation and Resettlement Policy, 2007.

³⁸² Section 3.9, The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

the affected persons, including women, children and indigenous peoples shall have the right to all relevant information and the right to full participation and consultation throughout the entire process and to propose any alternatives which could result in development-based displacement, with a view to fully securing the human rights of all potentially affected persons, groups and communities.³⁸³ The states should refrain from introducing any deliberately regressive measures with respect to *de jure* or *de facto* protection against forced evictions.³⁸⁴ All persons subjected to any forced eviction not in full accordance with the present Guidelines, should have a right to compensation for any losses of land, personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments.³⁸⁵ All persons, groups and communities have the right to suitable resettlement which includes the right to alternative land or housing, which is safe, secure, accessible, affordable and habitable.³⁸⁶

CORPORATE INITIATIVE: GLOBAL APPROACH

Corporate social responsibility through financing for development has become a reality in many countries. True corporate social responsibility (CSR) is not just about planting some trees along the boundaries of an industrial unit or employing some local people temporarily. CSR also means taking into account the

³⁸³ Section 3.12; Section 3.13 & Section 3.16 The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

³⁸⁴ Section 3;10 The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

³⁸⁵ Section 4(24), The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

³⁸⁶ Section 4(27), The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997

Resettlement and Rehabilitation of the project affected families. In current jargon, this practice is known as 'financing for development'. Recently, the Union Government has decided to roll back one percent of the profit from the major projects for development and welfare of the project area³⁸⁷ so that the local people also benefit from it. Prof. Micheal Cernea, a former World Bank expert on resettlement and rehabilitation, in an article cited many examples of benefit sharing mechanisms beyond the ordinary monetary compensation paradigm.³⁸⁸ One interesting example came from Norway.

NORWAY: - Norway not only adopted a law in 1997 that ensured redistribution of a portion of the tax paid by the power companies acquiring land to local populations but also, affected Municipalities used to receive 10% of the electricity generated by the companies.

CHINA: - In China,³⁸⁹ there is no recognition of the individual rights over land. The owner of land is the Government. Land is considered as the property of the nation. The Chinese Government recognises the lease holding of its land to its citizens for the agricultural, residential or other purposes. However, one of the most interesting feature of the Chinese policy that is followed at the time of acquisition of land used by a person or land leased to a person involved in agricultural activities includes inter alia-

- (1) The ascertainment of alternative income of such persons;
- (2) To make the relief packages supporting the livelihood of such people [victims of land acquisition] as much as flawless;
- (3) To give sufficient financial assistance to meet the expenditures for managing their food, habitation/ shelter, wearing apparels,

³⁸⁷ Reported in The Hindu: 25th January, 2009 at pg. 07.

³⁸⁸ Abhijit Guha, Good Corporate; Published in The Statesman, 5th September, 2008 at pg. 07.

³⁸⁹ Madan Ghosh, Reported in the Ganashakti: 27th December, 2008 at pg. 04.

medical expenses, and even the cremation of the people who are infirm, lost the capacity to work, who do not have kins or near relatives etc.

All these arrangements must not be inferior to the already locally existing practices.

JAPAN: - Japan has conducted land- leasing experiments to minimise tension and conflicts inherent in land acquisition and population relocation required for dams and reservoirs. For building the Jintsu- Gawa dams the Japanese government instead of acquiring land, made agreements for the owners to lease out their lands to the private companies so that the land losers could receive an upfront payment as well as regular rents. So the land losers for the dams are still receiving regular rents for the land now under deep water after 50 years as recent research has confirmed.

Japan's innovative strategy for building the Numata dam is another example of good CSR. In this project the Japanese government calculated that about 10,000 agriculturists would be displaced by the reservoir. In order to make arrangements for the rehabilitation of the would -be displaced families, the government made plans to convert 1,500 ha of dryland on the slopes of Mount Akagi into paddy fields and set up irrigational facilities at the government's cost. The government then decided to allocate to each resettled families twice the amount of land they had in their original habitat. This unique arrangement was ready for implementation, but for other reasons the construction of the dam was cancelled in 1972. However, this original plan is still relevant for replication.

THE INDIAN SCENARIO

Resettlement doesn't work in isolation and is a function of the general, administrative and socio- cultural traditions of a particular country or state. Resettlement function is a function of entitlement policies timely preparation of resources, adequate resettlement

plans based on detailed socio- economic surveys, development of well- staffed resettlement organizations, effective (broad based) participation of the affected and the host communities in the resettlement efforts and the existence of a socio- political and administrative environment conducive to efficient implementation of rehabilitative programs. At this juncture, special emphasis is to be given to the protection of the Common Property Resources (CPRs).³⁹⁰ These resources generally escape the attention of policy framers. The design, timing and inter- relationship of the above components are crucial for determining the outcome of the implementation³⁹¹ programme.

The National Policy, Packages and Guidelines for Resettlement and Rehabilitation (NPRR- 1998)³⁹²: accepts the following principles-

- Displacement should be minimized;

³⁹⁰ The Common Property Resources (CPRs) are resources accessible to the whole community of a village and to which no individual has exclusive property rights. They generally include village pastures, community forests, wastelands, dumping places, watershed drainage, village ponds, tanks, rivers, rivulets and river beds etc.

³⁹¹ In the international human rights regime the term '*enforcement*' refers to coerced compliance, while '*implementation*' refers to supervision, monitoring and general effort to hold duty- holders accountable. Implementation is further sub- divided into Promotion- preventive measures to ensure respect for human rights in the future and Protection- responses to violations that have occurred in the past. The means and methods of implementation may be summarised in three forms of promotion and five forms of protection. Promotion of human rights is achieved through developing awareness, standard- setting, and interpretation and creation of national intuitions. The protection of human rights involves a complex web of national and international mechanisms to monitor, judge, denounce, and coerce states as well as providing relief to victims. In the domestic level, law is binding and the courts and police are available to use force to compel compliance.

³⁹² At this, a rehabilitation policy was first mooted in the mid 1980s when a draft of a rehabilitation policy mostly applicable to all future dam projects, industrial, mining and developmental projects.³⁹² Another draft policy was brought by a committee appointed by the Ministry of Welfare, Govt. of India in 1985. Again, the draft rehabilitation policy by N.C. Saxena in the 1990s didn't pass through despite many positive aspects. But, it was first drafted only in 1993. Thereafter, the Second Draft prepared by the government was approved by the Committee of Secretariats on 28th November, 1997.

- The public purpose based on which people are displaced or otherwise deprived of their livelihood should be defined;
- Prior informed consent to be affected by it should be mandatory after the project is explained to them and if they see that it is according to public purpose thus defined properly;
- Replacement value to be the norm for compensation, against the present norm of market value which is totally inadequate.
- Right to life and dignity enshrined in Art. 21 of the Constitution should be respected. So, the displaced persons should have a better lifestyle after displacement than before it because they are paying the price of national development.
- Displaced persons (DPs/ PAPs) should be the first beneficiaries of any project.
- Rehabilitation is mandatory and should go on side by side with the project.
- Land for land is recommended to all and is mandatory for tribals. Compensation is to be provided for common property resources and forest lands that may be acquired from their dependants.
- The DPs/ PAPs are defined in a way as to include not only land owners but also those who depend on it without owning it and those who have common property resources as their sustenance.

There are certain shortcomings in the NPRR, 1998. It doesn't define the term 'public purpose'. Again, this policy is yet to be implemented.

National Rehabilitation and Resettlement Policy, 2007³⁹³: -

Land is one of the most important factors which affect the interests of a farmer if acquisition is made over it by anybody be it government or any other. The salient features of this policy are -

- This policy is applicable not only to the persons affected by acquisition of land for projects of public purposes, but also to the involuntary displacement of a permanent nature due to any cause.
- The beneficiaries of policy again includes the families whose source of livelihood is adversely affected, i.e., any tenure holder, tenant, lessee, agricultural and non- agricultural laborers, landless persons, rural artisans, small traders etc.
- Free house site to the affected families whose house has been acquired or lost to be provided.
- Land for land to the extent of availability of Government land.
- Social impact assessment by independent multi- disciplinary expert group made mandatory in cases of displacement of 400 or more families in plain areas and 200 or more families in tribal and hilly areas, DDP blocks or areas mentioned in the V & VI Schedules of the Constitution.
- Involvement of stakeholders in R&R through R&R Committee at project level comprising of representatives of SC/ ST and women of the affected area along with the representatives of NGOs working in the area, banks, Panchayati Raj representatives.
- Project affected families to be compensated for shifting the belongings from the project site to the rehabilitation site.
- Effective monitoring arrangement for timely rehabilitation and resettlement

³⁹³ Reported in The Hindu, June 28, 2008 at pg. 07.

- Amendment in the Land acquisition Act, 1894 proposed to incorporate the consequent amendments as a result of Rehabilitation & Resettlement Policy, 2007.
- In case of transfer of acquired land, 80% of the net unearned profit would be shared with the original land owners or their legal heirs.

Proposed Bill On The Amendments To The Land Acquisition Act, 1894: - The Land Acquisition (Amendment) Bill, 2007 proposes to amend the Land Acquisition Act, 1894, by defining the term 'public purpose' as land acquired for defence purposes, infrastructure building or any project that would be beneficial to the general public. The said Bill has the following features-

- The term 'affected person' has been redefined. Now it will include not just the land holder, tenant or lessee of the land but also those dependent on the land such as agricultural and non- agricultural labourers, landless persons, rural artisans and so on whose livelihood is connected to the acquired land and who have been living in the affected areas for over five years preceding the acquisition.
- The ambit of persons interested proposed to be redefined for inclusion of tribal and other traditional forest dwellers also.
- Provision for acquisition of land for companies to be deleted.
- The government can use land acquisition powers for only three purposes: (a) strategic uses like the armed forces, (b) public infrastructure projects and (c) where the project being set up by a person (which includes any company or association or body of individuals whether incorporated or

not) serves a larger public purpose and meets the 70% norm.³⁹⁴

- It specifies that the government will help to acquire 30% of the total land required after the company or the body has purchased 70% of the land from the willing sellers. The rationale is that if a company buys the land through private negotiations on a 'willing seller to willing buyer basis', the government can then negotiate with the 'unwilling' landowners to acquire the residual land.
- Compensation of the land is to be calculated at the market value.
- Provision for solatium to be enhanced from the existing 30% of the market rate to 60% of market rate in cases of normal acquisition and 75% in case of urgent acquisition.
- Compensation will be given within timeframe before actual displacement.
- The bill also proposes that a social impact assessment study be conducted in case of large- scale displacement of local dwellers. It stipulates that the acquisition costs should include the payment for loss, damages and cost related to the resettlement of displaced residents. The bill recommends that the current market price of the land be assessed before deciding on the compensation package for residents.
- It also makes it mandatory for each state to establish the Land Acquisition Compensation Dispute Settlement Authority (LACDSA). At this, the investors may feel that the percentage specification should not be mandatory. It should be left to the state authority to acquire the land. Getting the

³⁹⁴ Government shall acquire land for private companies only when private requiring bodies acquire atleast 70% of the land requirements through direct purchase, then only the Government will acquire remaining 30% area.

land from owners could be problematic as it involves tackling of land sharks like the Promoters in the real estate sector, small-time politicians or individuals wanting the sell land at a price higher than the market value. Again, the bill states that the LACDSA staff need not have any judicial qualification, meaning that the officials may not be lawyers or a judge which is again questionable.

- When it comes to compensation, the proposed legislation continues to view it only in monetary terms. Consequently, the only challenge it takes on itself is to arrive at the fair value of land acquired. Since the records with the registration department do not reflect the correct market value, the committee has suggested that land values spread over three it only in monetary terms. Consequently, the only challenge it takes on itself is to arrive at the fair value of land acquired. Since the records with the registration department do not reflect the correct market value, the committee has suggested that land values spread over three years preceding the date of notification be considered for this purpose. It also recommends that independent experts could also be involved. These are definite improvements over the existing methods. But the question how to expand the notion of compensation to include other social costs such as loss of livelihood remains to be addressed. The committee thus suggests the solatium be raised to 60% of the land value from the current 30%.
- Alternative forms of compensation such as employment and pension are envisaged only under the proposed Resettlement and Rehabilitation Bill, 2007. Even this is applicable only where 400 or more families (in plains) are affected by land acquisition. Where the number of people displaced is lower, the families have to settle for what the

Land Acquisition Bill offers. These anomalies need to be addressed and non-monetary forms of compensation provided for.

- Land acquired for a purpose remains unutilised for a specified time, would revert to Government.

Unfortunately, the said bill includes conflicts of opinions on certain issues e.g the government's power to acquire only 30% of land and in certain rehabilitation measures against which the proposal or recommendations of the Parliamentary Committee without paying heed before the passage of the bill which passed in the Lok Sabha on the last day of Parliament on 25th day of February, 2009.

National Human Rights Commission & Relief And Rehabilitation: - Again, on this very issue, the National Human Rights Commission has organized the National Conference on Relief and Rehabilitation of Displaced Persons on 24- 25th March, 2008 in New Delhi while the following issues were stressed by the Commission-

- Full compliance with the ILO Convention 107, and other international human rights instruments relevant to displacement, relief and rehabilitation to which India is a party.
- The resettlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act, 1894.
- The need of the State and Central Governments to reexamine and amend laws, regulations and practices.
- Adequate rehabilitation packages to those who are adversely affected by mega development projects.

- Procedure laid down in the Wild Life Protection Act, 1972 in regard to the rights of the affected persons and their rehabilitation has to be followed.
- Incorporating policy measures such as maintaining electronic lists of dead and missing, widows, children and young girls, list of properties partially or fully destroyed or damaged and centralized collection and distribution centers where relief materials could be received from NGOs and private organizations.
- The social impact assessment of projects which is to be conducted simultaneously with any environmental assessment.
- The appointment of Administrator for Rehabilitation and Resettlement with respect to large projects involving involuntary displacement of large number of people.³⁹⁵

Again the NHRC has recommended interalia, the followings on development induced displacement-

- i.* The basic principles in the National Relief and Rehabilitation Policy [NRRP] must be incorporated in the Rehabilitation and Resettlement Bill, 2007.
- ii.* There should be a mechanism to ensure equitable sharing of project benefits with the displaced people. This may be in terms of providing direct or indirect employment or reservation of a quota of shares etc.
- iii.* The conditional availability of certain resettlement provisions³⁹⁶ in the R&R Bill, 2007 should be put under scanner.
- iv.* Time limit should be defined for various stages in the process for acquisition of land. Besides, where land has been acquired and has not been used for intended purpose

³⁹⁵ Section 9, The Rehabilitation and Resettlement Bill, 2007.

³⁹⁶ Section 36 (1); 41 (i); 49(4), The Rehabilitation and Resettlement Bill, 2007.

or any other public purpose, then instead of auctioning the land, option should be given to the original owner to take it back on laid down terms.³⁹⁷

- v.** The public interest should justify any large-scale development projects, authorities should hold public consultation with people likely to be displaced.
- vi.** The concept of eminent domain should be in line with the constitutional obligations and the proposed amendments to the Land Acquisition Act, 1894 and the relief and resettlement bill should provide for more scope for consultation/ participation of affected people both in the acquisition as well as consultation/ participation of affected people both in the acquisition as well as relief and rehabilitation process.
- vii.** In case of development based displacement there should be the principle of minimal displacement.
- viii.** Where agricultural land is sought to be acquired, it should be mandatory that area of wasteland equal to double the area acquired will have to be acquired and reclaimed for public purpose or at least funds for the same should be deposited in a special fund to be created for the purpose of rehabilitation of displaced persons or in the Central Relief and Rehabilitation Fund.
- ix.** It shall be mandatory for all local bodies to formulate land use plans and building rules so as to minimize and regulate conversion of agricultural lands for other uses. No non-agricultural activity should normally be allowed in areas marked for agriculture unless there are overriding and compelling reasons in public interest.

³⁹⁷ Section 22 of the Land Acquisition Bill, 2007.

- x.** It has been the experience that where infrastructure projects like highways, roads are planned, the land values of the adjoining areas go up. Appropriate legislations should be put in place to charge additional duty/ tax for such enhanced value, at least at the time of the subsequent transfers of land and sums so collected should be transferred to the Central Relief and Rehabilitation Fund or any special fund created for the purpose of rehabilitation of the displaced persons.
- xi.** Carrying out of social and environment impact assessment, local people especially those who are likely to be displaced and/ or some expert NGOs should be consulted and necessary norms to be laid down.
- xii.** Where there are multiple displacements, it is necessary to compensate the displaced people appropriately e.g. by enhancing the solatium amount provided for in the bill or otherwise.

Very recently, while considering enhancement of compensation of Rs.200 per sq.m. of land in Curti village acquired for construction of Panda bypass road; a Division Bench of the Hon'ble Supreme Court constituted by *Justices R.V. Ravindran and B Sudershan Reddy* in an order has held³⁹⁸ *"A long strip of land measuring more than two thirds of an acre lying alongside the Highway cannot be treated as a land without vale or without a potential for development, merely on the ground that the law relating to Highways prohibited construction on either side of the Highway, upto a depth of 40metres from the centre of the Highway."*

³⁹⁸ Reported in The Statesman: 28th September, 2009 at Pg 05.

COUNTER LAND REFORMS POLICY

*"...the farmers should be given remunerative compensation
wherever land is acquired."*

Dr. Manmohan Singh³⁹⁹

The land reforms in India, could not be implemented successfully either due to the reason that the laws are defective or frequent filing of litigations by the owners of the land especially on the matter of taking of possession ceiling surplus land by the government. The Constitution (49th Amendment) Act 1983 was enacted by the Parliament in August, 1984 which put 14 land reforms laws in the Ninth Schedule of the Constitution to provide the immunity to these measures from being challenged in the court of law. The Constitution (81st Amendment) Bill, 1994 was passed in 1995 placing land reform laws in the Ninth Schedule. However, the move towards land reform has not been fully successful due to absence of required political will in the country. Land reforms must include both

- (a) Providing land to the landless peasants and
- (b) Protecting the land rights of the existing farmers.⁴⁰⁰

Such programme should aim at-

1. Reduction of poverty,
2. Increasing productivity,
3. Ensuring food security and
4. Bringing peace and justice to the people.

Presently, it is noticeable that the mode of land reform in the state of West Bengal is going on the following lines-

- **Land Bank:** - Form Land bank with an area of 5000 acre of acquired land with a created fund of Rs. 500 crore.⁴⁰¹

³⁹⁹ Reported in The Times of India: 28th October, 2008 at pg. 04.

⁴⁰⁰ Bharat Dogra, Land reforms and Justice, Published in The Statesman: 13th October, 2009 at pg. 06.

⁴⁰¹ Reported in The Ananda Bazar Patrika: 15th February, 2009 at pg. 04.

- **New industries on closed factories:** - Set up industrial units at abandoned factories in the state that have been remained closed for years. The government has laid a proposal before the Central government to either set up industrial units in the closed factories in the state by itself or hand over to the state government where the state will set up industries.⁴⁰²
- **Unused land being held by the promoters to be acquired:** - In many cases of developmental activities, the state feels the scarcity of land. Promoters of different parts of the state are purchasing land from the poor and keep those lands unused for long without using after constructing the boundary wall and sell those out when the price hikes and earn huge profit at the instance of building of infrastructures at the expense of the government. The state government has taken the policy to acquire such lands to undertake the developmental activities.⁴⁰³
- **Ownership of land to the Bargadars:** - Presently, the government of West Bengal is considering the policy of giving the ownership to the bargadars. Initially through '*Operation Barga*' in late 70's the Government successfully brought the landless people under the direct control of the government through securing them from termination on any reason and also giving such people '*patta*' over the vested lands. Again, due to proper irrigation programmes, the state could convert mono- crop lands into duo- cropping or multi- cropping land. This led to the significant growth of agricultural production initially.

Since 90's new problems started coming due to the reasons as under-

⁴⁰² Reported in The Times of India: 3rd March, 2009 at pg. 06.

⁴⁰³ Reported in the Ananda Bazar Patrika: 2nd February, 2009 at pg. 01.

1. The cost of production in agriculture increased manifold. Selling off of agricultural land, division of land into small holding in the aftermath of operation Barga took place. No adequate initiatives have been taken by the government regarding the supply of high quality seeds, fertilisers or availing the expensive modern farm practices to them.
2. Repeated bumper crop resulted in shortage of storage facilities and food processing units in the state for the agricultural produces.
3. Lack of proper marketing of the agricultural produces.

Under the new plan, the government wants to confer the ownership to the bargadars⁴⁰⁴ on buying such lands directly from the original owners due to reasons inter alia-

(i) The bargadars to a great extent harass the raiyats on several reasons; (ii) The relevant bargadars or share- croppers don't want to share the crops regularly with the raiyats as prescribed under the Act.⁴⁰⁵

(iii) The Raiyats under the Act is not in a position to sell out the land to some other persons except the Bargadars while the bargadars are unwilling to purchase such lands.

Under these circumstances, the government is planning to directly purchase the lands from the raiyats and the same is to be sold to the bargadars on long term loan. This will facilitate them in the ways as-

(a) The bargadars will enjoy the ownership of land;

(b) Enjoying the ownership they will get the loan from banks or other financial institutions in case of distress giving the said land on mortgage.

- **Giving of land rights to long - term occupants:** - The state Urban Development Department has been considering

⁴⁰⁴ Reported in The Ananda Bazar Patrika: 21st March, 2008 at pg.01.

⁴⁰⁵ Section 16, The West Bengal Land Reforms Act, 1955.

giving land rights to the long term occupants of state government land. Under the new policy it has been proposed to enable occupants to secure housing loans against such occupation.⁴⁰⁶ It is important to mention that even, the Planning Commission has admitted that as many as rural household lack homes of their own. Such people either live in the house constructed on the land of others or provided by landowners in return of forced labour.⁴⁰⁷

- **Pattas for residents of forests:** - The state government has decided to distribute *pattas* to the people living in the forests under the Scheduled tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This initiative of the government is expected to enable the residents of the forest area to make good use of the forest produces.⁴⁰⁸

Ceiling laws:- Land is the biggest item of asset or wealth holding in rural areas but still in most of the states except West Bengal and a few other states is very inequitably distributed among the rural community. Hence, it is the ceiling on holdings. The main purpose of land ceiling is to bring about a wider and equal ownership and use of land what exist at present. In other words, more people should own and use land and smaller holders and cultivators should have more of it. In West Bengal, in late 70's Operation Barga endowed the land less people to enjoy land. Thus here, land has become fragmented. Since 2005, in West Bengal, the investment boom is a continuous phenomenon. The flow of investment is mainly continuing on the line of Software; Iron and Steel; Real Estate; Petro- Chemical; Engineering etc. In addition to these, a great number of SEZs proposals either are on the way of execution

⁴⁰⁶ Reported in The Statesman: 24th July, 2009 at pg. 01.

⁴⁰⁷ Bharat Dogra, Land reforms and Justice, The Statesman: 13th October, 2009 at pg.

06.

⁴⁰⁸ Reported in The Statesman: 14th July, 2009 at pg. 04.

or are waiting for the clearance of the B.O.A. (Board of Approval) of the Central Government throughout the country. To set up an industrial unit the first and foremost necessity is the land which is causing displacement of people. Thus, to bring about the balanced development of different regions of the state while ensuring the minimal displacement of people, first attempt should be made to develop the non- arable or less fertile lands for industrial purposes. Given the fact that West Bengal has low quantum of non- arable land, the conversion of some agricultural land for industrial use may have to be considered. Again, a plea is peeping in the mind of the statesman, scholars, and policy makers on the event of relaxing the ceiling laws. If ceiling laws are relaxed and the agricultural income were to remain to exempt from tax, there will be a rush to invest in land, which would benefit only the large farmers, businessman and moneyed people from all walks of life. It will encourage the corporate sector to enter into the agricultural sector for the commercial production of high value and processed agricultural products and even, they may be encouraged to set up contract farming. The land prices would soar. Another intermediary group of speculator would emerge, but millions of small and marginal farmers would be pushed off their land and in the absence of alternative employment opportunities, such marginal farmers with small holdings will turn into landless agricultural labour working for wages. Again, the moment they are ousted they will pick up weapons of war. Thus, the direct involvement of the rich urban families and corporate entities in farming sector especially in holding lands must be firmly restricted. Recently, a committee of the Union Rural Development Ministry commissioned in January, 2008 has recommended that in rural India, the ceiling should be imposed on irrigated lands above 15- 20 hectares and holdings of

non- irrigated lands should be limited to 10- 15 hectares with retrospective effect.⁴⁰⁹ The report also suggested that a minimum of 10- 15% of land should be provided for the landless and homeless in a time bound manner with the titles of the land being made in the name of the women.

SPECIAL AGRICULTURAL ZONES

Setting up of Special Agricultural Zones is another important tool to achieve the balance among the increasing pressure of population, job creation, meeting the demands of the consumers, industrial houses. The aim of Special Agricultural Zones (SAZs) is to conserve prime farm land for farming and to bring about convergence among all ongoing government programmes, like the Rashtriya Krishi Vikash Yojna, the National Food Security Mission and the National Horticultural mission. It will also focus to build infrastructures like roads, markets and storage facilities in one area and thereby prove farming profitable again. Conservation farming and the care and enhancement of the ecological foundations essential for sustainable agriculture will be bottom line of the SAZ.⁴¹⁰ After famous agricultural scientist and the father of Indian Green Revolution, M. S. Swaminathan, "the aim of the SAZ is to conserve prime farm land for farming and to bring about convergence among all ongoing government programmes."⁴¹¹ At this the Uttarakhand model may be a guide. Again recently, the state of Punjab⁴¹² has started to demand the Union Government to declare the state as the Special Agricultural Zone (SAZ) on the pattern of SEZ with assured free

⁴⁰⁹ Reported in The Times of India: 1st November, 2009 at pg. 10.

⁴¹⁰ The system should be so devised that the farmer's co- operative would help to administer the Special Agricultural Zones (SAZ), with the government acting as facilitator. Together, the state and co- operative would determine what additional facilities are needed like- storage, cold storage, cold chains, fish farming, horticulture and also packaging etc.

⁴¹¹ Reported in The Hindustan Times, Kolkata: 24th March, 2009 pg. 01.

⁴¹² Reported in The Hindu: 31st August, 2009 pg. 03.

power supply to the farm sector, tax free subsidized agro inputs like fertilisers, pesticides, seeds and diesel, assured marketing and export of agro produce at price linked rates besides revitalising its age old canal irrigation system as it contributes nearly 70% of wheat and 40% rice to the national pool.

RETURN OF THE LAND ACQUIRED

A land once acquired for public purpose or for a company under the Land Acquisition Act, 1894 by state cannot be returned to the original owners. In *State of Kerala v. M. Bhaskaran Pillai*⁴¹³ the Supreme Court held that when the land has been acquired for public purpose, sale of unused to the erstwhile owner is improper. Such land should be put to public auction and the amount fetched can be better utilised for the public purpose envisaged in the Directive Principles of State Policy of the Constitution. However, in *Ramniklal N. Bhutta v. State of Maharashtra*⁴¹⁴ the Supreme Court didn't find any fault with the municipal corporation giving up a part of land proposed to be acquired under a private treaty with the persons interested. In absence of the material to show that the purpose stated in the notification was not true or real, the acquisition of the remaining land cannot be struck down on the ground of malafides. But the Land Acquisition Amendment Bill, 2007 is also speaking for the returning of the land to the original owners if the purpose of acquisition is not satisfied. But, the *Land Acquisition Manual*, a delegated legislation of Parliament which has the force of a statute, under section 55, clearly states that any land not required by any company, railway or otherwise, shall be relinquished and returned to the original owners or their heirs.

⁴¹³ AIR 1997 SC 2703; (1997) 5 SCC 432.

⁴¹⁴ AIR 1997 SC 1326; (1996) 1 SCC 134

PROPOSED SCHEME FOR THE CORPORATISATION/ ACQUISITION OF LAND AND DISPLACEMENT

Corporatisation is based on four factors- land, labour, capital and entrepreneurship. Capital gets its reward with dividends and capital appreciation; entrepreneurs get salaries and fat annual bonuses, labour in wages and ESOp (Employees Stock Options) which give them perpetual income. The landowners in most of cases get only one time compensation. It is nothing but merely robbing of the landowners or peasants to satisfy the will of the corporate bodies. The acquisition laws must necessarily ensure that the private owner is suitably compensated. The *just compensation* clause in the Fifth Amendment to the Federal Constitution of the USA says, that *such laws should also ensure that the powers of acquisition can be exercised only when the pain and suffering of a person being deprived of his property is overwhelmingly outweighed by the public good sought to be achieved by the acquisition. Such laws should also ensure that no private owner of property is deprived of his life or livelihood in the process of acquisition if the land in question forms his only source of economic sustenance.* As long as farmers have their sickle, they will be peaceful. But if their sickle is snatched from their hands, it will be replaced by a gun. In West Bengal, 63% of the land is agricultural land, 13% of land is forest land, 23% is used for township and industries while only 1% of the land is the fallow land.⁴¹⁵ Again, the government after duly implementing the ceiling laws distributed the excess land among the landless people intending to do agricultural works in the form of 'patta'. Thus, today, at the instance of industrialisation, acquisition of land is inevitable. A person who is unwilling to part with his land mustn't be evicted at the cost of his livelihood. If he is, there is bound to be

⁴¹⁵ Statement of Mr. Buddhadeb Bhattachariya, the Chief Minister of West Bengal at CPI(M) Party Congress, Coimbatore, 1st April, 2008. Reported in the Ananda Bazar Patrika, 2nd April, 2008.

trouble. Today, the Land Acquisition Act, 1894 provides provision for payment of compensation for the acquisition of land. But, still the land losers, on acquisition, suffer a lot as the scheme of compensation has some drawbacks as under-

1. The relevant state government and the corporate bodies must pay attention to choose uncultivated, barren, lands for the setting up of their projects and the government must facilitate this by providing the necessary infrastructural facilities in those lands. Prime farmland must be conserved for agriculture except under exceptional circumstances, provided that the agencies that are provided with agricultural land for non-agricultural projects should compensate for treatment and full development of equivalent degraded / wastelands elsewhere. The appropriate government acquisitioning land should hand over the land to the corporate bodies only when the entire facilities are ready for the 'would be' displaced people. At this, the decision of creation of land bank by the state as well as, the declaration of rail land bank for laying down the tracks are very welcoming steps taken by the State of West Bengal and the Indian Railways respectively.
2. For non- agricultural purposes, as far as possible, land with low biological potential for farming would be earmarked and allocated. State governments would be advised to earmark lands with low biological potential such as uncultivable land, land affected by salinity, acidity, etc., for non-agricultural development activities, including industrial and construction activities.
3. No ownership of the land to the corporate bodies on acquired land. On acquisition, the land should be transferred the same

land on lease to the relevant corporate bodies/ developers.⁴¹⁶

In addition to this, on sharing land the government should secure a percentage of shares in the relevant industry.

4. While acquiring the land, the states should acquire at least acquire land more than the company requires after scrutinising the company's requirement in details because the construction of the rehabilitation site with all necessary facilities and keeping in mind the area of land required to ensure the continuation of agriculture to the people who do not want to shift to industrial life. If the land acquired for 'public purpose' is not coming up with the proposed project for a long time, the relevant land may be used for agricultural activities by the '*persons interested*' on contract with the respective local bodies for a very short period and the respective local bodies should allot land to them as per the norms set by the West Bengal Land Reforms Act, 1955 on the principles of the distribution of land.
5. The compensation offered is just the current value of the property when the notification is pronounced, but the experience shows that, once the project is set up on the land as acquired, the value of the land so acquired becomes multiple times to the price at which it was acquired. Thus, the framing of separate comprehensive schemes for compensation and resettlement package for the acquisition of land for setting up of the project of corporate bodies for commercial purposes. It may be securing them for the projects of 100 days works in the area or near by and this payment may be made in advance for at least 1 year. While, in Singur Rehabilitation Package, the government announced

⁴¹⁶ Roopam verma & Kanupuriya Bhargava; Land Acquisition for SEZ, Questioning the validity of Government Power to acquire land; 2007 AIHC(All India High Court) Jour./ 11 XI at pg 164.

the payment of 300 days under the NREGS at a time. It should be at least 100% because once such acquisition takes place, the land value goes in multiples. In cases where the non- corporate bodies to use the land for non- commercial purposes like government offices, schools, The amount of solatium should be greater than what ever is suggested under the R& R Bill, 2007. Again, in case of construction or expansion of highways, railways etc. the '*persons interested*' must be provided with land maintaining status quo as much as possible regarding the types of interests they had with the land prior to the acquisition. In addition to these, duly attracting private players to set up the wayside amenities like- *hotels, parking lots, snack bars, restaurants, restrooms for short stays, petrol pumps and kiosks* along the respective stretches and thereby facilitate the landlosers to get engagements and also giving preferences in setting up of godown, cold chains etc.

6. Considering the skewed ownership of land, it is necessary to strengthen implementation of laws relating to land reforms, with particular reference to tenancy laws, land leasing, distribution of ceiling surplus land and wasteland, providing adequate access to common property and wasteland resources and the consolidation of holdings.
7. The present practice of paying a lump sum amount for the land purchased or acquired, the livelihood of the people, basically, who are illiterate, ignorant and dependent on that very land is taken away which is not safe and unjustified, as they mostly do not know the proper use of this sum of money and hence, there lies sheer possibility of misusing the sum received in the way of paying compensation which in many cases causes the distress in future. At this, to ensure the livelihood security of such people, the government should

take steps. Some of the corporate bodies prefer the allotment of share of the relevant company in terms of the compensation to be paid to the displaced. But there is sheer possibility of incurring loss of the investors in the stock as it fluctuates with the Stock markets which a farmer can not bear with. At this, on creation of a separate fund, if the government regulates the same at the interest of the landlosers and a monthly benefit is given to them in the way of starting of pension on retirement from agricultural works, this can be a good option in this regard.⁴¹⁷ Thus the issue of income and livelihood security should be maintained in the way as under-

- a.** A certain portion of the compensation money (1/3; 2/3, 1/2; 3/4)th on the basis of the agreement on due consultation with the displaced people) of the whole amount should be deposited with a financial institution (may be the Central Relief and Rehabilitation Fund or any special fund created for the purpose of rehabilitation of the displace persons) to be monitored by the renowned fund managers to get the maximum gain from which the Project Affected People (PAPs) will get monthly benefit.
- b.** The rest of the sum should instantly be given on acquisition of land so that they may grow the profession of their choice may be agriculture or any other profession of their choice.
- c.** The very fund again should include- **(i)** a certain percentage of yearly profit where the practice of Jharkhand⁴¹⁸ may be a model; **(ii)** the interest on the

⁴¹⁷ Pranab Bardhan, The Ananda Bazar Patrika; 17th March, 2009 at pg. 04.

⁴¹⁸ Jharkhand has secured the sharing of 1% of profit of the project among the land loosers to project: Published on 2nd august, 2008; Ananda Bazar Patrika at pg. 9.

debentures, if allotted on purchase or acquisition on the difference money i.e. the price at which the land was acquired and the price of the land after the corporate body starts operation. **(iii)** the amount charged in terms of additional duty/ tax for such enhanced value, at least at the time of the subsequent transfers of land and sums so collected should be transferred to the said fund to enhance the amount. **(iv)** the allotment of company's share like the Salboni Model, has been put alternative to the allotment of debentures to that fund to give momentum to the monthly benefit. At this, on creation of a separate fund, if the government regulates the same at the interest of the land losers may be a good option in this regard.⁴¹⁹ At this, the government is to manage the risk of stock market while the land losers will remain sustained livelihood. Again, all the people of whatever age should be covered under the scheme. It will allow the land losers to have a sustained livelihood.

- d.** If the very corporate body is not appointing the local people, then there should not be any relaxation of tax. Again, the difference money in terms of tax, in case of not non appointment of local people and the tax amount relaxed should go to the said fund from which the landlosers will get monthly relief.
- e.** Experience shows in many cases that once people get money of big amount, out of selling the land, they spend most of their money over liquor and die as cycle rickshaw puller or even beggar. A well organised consultancy and training programme should be organised by the government may be arranged to

⁴¹⁹ Pranab Bardhan, The Ananda Bazar Patrika; 17th March, 2009 at pg. 04.

secure proper utilisation of the fund so realised by the victims.

f. Further, the very corporate body should compulsorily be involved in various social infrastructural development activities in the areas nearby.

8. The Act doesn't provide the replacement value including the cost of shifting to the persons interested. The scheme of compensation generally offered, doesn't contain the proper replacement value of the property e.g. a person was having a running grocery in the area he is not provided with a grocery where the displaced people start dwelling on displacement. Again neither the Land Acquisition (Amendment) Bill, 2007; the National Resettlement & Rehabilitation Bill, 2007 nor the National Resettlement Policy, 2007 do not prescribe such benefits. In this regard the following may be submitted-

- i.* The data of entire lands in the state regarding the nature of the land to be prepared with utmost priority;
- ii.* The annual earning of the cultivators of those land;
- iii.* Preparation of land map with their characters and constituting of land bank for the state. At this, Tamil Nadu, model may be a guide. Recently, following the same the Haryana State Industrial and Infrastructure Development Corporation (HSIIDC) has drawn up a plan for crating a land bank of about 17,000 acres for setting up new industrial estates and infrastructure projects which include expressways, model industrial townships, clusters and dedicated theme parks etc in the state. Very recently the government of West Bengal has finally decided to buy or acquire land at

strategic allocations with bank loans to create a land bank for industrial projects in the state.⁴²⁰

- iv.** Again, the families whose lands have been acquired should be secured to take the vocational or technical education through the introduction of quota system so that the technical hand, the industries require, can be met up by them.
9. Involvement of Panchayats and the opposition parties in the acquisition process from the fixing of the price of land along with a detailed counselling of the owners regarding the pros and cons of the possible facilities to be rendered in the proposed project which will smoothly build confidence and consensus for the setting up of the project.
10. Under the L.A. Act, 1894, there is no guarantee of job or alternative means of livelihood in the project after starting the operation after duly training the people whose land is so acquired. The corporate body should create job opportunities for the local people. At least one member of the family whose land has been acquired must be provided with job after duly training him in the very project, provided, the very person is lacking the required skill and qualification. This issue though has been discussed into the National Rehabilitation and Replacement Policy, 2007 but with insufficient description of scheme to undertake on this point. It may be so that the relevant acquisitioning body is not in a position of providing job to the affected people due to the some reason. The state government's declaration of relaxing tax norms on the issue of appointing the localites is a welcome move. At this, some relaxation on point of qualification is desirable. Again, the people not being engaged in the establishment should be

⁴²⁰ Reported in The Statesman: 11th December, 2008 at pg. 10.

provided with the commercial site near the project area if they have not shown interests in cultivation.

11. There is no scheme for providing the alternative land of same nature nearby through a preferential treatment in giving 'Patta' to the people near the project area atleast to the people who do not have any other skill or who are not willing to involve themselves into some other works by which they can earn livelihood in alternative means.
12. Presently, the Act the power of execution of acquisition is vested with the Collector of the relevant District. At this, to ease the process of acquisition, a committee may be formed consisting of the local MLA or MLAs, representative or representatives of opposition in the relevant area and such other persons as the Collector deems fit who will monitor the entire acquisition process starting from the fixation of price of the land to be acquired till the entire process of acquisition is complete.
13. The government following the Norway model should enact the CSR⁴²¹ Act to compel the corporate bodies to undertake social activities of various natures. During the corporatisation of land, the very corporate body should atleast maintain the followings-
 - Starting and running of the various socio- economic activities and community development programs.
 - Providing health and medical facilities to the localites as a part of the Corporate Social Responsibility.
 - The very corporate body should pay attention to educate and initiate skill development programs of the children of the Project Affected Peoples (PAPs).

⁴²¹ Corporate Social Responsibility is the continuing commitment by business houses to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large.

14. All these activities require utmost transparency of the officials. Finally, I have strong reservation over the issue of transferring the land once acquired by the state for some public purposes if the very project is in the cold storage. Again, the issue of direct purchase of land by the corporate bodies is objectionable as it may cause adverse impact on the people.
15. The state needs to introduce 'Demand oriented courses' in the it is so that he youths get jobs easily or are equipped to start their enterprises. Keeping this in mind the Planning Commission⁴²² has approved the proposal of establishing 50,000 training centres in the remote areas of the country to supply the skilled labourers required for the industries.
16. Following the conferment of land rights to women under the Hindu Succession (Amendment) Act, 2005, the provision of appropriate support services to women farmers has become urgent.
17. Joint *pattas* for both homestead and agricultural land are essential for empowering women to access credit and other services.
18. The system of issuing land pass book may be introduced in which every details of the land including the details of buying and selling of land should be mentioned.
19. The Land Acquisition Act would be reviewed with particular reference to the assessment of compensation. Further, the commitment under the existing re-settlement policy of the Central / State governments would be fulfilled in letter and spirit. In addition to these, the speedy disposal of the claims of the land losers regarding rehabilitation and resettlement.

⁴²² Reported in The Ananda Bazar Patrika: 16th February, 2009 at pg. 03.

The Right to Property actually flowing from Article 300A is a human right.⁴²³ Land is one of the most critical and costly input for the setting up of an industry. The industrialisation agenda thus, needs to be placed in the larger context of overall public welfare. There is a need to have a balance between private profits, personal initiative, on the one hand and the state or central government's largesse, concessions and public good on the other. Unfortunately, this has surfaced at a time when we are moving into the election phase and a large chunk of our political class is going to remain preoccupied with the election. Here, the polity needs competent capacities for honest bargaining at the cost of democratic arrangement. At the same time, the state requires to ensure its policy instruments recharged with their democratic obligations. What we want is a 'complete, transparent and flexible land acquisition policy' which can help both the investor and the land owner. On a case to case basis, a compensation package-land for land, jobs, share of profits or royalty will be mutually advantageous. Further, industry would like to see a political consensus evolve on the land acquisition issue so that irrespective of which party is in power, the projects without a hitch or political vendetta. Through allowing a person to purchase 70% of land through negotiation under the Land Acquisition Amendment Bill, 1894 the government perhaps wishes to privatise the welfare activities which in turn may result into grave injustice. At this juncture, being driven by the profit motive, either they will not take up such activities or such enterprise will be priced so high that the intended beneficiaries (the small and marginal farmers) will be excluded. However, the principle of *minimum displacement, non-displacing alternatives, Social Impact Assessment*, the

⁴²³ Lachhman Singh v. Jagat Ram (2007) 10 SCC 448.

provision for the institution of *Ombudsman* for the redress and grievances and the constitution of the *National Rehabilitation Commission* are some the unique contribution of this bill.

CHAPTER VI

IMPACT OF CORPORATISATION OF SEED ON FARMER'S RIGHT

A farmer possesses the inherent rights over tilling, rearing and production. Production includes the production of crops and plants as well. Among the means of production of plant seed is the most common means of reproduction. Traditionally the farmers had been involved in producing or collecting seeds after the harvesting is over for the next phase of cultivation. A farmer is not merely a cultivator but also a conservator of all agricultural gene pool. They assert their right to seed through the Community Intellectual Rights (CIRs). As the time advanced, with the growing concern of the people regarding the security against crop failure, diseases and pest attacks, the people started to find out the ways to how the agricultural production can be enhanced and the food security can be achieved. So the concept of GM crops came in. Again, with the tight norms of UPOV; TRIPs and TRIMs under the WTO the farmers' right over seed is facing tough challenge against the breeder's right backed by the corporate bodies. The concept of corporate activities in seed sector is the west in origin. After the Plant Patent Act, 1930 in the USA the seed industry started flourishing. This line of approach has been adopted by other countries as the time elapsed. However, for farmers the right to seed is a positive right and not a negative one. It is a fundamental right, not a concession.⁴²⁴

FARMER'S RIGHT TO SEED

The concept of farmer's right had its origin in the FAO International Undertaking on Plant Genetic Resources, 1989 in Rome. The Resolution defined farmer's rights as *"rights arising from the past, present and future contributions of farmers in conserving,*

⁴²⁴ Vandana Shiva, Agricultural Biodiversity, Intellectual Property Rights and Farmer's rights; Economic and Political Weekly, June 22, 1996, pg1622.

*improving and making available plant genetic resources, particularly those in centres of genetic diversity. These rights are vested in the international community as trustees for present and future generations.*⁴²⁵ For farmers the right to seed is a positive right and not a negative one. Presently, in West Bengal, four types of seeds are available- *Foundation seed, Breeder seed, Certified seed, and Truth Level seed*. At time, after independence, India's policy on plant varieties and seeds were the common heritage of mankind. Agriculture, especially the seed farmer relationship in India has been passed changed with the following phases- the Classical age (starting from the time immemorial); the age of HYV seeds (The Green Revolution beginning in 1967); Age of GM seeds (starting from late 90's) and Organic cultivation (very recently started).⁴²⁶ Before 1967, India was not self-sufficient in food but the green revolution has changed the scenario. The HYV seeds recognising the interest of the breeders welcomed the corporate bodies into seed sector in the form of the breeders and in other forms. However, the farmers have the following important rights-

- a. ***Farmer's right to produce own seed:*** - Mostly, the seed required for Indian farming is created by farmers themselves. When it comes to seeds, Indian agriculture has seen and continues to witness a variety of roles that farmers perform. Innovation by farmers began from the time of settled agriculture. Though the process of innovation by the farmers may not conform to the strict terms of the distinctness, stability and uniformity requirement, they also have definite criteria to identify improved varieties they develop. But these

⁴²⁵ Twenty-fifth Session of the FAO Conference- Rome, 1989, Resolution 5/89.

⁴²⁶ Organic farming is an ecological production management system that promotes and enhances biodiversity, biological cycles and soil biological activity. It is based on minimal use of off-farm inputs and on management practices that restore maintain and enhance ecological harmony. [The National Organic Standards Board of the US (1996)]

innovations are rarely recognised, primarily because of the nature of the farmer's process of innovation. Farmers do not breed in ideal laboratory conditions, but on actual knowledge of the environmental conditions through natural selection and continuous evolving process. While some farmers and farming communities have been breeders of seed varieties. Indian farmers have evolved many varieties those are resistant to salt, flood, draught etc.⁴²⁷ Again, it is the farmer who has safeguarded the tremendous biodiversity that breeders use as raw material. There have been various efforts at the international level for recognizing the contribution of the farmers. The UNCED provides for the establishment of a global trust fund for genetic resources primarily intended to support programmes relating to capacity building for germplasm conservation by rural community.⁴²⁸ India is the first country which has included farmer's right in its protection of plant varieties. Most of the farmers are seed producers. They mostly save seeds from their own crop to be re-used. Many farmers also engage in seed exchange and thereby meet their varied needs. Farmers are also consumers as they buy seeds from companies and traders. The farmer's rights to sale, reuse and develop seeds and plant materials is going to be hampered⁴²⁹.

b. Farmer's right to preserve own seed: - A farmer is not merely a cultivator but also a conservator of all agricultural gene pool. It is a fundamental right, not a concession⁴³⁰. They assert their right to seed through the Community Intellectual

⁴²⁷ Elizabeth Varkey, Law on Plant Varieties Protection; The Eastern Book Company, Lucknow; First edition, 2007; at pg. 146.

⁴²⁸ Chapter 14, Agenda 21.

⁴²⁹ Dr. (Mrs.) Harpal Kaur Khara; Patents and sui generis system for the protection of plant varieties: A threat to food security and health care; CILQ 2000, vol. 13, pg 190

⁴³⁰ Vandana Shiva, Agricultural Biodiversity, Intellectual Property Rights and Farmer's rights; Economic and Political Weekly, June 22, 1996, pg 1622.

Rights (CIRs). Since the time immemorial, the farmers were involved in the development of new and productive varieties with better qualities of crops. Indian agriculture is mainly run by seed saved from farmers' own fields, very often by women in farming communities who use their traditional knowledge and skills in selecting and saving seed. In *Mosanto Co. v. Swann*⁴³¹ the defendant admitting the fact that he saved and replanted seeds generated from crops produced by seed containing patented technology contented that the right of farmers to save seeds of plants registered under the Plant Variety Protection Act permits defendants to save seeds subject to plaintiff's utility patent. The Court concluded that the defendant's use of plaintiff's patented biotechnology was without authority and the use of a patented product without authority constitutes patent infringement. However, the full Court of Federal Court of Australia in *Cultivaust (P) Limited v. Grain Pool (P) Limited*⁴³² observed that a person engaged in farming activities (a farmer), who legitimately obtains propagating material from plants grown from the propagating material so purchased and may condition that further propagating material for the farmer's use for reproductive purposes and may reproduce that further propagating material. The farmer may do those some acts in relation to third generation of propagating material harvested from the second generation of propagating material. The farmer will not infringe plant breeder's right by doing so.

c. Farmer's right to exchange the seed: -. Seed exchange between farmers at the local level is based on honesty and the basic rules of being a good neighbour. Everyone knows the farmer providing the seed and how good his or her seeds

⁴³¹ 308 F. Supp. 2d 937, 941 (ED Mo. 2003).

⁴³² [2005] FCAFC 223, Full Court of Federal Court of Australia.

are. But, as we increase the area of seed exchange, risk increases. The quality of seed is not visible to the naked eye and the market is soon invaded by fraudsters who sell any old seed. Industrial seed producers who want to control markets have used the excuse that the anonymous consumer needs protecting and that fraudsters need to be kept at bay. It is in the name of these objectives that the state, together with the corporate seed producers, put in place seed laws to ensure that the corporates can get, and maintain, an absolute monopoly on seed production.

CORPORATE ENTRY INTO SEED SECTOR

The corporate entry into seed sector in India is associated with the age of Green Revolution. This, at the same time, is leading to the losing of a number of traditional varieties and endangering the genetic base of the world along with pushing the farmers into the hands of big seed companies to satisfy their lust. The Green Revolution involved the development and introduction of the high-yielding varieties (HYV) of seeds and low cost chemical fertilisers and insecticides. The Green Revolution changed India's position from a food deficient to food self-sufficient state. It involved the development and introduction of the high-yielding varieties (HYV) of seeds and chemical fertilisers and insecticides. However, the concept of corporate activities in agriculture, especially seed and its allied sectors firstly took place in the USA.⁴³³ The, corporate entry

⁴³³ In the beginning, there was widespread objection in the United States to the granting of patents to plants due to the reasons like non-compliance with the requirements of patentability e.g. plants were thought not amenable to the written description requirement of the patent law, product of nature concept etc. [*Diamond v. Ananda Chakraborty*, 447 US 303 (1980)]. In 1889, the Commissioner of Patents rejected the application for patent to cover a fibre identified in the needle of a pine tree on the ground that ascertaining the composition of the trees in the forest was "not patentable invention, recognized by the statute, any more than to find a new gem or jewel in the earth would entitle the discoverer to patent all gems which should be

into seed sector demanded the introduction of stricter norms of protection of seed and plant varieties as developed by them. At the same time, the protection of farmer's right to preserve and protect his own seeds is also important because for farmers, the right to seed is a positive right and not a negative one.⁴³⁴ But unfortunately, after independence, India's policy on plant varieties and seeds were the common heritage of mankind. The Green Revolution recognising the interest of the breeders welcomed the corporate bodies into seed sector started to give birth to a number of conflicts between the farmers and the corporate bodies on a number of issues. Today, the IPR⁴³⁵ regime, while the Plant Genetic Resources are considered as one of the valuable economic resources is further adding fuel into this conflict and arising the following consequences -

- The concept of farmer's right is basically contradictory to the principles of intellectual property. While farmer's right is a retrospective reward of unlimited duration for the

subsequently found". The Commissioner further added that it would be 'unreasonable and impossible' to allow patents upon the trees of the forest and the plants of the earth. [*Latimer, ex p., 1889 CD 123 (Comm'r Pats)*]. Later on, this doctrine was followed by the United States Supreme Court in the *American Fruit Growers case*, 283 US 1 (1931) and the *Frank Brothers Seed Co. Case* 333 US 127 (1948). However, in 1891, in a Report to the American Association of Nurserymen, it was said that "when the time comes that men breed plants upon definite laws and produce new and valuable kinds, then plant patents may possibly become practicable." However, the rediscovery of Mendel's laws made it possible for the breeders to ask for intellectual property protection for plants. At this juncture, a Bill containing the intellectual property protection for plants was brought before the House. But the Bill did not find its passage before the House Committee at that time. However, in 1930 the Plant Patent Act was passed by the Government. With the passage of time we see the other countries are following the line of the US regarding the protection of plant varieties.

⁴³⁴ A farmer is not merely a cultivator but also a conservator of all agricultural gene pool. It is a fundamental right, not a concession. They assert their right to seed through the Community Intellectual Rights (CIRs). Since the time immemorial, the farmers were involved in the development of new and productive varieties with better qualities of crops.

⁴³⁵ Intellectual Property Rights (IPR) as the term suggests, the rights of intellectuals over their informations, thoughts, ideas, beliefs, especially, regarding the new inventions and discoveries. It disallows the persons to imitate the aliens by giving exclusive right to the holders to commercially exploit the same for certain period.

conservation of plant genetic resources, the intellectual property rights are intended to provide incentive for a limited period as a reward for the past innovation. Again, it is impossible to fulfil the criteria of distinctiveness, uniformity and stability (DUS), plus value for cultivation and use (VCU), required for registration on the national seed catalogue, without using breeding techniques which have become more and more sophisticated and are not available to farmers.

- It is the farmer who has safeguarded the tremendous biodiversity that breeders use as raw material. Thus, if the breeders develop a new variety from the existing genetic resources have a right of ownership and control by virtue of labouring to develop a new variety, the farmer has also a right for identifying, conserving and developing a traditional variety.⁴³⁶ But unfortunately, in these days, with the tightened Plant Breeders Rights, this field is increasingly coming under the domain of large corporate concerns (MNCs) which is a monstrous thing as the farmers' right over their seed has been made the subject of monopoly. By January, 2005 the picture come before us is as under⁴³⁷-

Table- 5
Corporate Monopoly on Seed

Sl. No.	Name of the crop	Name of the corporate body having control	Nature of control
01.	Beans		controls 31% of the

⁴³⁶ Elizabeth Varkey, Law on Plant Varieties Protection; The Eastern Book Company, Lucknow; First edition, 2007; at pg. 146.

⁴³⁷ http://www.non-gm-farmers.com/news_details.asp?ID=2549 visited on 5th May, 2009 at 5.36 PM

			global seed market
02	Cucumbers	Monsanto	controls 38% of the global seed market
03	Hot Pepper		controls 34% of the global seed market
04	Sweet Pepper		controls 29% of the global seed market
05	Tomato		controls 23% of the global seed market
06	Onions		controls 25% of the global seed market

- Now the breeders⁴³⁸ are rewarded while the farmers are prevented from even to sale the seeds of protected varieties instead of older varieties. From the first hybrids to modern biotechnology, the plant breeder has left the field for the laboratory. In this way, the plant breeder is imposing on farmers standardised crops which have been perfected in the laboratory and at research stations. A plant breeder cannot meet DUS (distinctiveness, uniformity and stability) and VCU (value for cultivation and use) criteria without the use of fertiliser, pesticides, mechanisation and irrigation to ensure conditions are stable and to evermore increase yield. Therefore today's commercial varieties are selected for and by these techniques for industrial agriculture, without which farmers cannot produce crops from these seeds.
- Under the corporate breeding strategies seeds so developed, susceptible to diseases can give a good yield only under ideal conditions. The special corporate drive is to engineer seeds so that they can carry in built genetic tolerance only for the

⁴³⁸ A breeder is a person who bred several successful varieties.

pesticides they produce but not to others. Thus where they are able to push their traditional seed sale, their pesticides will automatically be sold out otherwise they will fall prey of diseases. Again, the Royalty payments to the breeders are pushing up the price of such seeds. Thus, being not conducive to the traditional farmers, it cannot be translated into an overall societal benefit for all. Agriculture is becoming a capital intensive sector where the small and marginal farmers will have no place.

- The seed producers having the control over the supply of their varieties may fix higher price for such seeds. But there are many farmers who wish, for a variety of reasons, to grow crops not listed in the corporate seed catalogue. They may not have the money to pay all the costs of the industrial production system that the seeds were bred for. They may be against buying these seeds or they may be attached to a traditional way of doing things. They may be looking for more autonomy or to develop alternative farming systems (organic, peasant, low-input, regional, etc). Or they may simply not find what they need in the corporate seed supply system.
- Finally, over activism/ exploitation of the genetic resources by the corporate bodies will lead to the loss of a number of traditional varieties and endangering the genetic base of the world.

A farmer possesses the inherent rights over tilling, rearing and production. Production includes the production of crops and plants as well. The way of production of plant may be different on the basis of the system of reproduction including the grafting of seeds. Community rights especially (CIRs) is an important balancing concept to this point. At this, the Keystone International Dialogue on Plant Genetic Resources between 1988 and 1991 offered suggestions for developing recognition and reward system for

informal innovation represented by the concept of farmer's right. The knowledge and rights of local community needs to be strengthened in order to conserve the agricultural biodiversity. The Italian 2001 seed law establishes the right to protect traditional farming practices. On this very issue the judicial decisions are twofold-

Position Before The GM Crops Emerged: - In the beginning, there was widespread objection in the United States to the granting of patents to plants due to the reasons like- non- compliance with the requirements of patentability e.g. plants were thought not amenable to the written description requirement of the patent law, product of nature concept etc. [*Diamond v. Ananda Chakraborty*⁴³⁹. However, in *Asgrow Seed Co. v. Winterboer*⁴⁴⁰ the petitioner was the holder of PVPA certificates protecting two novel varieties of soybean seed, which it calls A1937 and A2234. The respondents are the Iowa farmers who in addition to growing crops for sale as food and livestock feed, derived a sizable portion of their income from 'brown bag' sales⁴⁴¹ of their crops to other farmers to use as seed. At this, Asgrow brought suit seeking damages and a permanent injunction against sale of seed harvested from crops grown from protected varieties. The complaint alleged infringement- for selling or offering to sell Asgrow's protected soybean varieties; for sexually multiplying Asgrow's novel varieties as a step in marketing those varieties for growing purposes; for dispensing the novel varieties to others in a form that could be propagated without providing notice that seeds were of a protected variety. At this, the defendant

⁴³⁹ 447 US 303 (1980).

⁴⁴⁰ 513 US 179 (1995).

⁴⁴¹ Brown Bag sale: - A brown bag sale occurs when a farmer purchases seed from a seed company, plants the seed in his own fields, harvests the crop, cleans it, and then sells the reproduced seed to other farmers (usually in nondescript brown bags) for them to plant as crop seed on their own farms.

contended that their sales fell within the statutory exemption from infringement liability found in 7 USC Section 2543, entitled 'Right to save seed crop exemption'. At this, the US Supreme Court held that a farmer who meets the requirements set forth in the proviso to Section 2543⁴⁴² may sell for reproductive purposes only such seed as he has saved for the purpose of replanting his own acreage. If a farmer saves seeds to replant his acreage, but for some reason changes his plans, he may instead sell those seeds for replanting under the terms set forth in the proviso, or of course sell them for non-reproductive purposes under the crop exemption. The United States Court of Appeals for the Federal Circuit again interpreted the farmer's exemption in *Delta and Pine Land Company v. The Sinkers Corporation*⁴⁴³. In this case the plaintiff was the owner of numerous Certificates of Plant Variety Protection issued by the Plant Variety Protection Office of the United States Department of Agriculture, including PVP Certificates for many varieties in cotton. Here the plaintiff claimed that the defendant infringed their rights by- (i) transferring possession of protected seed without Delta's authority; (ii) failing to mark bags of protected seed with a notice that they contained protected seed; and (iii) funnelling large quantities of

⁴⁴² 7 USC S.2543 reads, "Except to the extent that such action may constitute an infringement under sub-sections (3) and (4) of S. 2541 of this title, it shall not infringe any right hereunder for a person to save seed produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section:

Provided, that without regard to the provisions of S. 2541(3) of this title it shall not infringe any right hereunder for a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State Laws governing the sale of seed as may be applicable. A bonafide sale for other than reproductive purposes, made in channels usual for such other purposes, of seed produced on a farm either from seed obtained by authority of the owner for seedling purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seedling purposes shall not constitute an infringement....."

⁴⁴³ 50 USPQ 2d, 1749 (Fed. Cir. 1999).

protected seed through its facilities with knowing indifference to the lack of authority from Delta and the absence of an exemption, thereby actively inducing infringing acts by others. At this, the District Court found no infringement and dismissed all the three claims. The United States Court of Appeal also affirmed the District Court's dismissal

Position after the Emergence Of The GM Crops: - The concept of genetic engineering and its application in seed sector is further aggravating the picture. Presently, in a tight IPR regime, a number of MNCs into the seed sector through injecting a few economically important traits like high yielding or resistance to a particular disease etc. are improving the crops. Through the agreement⁴⁴⁴, they encroach into the farmers' rights of breeding, selecting, saving, using, exchanging/ bartering, distributing and selling of seeds. In recent times, the Multinational seed company Monsanto has been filing series of cases (73 civil lawsuits) against farmers challenging that their rights have been infringed by the farmers and send a stern message in last past five years. Now, let's have a look over the most important among them. In *Mosanto Co. v. McFarling*,⁴⁴⁵ McFarling executed a technology agreement in connection with the licence of 1000 bags of Roundup Ready soybean seed in 1998. McFarling conceded that he saved 1500 bushels of seed from his 1998 crop, enough to plant approximately 1500 acres, and that he replanted them in 1999. He subsequently, saved 3075 bags of soybeans from his 1999 crop, replanting them in 2000. In this case, on plaintiff's complaint, the district court granted a preliminary

⁴⁴⁴ "to use the seed containing Monsanto gene technologies for planting a commercial crop only in single season; to not supply any of this seed to any other person or entity for planting and to not save any crop produced from this seed for replanting, or supply saved seed to anyone for replanting and to not use this seed or provide it to anyone for crop breeding, research, generation of herbicide registration data or seed production".

⁴⁴⁵ 302 F. 3d 1291 (Fed. Cir. 2002).

injunction against McFarling prohibiting him from replanting the seeds he saved from crops grown from Monsanto's patented soybean seed. On appeal, McFarling contended that Monsanto has committed patent misuse because it has impressibly tied an unpatented product to a patented product. By prohibiting seed saving, Monsanto has extended its patent on gene technology to include an unpatented product, the germplasm or God-made soybean seed, which is not within the terms of the patent. However, it didn't argue that he can not purchase soybean germplasm without the genetic trait that brings the soybean within the ambit of Monsanto's patent. It was also brought before the court that no license was granted to the seed companies to purchase, make or use the patented gene sequence prior to its insertion into the seed. At this, the Federal Circuit Court found that McFarling's argument centred on the need to replant the entire seed, including the genetic modifications at a technology fee in conjunction with replanting of the second-generation soybeans. It was again observed by the court that McFarling has effectively argued that he should be granted a compulsory licence to use the patent rights in conjunction with the second-generation Roundup Ready soybeans in his possession after harvest and declined to concur with the tying argument of McFarling. On 3rd March, 2003, the US Supreme Court denied the petition for writ of certiorari. Again in *Mosanto Co. v. Swann*⁴⁴⁶ the defendant admitting the fact that he saved and replanted seeds generated from crops produced by seed containing patented technology contented that (i) the 1998 Technology Agreement violates the doctrine of patent exhaustion or first sale; (ii) the right of farmers to save seeds of plants registered under the Plant Variety Protection Act permits defendants to save seeds subject to plaintiff's utility patents; (iii) the doctrine of patent misuse precludes plaintiff

⁴⁴⁶ 308 F. Supp. 2d 937, 941 (ED Mo. 2003).

from ascertaining its patent infringement claims. At this, after considering all the issues the Court stated that both the soybean and the cotton samples from the defendants' crops for the year 2000, which were the infringing products; contained the chimeric gene and the enhanced promoter element covered by Monsanto's infringed patents. The Court also concluded that the defendant's use of plaintiff's patented biotechnology was without authority and the use of a patented product without authority constitutes patent infringement. Again, in *Monsanto Canada, Inc. v. Schmeiser*⁴⁴⁷ the Canadian Supreme Court held that the appellants saved, planted, harvested and sold the crop from plants containing the gene and plant cell patented by Monsanto. At this, the court upheld the validity of Monsanto's patent and on using the protected invention, the appellants infringed Monsanto's patent. Again, in another case between *Monsanto and Kim Ralph of Covington*⁴⁴⁸ the Federal court at St. Louis U.S. through the District Judge Mr. Richard Webber ordered Ralph to serve the prison for eight months and to repay Monsanto \$165,649 for about 41 tons of genetically engineered cotton and soybean seed he was found to have saved (lying about a truckload of cotton seed he hid for a friend) in violation of the agreement. The prison term for conspiracy to commit fraud is believed to be the first criminal prosecution linked to Monsanto's crackdown on farmers for violating agreements on use of the genetically modified seeds. At these, the Organic Consumers organisation in the US started a campaign against biotechmultinational Monsanto on 28th July, 2006. Sign the "Millions Against Monsanto" petition, demanding that the Monsanto Corporation stops intimidating small family farmers, stops force-feeding untested and unlabeled genetically engineered foods on

⁴⁴⁷ 2004 SCC 34, Decision dated 20th January, 2004.

⁴⁴⁸ <http://www.organicconsumers.org/ge/prison051403.cfm> visited on 5th May, 2009 at 4.34 PM.

consumers and stops using billions of dollars of US 'taxpayers' money to subsidize genetically engineered crops- cotton, soybeans, corn, and canola.⁴⁴⁹

INDIGENOUS SEEDS IN INDIA WITH SPECIAL EMPHASIS TO THE STATE OF WEST BENGAL

At the instance of green revolution in India we experienced a significant increase in the output of the foodgrains through creating a large market of the High Response Varieties (HRVs) responsive only to high doses of chemical fertilizers and pesticides. But experience shows that even if there is significant rise in yields initially, the yields tend to stagnate or rise at a much lower rate and even destabilized⁴⁵⁰ because-

- (i) the chemical fertilizers do not add to the fertility of the soil but acts as stimulants or drugs so that the land yields up it's fertility resulting in immediate bumper crops, but in finally cause the exhaustion of the land. They also destroy a host of earthworms essential to maintain the fertility of the soil;
- (ii) soils under the intensive monoculture tend to lose organic matter tend to lose organic matter and their ability to retain moisture for which it becomes more susceptible to erosion which ultimately leads to lose of the fertility and productivity;
- (iii) A very small part of the pesticides applied on the field (less than 0.1%) actually reaches on the target organism while the rest causes poisoning of land water and other other plants and animals.

⁴⁴⁹ <http://www.organicconsumers.org/monlink.html>, visited on 25th Macch, 2007.

⁴⁵⁰ Bharat Dogra, Indigenous Seeds, The Sunday Statesman: 25th October, 2009 at pg. 07.

- (iv) Again, due to green revolution, while a narrow genetic base is encouraged for further upliftment, the treasure of huge local varieties are proving invaluable for our farmers as the pest and disease susceptible varieties are allowed to be spread. The indigenous seeds being neglected, is supposed to cause serious impact on the farmers in future if such HYVs are destabilized and if their production is go down.

At this, the initiative of a voluntary organization namely, the *Basudha Voluntary Research Foundation* operating in the remote areas of Bankura is working for the revival of a number of paddy varieties which went out of sight few decades back.⁴⁵¹

SUPPORT PRICE FOR SEED

Today, seed sector has been corporatised. A number of corporate bodies are working in this line. Earlier, the farmers used to dominate the sector. They used to collect, preserve the seeds for the next cultivation after the harvest is over. Now, with the entry of the big corporate bodies, the farmers are losing control over this sector. These corporate bodies are consolidating their presence into this sector gradually. They are sensitising their seeds to a particular manures and pesticides. Thus, by this way, they are entering into these sectors in addition to their main line of business. In this way the government is also supporting them by imposing support price by fixing higher price even for the certified seeds⁴⁵² which is a violation of the farmer's right to seed by affecting the easy access of seeds. This is a violation of farmer's right over seed at the instance of corporatisation. Support price for seed may have

⁴⁵¹ Kanchan Siddiqui, Reported in *The Statesman*: 5th Nov, 2009 at pg. 14.

⁴⁵² This type of seed is produced by all farmers and in all regions.

entitled the farmers with to receive money for seed they preserved but at the same time it is making the cost of agriculture dearer for the poor farmers. The government, on allowing the corporate bodies into the seed sector, has welcomed the encroachment of farmer's right on seed in a number of ways. The last edition to this is the support price. This is an initiative undertaken following the WTO as well as important to prevent the monopoly of the farmers.

Support price and the Monopolies and Restrictive Trade Practice Act, 1969: - The Act was passed in 1969 and is designed to ensure that the operation of the economic system doesn't result in the economic concentration of economic power to the common detriment and to prohibit such monopolistic and restrictive trade practices as are prejudicial to public interest.' The very objective of this Act are-

- a. Prevention of concentration of economic power to common detriment;
- b. Control of monopolies;
- c. Prohibition and control of monopolistic, restrictive and unfair trade practices.

Under the Act, the Central Government shall establish, a Commission to be known as the Monopolies and Restrictive Trade Practices Commission.⁴⁵³ The Central Government may appoint a Director General of Investigation and Registration, for making investigation for the purposes of this Act.⁴⁵⁴ Again if, as a result of the monopolistic [Section 2(i)] or restrictive [Section 2(o)], or unfair [Section 36(a)] trade practice, carried on by any undertaking or any person, loss or, damage is caused to the Central Government, or any Government or any trader or class of traders or any consumer, such Government or, as the case may be, trader or class of traders or consumer may, without prejudice to the right of such

⁴⁵³ Section 5, the Monopolies and Restrictive Trade Practices Act, 1969.

⁴⁵⁴ Section 8(1), the Monopolies and Restrictive Trade Practices Act, 1969.

Government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage so caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the Commission may determine, as compensation for the loss or damage so caused.⁴⁵⁵ Thus, if the support price is not given by the state, the way that is open is the subsidizing the corporate bodies from the government exchequer i.e. the money paid by the tax payers as a means of compensation under the Act. In this regard we may take example of France where Agricultural subsidies have also been used to reinforce the monopoly that seed companies enjoy. In France, for example, subsidies paid to encourage farmers to grow durum wheat are only available for those buying certified seeds. On the other hand in Italy, where the *terroirs* and local growing conditions are just as important the certified variety, subsidies are given for all durum wheat varieties grown. However, the European Commission is trying to get Italy into line.⁴⁵⁶ Again, under Section 14 of the Act, if any practice substantially falls within monopolistic, restrictive, or unfair, trade practice, relating to the production, storage, supply distribution or control of goods of any description or the provision of any services and any party to such practice does not carry on business in India, an order may be made under this Act with respect to that part of the practices which is carried on in India. Monopolistic trade practice is deemed to be *prejudicial to the public interest*⁴⁵⁷ except in cases where (a) such trade practice is expressly authorised by any enactment for the time being in force,

⁴⁵⁵ Section 12(B), the Monopolies and Restrictive Trade Practices Act, 1969.

⁴⁵⁶ Guy Kastler, Seed Laws in Europe: Locking Farmers out: <http://www.grain.org/seedling/?id=343>, visited on 4th May' 2009 at 2:00 pm.

⁴⁵⁷ Section 38 the Monopolies and Restrictive Trade Practices Act, 1969.

or (b) the Central Government, being satisfied that any such trade Practice is necessary- (i) to meet the requirements of the defence of India or any Part thereof, or for the security of the State; or (ii) to ensure the maintenance of supply of goods and services essential to the community; or (iii) to give effect to the terms of any agreement to which the Central Government is a party, by a written order, Permits the owner of any undertaking to carry on to any such trade Practice.⁴⁵⁸ Failure to comply with the requirements under the Act will lead to the imposition of punishments under Chapter VIII (Sections 46- 53) of the Act. The Monopolies and Restrictive Trade Practices Act, 1969 however has been repealed and the Monopolies and Restrictive Trade Practices Commission established under subsection (1) of section 5 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved as per Section 62 of the Competition Law, 2002.

Support Price and The Competition Law, 2002: - The Corporates are further backed by the Competition Law, 2002. Under Section 3 of the Act no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. This provision is affecting the farmers by restricting their varieties at a lesser price. To check this, the government is putting support price for seed so that no farmer sale his own varieties at a lesser price. Apparently it may be looked that the farmers are benefited for support price on seed, but ultimately it is increasing the cost of agricultural production in the country and on the other hand the corporate seeds are sold at a price as they fix with no much difference with the traditional ones. In this way, the corporate seed

⁴⁵⁸ Section 32, the Monopolies and Restrictive Trade Practices Act, 1969.

producers again controlling the price of the seeds even if the Act clarifies that no enterprise shall abuse its dominant position.⁴⁵⁹ The Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India"⁴⁶⁰ with the duty to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India except in cases where there is any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country (Section 18). Again, under Section 16(1) of the Act, the Central Government may appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act. Section 32 of the Act prohibits Acts taking place outside India but having an effect on competition in India. The Act prescribes penalties under Sections 41- 48 if any person violates any direction issued or contravenes, without any reasonable ground, any decision or order of the Commission issued under sections 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act. Again, the Central Government may supersede the decision of the Commission u/ Sec 52 of the Act.

MICRO- FINANCE FOR SEED GROWTH

Today, the picture of agriculture has been changed a lot. Earlier the farmers had not been spending a pie for seed; they used to utilise the dung of their cattle in farming in place of today's chemical fertilisers; machines replaced men. Thus, in a word, the cost of

⁴⁵⁹ Section 4(1), the Competition Law, 2002.

⁴⁶⁰ Section 7(1), the Competition Law, 2002.

agricultural production has been increased exorbitantly. The price of seeds especially the HYV and the breeder's (GM seeds) has been increased in times in last few years. At this, many bankers have become cynical about lending to poor people because of the low repayments of government- subsidised loans while, the first step for the poor people on the path out of the poverty cycle is social and economic security. The agriculturists more specifically, the small and marginal farmers are poor and they are mostly deprived of getting loans from such banks. Here, there is the significance of micro- finance⁴⁶¹ as the farming community, mostly in India, are struggling due to the paucity of funds.

NABARD, being associated with the rural development and more specifically, with the agricultural sector provides policy support for various farm sector initiatives aimed at accelerating ground level credit flow by rural credit agencies for various farm related activities under investment credit with a view to increasing

⁴⁶¹ To most, microfinance means providing very poor families with very small loans (microcredit) to help them engage in productive activities or grow their tiny businesses. Over time, microfinance has come to include a broader range of services (credit, savings, insurance, etc.) as we have come to realize that the poor and the very poor who lack access to traditional formal financial institutions require a variety of financial products. Microfinance refers to loans, savings, insurance, transfer services and other financial products targeted at low-income clients. Microcredit refers to a small loan to a client made by a bank or other institution. Microcredit can be offered, often without collateral, to an individual or through group lending. The concept of Micro- finance emerged in the year 1976 in Bangladesh when the Grameen Bank was introduced which is the brain- child of Md. Yunus. In India, the reflection of the concept of Micro- finance can be partially noticed with the introduction of the Integrated Rural Development Programme in 1982. But the programme could not achieve the desired result. However, in early 90's with the wave of economic liberalisation, many banks, financial institutions other than banks, Micro Financial Institutions (MFIs) and a great number of Non- Government Organisations (NGOs) expressed interests into this sector. Another important milestone was the special drives taken by the NABARD (National Bank for Agriculture and Rural Development, India) through the various pilot projects in association of the Self Help Groups (SHGs). Again, under the Eighth and Ninth Five Year Plans, the government initiated the National Policy of giving loans in agriculture and its' related sectors. The Micro- finance programmes are linked up with the Self Help Groups (SHGs); Non- Government Organisations (NGOs); Micro Credit Institutions (MCIs); and Micro Financial Institutions (MFIs).

agricultural production and productivity and for other related initiatives. In West Bengal, since last few years, in the districts of the state a large number of SHGs⁴⁶² are forming with the help of the NABARD and some other financial organisations. As per the report of the State Institute of Panchayat and Rural Development (SIPRD) here, in West Bengal, nearly 3,50,000 SHGs are working among which 1.50 lakh of SHGs are linked with the NABARD while, 1.66 lakh groups are associated with the Swarnajayanti Gram Swarojgar Yojna (SGSY).⁴⁶³ Looking at this, on 20th March, 2007 the Micro-finance Sector (Development and Control) Bill, 2007 has been presented in the Lok Sabha to develop and control the MFOs (Societies, Co- operatives and various financial organisations). NABARD has been empowered to control the Micro- finance i.e. small credit (normally upto Rs. 50,000/- but upto Rs. 1.5 lakh in case of house loans), life insurance, general insurance and pension under the bill. Interestingly, the bill has not fixed the upper limit of interest. There are certain shortcomings in the bill. The definition of MFOs is not very clear. Again, due to the lack of proper mechanism, 90% of the loans of the country's largest MFOs have been left unpaid.

⁴⁶²A small group (15 to 20 members), voluntarily formed and related by affinity for specific purpose, it is a group whose members use savings, credit and social involvement as instruments of empowerment. Generally, the SHGs are involved in Thrift and credit activities; Participatory monitoring of the groups; Group level poverty reduction plans. There are a good number of advantages of financing through SHGs. Firstly, economically poor individual gains strength as part of a group. Secondly, financing through SHGs reduces transaction costs for both lenders and borrowers. While lenders have to handle only a single SHG account instead of a large number of small-sized individual accounts, borrowers as part of a SHG cut down expenses on travel (to & from the branch and other places) for completing paper work and on the loss of workdays in canvassing for loans.

⁴⁶³ Bhaba Roy, Yojna (Bengali) January, 2008 at pg. 31.

LAWS RELATING TO SEED

Since the beginning of agriculture, the selection and reproduction of seeds, as well as the conservation and renewing of agricultural biodiversity, have never left farmers' fields. Of course, farmers' work with seeds has been influenced by many things such as local culture, traditional medicinal systems, religion and the birth of modern science, but these never took varietal development away from agricultural production.⁴⁶⁴ The breeding and production of seeds as a profession started in Europe and then in the US towards the end of the 19th century, first within specialised farms, and then among specialised companies. This was the beginning of the separation of seed production from farming. The concept of corporate control of seed is of alien origin and a few decades ago the process started in the USA in 1930s through the recognition of the same under its patent laws. Later on the same started being recognised under the domestic legislations in various countries in Europe. But problem started when the MNCs started dominating the field and finally the globalisation of trade and commerce started giving the international character to intellectual property. At this end, the various international conventions play a very significant role.

INTERNATIONAL SCENARIO: - In the sector, the international conventions which led a paradigm shift are on the way of discussion-

1. The UPOV Conventions and the impacts thereof: - The UPOV agreement signed in the year 1961 gave strength and vigour

⁴⁶⁴ Guy Kastler, Seed Laws in Europe: locking farmers out; <http://www.grain.org/seedling/?id=343>

to the global seeds men initially under the leadership of Germany, Hungary, Italy Netherlands, Austria, UK etc. who had already introduced the system of private monopolization of plants and seeds business through legislation not only from their own countries but also from the other countries as well. The UPOV gave strength and vigour to the global seeds men or breeders to exploit the genetic resources not only from their countries but also from all available sources in the world. This convention inter alia mandates the member countries to provide protection of seeds for commercial marketing.⁴⁶⁵ This led to the shifting of seed companies from the production of seeds of fruit plants and ornamentals to that of agricultural seeds. With this the MNCs started their journey towards getting control over the genetic resources through collecting genes worldwide and creating the gene banks with the direct help of several world bodies like CIAR (*International Agricultural Research Centre*), IRRI(*International Rice Research Institute*), ICARDA(*International Centre for Agricultural Research on Dry Areas*), CIAT(*International Centre for Tropical Agriculture*), CIP(*International Potato Centre*)etc. and after channelising the same through the research process resulting a new variety and getting it in patented form sell back the same with exorbitant price. In this process many a time it so happens that the gene supplying country is not paid and even they are not excused from pricing and even they many a time don't pay a single pie as royalty for the same to the persons involved in the process. Again the UPOV Convention had been constantly revising to tighten the IPR protection over biodiversity.

One of the notable incident to this dimension is the amendment took place in 1991 which omitted the exemption clause in the original convention on Farmers' Rights to reuse the seeds.⁴⁶⁶

⁴⁶⁵ Art. 14 of the 1961 Convention.

⁴⁶⁶ Art. 14, Art.14.5(c) and Art.15.2 of the Amended UPOV Convention.

As such, the activities of the MNCs and the bodies engaged in the process of collecting and developing the genetic variations worldwide are encroaching into the areas of the enjoyment of some of the traditional rights enjoyed by some communities. As far as the record is concerned the developing nations possess the genetic basket of the world and hence this system affecting gravely to the third world countries. Article 14(5) of UPOV 1991 considers the 'researchers exemption', a compulsory exemption⁴⁶⁷ where the right of the PBRs extends to even EDVs bred from the protected variety thus bringing PBRs closer to a patent protection. Again, under Article 14(5)(c) of UPOV 1991 provides a non-exhaustive list of examples of acts that may result in the essential derivation, including the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of an initial variety, back-crossing or transformation by genetic engineering. This indicates that all acts of breeding, from the most conventional to those involving use of modern techniques, would be taken into consideration while determining whether or not a new variety is "essentially derived".⁴⁶⁸ Under UPOV 1991, the farmers right in the nature of an optional exemption, that each "Contracting Party may, within the reasonable limits and *subject to the safeguarding of the legitimate interests of the breeder*, restrict the breeders' right in relation to any variety in order to permit farmers to use for propagating purposes, *on their own holdings*, the product of the harvest which they have obtained by planting on their own holdings, the protected variety...".⁴⁶⁹

This is in sharp contrast to the earlier system under which farmers were allowed to re-use protected material without paying any royalty to commercial breeders. The new provisions allow

⁴⁶⁷ Art. 15(1)(iii) of UPOV 1991

⁴⁶⁸ See Supra note 5 at p 16

⁴⁶⁹ Art. 15(2), UPOV 1978

farmers to re-use protected material only if the "legitimate interests of the breeder" are taken care of - the "legitimate interests" being the royalty that the breeder should be paid and this meant "downgrading of the farmers privilege" and that too this is an optional and not a compulsory exemption like the breeders exemption.⁴⁷⁰

2. The Biodiversity Convention: - The Convention on Biodiversity (CBD) in 1992 has somehow advanced the IPR regime in biodiversity protection. This Convention under Art.8 (j) imposes an obligation on the contracting parties to respect, preserve and maintain the knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles for the purpose of conservation and the sustainable use of biodiversity. It again mandates prior permission of the holders of the traditional knowledge system for the wider application and also entails showing of benefits. This provision may be read as the recognition of the patent like IPR protection over the existing knowledge systems and warrant for their protection.

3. The TRIPS Agreement and The Impacts Thereof: - With the emergence of the WTO in 90's a new era in the field of international trade has began. The TRIPs agreement as suggested under the WTO is aimed at to internationalise the patent which conceptually made its emergence in the Paris Convention. Art. 27 of the TRIPs agreement requires that the Patents be made available for both processes and products in all fields of technology. This includes biotechnology as well. Under Art. 27(3) (b) the WTO member countries had been made empowered to exclude from patentability "Plants and Animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological processes" so long as members provide for the protection

⁴⁷⁰ See supra note 5 at pg. 17

of life forms, "either by patents or by any effective *sui generis* system or by any combination thereof." Again three universally recognised criteria of patentability namely, novelty, non-obviousness, and industrial application of utility has been incorporated into TRIPs under Art.27.1 which is made applicable to all inventions including biotechnological inventions. Moreover the term for the protection of patentability has been increased to twenty years.

The term 'effective' applies in terms of enforcement and protection. This formulation argues that a *sui generis* system needs to allow effective action against any act of infringement, as required by the relevant articles of the TRIPS Agreement. This criterion can only be met if protection is extended to include all the stakeholders involved in plant breeding in various countries, i.e. formal plant breeders - the focus of UPOV - and traditional farmers who continue to play a significant role in the development of agriculture across countries." Most developing countries have steered clear of granting patents⁴⁷¹ for plant varieties and have instead opted for a system that provides plant breeders rights⁴⁷² and farmer's rights while, the WIPO and the developed nation's bloc are trying hard to push through the proposal that UPOV 1991 is the 'effective *sui generis*' system under TRIPs.

SEEDS AND FARMERS: INTERNATIONAL SCENARIO

Position in USA: - The emergence of seed industry in the United States gives a pointer to the need for protection. The early settlers

⁴⁷¹ US had granted patents under the Plant Patents Act, 1930 and the Plant Variety Protection Act, 1970 and thereafter in 1985 in the *Ex parte Hibberd* case the Board of Patent appeals and Interferences allowed a corn plant with an abnormally high level of amino acid to get a utility patent protection.

⁴⁷² Plant breeders rights were originally envisaged as an alternative to patent protection because of the obvious resistance to patenting plants or 'life' however this distinction is now eliminated by UPOV 1991 which allows both patent and PBR protection on plant varieties.

in the US used to bring the seeds from Europe under the mistaken notion that they will sustain them. Since the seeds were not suited to the environment, the crops failed. Afterwards, the production of seeds was largely in the domain of the wealthy landowners who used to import seeds which were not available to the common farmers. However, since 1819 the seeds became widely available. Later on, the seed programme was succeeded by the United States Department of Agriculture (USDA) whose primary purposes were the procurement, propagation and the distribution of new and valuable plant varieties. However, there was not much improvement in the seed industry during the period as there was no much legal protection. Private seed breeding was not rampant for lack of necessary incentives. Presently, the US has three systems under which new varieties are protected which are-

1. The Plant Patent Act, 1930 (as amended in 1954) protects asexually reproduced varieties⁴⁷³.
2. Utility Patents granted under the Patent Statute of 1952.
3. The Plant Variety Protection Act of 1970 (as amended) protects sexually reproduced varieties.

Presently the Plant Patent Act is a sub- chapter of the General Patent Act. The relevant important features of these Acts are as under-

- The Plant Patent Act, 1930 extends protection to the breeders of asexually reproduced plants.⁴⁷⁴

⁴⁷³ Asexually reproduced plants are reproduced from a single parent, through processes such as grafting, budding, cutting, rooting and layering. Asexual reproduction may occur naturally, or as part of human plant breeding. Asexually reproduced plant is genetically identical to its parent plant.

⁴⁷⁴ Whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or plant found in an uncultivated state, may obtain a patent therefore, subject to the conditions and requirements of this title. (Section 161)

- Section 163 of the Act gives the exclusive right to propagate the plant by asexual reproduction.
- The conditions for obtaining Plant Patent include novelty, non-obviousness⁴⁷⁵ and distinctiveness (habit, colour of flower, flavour, productivity etc) rather than usefulness. The Act of 1930 also emphasises that each case must be decided on its own particular facts in determining whether, in fact, the description in the printed publication is adequate to put the public in possession of the invention and thus bar patentability of a plant under the conditions stated in Section 102(b).
- The Plant Patent Amendment Act, 1998 prevents the foreign growers from acquiring a plant in the US and to grow the plant and then sell its fruits or flowers in the US without paying any royalty.
- Again, under the PVP Act, 1990 clarifies that no reasons other than commercialization of the variety shall render the variety a matter of common knowledge.
- The Act provides utility patent even on plant varieties any person inventing, discovering any new and useful process, machine, manufacture, or composition or matter, or any new and any useful improvements thereof, may obtain a patent.⁴⁷⁶
- The 1990 Plant variety Protection Act allows a farmer to save seed for their own planting needs and also to sell it to a neighbour. This applies to all varieties protected prior to 4th April, 1995. However, the amended Act prohibits the sale of any farmer saved seed without prior permission of the variety owner. It also extends protection to tuber reproduced plants; varieties essentially derived from variety, and harvested material of the variety.

⁴⁷⁵ It requires actual inventiveness of the invention at the time the invention is made. (35 USC, Section 103).

⁴⁷⁶ 35 USC, Section 101.

Position in Europe: - In Europe, the commercial seed supply system is highly organised and controlled. European law on seed marketing has evolved over the years to ensure that only uniform seeds for industrial farming can be sold on the market, condemning farmers' seeds and traditional varieties to the black market if not complete illegality. Together with strong intellectual property rules and the production of hybrids, European seed laws lock farmers out of the seed system. In Europe, three sources of law govern the protection of plant varieties. They are the European Patent Convention⁴⁷⁷, Plant Variety Protection Certificates and the Biotechnology Directive⁴⁷⁸. The relevant important features of these are as under-

- The product of nature doctrine is recognised under the European Patent Convention which provides that discoveries shall not be regarded as inventions for the purpose of patentability⁴⁷⁹ and more over in Article 53(b) of the EPC plant varieties⁴⁸⁰ were excluded even if the Strasbourg Patent Convention allows the same under Article 2(b). However, under the EPO Guidelines if a substance is found in nature can be shown to produce a technical effect, it may be

⁴⁷⁷ The European Patent Convention is the result of the political initiative for a centralised system for the grant of patent. European states agreed in 1963 to a convention on the Unification of Certain Points of Substantive Law on Patents for Inventions. This convention laid the path of European Patent Convention which was signed at Munich on 5th October, 1973 with the object of strengthening co-operation between the States of Europe in respect of the protection of inventions. The EPC establishes a single patent granting authority, the European Patent Office (EPO). The EPC doesn't displace individual national patent regimes, but exists alongside with them as an alternative route to obtain intellectual property protection.

⁴⁷⁸ Directive 98/44. Netherlands voted against this Biotech Directive as they opposed the genetic manipulation of animals and plants.

⁴⁷⁹ EPC Art. 52(2).

⁴⁸⁰ Defined in the Rule 23(b)(4) of the Guidelines of the European Patent Office.

patentable.⁴⁸¹ Again, if the invention concerns plants and animals and if the technical feasibility of the invention is not confined to a particular plant or animal variety, the invention is patentable.⁴⁸²

- The European patents is not be granted in respect of possesses for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.⁴⁸³
- The Biotech Directive defines a biological material as "any material containing genetic information and capable of reproducing itself or being reproduced in a biological system."⁴⁸⁴ Again the directive provides that plant and animal varieties are not themselves subject to patent protection. But invented plants and animals are patentable provided that the application of the invention is not confined to a particular plant or animal variety and no such variety is claimed.⁴⁸⁵ Again, essentially biological processes for the production of plants and animals are not patentable. However, this provision is not affect the patentability of inventions which concern a microbiological or other technical process or a product obtained by means of such process.⁴⁸⁶
- The Biotech Directive provides that no one is entitled to a patent to a process for the production of plants and animals consisting entirely of natural phenomena such as cross fertilisation or selection. It also provides that patent protection extends to biological material produced through

⁴⁸¹ Part C, Chapter 4, Para 2.3 as revised in July, 1992.

⁴⁸² EPO Guidelines, Part C, Chapter 4, Para 2a.2

⁴⁸³ Rule 23d(d) EPC.

⁴⁸⁴ Directive 98/44, Article 2(1)(a).

⁴⁸⁵ Directive 98/44, Article 4(1) and 4(2).

⁴⁸⁶ Directive 98/44, Article 4(1)(b).

propagation or multiplication of patented material or using patented process of production.⁴⁸⁷

- The Biotech Directive recognises the rights of farmers to keep the seeds and plants grown using certain listed plants, even if patented, and use those seeds on farmer's land.⁴⁸⁸
- Rule 23(c)⁴⁸⁹ acknowledges the patentability of transgenic plants.
- Certain countries grant protection to old, but advantageous varieties that do not meet the conditions of novelty. The EC Regulation on Community Plant Variety Rights⁴⁹⁰ has defined variety in general which includes both protectable and non-protectable varieties.⁴⁹¹ Even a single plant cell, if capable of producing entire plant, grouping of such plant is considered as a variety. Under the regulation, the varieties of all botanical genera and species including hybrids between genera or species are protectable.⁴⁹²
- As a result of GM crops, Europe adopted a directive on patenting plants and animals⁴⁹³. Protection has been provided with a patent on genetic information (a gene plus a function) which includes all biological derivatives from its reproduction and multiplication. However, a variety already covered by a

⁴⁸⁷ Ibid. Article 8.

⁴⁸⁸ Ibid. Article 11(1).

⁴⁸⁹ Regulations to European Patent Office.

⁴⁹⁰ Community Plant variety rights within the EC are administered by the Community Plant Variety Office (CPVO) in Angers, France.

⁴⁹¹ Council Regulation (EC) No. 2100/94 on Community Plant Variety Rights, Art. 5(2). According to the Article 5(2), a variety, i.e. a plant grouping within a single botanical taxon of the lowest rank, is essentially characterised by two conditions, viz. firstly, by at least one distinguishable expression of a genotype characteristic (distinctness) and secondly, by its suitability for being propagated unchanged, as a result of which the variety can be considered as a unit (stability).

⁴⁹² Council Regulation (EC) No. 2100/94 on Community Plant Variety Rights, Art. 5(1).

⁴⁹³ 98/44/EC - the legal protection of biotechnological inventions.

PBR cannot be patented, though a variety which includes a patented gene can be protected with a PBR.

- Article 13 of the Regulation on Community Plant Variety Rights sets out the rights of the holder of a Community Plant Variety. Authorisation of the holder of a community plant variety right is required in the case of variety constituents or harvested material of the protected variety for:

- a.* production or reproduction (multiplication);
- b.* conditioning for the purpose of propagation;
- c.* offering for sale;
- d.* selling or other marketing;
- e.* exporting from the Community;
- f.* importing from the Community;
- g.* stocking for the above- said purposes.

- The Regulation authorises a farmer to use for propagating purposes in the field on their own holding the product of the harvest which they have obtained by planting on their holding, propagating material of a variety other than a hybrid or synthetic variety.⁴⁹⁴ Again certain acts done in respect of a variety protected by the community plant variety right shall not be considered as an infringing act. They include-

- a.* the acts done privately and for non- commercial purposes;
- b.* acts done for experimental purposes;
- c.* acts done for the purpose of breeding or discovering or developing other varieties;
- d.* acts whose prohibition would violate public morality, public policy or public security, the protection of health and life of humans, animals or plants, protection of the environment,

⁴⁹⁴ Council Regulation (EC) No. 2100/94 on Community Plant Variety Rights, Art. 14.

protection of industrial or commercial property, or the safeguarding of competition of trade or agricultural production;

- e. Acts whose prohibition would violate the agricultural exemption and also the compulsory exploitation right.

SEEDS AND FARMERS- INDIAN SCENARIO

The seed and farmer relationship in India is a unique one. Here, the farmers enjoy some more privileges on point of producing and using seeds. In 1963, the National Seed Corporation was set up by the Government of India. Here, in India, the seeds are given protection under the *sui generis* system while in many countries like the USA, UK etc. the patent protection is available on seed. In India, the private capital, including that of foreign seed companies, began to flow in even as mushrooming of several small Indian seed companies happened since the late 1980s. As the seed production and supply chain lengthened in terms of distance as well as number of players in the chain, the need for regulating the seed trade became more urgent and important. In this context, the existing Seed Act 1966 as well as the Seeds Control Order 1983 were found to be inadequate in regulating seed trade and ensuring provision of high quality seed. However, the seed industry itself has grown rapidly and changed its profile substantially after the articulation of the New Policy on Seed Development in 1988 and the National Seeds Policy of 2002.

Policies: - To understand the full implications of what lies ahead for Indian farmers in terms of their seed resources, it is necessary to study the policies regarding seed. Any new policy and legislation should first and foremost try and uphold the rights of farmers over Seed in terms of its ownership as well as its use and management. Such policies and legislation should also uphold the central and

special role that women have always had when it comes to seeds. The seed sector, in India has been governed by the following policies.

Legislations: - Legislations which have been enacted in recent times only work within an IPR framework to the advantage of seed companies, including the PVPFR Act.⁴⁹⁵ Farmers' rights are more and more defined only in terms of residual rights, after rights to seed corporations are ensured. However, seeds in Indian agriculture are governed by nearly thirty legislations – the Seeds Act 1966; the Essential Commodities Act, 1955; the Biological Diversity Act, 2002; Plant Varieties Protection and Farmers' Rights Act, 2001; Patents Amendment Act, 2005; Environment Protection Act, 1986; Consumer Protection Act, 1986; Geographical Indication of Goods Act, 1999; The Plants, Fruits and Seeds (Regulation of Import into India) Order, 1989 and so on. However, the most important legislations are on the way of brief discussion-

1. The Seeds Act, 1966: - The Seeds Act, 1966 is an important Act to regulate the seed sector in India. According to the Act, seed⁴⁹⁶ means, any of the following classes of seeds used for sowing or planting- (i) seeds of food crops including edible oil seeds

⁴⁹⁵ In AP, just in the span of three months last year (2004), spurious seeds worth nearly seven crores of rupees were seized during raids all over the state. Further, the existing Seeds Act deals only with notified varieties and there are many varieties which are not notified but which get traded. Certification is also voluntary and not mandatory. There are no adequate deterrents in the Law for offenders – the punitive clauses are very weak compared to the tremendous potential that exists to make quick money at the expense of farmers. There are also no compensatory mechanisms provided for farmers in case of failure of seed. Again, given these shortcomings, Maharashtra and Andhra Pradesh wanted to enact their own legislations to regulate the seed industry at the state level. However, the Central Government did not give a clearance for this, citing that a new seeds legislation was on the anvil at the central level. This is the genesis of the current national bill.

⁴⁹⁶ Section 2(11) of the Seeds Act, 1966.

and seeds of fruits and vegetables; (ii) cotton seeds; (iii) seeds of cattle fodder;; (iv) jute seeds and includes seedlings, and tubers, bulbs, rhizomes, roots, cuttings, all types, all types of grafts and other vegetatively propagated material, of food crops or cattle fodder. Section 2(9) of the Act deals with the notified kind⁴⁹⁷ or variety⁴⁹⁸ in relation to any seed which means, any kind or variety notified under section 5. The Act recognises the following rights of the farmers-

- *Registration of seed varieties:* - The Central Government after consultation with the Central Seed Committee, by notification in the Official Gazette, declare such kind or variety to be a notified kind or variety under the Act. (Section 5)
- *Maintenance and regulation of quality of the seeds:-* The Act for the regulation or sale of seeds of notified kinds of varieties mandates that, no person shall, be allowed to carry on the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of notified kind or variety, unless- (a) such seed is identifiable as its kind or variety; (b) such seed conforms to the minimum limits of germination and purity as required under clause (a) of Section 6 (Section 7). Again, the respective State Governments may under Sections 12 & 13 of the Act appoint Seed analysts and Seed Inspectors and define the areas within which he shall exercise the jurisdiction.

Under the Act, any person selling, keeping for sale, offering to sell, bartering otherwise supplying any seed of notified kind or variety may, apply to the certification agency for the grant of a certificate for the purpose if he desires to have such seed certified by the certification agency. [Section 9(1)] Again, Section 10 deals with the

⁴⁹⁷ Kind means, one or more related species or sub- species of crop plants each individually or collectively known by one common name such as cabbage, maize, paddy, and wheat. (Section 2(8); the Seeds Act, 1966)

⁴⁹⁸ Variety means a sub- division of a kind identifiable by growth, yield, plant, fruit, seed or other characteristic. (Section 2(16); the Seeds Act, 1966.)

power of revocation of certificate. Again, the Act under Section 17 may impose restrictions on the export and import of seeds of notified kinds or varieties. The Act under Section 17 may impose restrictions on the export and import of seeds of notified kinds or varieties. Section 19 makes the Act deterrent. Under this Section if any person- (a) contravenes any provision of this Act or any rule made there under; or (b) prevents a Seed Inspector from taking sample under this Act, or (c) prevents a Seed Inspector from exercising any other power conferred on him by or under this Act, he shall, on conviction, be punishable- (i) for the first offence with fine which may extend to five hundred rupees, and (ii) in the event of such person having been previously convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend one thousand rupees, or with both. Again, section 21 is dealing with the offences by the companies. Under Section 21, it states that where an offence under this Act has been committed by a company⁴⁹⁹ and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, then the company as well as such director, manager, secretary or other officer shall also be held guilty of that offence and shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Thus, if we go by the very Act of 1966, the Act presently suffering from the grounds like the Act doesn't cover the GM seeds. Again, unfortunately, the term purity has not been defined anywhere under the Act. Now a day it is seen sometimes that after the seed has been germinated, grown properly, but doesn't yield the crops, in such a situation due the defect in the seed no yield takes place the

⁴⁹⁹ Company means any body corporate and includes a firm or other association of individuals. (Section 21 Explanation (a) of the Seeds Act, 1966)

very person involved in the deal may escape the liability. Does the term purity cover this? Again, the Act is not sufficiently deterrent on the issue of offences when a company is involved. The punishment is Rs. 500/- only paying which any company can escape the offences committed by the same. As such, my submission is that the distribution of seeds and manures may have government's control on the basis of the quality of soil, so that the farmer's interests may be better safeguarded.

2. Plant Varieties and Farmers Rights Act, 2001:- The Protection of Plant Varieties and Farmers' Rights Act, 2001 was enacted, *inter alia*, to recognise the role of farmers as cultivators and conservers of the country's agro biodiversity by rewarding through benefit sharing. The Act recognises the following rights of farmers-

- Benefit sharing over the breeder's registered breed: - The concept of benefit sharing is discussed under Section 26 of the Act on a variety of seed registered under Section 24 of the Act. The Act mandates that the breeders shall disclose the location of the genetic material and also the contribution of any farming community which has bred, evolved or developed the variety⁵⁰⁰ that the genetic material was lawfully acquired.⁵⁰¹ Again, Section 27 requires the breeder to deposit such quantity of seeds or propagating material including parental line of seeds of registered variety in the National Gene Bank.
- Recognition of a breed as developed by farmer: - Section 39 of the Act provides that- (i) a farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety; (ii) the farmer's variety⁵⁰² shall

⁵⁰⁰ Sec 18(e) & Sec 40(1)

⁵⁰¹ Sec 18(h)

⁵⁰² Section 2(I) of the Plant Varieties and farmer's Rights Act, 2001

be entitled for registration if the application contains declarations as specified in Section 18(1)(h); (iii) a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled for recognition and reward from the Gene Fund subject to the condition that material so selected and preserved has been used as donors of genes in registrable varieties; (iv) a farmer is deemed to be entitled to save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a protected variety. However, the farmer is not entitled to sell branded seed of a protected variety. Under Section 43 of the Act, where an essentially derived variety is derived from a farmer's variety, the authorisation to produce, sell, market or otherwise deal with variety is not to be given by the breeder of such farmers variety, except with the consent of the farmers or group of farmers or community of farmers who have made contribution in the preservation or development of such variety.

- Provision for guarantee of new seed developed by a breeder: - The Plant Breeder has a duty to disclose the expected performance of the seed under given conditions to the farmer and if such propagating material failed to perform the farmers have a right to compensation which must be determined by the Authority under the Act.⁵⁰³

- Exemption from the payment of certain fees: - Section 44 of the Act exempts a farmer or group of farmers or village community from paying any fee in any proceeding before the Authority or Registrar, or the Tribunal or the High Court under the Act or the rules made thereunder.

⁵⁰³ Sec 39(2). In this regard a Fund should be made wherein each breeder who acquires a PBR under the Act,

3. The Patent Act, 1970: - The Indian Patent Act 1970 is often been considered as model legislation for developing countries. Originally the Patent Act used to grant only process patent in the areas of chemicals, pharmaceuticals and food. Inventions pertaining to atomic energy, agriculture, medicine, horticulture and the processes, which led to products of certain use, were excluded. With the establishment of WTO, TRIPs Agreement have come force w.e.f. 1st January, 1995. One of the requirements of this agreement is to make necessary mechanism to facilitate the applicant to file the application for pharmaceutical and agro products where member country doesn't grant patent protection for such products. This mechanism has been provided U/Art 70.9 of the said Agreement. Pursuant to this provision, the Govt. of India under the Patents (2nd Amendment) Bill 1999 it passed as a Patents (Amendment) Act 2002. It dealt with the products relating to the medicines and drugs, which included exclusive marketing rights of these products subject to certain restrictions. If we closely observe the provisions of the Amendment Act 2002, it reflects the TRIPS agreement but did not follow the objectives as enshrine in the CBD declaration. It simply meant that if some plants or some organisms are taken away by the citizen of other country and make research in it and after that he makes an invention of new drug or medicine, he can exclusively market it through out the world. But it denied the contribution of the material supplying country or the indigenous people who might have been the resource person of the item. Again the amendment Act 2002 redefines the term invention. However, under the new amendment Act the followings inter alia have been declared as not patentable, viz.

- a. Discovery of any living thing or non-living substance occurring in nature.

- b. Plants and animals other than micro-organisms in whole or any part thereof including seeds varieties and species and essentially biological process for production or propagation of plants and animals.

The Patent Act, 1970 was amended for third time by passing an ordinance in the year "2004". The Bill passed in the Parliament on 26th December 2004 which extends Patent Protection to products in all fields of technology; including drugs, food, chemicals, which were earlier excluded.

Again as per the TRIPs obligation⁵⁰⁴ the Parliament in the view of amendment to the Patent Act in 2002 to include micro-organism for granting patent protection. Section 3(I) of the Act reads- "Plant and animals in whole or any part thereof other than micro organizations including reads, varieties, species and essentially biological processes for production or propagation of plants and animals can be patented". Again the definition of chemical substance U/Sec. 5 of the Act also changed. For the purpose of this section 'chemical process' includes biochemical, biotechnological and microbiological process.

4. The Geographical Indication of Goods (Registration and Protection) Act, 1999: - After Basmati controversy, the government of India passed the Geographical Indication of Goods (Registration and Protection) Act, 1999 is with an aim to stop 'Bio-piracy'. The Act provides for the registration and protection of resources originated/ developed in India. Sec. 2(1) (e) of the Act defines the term "Geographical Indication".⁵⁰⁵ Section 11 of the Act

⁵⁰⁴ Art. 27 (3) (6)

⁵⁰⁵ The Geographical Indications in relation to goods, as an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating or manufactured in the territory of country or a region or locality in that territory where a given quality reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are

provides that an application for the registration of geographical indication may be made to the Registrar of Geographical indications by any association of persons or producers or any organization or authority representing the interests of the concerned goods. On acceptance of this application the registrar shall advertise the same and on objection within three months hearing the parties, shall issue the registration.⁵⁰⁶ Once a geographical indication is registered any producer of the concerned goods may apply to the registrar for registering him as an authorized user of such geographical indication. Once the registration has been granted, it will last for a period of ten years but may be renewed from time to time for an indefinite period.⁵⁰⁷ And on infringement of the rights conferred by the Act, the civil and criminal remedies will follow.

5. The Biodiversity Act 2002: - The recent examples of granting of the patent right to Neem, Turmeric and Basmati by the US Patent office while all these resources were traditionally belonging to India led the Indian Parliament to pass the Biological Diversity Act 2002. The act defines inter alia the term bio diversity⁵⁰⁸ and speaks of the conservation of biological resources as defined u/sec 2(c) of the Act their by products creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application. The law relating to benefit sharing in cases of utilization of genetic resources has been clarified under the Act. The Act establishes three bodies viz. the National bio diversity Authority;⁵⁰⁹ the State

manufactured goods, one of the activities of either the production or of processing or preparation of the goods centered takes place in such territory region or locality as the case may be.

⁵⁰⁶ id Sec. 13-14

⁵⁰⁷ id Sec. 18 (1)

⁵⁰⁸ The Bio-diversity Act. 2002, Sec 2(b)

⁵⁰⁹ id Sec. 21

Biodiversity Board;⁵¹⁰ the Biodiversity Management Committee.⁵¹¹ As per the Act, the National Biodiversity Authority and the State Biodiversity Authority shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management committee. Under the Act, an Indian national with only prior information to the National Biodiversity Authority can start any work relating to biodiversity while for a foreign national prior approval of the NBA is necessary to start work.⁵¹² Again it has been mandatory that the result of the research shouldn't be transferred without the consent of the NBA. But u/sec 5 of the Act non-applicability of Sec 3 & 4 of the Act for some collaborative works involving there to has been laid down. Again the NBA has been given the Authority to impose conditions including the sharing of financial benefits arising out the commercial exploitation of such rights.⁵¹³ The Act gives a detailed account of the manner in which the benefit sharing arrangements shall be effected. Under the Act there is provision for the granting of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers; transfer of technology, setting up of venture capital fund for aiding the cause of benefit claimers; payment of monetary compensation and non-monetary benefits to the benefit claimers as the NBA may deem fit etc. Section 7 of the Act speaks that a person who is a citizen of India or body corporate association or organization registered in India shall obtain any biological resources for commercial utilization except after giving prior intimation to the state Biodiversity Board

⁵¹⁰ id Sec. 22

⁵¹¹ id Sec. 41

⁵¹² id Sec. 3

⁵¹³ Sec. 6(2) *infra*

concerned.⁵¹⁴ Sec 21 of the Act⁵¹⁵ there is a provision relating to the determination of equitable benefit sharing with the objective to grant a joint ownership of the IPRs to the National Biological Authority where benefit claimers are not identified. The central Government under the Act has been empowered to develop national strategies and programmes for the conservation and promotion and sustainable use of biological reserves incentives for research, training and public education to increase awareness with respect to biodiversity. Again the Act prescribes punishment for the contravention of any provision of the Act.

6. The Consumer Protection Act 1986: - The Consumer Protection Act 1986 is supposed to uphold the rights of farmers as consumers of inputs like seed, fertilisers, pesticides etc. Coming to farmers as consumers of seed supplied by the formal seed sector, the Bill has no satisfactory clauses with regard to the institutional set up that will regulate and ensure the quality of seed produced and supplied nor satisfactory punitive clauses that will act as deterrents on unscrupulous seed traders. Under the Consumer Protection Laws a farmer is protected against goods and services, which are hazardous to life and property. Again, they have the right to be informed about quality, quantity potency, purity, standard of the goods and services rendered by one. Again, he does have the right to acquire knowledge and skill to use the commodity or service. But unfortunately, there is no significant mechanism to ensure the best output from a seed by the seed supplying corporate bodies through sharing the knowledge with the farmers and developing their skill. In some cases the universities are taking the initiatives in this regard, while the number of participants is also very meagre. It also does not uphold the rights of farmers when it

⁵¹⁴ The people who are working on the indigenous medicines have been exempted from this provision for the purpose of the development of indigenous medicines.

⁵¹⁵ Sec. 21 infra

comes to compensation in case of seed failure. The National Seed Bill 2004 proclaims that farmers can claim compensation through Consumer Forums under the Consumer Protection Act 1986. As is well known, it is not easy for the farmers of this country who are mostly illiterate to access and successfully obtain redressal through these Consumer Forums. This objective should be satisfied through the incorporation of a provision under which, the farmers in BPL category may get relief without paying any fee for the suit just like the RTI Act, 2005. Again, appropriate compensation clauses for speedy redressal to farmers who have incurred losses due to seed failure – this should be linked to an insurance system and should be based on calculations that consider loss in yields as well as cost of cultivation.

7. Environment Protection Act 1986 with its 1989 Rules pertaining to Genetically Modified Organisms (GMO): - The EPA Act 1986 and Rules 1989 of **Ministry of Environment and Forests**, namely which deals with rules and procedures for handling GMOs and hazardous organisms. The Genetic Engineering Approval Committee (GEAC) established by the Ministry acts as a statutory body for review and approval from environmental angle of activities involving large scale use of GMOs and their products in R&D, industrial production, environmental release and field application. The Ministry of Environment and Forests has issued a draft notification in July 2001 as an amendment regarding the permission and approval of foodstuffs. This notification restricts a person from importing, manufacture transport, store, distribute or sale of any food, feed, raw or processed or any ingredient of food, food additives or any food product that contains GM material, without the approval of the GEAC. A Biotechnology Coordination Committee under the GEAC functions as the legal and statutory body with judicial powers to inspect, investigate and take punitive action in

case of violation of statutory provision under EPA. Issues for action include review and control, and monitoring of large scale use of GMOs in R&D and industrial production, environmental release and experimental field trials.

8. The National Seeds Bill, 2004: - Today, the Indian seed industry has an annual turnover of about forty billion rupees. As the seed sector grew, the scope for more and more unscrupulous elements to enter the picture increased. At this point, the National Seeds Bill 2004 seeks to replace the Seeds Act of 1966. The current draft inter alia describes the followings-

- The bill provides for regulating the quality of seeds for sale, import and export and to facilitate production and supply of seeds of quality and for matters connected therewith or incidental thereto.
- It is wanting to put a check on the sale of spurious and poor quality seed and to provide compensation to affected farmers,
- The draft bill also expresses the objective of increasing private participation in the seed trade in the country and to liberalise imports of seed and other planting material into the country, ostensibly to meet WTO commitments.
- The bill then goes on to propose various mechanisms and modalities by which regulation of seed would happen – compulsory registration of all seed varieties; certification not just by State Seed Certification Agencies but by accredited agencies outside the government too;
- The bill also includes commercial crops and plantation crops regulation of transgenic material into the purview of the Bill.
- The bill also includes provisions for slight increase in penalties for contravening the law.

- The Seeds Bill asks farmers to compulsorily register themselves as "Seed Dealers" if they are engaged in saving and exchanging seeds.

Impacts on farmers' rights

"I find it all very stressful. I'd rather be fishing."

- Vincent Moye⁵¹⁶

The farmers and the farming communities have been enjoying the rights over years, regarding the development, preservation, and conservation of seeds or various traditional varieties. The present IPR Regime with the backing of the developed nations with stricter norms are willing to gain control over this. Although India is now busy with documenting traditional knowledge, to make claim over the American companies regarding the uses of the plant species they have got from us, it has already lost control over its valuable plant, animal and microbial genetic resources. At this, they are advocating for the stricter '*Plant Breeder's Rights*'. The balance between Plant Breeders rights and farmers rights is perhaps the most controversial issue as far as protection of plant varieties are concerned and especially in the context of the developing countries. The Indian *sui generis* legislation i.e. the Plant Varieties Protection and Farmers' Rights Act, 2001 provides for the farmer to save, use, sow, resow, exchange, share, and sell his farm produce including the seed of a variety protected under this Act, exactly the same manner as he used to do before, however, he

⁵¹⁶ Supporter of Schmeiser, commented on Monsanto Canada Inc. v. Schmeiser Date: 20010329 Docket: T-1593-98 Fred Bridgland: "Farmer v. Monsanto: GM Seed Fight in Canada's Highest Court" Published in http://www.biotech-info.net/Farmer_v_Monsanto.html. visited on 14th December, 2009 at 5.54 P.M.

cannot sell the branded seed of a variety.⁵¹⁷ This issue was further brought into sharp focus in the case of *Monsanto v. Percy Schmeiser* decided on March 29, 2001⁵¹⁸, where the defendants were held liable for using a seed patented by Monsanto, which had come into his field without his knowledge.⁵¹⁹

Under the Act, a 'new plant variety'⁵²⁰ is granted protection provided it meets the criteria of novelty,⁵²¹ distinctiveness uniformity and stability as prescribed in Sec 15 of the Act. The provisions are very similar to that of UPOV 1991 with minor differences. However, the law is certain loopholes which are on the way of brief discussion-

Firstly, the principle of novelty as established under Sec.15(3)(a) of the PVAAct is framed on the basis of US patent law wherein an exemption period of one year is allowed and a first to invent system is followed. But this system is not recognised under the Indian laws. Again, any variety which has been commercially exploited prior to the filing of application is not novel.⁵²²

Secondly, Under Sec15(3)(b) a variety is distinct provided 'it is clearly distinguishable by at least one essential characteristic from any another variety whose existence is a matter of common knowledge in any country at the time of filing of the application'. The term 'common knowledge' is not defined⁵²³ under the Act. This

⁵¹⁷ Sec 39(iv)

⁵¹⁸ Federal court of Canada. *Monsanto Canada Inc. v. Schmeiser* Date: 20010329 Docket: T-1593-98 Judgement delivered by Judge W. Andrew Mackay

⁵¹⁹ 2004 SCC 34.

⁵²⁰ Plant variety has been defined in Sec 2(y) of the Act.

⁵²¹ Sec 15(3)(a) of the Plant Varieties and farmer's Rights Act, 2001.

⁵²² See N S Gopalakrishnan, 'Protection of Plant Varieties and Farmers Rights in India' <http://www.iprlawindia.org/> visited on 15th March, 2010 at 7.12 PM.

⁵²³ UPOV 1978 Art. 6(1)(a) however states that common knowledge may be 'established by reference to various factors such as: cultivation or marketing already

provision is some what equivalent to the novelty provisions in patent law, wherein even unpublished applications can be considered for the purposes of determining novelty.

Thirdly, In UPOV 1991 the distinct is defined in terms of being 'clearly distinguishable' from any other variety in common knowledge. However the words clearly distinguishable have not been defined. What adds to the confusion is when the concept of 'essentially derived varieties' or EDVs is discussed.⁵²⁴ Thus it can be seen that as far as UPOV 91 is concerned an EDV will be registered as it can meet the criteria of distinct, uniform and stable. However in the Indian Act, there arises a problem because of the definition of 'distinct'. As per Sec 23(7) 'an essentially derived variety shall not be registered ...unless it satisfies the requirements of Sec 15....". This will lead to an anomalous situation, because as per the definition of EDVs they retain all the essential characteristics of the initial variety, however they can be clearly distinguished from the initial variety, however in order to get registered under the Act, a variety (including) an EDV must be distinguished by at least one essential characteristics from other varieties in common knowledge. Thus, a clear guidelines need to be laid down as to what varieties can be classified as EDVs.

Fourthly, Under PVP Act, 2001 even extant varieties⁵²⁵ may be protected; however the criteria of distinctiveness, uniformity and stability shall be specified by the Protection of Plant Varieties and

in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection, or precise description in a publication?

⁵²⁴ EDVs as defined in both UPOV 91 and the Act, is “ (i) when it is predominantly derived from such initial variety or from a variety that is itself predominantly derived from such initially variety, while retaining the expression of the essential characteristics.....(ii) is clearly distinguishable from such initial variety (iii) conforms to such initial variety in the expression of the essential characteristics.....”

⁵²⁵ This will also include farmers' variety.

Farmer's Right Authority under the Act. Till date no criteria has been specified. Clearly there is no need to specify separate criteria; the same DUS criteria (i.e. novelty excluded) must be made applicable, and immediately.

Fifthly, Sec 39(1)(i) emphasizes the right of a farmer to register a new variety which he has bred or developed in the same manner as a commercial breeder. But, keeping in mind practical realities, it is not feasible for an Indian farmer to prove that indeed his variety is distinct, uniform and stable and therefore special provisions must be made wherein, the farmer must merely approach the relevant Authority⁵²⁶ and then the Authority will take the responsibility by referring it to any public research institute which can determine the distinct, uniform and stable nature of the variety and submit a report accordingly.

The traditional seed saving and exchange system is not based on commercial interests and is usually a non-monetised system. But unfortunately, the Seeds Bill asks farmers to compulsorily register themselves as "Seed Dealers" if they are engaged in saving and exchanging seeds. Again, the registration of plant varieties under the Seeds Bill is likely to create a parallel system to the PVPFR registrations and create much confusion, because the PVPFR Act also allows for rights through "registration".

Again, the Seeds Bill allows for "Registration" of seed varieties without first resolving issues related to parentage/origin of seed while granting rights of commercialisation. The Bill could lead to a situation where plant varieties could be registered by anyone without the obligation of disclosure of origin or without prior

⁵²⁶ The Authority is a centralized body and therefore there is a need to simplify the system as far as access of the farmer to the Authority is concerned. In this regard, either the Panchayat in the village or group of villages will be the transmitting authority to a State level branch of the Authority, thus enabling access of the poor farmer to the protection guaranteed under the Act.

informed consent. Thus, through boosting exports of seeds, it will legitimise and facilitate bio-piracy since issues related to ownership/ parentage of seed resources is yet to be resolved.

Sixthly, Right of farmer or community as benefit sharers⁵²⁷ is a very important right. The Act recognises this right⁵²⁸. Under the Act, the Authority shall invite claims for benefit sharing, and a number of criteria have to be established before a farmer can claim benefit of the provisions. These provisions can prove to be fatal to the interests of poor farmers and farming communities who will never know that they have a right. Therefore this provision should be suitably amended.

Seventhly, Sec 39(1)(i) emphasizes the right of a farmer to register a new variety which he has bred or developed in the same manner as a commercial breeder. At this, keeping in mind practical realities, it is not feasible for an Indian farmer to prove that indeed his variety is distinct, uniform and stable. Thus, the objective of this section is not very clear.

Eighthly, The Bill says that farmers have to conform to the minimum standards laid down through this Bill. This is a clear infringement on the traditional rights of farmers who have always engaged in seed production and exchange with accountability systems that work out at the local level within the social structures of the community.⁵²⁹

⁵²⁷ Recognised by Art.13 of International Treaty on Plant Genetic Resources For Food and Agriculture, 1989.

⁵²⁸ Sec 18(e) & Sec 40(1), The Protection of Plant Varieties and Farmer's Rights Act, 2001.

⁵²⁹ Farmers who seek seed select their choice of seed from other farmers after first seeing it perform in their fields. Certain farmers and even landless women are known for their seed selection and seed keeping skills and the others in the community trust their resource and knowledge. In the author's experience, it is rare that such seeds fail

Ninthly, Imports of seeds should also be understood as bringing in undesirable pests, weeds, diseases as well as seeds which could cause problems for Indian farming.

Tenthly; The seed prices are bound to spiral upwards increasing the overall cost of cultivation for farmers. This is already seen in the case of the first transgenic crop in India, Bt Cotton. Ordinary cotton hybrid seed costs around Rs.450/- per acre while Bt Cotton costed Rs.1600/- in its three years of commercial cultivation so far.⁵³⁰

Thus, by depriving the farmer of the rights to store, reuse or exchange the seeds of the protected variety will imperil the livelihood of farmers in developing countries like India where the farming community is the largest seed producer, providing about 85% of the country's annual requirement of over 60 lakh tons.⁵³¹

due to deficient quality. Farmers do not knowingly supply deficient seed to other farmers. However, interviews with farmers engaged in seed exchange show that when such an instance of failure does happen, farmers who have borrowed the seeds pretty often assume that it is their management failure rather than the seed failure, especially if they see the same seed performing in other fields. Forcing the seed giver to pay compensation is somewhat rare given that it is perceived that the seed giver is actually doing a favour by lending her/his seed in the first instance. Still, in this traditional system, if a crop fails, the borrower could return any other variety to the seed giver.

⁵³⁰ Kavitha Kuruganti, The seed bill must go, <http://www.indiatogether.org/2005/aug/agr-seedbill.htm> visited on 21st December, 2008 at 3.45 PM.

⁵³¹ Dr. Suman Sahai, "The TRIPs Agreement and the Implications on Food Security in India" Supporter of Schmeiser, commented for Schmeiser on Monsanto Canada Inc. v. Schmeiser Date: 20010329 Docket: T-1593-98 Fred Bridgland: "Farmer v. Monsanto: GM Seed Fight in Canada's Highest Court" Published in http://www.biotech-info.net/Farmer_v_Monsanto.html. visited on 15th March, 2009 at 4.57 PM.

GENETICALLY MODIFIED SEED

"Monsanto is the bigger and more dangerous monopoly. We're all gonna be serfs on our own land."

-- Vincent Moyer⁵³²

At times, and even it today, we see that that the farmers are suffering from the seeds they have for the purpose of cultivation. Some varieties can not suffer water logging, some are very sensitive to winter, and some are very much prone to some kids of diseases. Again, on the other hand we can also notice that some varieties have the in built capacity to tackle water logging, some yield very high etc. thus, the GM crops have been widely adopted in the United States. They have also been extensively planted in several other countries like Argentina, Brazil, South Africa, India, and China where the agriculture is a major part of the total economy. GM food diverts precious financial resources stronger intellectual property rights, and is aimed at strengthening corporate control over agriculture.

Development of GM Crops: - The first commercially grown genetically modified whole food crop was the tomato, which was made more resistant to rotting by Californian company *Calgene*. Calgene was allowed to release the tomatoes into the market in 1994 without any special labeling. It was welcomed by consumers who purchased the fruit at two to five times the price of regular tomatoes. However, production problems and competition from a conventionally bred, longer shelf-life variety prevented the product from becoming profitable. A variant of the Flavr Savr was used by Zeneca to produce tomato paste which was sold in Europe during the summer of 1996. The labeling and pricing were designed as a

⁵³² Id.

marketing experiment, which proved, at the time, that European consumers would accept genetically engineered foods.⁵³³

Impacts of GM Crops: - Today, with the discovery of gene and the invention of the technology of transferring gene the scientists through altering genetic traits are developing the seeds which are more suitable to the farming communities. Such crops include the productivity gains needed to feed the increasing population, lesser expenditure on pesticides/herbicides, improved nutritive value, durability of products during post harvest stage, etc. This is really a boon for the farming community on the one hand while, at the same time, the presence of a large number of MNCs in this field is causing serious encroachment into several valuable rights of farmers like the right over the seeds and some other allied rights which the community endowed with them since the time immemorial. However, the attitude towards GM foods would be drastically changed after outbreaks of *Mad Cow Disease* weakened consumer trust in government regulators, and protesters rallied against the introduction of Monsanto's "Roundup-Ready" soybeans.⁵³⁴ Recently, four of the six GMO maize fields, an experiment of the Dutch government, did not survive the season. The BT-maize of seed multinational Monsanto is made resistant against the (not yet in the Netherlands living) European corn borer. But nature strikes back. The fields near Lelystad (provincial capital of Flevoland), Drimmelen (province of Noord-Brabant), Meerlo-Wanssum (northern Limburg) and Nuth (southern Limburg) have partially or completely fallen prey to other plagues like maize hackers, slammers and cutters.⁵³⁵ The Herbicides tolerant crops-

⁵³³ [http://en.wikipedia.org/GM Crops/Genetically modified food/](http://en.wikipedia.org/GM_Crops/Genetically_modified_food/) Wikipedia, the free encyclopedia.htm - visited on 17th September, 2008 at 3.46 PM.

⁵³⁴ Id.

⁵³⁵ http://www.aseed.net/index.php?option=com_content&task=blogcategory&id=21&Itemid=38, uploaded on 22 August 2006 visited on 5th May, 2009 at 2.30 PM.

accounting for a majority of all GM crops worldwide are tied to a broad spectrum of herbicides- glyphosate and glufosinate ammonium which are linked to spontaneous abortions, birth defects and other health problems for human beings, animals and soil organisms. Again, the GM varieties are not stable and are prone to create new viruses and bacterias which can cause diseases and disrupt gene functions in animals and human cells. It does n't guarantee that a GM variety is safe everywhere irrespective of the different environmental or climatic conditions.⁵³⁶ In addition to these, a technical report by Dr. Charles Benbrook, a former Executive Director of the Board on Agriculture of the US National Academy of Science, examining the US agricultural data over a span of last nine years revealed that the spread of the GM crops has actually led to the increase in the use of pesticides instead of the projected reduction.⁵³⁷ At this, the Penang Statement observed, *"the new biotechnology based upon genetic engineering Has already been rejected by the majority of the biologists because it fails to take into account the complex interactions between genes and their cellular, extra cellular and extra environment that are involved in the development of all features.... Again, it is impossible to predict the consequences of transferring a gene from one type of organism to another in a significant number of cases. The limited ability to transfer identifiable molecular characteristics between organisms through genetic engineering doesn't constitute the demonstration of any comprehensive or reliable system for predicting all the significant effects of transferring genes."*⁵³⁸

⁵³⁶ Dr. Jane Rissler and Dr. Margaret Mellon, 'Perils Amidst the Promise' released by Washington based Union of Concerned Scientists and Quoted by Bharat Dogra, The endangered brinjal, published in The Statesman: 20th October, 2009 at pg. 06.

⁵³⁷ Bharat Dogra, The endangered brinjal, published in The Statesman: 20th October, 2009 at pg. 06.

⁵³⁸ The Pennag Statement, 1995.

Again, some believe that the increasing use of GM in major crops has caused a power shift in agriculture towards Biotechnology companies, which are gaining more control over the production chain of crops and food, and over the farmers that use their products, as well. Although the cultivation of GM crops have been claimed to be profitable to farmers, the impact varies by year, location, crop, etc. still there lies some serious doubts over the GM crops which are as under-

(a) Environmental concerns: -

- **Emergence of resistance:** Many crops have been engineered for pest disease and herbicide resistance. There could be a potential for development of resistance in the target organism. This has been particularly observed in crops developed for insect resistance like cotton. This has resulted in the use of a 'refugia' while cultivating *Bt* crops. Similarly in the case of herbicide resistance crops like soyabean, a potential for development of superweeds due to spread of herbicide resistance from GM crops to weeds exists.
- **Genetic pollution and pollen movement:** The potential for transfer of pollen from GM crops to other plant species has been an issue of much concern. For example, the transgenic material from a GM maize cultivated by a farmer can be transferred without the farmer's knowledge to a non-GM maize cultivated in the neighbouring field. Such kind of pollen transfer varies with different environmental conditions.
- **Loss of biodiversity:** Contamination of non-GM varieties of plants through pollen drift can cause loss of biodiversity. Again, there may be the extinction of a particular species due to the over exploitation of a bio substance.

(b) Health and Safety Concerns: - Although we have limited scientific evidence regarding their toxicity or health risks, the

methodology used for assessing the risks is not robust enough or sensitive enough and the molecular and genetic effects of the technology are unpredictable in nature. The use of recombinant DNA (rDNA) technology in the production of GM foods involves transfer of genes from different species into the food producing organism. Such a transfer is facilitated along with various regulatory elements obtained from bacterial or viral sources that are required to empower to produce the trait in the host organism. Thus, safety concerns are centered around potential toxicological and nutritional changes that could be harmful to human health.

- **Toxicity Potential:** Various toxicants are known to be inherently present in different plants. Genetic engineering has the potential to alter such constituents or produce newer toxicants. Crops developed for pest resistance and herbicide resistance are particularly focussed for toxicity concern. The case of GM potatoes experiencing *Galanthus nivalis* lectin gene for insecticidal properties is an example of the potential of GM foods to cause toxicity. In a group of rats fed with GM potato damage to immune systems and stunted growth was observed and the experiment had generated considerable controversy.
- **Nutritional composition:** Genetic modification of plants may result in alteration in nutritional composition which in turn may affect the nutritional status of the consumer or population groups. Currently developed plants with improved nutritive value include GM rice with enriched vitamin A and GM soyabean and rapeseed with modified fatty acid. Again, there is also the potential for unexpected alteration in nutrients as it was observed in the case of GM rice (accumulation of xanthophylls, increase in prolamines). Such changes can affect nutrient profiles resulting in nutritional imbalances in the consumer. Again, it is quite alarming that

due to the heavy use of such items, the crops so produced, may become less nutritious.

- **Allergenicity:** Most traits introduced into GM crops result from the expression of one or more protein that may possess allergenic properties. Crops modified for insect resistance have been shown to have the potential for allergic responses. This has been highlighted in the recent findings of Starlink variety of GM maize which has been shown to possess allergic properties in the food chain in USA, EU and Japan. The allergenicity potential of GM food has often been difficult to establish with existing methods.
- **Antibiotic Resistance - Potential for Gene transfer:** Concern has been expressed on the possibility of transfer of GM DNA from the plant to gut microflora of humans and animals. Of importance have been the antibiotic resistant genes that are frequently used as selection markers, in the genetic modification process. Such genes have the potential to adversely affect the therapeutic efficacy of orally administered antibiotics.

Risk assessment of GM foods requires scientific data which addresses the current safety concerns of GM foods like the effect of the genetic modification process on diet, potential for allergenicity, potential for gene transfer to human and animal cells, and unexpected changes in the composition of the modified product due to insertion of novel genes or suppression of constituent genes.

(c) Ethical Concerns: -Many persons feel that gene transplantation processes to the germ plasm of crops violates the natural order. Again, concerns have also been raised by vegetarian groups on using animal genes in plants.

(d) Socio- economic Concerns: - Modern agriculture biotechnology is increasingly subjected to Intellectual Property protection, and is generally developed by Private Sector companies. Being the seeds so produced by these concerns, made sensitive to a particular types of manures, insecticides or pesticides, these, companies are capitalising the sector. Consequently, agriculture biotechnology leads to increased inequality of income and wealth because large farmers may capture most of the benefits while, it will lead to reduced competition, and exploitation of small farmers. Most of the EU countries are not enthusiastic about GM food. Again, some of the developing countries are hesitant to do so because of the fear of losing access to the European market because, it may be difficult to keep GM and non-GM commodities separate and often they could get mixed.

GM Crops and global consensus: - The safety assessment of GM food has been addressed by several international organizations. As per the general consensus of these organizations it requires an integrated and stepwise case-by-case approach. Introduced commercially in the United states in the mid- 1990s, the genetically modified crops have expanded substantially in recent years. An estimated 125 million hectares were under such cover in 2008 in 25 countries including China, Brazil, Egypt, Australia, along with seven GM- phobic European countries including Germany and Portugal.⁵³⁹ At this, various strategies have been designed to assess the safety of GM crops and these have been evaluated in a series of workshops and meetings which are as under-

- i. Joint FAO/WHO Expert Consultations on foods derived from biotechnology:** - WHO and FAO have convened various consultations to address the safety issues concerning GM foods.

⁵³⁹ Editorial: The Hindu: 21st October, 2009 at pg. 10.

The concept of Substantial Equivalence (SE)⁵⁴⁰, initially formulated by the Organization for Economic Cooperation and Development (OECD) and evaluated in these consultations, became a key element in the safety assessment procedures for GM foods. Factors taken into account in the safety assessment include phenotypic, agronomic and functional characteristics as well as potential intake and dietary impact of the introduction of GM foods. Depending on the type of outcome the food is subjected to further nutritional and toxicological studies. A decision-tree approach has also been prepared by some authorities for determining the extent of testing required in specific cases.

- ii. **Codex Alimentarius Commission:** - The Codex Alimentarius Commission of the FAO/WHO set up an Ad-hoc intergovernmental task force on foods derived from biotechnology. The task force was endowed with the task to develop standards, guidelines and recommendations for foods derived from biotechnology. Recently, a draft guideline for the conduct of safety assessment of foods derived from genetically modified plants has been brought out by the task force.
- iii. **Cartagena Protocol on Biosafety, 2000:** - The Cartagena Protocol was negotiated under the auspices of the Convention of Biological Diversity (CBD) in 1992. The Protocol provides rules for safe transfer, handling and disposal of Living Modified Organisms (LMOs) or Genetically Modified Organisms (GMOs). Its aim is to address the threats posed by LMOs to biological diversity, also taking into account the risks to human health. The Protocol takes into account the general principles of risk assessment developed by international bodies. Two features of

⁵⁴⁰ Substantial Equivalence involves a comparative approach where the relative safety of GM food or food component to an existing food or food component is established.

the protocol, the Advance Information Agreement (AIA)⁵⁴¹ and the Precautionary Approach⁵⁴² are being incorporated in risk/safety assessment procedures in the context of trade in GMOs. In making the decision to import, the Protocol allows a precautionary approach to be used to restrict or ban the GMO if there is a lack of scientific certainty due to insufficient information on the potential risks that LMOs can have on biodiversity and human health. Again the SPS (Sanitary and Phyto- sanitary) agreement, allows members to adopt measures on the basis of available pertinent information in the face of insufficient scientific evidence, provided the members seek to obtain the additional information necessary for a more objective assessment of risk and review the decision within a reasonable period of time.⁵⁴³ The information on GMOs shall appear either on a label or in an accompanying document.⁵⁴⁴ Article 26 of the Protocol permits Parties to consider the socio-economic issues arising from the LMO impact on the conservation and sustainable use of bio- diversity, before reaching a decision on imports. The Protocol also gives special attention to the biodiversity to indigenous and local communities. It also encourages to co- operate on research and exchange of information on these matters. India has ratified the protocol on 17th January, 2003 and the protocol entered into force on 11th September, 2003.

iv. World Trade Organization (WTO) Agreements: - The WTO is mainly involved in establishing rules for international trade in

⁵⁴¹ The AIA provides for a prior assessment by importing country of GMOs intentionally introduced into the environment like seeds for plantation, live fish for release etc. This agreement calls for documentation and identification of LMOs which include the relevant trait, information handling, storage, transport and use along with a full report or risk assessment.

⁵⁴² Preamble, Article 1, Article 10(6) and Article 11(8) of the Biosafety Protocol.

⁵⁴³ Article 5.7 of the Protocol.

⁵⁴⁴ Article 21 and 26 of the Biosafety Protocol.

GM foods. Two agreements in the WTO apply to risk assessment and labelling of GM foods. These are the Agreements on Sanitary and Phytosanitary Measures (SPS)⁵⁴⁵ and Technical barriers to Trade (TBT)⁵⁴⁶. The risk assessment of GM foods for trade requirements is addressed under the agreement on Sanitary and Phytosanitary Measures (SPS). This agreement deals with application of food safety and animal and plant health regulations.

v. OECD Guidance for the Designation of a Unique Identifier for Transgenic Plants, 2002: - In February 2002, the OECD published the Guidance for the Designation of a Unique Identifier for Transgenic Plants. A Unique Identifier is a nine-digit, alphanumeric code that is given to each transgenic (or genetically engineered) plant that is approved for commercial use, including planting and food/feed use. This guidance was developed because confusion can arise when different national authorities are sharing information on the same genetically engineered crop if different names or descriptions can be used for the same product. The guidance has been designed so that developers of a new transgenic plant can generate an identifier

⁵⁴⁵ The Agreement on the application of Sanitary and Phytosanitary (SPS) measures is closely linked with the Agreement on Agriculture. It empowers the governments with the right to restrict trade when necessary to protect human, animal or plant life or health was also recognised under the GATT [in Article XX(b)] provided that the measures were not applied as a disguised restriction on trade. Many countries feared, however, that with non-tariff barriers to agricultural imports being banned following tariffication and enhanced and unjustified use might be made of sanitary and phytosanitary measures to restrict trade. The new SPS Agreement designed to head off this threat followed the model as negotiated at GATT Tokyo Round and it was further negotiated at Uruguay Round so that the SPS agreement is a spin off from TBT (Technical Barriers to Trade)

⁵⁴⁶ The TBT agreement assists to ensure that WTO members do not use domestic regulations, standards, testing and certification procedures to create unnecessary obstacles to trade. It encourages countries to use international standards where appropriate.

and include it in the dossiers that they forward to national authorities during the safety assessment process. Once approved, national authorities can then forward the unique identifier to the OECD Secretariat for inclusion in the OECD's product database. This is particularly important as more and more information on the safety of approved products becomes available through web sites. In January 2004, the EU adopted the OECD guidance as its system for generating unique identifiers "establishing a system for the development and assignment of unique identifiers for genetically modified organisms".⁵⁴⁷ The OECD guidance has also been recognised as a mechanism for unique identification to be used within the context of the Cartagena Protocol on Biosafety.⁵⁴⁸

REGULATORY REGIME FOR GENETICALLY MODIFIED FOODS

During recent years there has been considerable advancement of Science and Technology for using Modern Biotechnology tools for the production of foods, feeds and drugs. Research is also helping in developing plants such as banana with vaccine against cholera and tomato and muskmelon with vaccine against rabies. Cures even for diabetes and cancer have been attempted with encouraging results through the production of immune proteins in plants.⁵⁴⁹ While the countries like USA, Argentina, Canada, Brazil, China, and South Africa are jointly producing 99% of the world's transgenic crops (GM food), the rest of the countries like Australia, Mexico, India and EU countries like Spain, France and Germany, contribute remaining

⁵⁴⁷ Commission Regulation (EC) No. 65/2004.

⁵⁴⁸ http://www.oecd.org/document/57/0,3343,en_2649_34385_31562937_1_1_1_1,00.html. Visited on 15th April, 2009 at 3.47 PM.

⁵⁴⁹ The Indian Council of Medical Research, New Delhi, Regulatory Regimen for Genetically Modified Food: The Way Ahead, April 2004.

1%.⁵⁵⁰ India grew *BT* cotton in around 0.1 million hectares in 2003 which was double of 2002.⁵⁵¹ The genetically engineered crops commercially cultivated include cotton, soyabean, maize, canola, tomatoes, potatoes and squash. Seventy three percent of the GM crops raised were for herbicide tolerance, 18% were aimed at resistance to insects and 8% were varieties containing both traits while only less than 0.1% of the crop was aimed at other characteristics like yield improvement, vitamin enrichment, etc.⁵⁵²

REGULATORY SYSTEM FOR GM FOODS IN SELECTED COUNTRIES

(a) USA: In the USA, there is a co-ordinated framework for the regulation of biotechnology. Genetically engineered (GE) crops--including crops engineered to resist pests or tolerate herbicides--are widespread in the United States and around the world. Taking direction from the 1986 Coordinated Framework for Regulation of Biotechnology, the U.S. Department of Agriculture (USDA), Environmental Protection Agency (EPA), and Food and Drug Administration (FDA) regulate GE crops to ensure that they are safe.⁵⁵³ The three agencies have a coordinated program for monitoring the use of marketed GE crops to determine whether the spread of genetic traits is causing undesirable effects on the environment, non-GE segments of agriculture, or food safety, as recommended by the National Research Council and others. USDA, EPA, and FDA have proposed regulatory changes intended to improve their oversight of GE crops. The regulatory system is characterized with- *sectoral approach regulation; procedures for notification, performance standards, safety standards; no*

⁵⁵⁰ Id.

⁵⁵¹ Id.

⁵⁵² Id.

⁵⁵³ <http://www.gao.gov/products/GAO-09-60>

mandatory labeling and mandatory pre-market approval. The Farm Bill, 2008 requires USDA to take actions on lessons learned from its investigation of an unauthorized release of GE rice.

(b) European Union (EU): The European Union adopted the policy of environmental release and marketing, contained use, safety review and labeling of GM foods. The regulatory system on GM food under the EU is featured with- *procedures for authorization and notification; procedures for risk assessment; mandatory monitoring, labeling and traceability, consultation of scientific; committees, consultation of public; establishment of 1% threshold for adventitious contamination of non-GM with GMO.* In Europe, the labeling and packing of the GMOs placed on the market are to be in accordance with the permitted conditions under Article 21 and 26 of the Biosafety Protocol.⁵⁵⁴ The EC Regulation⁵⁵⁵ of the European Parliament and of the Council on GM Food and Feed lays down the details of labeling. Again, the imported foods must be subjected to label regulations. It should have certificate of origin indicating GMO status and proof of analysis from certified laboratories. The System for the Development and Assignment of Unique Identifiers for GMOs designed a unique identification system for GMOs authorized for the placing on the market.⁵⁵⁶ In Europe, the economic damage resulting to the non- GM growers from the blending with GM crops is dealt under the national civil liability systems.⁵⁵⁷ Member countries are planning to introduce specific legislations and compensation schemes for this purpose. Imposition of levy on GM growers and third party insurance obtained by the GM growers are the practice

⁵⁵⁴ Directive 2001/18/EC of the European Parliament and of the Council on the Deliberate Release into the Environment of GMOs.

⁵⁵⁵ EC Regulation No. 1829/2003.

⁵⁵⁶ European Commission Regulation No. 65/2004.

⁵⁵⁷ Directive 2004/35/EC of the European Parliament and of the Council on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage.

methods for compensating admixture.⁵⁵⁸ The European Commission on September 8, 2004 has approved the inscription of 17 varieties genetically modified seeds in the Common EU Catalogue of Varieties of Agricultural Plant Species, the first time that transgenic varieties have been entered into the catalogue.⁵⁵⁹ However, on 9th of February, 2008 France officially banned the cultivation of the bt-maize MON810. With the ban on the US-agrogiant Monsanto's crop France joins Austria, Poland, Hungary and Greece. Environmental organisations and critical farmers are happy, conventional maize growers and Monsanto angry.⁵⁶⁰ Till 17th March, 2009, the crucial decisions are pending at the European Union's level regarding the cultivation of genetically modified crops. Earlier, the European Commission had proposed to force Austria, Hungary, France and Greece to lift safeguard measures they put in effect against Monsanto maize MON 810, the only GM crop currently allowed for cultivation in the EU. Again, the European Commission also proposes to approve the cultivation of two GM maize crops (Syngenta Bt11 and Pioneer 1507) which would be the first approvals of the cultivation of a genetically modified crop in Europe since 1998.⁵⁶¹ In spring 2004, Greek authorities discovered that with GM contaminated corn and cotton seeds had entered the Greek market. In many cases, the contaminated corn seeds had been sold to farmers without informing them and already sown in various small areas mainly at Northern parts of Greece. According to Ministry of Agriculture official statements Greek government traced

⁵⁵⁸ European Commission Reports on National Measures to Ensure Co-Existence of GM Crops with Conventional and Organic Farming, IP/06/293, 2006, downloaded from <http://www.biosafety.be/Menu/biosEur.html>, visited on 12th December, 2009 at 6.54PM.

⁵⁵⁹ <http://www.ens-newswire.com/ens/sep2004/2004-09-08-04.asp>, visited on 12th December, 2009 at 6.59PM

⁵⁶⁰ http://www.aseed.net/index.php?option=com_content&task=blogcategory&id=21&Itemid=38, visited on 12th December, 2009 at 6.24PM.

⁵⁶¹ http://www.aseed.net/index.php?option=com_content&task=blogcategory&id=21&Itemid=38, visited on 12th December, 2009 at 3.54PM

and destroy 117, 97 hectares of sown corn fields. Two companies were liable for the GE corn contamination, Pioneer and Syngenta. Both companies offered to the farmers compensation provided that they would have signed a contract. By signing the contract the farmer was bound not to turn against the company; in case they would, they had to return the money of compensation to the company. The amount of compensation differed from farmer to farmer, from area to area and from company to company. In some cases, a company offered to cover the cost of farmer's expenses up to that time. In other cases, they offered to cover a part of the lost profit or a part of the subsidy per hectare. At this, the General Confederation of Greek Agrarian Association (GESASE) filed case against companies that unlawfully supplied GM contaminated seeds to Greek farmers.⁵⁶²

(c) Australia: In Australia, there is National Gene Technology Regulatory System. The top most organ is the Office of the Gene Technology Regulatory. The Australian GM crop Regulatory system is featured with- whole of government approach; labelling of foods containing GM protein or DNA in final product; minor ingredients and highly refined oils exempt from labelling; 1% tolerance for unintended mixture.

(d) China: In China there is the Safety Administration Office for Agricultural Biological Genetic Engineering under the Ministry of Agriculture. The most important features of the system- procedure for administration of registration of imported feed and food additives; labelling requirements for all imported GM soya bean, corn, rapeseed, cottonseed and tomatoes; approval procedure for

⁵⁶²http://www.aseed.net/index.php?option=com_content&task=view&id=330&Itemid=174, visited on 12th December, 2009 at 4.34PM.

release into environment. The Chinese Regulations on Safety of Agricultural Genetically Modified Organisms, 2001 and the Implementation Regulations on Labelling of Agricultural Genetically Modified Organisms, 2002 specify that GMOs in the labelling catalogue shall be marketed according to the implementing regulations. Otherwise, imports or marketing are banned.

India: - Currently the Ministry of Environment and Forests as well as the Department of Biotechnology, both of whom were pioneers in regulating GM foods in India as well as the Ministries of Agriculture, Health, and Commerce have considerable stake in the field. Regarding the GM Crops, the legal framework in the country is as under-

1. Environment Protection Act 1986 With Its 1989 Rules Pertaining To Genetically Modified Organisms (GMO): - The Genetic Engineering Approval Committee (GEAC)⁵⁶³ established by the Ministry of Environment and Forests⁵⁶⁴ acts as a statutory body to deal with rules and procedures for handling GMOs and hazardous organisms for review and approval from environmental angle involving large scale use of GMOs, their products in R&D, industrial production, environmental release and field application. Further, without the approval of the GEAC⁵⁶⁵ no person is entitled to import, manufacture, transport, store, distribute or sale of any food, feed, raw or processed or any ingredient of food, food additives or any food product that contains GM material. Again, a Biotechnology Coordination Committee under the GEAC functions as the legal and statutory body with judicial powers to inspect, investigate and take

⁵⁶³ GEAC gives the approval of large scale field trials and commercialisation of the GM commodities.

⁵⁶⁴ The EPA Act 1986 and Rules 1989 of Ministry of Environment and Forests.

⁵⁶⁵ The draft notification issued by the Ministry of Environment and Forests in July 2001.

punitive action. Again, the Committee is also empowered to review, control, and monitor large scale use of GMOs in R&D and industrial production, environmental release and experimental field trials.

2. **The Report of the Review Committee on Genetic Manipulation (RCGM) under the Department of Biotechnology (DBT):** -The Ministry of Science and Technology, monitors the safety related aspects of ongoing research projects involving GMOs through bringing out manuals of guidelines.⁵⁶⁶ The mechanism of implementation of guidelines is through the Recombinant DNA Advisory Committee (RDAC)⁵⁶⁷ and Institutional Biosafety Committee (IBSC)⁵⁶⁸. Such committee (RCGM)⁵⁶⁹ should also include a representative from the health sector. In addition, there is a provision of State Biotechnology Coordination Committee (SBCC) and District Level Committee (DLC).
3. **The National Seed Bill, 2004 and GM Seeds:** - The Seed Act, 1966 doesn't have provision relating to the Genetically Modified Seeds. Genetic engineering is an irreversible and uncontrollable technology. Once released into the environment even for one season in a small scale, the potential for environmental damage and human health impacts could be tremendous. However, the National Seeds Bill 2004, in the case of transgenic varieties, has inter alia following features-

⁵⁶⁶ Recombinant DNA Safety Guidelines 1992 and Revised Guidelines for Research in Transgenic Plants 1998

⁵⁶⁷ The RDAC takes note of development at national and international levels in biotechnology on recombinant research, use and application.

⁵⁶⁸ The IBSC is the nodal point for interaction within an Institute, University, Commercial Organization included in rDNA research or implementation of rDNA guidelines. The IBSC is constituted in all centres engaged in genetic engineering research and production activities.

⁵⁶⁹ RCGM controls the researches and limited field trials.

- The Bill contains "Special Provision for Regulation of Transgenic Varieties" - it proposes a provisional registration for two years, subject to clearance under the Environment Protection Act, 1986. Still, there is the inevitable and irreversible possibility of the transgenic contamination of seed stocks. At this, it may be submitted to enforce the absolute liability mechanism in case of any untoward incidents during seed trials, testing relating to such seeds.
- Under the new Bill, the accredited individuals and institutions will be able to provide certification. But self-certification is expected to allow any seed company to establish its own certification institutions tomorrow and certify its own seed which is really very dangerous.
- The Bill also says that any seed testing laboratory in the government or non-government sector can act as a State Seed Testing Laboratory where analysis of seed of any kind or variety shall be carried out.
- The penalty clauses provided for offences are very mild and not deterrent enough.⁵⁷⁰
- The bill is completely inadequate when it comes to compensation to farmers in the case of seed failure. Such compensation should be linked to a Seed Insurance system, the premium for which is paid by the seed trader. Compensation should include the monetised value of the

⁵⁷⁰ The bill proposes that the offender who sells sub-standard seed, upon conviction, be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty five thousand rupees. Offenders who sell spurious, misbranded or non-registered seeds are punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

expected performance as well as coverage of costs of cultivation incurred and not just the seed cost.

Institutional mechanisms proposed should incorporate decentralised planning. This is best done in the public sector given the elaborate R & D set up and the agriculture departments that are in place. Instead of doing away with the extension system and trimming the departments more and more, there should be adequate investments on State Seed Development Corporations, on Seed Certification Agencies, on Seed Testing Laboratories and most importantly on programmes like Seed Villages which could incorporate training on breeding skills to farmers where required. Again, Panchayats should have a role in certifying failures or losses since agricultural officials are not always available on time to verify the field level situation.

- 4. The Food Safety and Standards Act, 2006:** - The Act deals with the regulatory aspects of the GM Crops. The Act of 2006 defined the "genetically engineered or modified food" under Section 22(2).⁵⁷¹ The Central Government has established a body to be known as the Food Safety and Standards Authority of India.⁵⁷² The Food Authority shall, by notification, establish a Committee to be known as the Central Advisory Committee shall ensure close co-operation between the Food Authority and the enforcement agencies and organisations operating in the field of food.⁵⁷³ the Food Authority may establish as many Scientific Panels on genetically modified organisms and foods;

⁵⁷¹ "Genetically engineered or modified food" means food and food ingredients composed of or containing genetically modified or engineered organisms obtained through modern biotechnology, or food and food ingredients produced from but not containing genetically modified or engineered organisms obtained through modern biotechnology; [(Section 22(2), The Food Safety and Standards Act, 2006]

⁵⁷² Section 4, The Food Safety and Standards Act, 2006.

⁵⁷³ Section 12(1), The Food Safety and Standards Act, 2006.

biological hazards; contaminants in the food chain etc.⁵⁷⁴ under Section 16(3) the Food Authority shall also provide scientific advice and technical support to the Central Government and the State Governments in matters of framing the policy and rules in areas which have a direct or indirect bearing on food safety and nutrition; search, collect, collate, analyse and summarise relevant scientific and technical data particularly relating to food consumption and the exposure of individuals to risks related to the consumption of food; incidence and prevalence of biological risk; contaminants in food etc. take all such steps to ensure that the public, consumers, interested parties and all levels of panchayats receive rapid, reliable, objective and comprehensive information through appropriate methods and means. Under Section 22 of the Act, no person shall manufacture, distribute, sell or import any novel food, genetically modified articles of food, which the Central Government may notify in this behalf. Where an offence under this Act which has been committed by a company, ("company" means anybody corporate and includes a firm or other association of individuals; and "director" in relation to a firm, means a partner in the firm.) every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.⁵⁷⁵ For the purposes of adjudication under this Chapter, an officer not below the rank of Additional District Magistrate of the district where the alleged offence is committed, shall be notified by the State Government as the Adjudicating Officer for adjudication in the manner as may be

⁵⁷⁴ Section 13(3), The Food Safety and Standards Act, 2006.

⁵⁷⁵ Section 66(1), The Food Safety and Standards Act, 2006.

prescribed by the Central Government. [Section 68(1)]. The Central Government or as the case may be, the State Government may, by notification, establish one or more tribunals to be known as the Food Safety Appellate Tribunal to hear appeals from the decisions of the Adjudicating Officer under Section 68.⁵⁷⁶ No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer or the Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.⁵⁷⁷

- 5. Protocols for Food and Feed Safety Assessment of GE crops, 2008:-** Since the genetic material introduced into GE plants may be derived from organisms that have not previously been present in the human diet to any great extent, the corresponding gene products are considered to be novel with respect to human consumption. At this, a series of protocols have been developed by the Department of Biotechnology (DBT) as guidance to applicants seeking approval for the environmental release of genetically engineered (GE) plants⁵⁷⁸ in India under "Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Microorganisms/Genetically Engineered Organisms or Cells 1989" (Rules, 1989) notified under the Environment (Protection) Act, 1986. Specifically, these protocols address key elements of the safety assessment

⁵⁷⁶ Section 70, The Food Safety and Standards Act, 2006.

⁵⁷⁷ Section 72, The Food Safety and Standards Act, 2006.

⁵⁷⁸ A plant in which the genetic material has been changed through *in vitro* nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles. Such plant may be called as Recombinant-DNA Plant.

of foods and/or livestock feeds that may be derived from GE crops. The principal focus of the safety assessment of foods derived from GE plants is on assessing the potential effects of the expression product(s) of the inserted gene(s). This test is primarily used in situations where the experimenter has information indicating that the test material is likely to be nontoxic, *i.e.*, having toxicity only above a regulatory limit dose. Again the test should look into the following effects on health on consumption of the GE crops-

- Body weight and body weight changes;
- Food consumption, and water consumption in cases where the observation is optionally included;
- Toxic response data by sex and dose level, including signs of toxicity;
- Nature, severity and duration of clinical observations;
- Haematological tests with relevant base-line values;
- Clinical biochemistry tests with relevant base-line values;
- Organ weights and organ/body weight ratios;
- Necropsy findings;
- Detailed description of all histopathological findings; and
- Statistical treatment of results, where appropriate.

BIO-TECHNOLOGY AND LAW

Biotechnology has the potential to increase agricultural production and achieve food security. It can help face challenges like lower productivity of agricultural crops, livestock and fisheries, crop damage from pests and stress induced by salinity, drought and alkalinity. It is now possible to engineer crop plants that can tolerate drought, flood, salinity or other abiotic stresses, as well as resistant to various pests, pathogens or herbicides. While Bt crops resistant to insect larvae, and herbicide tolerant crops, are already in the

market in many countries, crops with tolerance to abiotic stresses are at various stages of development. Similarly, it is also now possible to engineer plants with altered ripening of fruits, changed nutritional composition, etc., or use plants as bioreactors for producing vaccines, pharmaceuticals or other molecules of special interest. From the Indian view point, more than herbicide resistance, stress resistance to drought, temperature and poor soils, nutritional enrichment, increased productivity and pest resistance are important. India is under tremendous pressure from the biotechnology industry to allow GM crops. These companies on this line have both the financial resources to mobilise scientific opinion as well as political support. The Government of India has taken the following steps in regard to regulate the biotechnological innovations.

1. Dr. M. S. Swaminathan Taskforce, 2004: - Biotechnology has the potential to increase agricultural production and achieve food security. The Taskforce headed by Dr M S Swaminathan (2004) under the Ministry of Agriculture, Government of India, proposed inter alia the followings-

- A comprehensive and integrated view should be developed of r-DNA and non r-DNA based applications of biotechnology with other technological components required for agriculture as a whole. Genetically engineered and non-genetically engineered new varieties arising out of applications of advance technology need equal emphasis.
- Integrated pest management system and the use of conventional biotechnologies (for example, bio-fertilizers, bio-pesticides, bio-remediation technologies, molecular assisted grading, plant tissue culture, etc.) should continue to be encouraged and supported.

- A precautionary, yet promotional approach should be adopted in employing transgenic R&D activities based on technological feasibility, socio-economic considerations and promotion of trade.
- Public funding should be avoided in low priority research areas or those that reduce employment and impinge on the livelihood of rural families.

2. Ram Gopal Yadav Committee report on seed⁵⁷⁹: -__The government tabled the controversial Seeds Bill in the Rajya Sabha in December 2004, later it was referred to the parliamentary standing committee on agriculture for review. The standing panel took about two years to review the Bill and recently submitted its report. In its 22nd report the Parliamentary Standing Committee on Agriculture headed by Ram Gopal Yadav has criticised the provision in The Seeds Bill, 2004, on the grounds as under-

- Under the Act, there is a condition for ``provisional registration/clearance for two years'' for transgenic (genetically modified seeds) irrespective of such a clearance under the Environment Protection Act, 1986. The committee reported that this would bring untested seeds and genetically engineered food crops into the market through ``the backdoor.'' Hence, the proviso to Clause (15) 1 in the Seeds Act should be deleted'.

⁵⁷⁹ <http://www.thehindu.com/2006/12/31/stories/2006123102111000.htm>; visited on 1st April, 2010 at 9.16 AM & <http://www.financialexpress.com/printer/news/185549/> visited on 1st April, 2010 at 9.12 AM.

- The seed legislation should address the issue of promoting sale of newly developed varieties of seeds and at the same time ensure that the interest of the farmers and the sustainability of agriculture were not jeopardised.
- The Seed Bill should not undermine the farmers/primary conservator friendly provisions of the Protection of Plant Varieties and Farmers Rights (PPV and FR) Act, 2001 and the Bio-diversity Act, 2002.
- To that effect, the committee has recommended that the Protection of Plant Varieties and Farmers Rights (PPV and FR) Act, 2001, be made fully operative first, before passing the Bill, to ensure harmony between the two.
- The Bill contains the protection and recognition of the traditional rights of farmers to produce, use, save, sell, exchange, share or sell seeds and planting material with the rider that farmers whose seeds do not conform to the minimum limits of germination, physical purity and genetic purity would constitute a 'violation' of the Act. The Committee has held that this rider-provision would infringe upon the rights of the farmers and has recommended that it be removed from the Bill.
- On pricing of seeds, the panel report said that the proposed Central Seed Committee should be given adequate powers to regulate seed prices. It cited "unfair trade practices" committed by the seed multinational Monsanto in charging exorbitant prices for BT cotton seeds.
- The panel suggested inclusion of a clause in the Bill for compensating farmers for losses due to bad quality seeds on the line of that in the Protection of Plant Varieties and Farmers Rights (PPV and FR) Act, 2001 and a designated arbitration tribunal or compensation committee be constituted for the purpose. It called for a Seed Mark to denote quality of

seeds and labeling norms in harmony with the Weights & Measures Act and Packaging Act Seed inspectors should not search farmers.

3. Draft Biotechnology Policy of West Bengal, 2006: - ⁵⁸⁰ The state of West Bengal has adopted the biotechnology policy in 2006. The important issues addressed under this policy are as under-

- a.** Development of genetically modified hybrids and new varieties of crops like rice, mustard, chickpea, potato, tomato and other vegetables. Target traits should be yield increase, pest and disease resistance, salinity/drought tolerance, enhanced nutritional quality, and increased shelf life.
- b.** Improving jute and tea cultivation through biotechnological interventions.
- c.** Development of horticulture and floriculture using clonal propagation.
- d.** Extension of regional hardening facilities for tissue culture raised plants to facilitate greater penetration of the technology.
- e.** Cultivation of medicinal and aromatic plants.
- f.** Establishment of gene-banks and germplasm repositories for maintenance and propagation of plants.
- g.** Improvement of sericulture and quality of varieties of silk including tussar.
- h.** Development of biofertilizers to enhance soil fertility and to decrease dependence on chemical fertilizers. Priorities should include screening of elite strains of microbes. Integrated nutrient management system needs to be strengthened.

⁵⁸⁰ Draft Biotechnology Policy of West Bengal , 2006 at pg. 07

- i.* Identification of indigenous micro-flora for development of bacterial or fungal consortium useful as biofertilizers, biopesticides, etc.

4. The Draft National Biotechnology Regulatory Bill (India), 2008⁵⁸¹: - Recently, the Department of Biotechnology of the Government of India released the Draft National Biotechnology Regulatory Bill for policing of modern biotechnology and its products. Pursuant to the draft bill, the Central Government is to appoint the National Biotechnology Regulatory Authority (NBRA) for the implementation of work programmes and decisions adopted by the Authority and ensuring timely and quality service and coordinating the Central Government and various stakeholders through relevant committees to guarantee a regular dialogue.⁵⁸² This authority⁵⁸³ is to render scientific advice and technical support to the concerned Governments on matters of policy and rules directly affecting GEO safety issues and crisis management; serve as the national point of contact for international activities for policy measures and monitor, review and analyze national and international policies that may affect Government priorities in the biotechnology sector; develop and implement guidelines for risk assessment methodologies and feed the concerned Governments on safety matters; establish a network of organisations for the exchange of information, expertise and best practices; provide access to process and criteria for risk assessment and risk management to the stakeholders and the public to uphold the 'credibility and predictability of risk assessment'; notify the public, all clinical and field trials and regulatory decisions; design public outreach programmes to inform the public on the Authority's

⁵⁸¹ <http://igmoris.nic.in/default1.asp> visited on 9th October, 2008 at 8.54 PM.

⁵⁸² Section 5 of the Draft Bill.

⁵⁸³ Section 9(3) of the Draft Bill.

mandate and programmes,⁵⁸⁴ commit to continued 'quality improvement and professional development' in the scientific front; contribute to the development of international technical standards; and promote consistency between international technical standards and domestic. Again, there is a provision for the setting up of the Inter- Ministerial Advisory Board (IAMB)⁵⁸⁵ and the National Biotechnology Advisory Council (NBAC)⁵⁸⁶. However, neither the Board nor the Committee are entitled to interfere with any product specific decisions made by the authority. Under the Draft Bill, the Authority shall have at least three⁵⁸⁷ branches, viz. the agriculture branch, forest branch and fisheries branch. Again, the Human and Animal Health Branch will control process and products with applications in human and veterinary health while the Industrial and Environmental Applications Branch will take care of products and process used in industrial manufacturing and environmental applications. Each branch will be headed by a Chief Regulatory Officers (CRO), an eminent scientist with expertise in the concerned subject matter. Again, the Authority is empowered to constitute Scientific Advisory Panels on an ad hoc basis for obtaining scientific advice, informations and recommendations on safety issues that could impact human and animal health and the environment. Under the Draft Bill, the inspection and monitoring activities will be undertaken according to NBRA best practices through ad hoc committees trained by the NBRA. Confined field trials of the GE

⁵⁸⁴ The Communication and Outreach Unit under the Draft Bill, 2008.

⁵⁸⁵ IMAB consists of the representatives of the concerned Ministries, Department of Biotechnology, Department of Science and Technology, ICMR, ICAR, CSIR, Drug Controller General of India, Directorate of Plant Protection, Quarantine and Storage and Food Safety and Standards Authority. This board (IMAB) has been made responsible for promoting cooperation with the Central Government to implement the biotechnology regulatory system in India.

⁵⁸⁶ NBAC will consist of representatives from the 'scientific community, private sector, and civil society in diverse fields such as science, business, law, nutrition, environment, human health and public advocacy'.

⁵⁸⁷ Section 9 of the Draft Bill.

crops will be carried out with the participation of State Agricultural Departments and State Agricultural Universities. Under the Draft Plan, non-compliance by a person with the provisions of the proposed act and rules is an offence punishable under the Act.⁵⁸⁸ However, Section 28 forbids any suit, prosecution or other legal proceedings against the functionaries acting in good faith under the proposed act or rules. The Draft Bill again proposes the constitution of the National Biotechnology Regulatory Appellate Tribunal constituted with one judicial member and two technical members (one from health care and allied fields and other from agriculture and allied fields). Any person aggrieved by the decision under Section 11, within a stipulated time of 30 days from the date of communication of the decision to the applicant is entitled to appeal before the tribunal. However, the jurisdiction of civil court or other authority to entertain any appeal in respect of any matter with which the Authority is empowered.⁵⁸⁹

5. The Right to Information Act, 2005: - Today, the protection of confidential business information (CBI) have gained strength with the expanding IPR regime to safeguard enterprises to attain and maintain competitive advantage. At this juncture, though the RTI Act, 2005 doesn't warrant the disclosure of information including commercial confidence, trade secrets or intellectual property, which would harm the competitive position of a third party⁵⁹⁰, this exception can be neglected in case it is satisfied that larger public interest demands such disclosure.⁵⁹¹ In *Divya Raghunandan v.*

⁵⁸⁸ Sections 16- 19 of the Draft Bill.

⁵⁸⁹ Section 26, of the Draft Bill.

⁵⁹⁰ Section of the Right to Information Act, 2005.

⁵⁹¹ Article 8(1)(a) of the Bio-safety Protocol, 2000.

*Department of Biotechnology*⁵⁹² a Greenpeace representative applied for information on the locations of multi location field trial and 'data on toxicity, allergic nature and other relevant material' of GM brinjal, okra, mustard and rice authorised for multi location field trials. At this, only a list of locations was provided but the data was not delivered. But on appeal, only the data on BT brinjal was given because the data on other crops was still under process. However, ruling on the second appeal, the Central Information Commission directed the DBT (Department of Biotechnology) to disclose the data. The Commission also suggested the publication of the information in printed form because the matter was of considerable concern to the educated public. Thus, although the revealing of the information may lead to the disclosure of patented technology, the greater public interest and sensitivity of the matter would make it a fit case for the competent authority to disclose. It was also opined that the disclosure based on expert opinion should at the best be done at the governmental level.

GM crops, in India have caused a number of problems in India. Here the suicide of a huge number of farmers is a sad commentary on the impact of liberalization policies that made agriculture un-remunerative. At this, commenting on the Bt-cotton controversy in India, Prof. Pental said⁵⁹³ that while the efficacy of the BT gene in imparting pest resistance to the plant is well established, the success of the technology depends critically on the cultivar into which that gene was introduced. Among the various Bt cotton varieties introduced so far in Indian agriculture, cultivars

⁵⁹² Complaint No. CIC/WB/A/2006/00548. Decision dated 7.05, 2007, accessible from <http://cic.gov.in/CIC-Orders/Decision>. visited on 24th October, 2008 at 4.56 PM.

⁵⁹³ <http://www.CorporatisationofagricultureIndiaInternationalCentreDiscussionForums.htm> visited on 30th September, 2008 at 4.56 PM

which were well known for their proven suitability for Indian agro-climatic conditions showed good results, while others such as those introduced initially by Monsanto-Mahyco were not as successful. This clearly shows that the failure is not due to the Bt technology, but due to the wrong choice of cultivars for introducing the Bt gene, he said.

The BT Brinjal story: - Very recently, after facing stiff opposition from the environment ministry, the proposal to introduce genetically modified (GM) food in India has run into trouble with the Planning Commission. In the first public positioning by the Government, the highest planning body has shown the red light to GM technology in food crops like- tomato, potato and green vegetables including brinjal. However, the plan panel has fewer objections to introduce the GM technology in non- edible agro- products like cotton. Mr. Abhijit Sen, a member, Planning Commission, commented that "India's crop export could be seriously hit if it is allowed GM Food crops"⁵⁹⁴ is very significant. However, in very recent times, the Genetic Engineering Appraisal Committee, the country's biotechnology regulator has deemed Bt brinjal which is a part of an USAID programme under which the Indian Institute of Vegetable Research, Varanasi, the University of Agricultural Sciences, Dharwad, and Tamil Nadu Agricultural University, Coimbatore who worked with the MNCs like- Mosanto & Mahyco with specific level, suitable for consumption. At this, the Union Environment and Forest Ministry under Jairam Ramesh has decided to hold a series of public consultations before finalizing the decision on the commercial release of bt brinjal.⁵⁹⁵ However, the farmer leaders sought the intervention of the Prime Minister, on the following grounds⁵⁹⁶-

⁵⁹⁴ Reported in The Sunday Times of India: 14th June, 2009 at pg. 08.

⁵⁹⁵ Reported in The Times of India: 17th Oct, 2009 at pg. 09.

⁵⁹⁶ Gargi Pasai: The Hindu: 24th October, 2009 at pg. 14.

- a. Fear of losing the traditional brinjal seed just like traditional cotton seeds;
- b. Brinjal is grown in abundance in India;
- c. It is used as fodder for cows and buffalos;
- d. It's impact on cattle and children and humans who consume their milk. Generally Bt (*Bacillus thurengiensis*) is an external spray, used to control pests in agriculture, with a warning written on it "Keep away from children as it causes allergies"
- e. It's impact on human beings in longer terms etc.

In addition to the farmer leaders of different regions of the country, some of the state governments like Madhya Pradesh, West Bengal, Kerala, Orissa, and Chattisgarh etc. are on a row to say no to Bt Brinjal. At this, the Madhya Pradesh Minister for Farmer Welfare and Agricultural Development, Dr. Ramkrishna Kusmariya categorically said that he will not allow Bt Brinjal into the state as he understands the possible dangers of GM food crops.⁵⁹⁷

West Bengal: - In West Bengal, mostly the traditional seeds are in use. In some parts the farmers preserve seeds, they exchange with each other, and they even purchase seeds from the market. Farmers especially, the small and marginal who dominate into the sector, in most cases, undergo agricultural activities after taking loan. Seed is the most important component for cultivation. If the seed is proper or pure, then, it is fine. But unfortunately, the seeds mostly available in the market are suffering from adulteration. Sometimes, the seed doesn't germinate, sometimes, they do not bear crops even if the plant has normal growth. In the second case the farmers suffers more as in this case he supplies all the

⁵⁹⁷ Reported in The Statesman: 30th October, 2009 at pg. 03.

implements but doesn't get the desired result. So, it requires the supply of good quality of seeds. Generally, seeds are of four types viz. - Foundation seeds,⁵⁹⁸ Breeder's seeds,⁵⁹⁹ certified seeds,⁶⁰⁰ and the Truth Level seeds.

GM Seeds and Bengal: - The State of West Bengal has not yet finalized its policy on GM crops. However, the government planned to modernise farming in the state to increase production and ensure food security through promoting crop diversity for intensive and maximum use of all kinds of land available for cultivation. The state government allowed Mahyco for conducting field trials for BT rice and Bt Okra on 11 July, 2006 at North 24-Parganas without setting up the SBCC and DLC for monitoring purpose.⁶⁰¹ The Bengal government is increasing cotton cultivation from 500 to 5,000 hectares by the end of the 11th plan period.⁶⁰² However, the members of the state agricultural commission had recommended in its interim report a complete ban on all kinds of open field trials and commercial cultivation of all kinds of GM crop varieties in the state till all issues of environment and bio-safety are resolved.⁶⁰³

Organic Farming

The most advanced phase of agricultural development is the demand for organic farming. The Green Revolution changed India's position from a food deficient to food self-sufficient state. Organic

⁵⁹⁸ Foundation seed: It is the secondary stage of seed production cycle. National Seed Corporation (NSC), Seed Farm Corporation of India (SFICI) and State Seeds Corporation (SSC)'s have been given the responsibility for its production.

⁵⁹⁹ Breeder seed: It is the primary stage of the seed production cycle. It's production is organised by the Indian Council of Agricultural Research (ICAR). Breeder's seeds are further multiplied into foundation and certified seeds.

⁶⁰⁰ Certified/ Quality seed: these seeds are produced by all the farmers in all regions.

⁶⁰¹ [http://sanhati.com/news/329/Cracks in agri commission over GM crop field trial ban.htm](http://sanhati.com/news/329/Cracks%20in%20agri%20commission%20over%20GM%20crop%20field%20trial%20ban.htm); visited on Aug. 31, 2008, at 5.45 PM.

⁶⁰² Id.

⁶⁰³ Id.

farming views the entire system- plants, animals, soil, air, water and micro- organisms- in totality, with the ultimate objective of producing healthy, nutritious and quality food in a sustainable manner. Thus, it encourages the biological cycles involving micro-organisms, soil flora and fauna, plants and animals in order to enhance long term productivity of soil on the one hand and getting rid of pollution, which results from chemical practices, on the other. Thus, to make millions of acres of our starved land productive, adequate organic inputs have to be provided. Unless plant nutrients are supplemented adequately through compost and biofertilisers, sustainability of production cannot be achieved. Again, the reduction of nitrogenous fertilisers, may itself be able to reduce the pest and disease incidence of crops proportionately.

Some of the major characteristics on organic farming are-

- i.* No use of synthetic chemicals such as fertilisers, pesticides, antibiotics etc. in agricultural production
- ii.* Use of organic materials such as compost and manure to maintain the organic matter balance of soil, and as source of nutrients
- iii.* Use of nitrogen fixing as well as pest resistant plant varieties
- iv.* Incorporation of soil management techniques such as mulching, inter- cropping, and crop rotation
- v.* Use of agro forestry systems
- vi.* Use of bio- agri inputs such as bio- pesticides, bio- control agents, bio- fertilisers and humid substances from vermin composts etc.

Opportunities for Organic Farming in India: - There is ample of scopes for Organic farming in India. Every year, huge agricultural waste is available but most of it is not properly used. We must convert our 'filth into our wealth' by mobilizing all the biomass in rural and urban areas. Our social forestry can be planned to

augment biomass requirement, in addition to fodder and fuel now being supplied. The government should pay attention to organic cultivation basically due to the reasons-

- The use of hybrids, excessive irrigation and chemicals have now started lowering agricultural yield, in other words diminishing returns have started accruing.
- The excessive use of chemicals is proving to be extremely harmful from the environmental point of view.
- A large proportion of agriculture does not use chemicals.⁶⁰⁴ Hence, it is necessary to upgrade non-chemical agriculture to organic agriculture and use modern and well known methods of organic and bio-dynamic cultivation to increase agricultural yield.

In a bid to boost organic farming in the country, the Union agriculture Ministry has drawn up a national project on organic cultivation during Tenth Five Year Plan. Under this project, there was a proposal for setting up a National Institute of Organic Farming at Ghaziabad and with six regional offices at Bangalore, Hissar, Jabalpur, Nagpur, Bhubaneswar, and Imphal and also the establishment of commercial production units for organic products. Again, the farmers of Punjab are already experimenting with green manure under the project called 'Subhayog' to combat the perplexing problem of glut, underground water table depletion, environmental degradation, increasing per unit profit margin and above all to jack up the quality of the produce to compete strongly in the international market.⁶⁰⁵ After having successfully produced a good yield of paddy, farmers of 10 villages in Ludhiana are trying this experiment on wheat crop also. The ground reality in India and in several other developing countries however is that 60-80% of its

⁶⁰⁴ In India, only 30 percent of our total cultivable area is covered with fertilizer where irrigation facilities are available and the remaining 70 percent of the arable land, which is mainly rainfed area, has not been using any fertilizer.

⁶⁰⁵ R. B. L. Garg, Eco- friendly Farming; Science Reporter; January, 2006 at pg. 26

agriculture still uses very little chemicals and could easily be converted to organic agriculture.⁶⁰⁶ Society for Equitable Voluntary Actions (SEVA)⁶⁰⁷, in eastern India with its thrust area in 24 Parganas in West Bengal is promoting organic agriculture through training programmes for farmers and through field action programmes. The India Bio-Organic Tea Association has already been formed to promote organic and bio-dynamic tea⁶⁰⁸ production. Alongside the efforts of NGOs and private bodies, the government had recently evolved some intensive programmes to encourage organic agriculture. These include institution of prizes for individual farmers practising organic farming and effort through Agricultural and Processed Food Export Development Authority (APEDA), Commodity Boards to promote export of organic agricultural products, etc. To vitalise the organic agricultural movement, a number of our universities and scientists of ICAR have also started playing a key role. Bidhan Chandra Krishi Vidyalaya in West Bengal and the University of Agricultural Sciences, Bangalore have already organized national workshops and also initiated a correspondence course on organic agriculture to reach a large number of farmers on organic agriculture.

A study on the Organic Darjeeling Tea⁶⁰⁹: - The Darjeeling Organic Tea industry shows some interesting findings. One of the major reasons for tea gardens to turn organic was because yields were decreasing due to excessive usage of chemicals and fertilisers, and most of the tea bushes are over 140 years old and need

⁶⁰⁶ Veena Jha, Production and trade in Organic Agricultural products; http://www.unctad.org/trade_env/docs/organic%20agriculture.%20cuba.pdf visited on 24th September, 2008 at 10.07 PM.

⁶⁰⁷ id

⁶⁰⁸ This was a practice which was prevalent in ancient India under which planting and harvesting is carried out according to the cycles of the moon. It is supposed to lead to higher productivity and those who practice it appear to find their yield rising.

⁶⁰⁹ Veena Jha, Production and trade in Organic Agricultural products; http://www.unctad.org/trade_env/docs/organic%20agriculture.%20cuba.pdf visited on 24th September, 2008

replanting. The chemical cultivation was leading to soil erosion and landslides in the Darjeeling district. Converting to organic agriculture, though labour inputs have increased by about 30% per year, other costs such as manure, organic pesticides and bio-fertilisers⁶¹⁰ decreased at a great extent. In order to truly benefit from organic farming of tea, market diversification into other products such as herb tea, eco-tourism, green tea, and other products are required.

Organic Farming vis a vis GM Crops: -The co- existence of organic farming and the farming of GM crops may lead to economic damage to the farmers. Not long before, the Basmati growers in India were warned by the Ministry of Commerce of the possible admixture with GM rice (used in field trials) and a subsequent loss of foreign markets.⁶¹¹ Although Article 4, of the Bio-safety Protocol makes a special reference to the centres of origin, the Draft National Biotechnology Regulatory Bill of 2008 doesn't address this. Again, many of the organic farmers fear from GM pollution. The European Council Regulation on Organic Production and Labelling of Organic Products stipulates that one of the basic principles of organic production is the exclusion of the use of GMOs and products produced from or by GMOs (not containing or consisting of GMOs).⁶¹² Commission Recommendation 2003/556/EC adopted guidelines for the development of national strategies and best practices to ensure the co- existence of genetically modified crops with conventional and organic crops. The Organic Consumers organisation in the US started a campaign against biotech-

⁶¹⁰ There are three kind of technologies available to manufacture organic fertiliser. They are Aerobic Reduction, Microbial reduction and Wormi-composting. The last one is very popular in India because the cost of production and investments are very low and it does not require a big set up for it.

⁶¹¹ M.K. Sanu, Draft National Biotechnology Regulatory Bill (India), 2008- A forgottable effort: Indian Journal of International Law; Vol. 48, No.3 July- September 2008 pg. 425.

⁶¹² (EC) No. 834/2007

multinational Monsanto. Sign the "Millions Against Monsanto" petition, demanding that the Monsanto Corporation stops intimidating small family farmers, stops force-feeding untested and unlabeled genetically engineered foods on consumers and stops using billions of dollars of US tax payers' money to subsidize genetically engineered crops - cotton, soybeans, corn, and canola.⁶¹³

Challenges to Organic farming: - India, a country with rich biodiversity, is the centre of origin for several agricultural crops, and wild relatives of improved varieties. Organic farming helps the farmers to witness a high yield besides saving resources on pesticides, fertilisers and irrigation of soil. But, the challenge is now-

- (a) Firstly, the biofertilisers and biopesticides have not become very popular in India as yet **firstly**, because there is the lack of marketing and distributing network. The retailers are not interested in selling bio inputs because their demand is low, supply is erratic and farmers are ignorant about bio inputs and **secondly**, is over presence of chemical fertilisers and pesticides, heavy advertisement of the same and higher margin for retailers. However some big firms like Terra Farma in Banglore and Organic Pesticides in Belgaum started producing fertilisers and pesticide on commercial basis in recent times.
- (b) Second main concern is the lack of markets and market premium. The best way of creating these markets would be to put the buyers directly in contact with the growers and promoting partnerships between developing country

⁶¹³ <http://www.organicconsumers.org/monlink.html> visited on 3rd April, 2010 at 3.05 PM.

producers, their clients, retailers, environment and development organizations and Government agencies in developed countries. Particular emphasis should be placed on international business partnerships along the supply chain.

- (c) Many of the organic farmers fear from GM pollution. The European Union has clear guideline on this issue.⁶¹⁴ But contemporary India has not consolidated its position about the co- existence of the GM and non- GM crops.
- (d) The cost of certification is exorbitant. Thus national certification agencies should be set up, so that the costs could come down.
- (e) There needs to have a common label of organic food for product certification and differentiation, and in mainstream markets, where self-certification under particular corporate brands increasingly influences green consumerism. An important example in this context is the marketing of organic Darjeeling tea by STARBUCKS in the United States of America.

PROPOSED DESIGN OF THE CORPORATISATION OF SEED

At this juncture, it is necessary to design a model of corporatisation of seed. Ultimately, any legislation related to seeds must uphold and support the following:

- i. The Corporate body⁶¹⁵ should directly purchase seeds and other agricultural implements through open tender for a stipulated time for three to five years and renewal may be

⁶¹⁴ European Council Regulation (EC) No. 834/2007 on Organic Production and Labelling of Organic Products. & Commission Recommendation 2003/556/EC.

⁶¹⁵ For Example- 'Swarojgar' a Self- Help Corporation in West Bengal.

allowed only on satisfactory actual performance of the suppliers.

- ii. Such corporate body may distribute them through the SHGs to the farmers especially the small and marginal farmers and give necessary guidance when requires.
- iii. The company must set up seed testing units of it's own.
- iv. The relevant body should take steps to improve the quality of land.
- v. The government must prepare the area wise lists of crops to be cultivated on the basis of the condition of the soil of the area which the body corporate must satisfy.
- vi. The choice of crops to be cultivated in an area should be left mostly with the farmers and the SHGs which distributes the seeds. Here, no compulsion by the suppliers will be entertained. Moreover, the SHG members are to be trained so that they can help the farmers practically or by giving advices when necessary.
- vii. The body must not be allowed to do contract farming and following mono- cropping pattern but must encourage to involve them in multi- cropping because, mono- cropping, contributes to erosion of diversity.
- viii. The company should encourage the pattern of organic farming.⁶¹⁶
- ix. The corporate body again should look into the followings-
 - The company must give necessary training to the people associated with the SHGs regarding the treatment of

⁶¹⁶ Today, 51% of the food items in India are contaminated with the pesticides of which 20% exceed even Maximum Tolerance Limits. At this, organic farming offers enormous opportunities as an eco- friendly option for agricultural production in a sustainable manner. The demand of organic agriculture is rising among the farmers, traders, consumers and research organisations in countries like the US, France, UK, Australia, Belgium, Canada, Germany, Italy, Japan and India.

soil, seed, and other implements in agriculture who will look after the process of cultivation and train the people with necessary skills.

- The company must ensure that they will purchase agri-commodities directly from the farmers through the relevant SHGs in the local area and give best price in the market as determined by the government time to time and thus ensure the remunerative costs on his produces.
 - The relevant SHGs will have to play the role as a guarantor in case of the any agricultural loan taken by a farmer.
 - The company must facilitate the farmers associate with it through crop and health insurance.
- x. The government must monitor the activities of the company entering into the sector through periodical license.

Again appropriate compensation and speedy redressal to farmers who have incurred losses due to seed failure should be linked to an insurance system and should be based on calculations that consider loss in yields as well as cost of cultivation. Accountability and liability should be fixed both in terms of civil and criminal damages against the seed traders. Again, a role for panchayats in determining seed failure under various conditions like misbranding, spurious seed, sub-standard seed, seed sold above MRP etc. under this model I have strong reservation for the cultivation till we have sufficient data on the issues like- health, safety and certain other issues.

Regarding the GM crops, there is an urgent need to device a strong coordinating mechanism in the country. The co- ordinate

mechanism has included the combined effort⁶¹⁷ of the Ministry of Health, Ministry of Environment, Ministry of Bio- technology and some other organs like GEAC (Genetic Engineering Approval Committee), RCGM (Review Committee on Genetic Manipulation), ICMR (Indian Council of Medical Research) etc. It also requires a whole of government approach rather than sector by sector approach. A 'National Gene Technology Regulatory System' which will have the overall mandate of regulating the use of biotechnology products, be they plants, microbes, animals or drugs, needs to be established with the Office of the Gene Technology Regulator to protect the health and safety of the people and to protect the environment by identifying and managing risks posed by the gene technology. For this purpose, adequate infrastructure needs to be built up in terms of modern laboratory facilities, training of food inspectors and laboratory personnel, etc. Under the system, the co-ordination should be like-

1. Unlike in the PVPFR Act, the Seeds Bill, 2004, also has no provision for regulating seed supply or seed pricing. The Seeds Bill is also silent when it comes to seed pricing and seed supply regulations.

2. The provision regarding benefit sharing under the PVPFR Act of 2001 should be suitably amended to a) the provision on lawfully acquired must be amended to acquired by 'prior informed consent' of the Panchayat of the village or head of tribal community, such declaration should be strictly scrutinized⁶¹⁸ b) As most varieties are documented there is no need for a particular breeder to claim the benefit, if the breeder either acknowledges the

⁶¹⁷ The Draft National Biotechnology Regulatory Bill, 2008.

⁶¹⁸ 'Prior informed consent' will also include the right of the community or farmer not to part with genetic material. Accordingly Sec 43 which takes about 'consent' must be amended to 'prior informed consent'.

contribution, which can be clarified from the records of the Authority, the benefit must be then determined as per the extent and nature of the use of genetic material by the claimant⁶¹⁹ and the commercial value of the genetic material used and determine the benefit which will automatically accrue to the community/farmer.

3. With the Patents Act coming into force and monopolies being legitimised in the form of IPRs, seed prices are spirally increasing which mounts pressure on farmers. This is already seen in the case of the first transgenic crop in India, Bt Cotton. This should be checked.
4. Furthermore, the Seeds Bill is also incompatible with the Environment Protection Act, the Biological Diversity Act and so on. For example, it is the EPA which lays down the procedure for approvals and permissions related to genetically modified organisms. But the current bill seeks to circumvent those rules by talking about provisional registration for GM varieties.
5. The various factors pertaining to food safety to be looked into by the Ministry of Health both at the application stage, commercial release stage, import and post market surveillance stage. The relevant factors are:
 - (a)** The process of Genetic modification;
 - (b)** Safety of new proteins
 - (c)** Occurrence and implications of unintended gene transfer between the GM plant, food and the gut microflora of humans or animals.
 - (d)** Role of new food in the diet and dietary intakes.
 - (e)** Effect on processing and cooking.

⁶¹⁹ Sec 26(5)(a)

- (f)** Experimental studies in animals and eventually controlled human trials and finding out long term or rare effects through targeted epidemiological techniques beyond any normal post marketing data collection.
 - (g)** In case, special studies are needed to conclusively prove the safety or otherwise of the GM food, they should be carried out in the laboratories designated for the purpose by the ICMR.
 - (h)** A comprehensive safety assessment of GM foods needs to be carried in harmonization with the Codex Alimentarius Commission.
 - (i)** GEAC should emphasise biological risk assessment. GEAC should regulate genetic technology like the US Recombinant Advisory Committee (RCA) does for genetically engineered drugs.⁶²⁰
 - (j)** **Post marketing surveillance** of GM foods is meant to see health effects if any among the population groups consuming these products need to be carried out. It also includes the supervision of sale of GM foods in the domestic market, their inspection, testing, taking of legal action for non-compliance, consumer awareness activity, etc.
6. The existing State Level food control systems need to be linked up with the State Biotechnology Coordination Committee (SBCC) and the district level health officials involved in food control activities need to be associated with the District Level Committee (DLC) and it should link

⁶²⁰ RCA makes it mandatory for companies to provide a list of negative and harmful impacts and minimises that impact before approving for commercial sale. As a result, the approval process takes 25 years.

up the local bodies even panchayat which will guarantee public involvement in the participation programs.

7. In India the seeds must be successfully gone through multi-locational agronomic trials (*Agronomic Performance*) from the end of parameters like yield, growth, pest/disease/ drought/ other resistance, quality, global warming etc. undertaken in a scientific manner before the seed is sought to be commercialised.
8. In India there is a need to compulsorily label a food if it contains novel DNA/protein or has altered characteristics. In this regard, the EU model, Chinese model or the African model⁶²¹ may be a guide.
9. **Transparency** in decision making process is essential both at the international and domestic level to satisfy the concerns raised by the Civil Society groups. Thus, reports gathered, not of the nature of confidential business information about companies, can be shared with the Civil Societies. Again, a competent authority is entitled to divulge Confidential Business Information (CBI) to in public interest.⁶²² Hence, the information on new GM varieties/products and the decisions made on the applications need to be made public through gazette notification/website/press release. Under the African Model Law on Safety in Biotechnology doesn't treat details of the GMO or products, risk assessment and management plans do not qualify as confidential.

⁶²¹ Article 11 of the African Model Law on Safety in Biotechnology requires that the GMOs shall be clearly identified and labeled to specify the relevant traits and characteristics for augmenting the traceability.

⁶²² Article 12, The Biosafety Protocol, 2000.

10. Again, there is no specific liability clause under any laws in India.⁶²³ Thus, accountability and liability should be fixed both in terms of civil and criminal damages against the seed traders. At this, the African Brazilian and European system may be the guide. Under the African Model Law on Safety in Biotechnology⁶²⁴ has a detailed provision on liability, setting out the scope of damage, strict liability, mandatory insurance etc. The Brazilian Law inflicts joint and several strict liability, full compensation or repatriation for damage inflicted on the environment and on third parties. Penalties include warning, suspension, or cancellation of registration; patent, state intervention in the business etc. fines can be imposed on a cumulative basis along with other sanctions.⁶²⁵ However, Europe deals with liability for GMOs in a general manner.⁶²⁶ At this I like to submit that in India the liability should be the absolute liability⁶²⁷ even if there is debate over the issue whether the GMOs are hazardous substances or not due to the reason that the procedure involving production and trial of GMOs may cause hazards to human and animal health and environment.

⁶²³ The Public Liability Insurance Act, 1991, the National Environmental Tribunal Act, 1995 deal with the hazardous industries and it is really a matter of doubt whether the GMOs are falling under the hazardous substances.

⁶²⁴ Article 14 of the African Model Law on Safety in Biotechnology.

⁶²⁵ Articles 20- 23 of the Brazilian Law No.11,105 (2005)

⁶²⁶ Directive 2004/35/EC of the European Parliament and of the Council on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage.

⁶²⁷ Absolute Liability: When an enterprise is engaged in hazardous or inherently dangerous industry, it must need to conduct the activities with highest standards of safety and if any harm is resulted from such activity, the enterprise must be held absolutely liable to compensate for such harm though it took all reasonable care and that the harm occurred without any negligence on its part. (M.C. Mehta v. Union of India AIR 1987 SC 1086)

11. There should be the clear reference to the centres of origin of the crops as per *Article 4* of the Biosafety Protocol.
12. There should be complete ban to the release of GMOs in the vicinity of the centres of origin and organic farm as well as conventional farming.

CHAPTER VII

CONCLUSION AND SUGGESTIONS

*"We cannot afford incremental progress in agriculture."*⁶²⁸

This thesis is divided into seven chapters. The 1st chapter deals with Corporatisation of agriculture: Concept, growth, and perspective in which the concept of agriculture as is understood within the legal framework is discussed and also reference made to it's future in the backdrop of corporatisation under the post WTO regime. Chapter 2 is the brief overview of the farmer's rights within the Indian legal framework deals with Rights of the Farmers. Chapter 3 is the Legal framework relating to land: A brief overview which deals with a very important aspect of land i.e. land reform and acquisition of land. The relationship between Acquisition and corporatisation of land and it's impact on Farmer's Right to land is examined under Chapter 4. Acquisition and corporatisation of land gives rise to the issue of displacement, resettlement, and rehabilitation. These matters are dealt with under chapter 5 and deals with Policy relating to these issues of resettlement and rehabilitation and it's impact on Farmer's Right to land; 6th Chapter deals with Impact of corporatisation of seeds and it's impact on farmer's right to seed. Seed is an integral part of agriculture. In Conclusions and suggestions the overall understanding of the issues relating to agriculture and corporatisation is laid down.

Corporatisation of agriculture is a recent phenomena and it manifests in various forms. Sometimes it is an agreement with a farmer to grow a single type of crops and hand over the same to the company at other times the farmers are compelled to purchase seeds from the corporate bodies because the alternative means of the alternative means of production and preservation of seeds

⁶²⁸ Reported in The Hindu: 8th August; 2009 at pg. 15.

doesn't become feasible but the largest challenge is that of the corporatisation of land. The configuration of land changes with land reforms and land acquisition and the status of the farmer changes along with it. These two situations together impact upon agriculture.

In Chapter 1 of this work it is seen that the land holding is fragmented and there is insufficient assistance and limited credit flow. The uncertain weather condition of the country also impact upon the agricultural activities. This results in insecure feeling of the farmers and the corporate bodies move into the vacuum so created with a promise of greater productivity, storage and marketability. The constitutional, statutory and acquired rights of the farmers have been generally dealt with under Chapter 2. It is concluded that marketing hazards storage hazards, middlemen hazards have encouraged corporate bodies to venture into agricultural activities which has led to replacement of traditional agro inputs with chemical inputs. The capital intensive approach replacing labour intensive approach of agriculture leading to ousting of traditional farmers from agricultural activities and there is possibility resulting in food insecurity. The legal framework relation to land including land reform and lands acquisition is dealt with under Chapter 3 enumerating the consequences of land acquisition on one hand and land reforms on the other. Land reform has resulted into the fragmentation and land acquisition has resulted in ousting the farmers from his land. the dual effect of the two poses a severe challenge to agriculture and also gives rise to conflicting issues of inadequate compensation shifting livelihood pattern, uncertain job guarantee, loss of shelter etc. This socio- economic hardship is actually at the cost of farmers where their interests are hardly respected. The close impact study carried out under Chapter 4 shows that though the impact of acquisition is profound and far reaching, neither the government nor the judiciary have been able

to arrive at a policy formulation for protracting the farmer and thereby the agriculture from the trauma of acquisition and displacement. It is indeed disappointing that a country whose backbone is agriculture has not taken sufficient steps for protecting the farmer against the trauma of displacement. The policy relating to rehabilitation and resettlement is closely related to issues of human rights of the farmers and those who are attached with agriculture. The procedure for acquisition and resettlement both must be just fair and equitable. Unfortunately in India, neither policy relating to procedure or resettlement is formulated nor does all of that take place in an ad hoc manner. The government and corporate bodies are not sensitive to acquisition of agricultural land. The fallow land in the state of West Bengal is not used for the purpose of setting up of industrial house but, in many cases multi-crop agricultural lands has been acquired for setting up non-agricultural corporate houses. Balance between private profits, personal initiative and government largesse are very important issues in the land acquisition- corporatisation debate. In this Chapter it is submitted that principle of minimum displacement, non- displacing alternatives and social impact assessment are important requirements. It is necessary to appointment of agricultural ombudsman who will implement these principles in acquisition and corporatisation process. In the last Chapter, the corporatisation of seeds it is concluded that, at present, agriculture is expensive and technology intensive sector. It requires technological inputs in respect of seeds, fertilisers, pesticides etc. This is pushing out small and marginal farmers and paving the way for corporate sector to invest into agriculture.

This is a vicious circle. Corporate sectors investing in agriculture will look for a single type of crop and work at its storage, processing and retailing. This has two impacts. On one hand, the number of

cropping and the variety of cropping is reduced and the second the small and marginal farmer finds himself out of the only livelihood earning avenue he knew. In the long run, this impacts upon the food security and agricultural viability of the country. Perhaps, in future, every country of the world will depend upon another for one type of food or another.

Worst still due to these uncertainties the generation next is not interested in carrying out agriculture. On the one hand, modern agriculture demands formal education and expertise and other other hand, young generation are reluctant to study agriculture because of uncertainties. This country must take immediate and serious note of this dilemma or else we may have food scarcity on the one hand and desertification on the other. No matter how much the non-agricultural corporate sector benefits, the country is heading for food crisis.

Agriculture is often described as the backbone of Indian Economy. It was the predominant sector of India's economy at the time of independence in 1947 with approximately 55% of the share in the GDP and about 70% share in the workforce.⁶²⁹ It complementarily with other sectors has the ability to trigger growth of the economy. The overall economy of the country is very much dependent on the performance of agriculture to a considerable extent. Besides, agriculture is the source of livelihood and food security for a large majority of the vast population of India; it has a special significance for the low income, poor and vulnerable sections of rural society. Thus it may be said that agriculture lies at the core of socio-economic development and progress of Indian society, so a proper policy ensuring the remunerative price for their produce to improve the living standards and welfare of the masses is necessary. If there

⁶²⁹ Ramesh Chand, India's National Agricultural Policy: A Critique Indian Agricultural Challenges: CENTAD pg. 19

is a profession in which losses are tolerated, it is only agriculture. Once a farmer is always a farmer. He plucks, grades and markets the produce at a nearby market every day. They suffer mainly due to the increase of the price of the inputs and the marketing of their crops. He finds it difficult to change the profession. But till today, the agriculture is languishing and is treated as a profession of lower sections of the society.

Today, in the midst of the rural indebtedness, hunger, the failure of crops because of spurious fertilizers and pesticides, unseasonal rains, hailstorms or draught across the country the farming community is tightly noosed. It is true that today's agriculture is an expensive and energy intensive technology. It requires high inputs in respect of quality seeds, fertilizers, pesticides, irrigation, farm mechanization etc. which all aim to rob the farming community which is dominated by the small and marginal farmers. The price safety net is one of the most important tools which insulate peasants from the sharp fluctuations in the prices of their commodities in the market, be it domestic or international. There is no mechanism yet to help the poor farmers per se. Still, agriculture has average nearly 4% growth for last five years and there have been four years of bumper harvests plus a 40% rise in the minimum support prices of food grains over last two years.⁶³⁰

Presently, there has been a tendency has been found in the new generation to come out from this profession. They do not like to do farming. This is the picture all over the state from the districts of Coochbehar in the north to Midnapurs in the South. With an expectation to earn more the young generation (better educated) is stepping to the other states even while modern cultivation demands educated class. Again, the farmers especially in the border villages

⁶³⁰ Reported in The Times of India: 27th March, 2009 at pg. 14.

of the district of Murshidabad having their plots located beyond the fence on the Indo- Bangladesh border are stopping to produce crops and turning to the manufacture and smuggling of heroine to feed their families.⁶³¹ The last decade has experienced huge number of farmer suicides. While the number of death recorded in the country is 69,064 in last four years i.e. one farmer commits suicide every 30 minutes.⁶³² Again, due to fourth successive draughts thousands of farmers of Chhattarpur Block in Jharkhand's Palamau district have presented a mass signature for mercy killing to the President Pratibha Patil in June, 2009 to have a respectable death. According to their statement, in the 2006 draught, they sold their bullock cart, goats and other things; in 2007 they sold their lands; in the 2008 draught they forced to see their wives's jewellery.⁶³³ In recent times, in the state of West Bengal this trend has been started (already two farmers one from Khairbari, Jalpaiguri⁶³⁴ and women from Phanshidewa, Darjeeling⁶³⁵ committed suicide) due to the surplus yield fetching low price and thus failure to meet both the ends of agricultural expenses.

Hence, a system is necessary to introduce wherein the peasants got a '*livelihood price*' for their commodities in which the farmers would be allowed to take the price on offer and the rest would be taken care of from either the state budget or from the relevant corporate bodies involved into the sector of retailing of such commodities. At this, the proposed model of corporatisation suggested that for the purpose of agriculture, land must be avoided from being corporatised but to be consolidated. Again, such lands must be used for as much as possible multi cropping purposes. Necessary amendments should be brought on the

⁶³¹ Rajib Chatterjee: The Statesman: 5th October, 2009 at pg. 01.

⁶³² Reported in The Hindu: 26th March, 2009 at pg. 10.

⁶³³ Reported in The Statesman: 29th June; 2009 at pg. 01.

⁶³⁴ Reported in The Times of India: 26th March, 2010 at pg. 13.

⁶³⁵ Reported in The Ananda Bazar Patrika: 2nd April, 2010 at pg. 11.

relevant laws e.g. the Factories Act, 1948; the Maternity Benefit Act, 1961; the Equal remuneration Act, 1976; the Employees State Insurance Act, 1948; the Workmen Compensation Act, 1923. It also requires the introduction of the agricultural tribunal to address the conflicts those arise in the inter- relationships between the farmers as well as the other interests groups for smooth enforcement of the relevant laws on this point. It also requires the boosting of farm productivity and its diversification, pushing up of non- farm sector growth in areas like agro- processing. In addition to these, most importantly, the encouragement of the farmers is necessary. Farmers are encouraged when they get their dues in terms of price of the crops they produce. At this, if the measures are not taken properly, the future generations will show their backs to farming and the country's food security will be at stake. Looking at this trend Prof. M. S. Swaminathan once emphasised⁶³⁶, "to attract youth to the farm sector, they should be given opportunities in such agricultural services as pest control and manufacture of value added products."

The Right to Property actually flowing from Article 300A is a human right.⁶³⁷ Land is one of the most critical and costly input for the setting up of an industry and a farmer has close association with land. For corporatisation of agriculture there should not be acquisition of land but land needs to be acquired where an industrial house is to be set up. Again, for this purpose necessary precaution is to be taken so that the farmer's interest may not be vitiated at the interest of some other section of people. The industrialisation agenda thus, needs to be placed in the larger

⁶³⁶ Reported in the Hindu: 6th January, 2010; at pg. 14.

⁶³⁷ Lachhman Dass v. Jagat Ram (2007) 10 SCC 448.

context of overall public welfare. Again, there is a need to have a balance between private profits, personal initiative, on the one hand and the state or central government's largesse, concessions and public good on the other. In fine, what we want is a 'complete, transparent and flexible land acquisition policy' which can help both the investor and the land owner. The land losers should be rehabilitated with a package which should include- the option of alternative land for land, jobs, share of profits or royalty will be mutually advantageous in long term. Further, industry would like to see a political consensus evolve on the land acquisition issue so that irrespective of which party is in power, the projects without a hitch or political vendetta. A person who is unwilling to part with his land mustn't be evicted at the cost of his livelihood. If he is, there is bound to be trouble.

Due to multiple reasons, food security is greatly challenged. At this, to push up the agricultural production along with the increase of cultivable area, we need to take advantage of the existing and upcoming technology resources like efficient water use, efficient use of fertilisers, better seeds (climate sensitive), and strengthen applied research while ensuring value addition and better post-harvest management. The recent report released by the FICCI⁶³⁸ (Federation of Indian Chamber of Commerce and Industry) calls for a long term strategy that can insulate the agriculture sector from the vagaries of monsoon. It proposes- the strategy should ensure food security by bringing more areas under irrigation, setting up advance weather forecasting systems, investing in farm research and development involving the development of *heat resistant, short duration varieties requiring minimal irrigation* and taking up steps to speed up farm mechanization involving the technology *zero tillage, direct speeding of paddy and other*

⁶³⁸ The FICCI Report on Agriculture, 2009, Reported by Gargi Parsai in the Hindu: 8th October, 2009 at pg. 14.

equipments suitable for rainfed farming conditions etc. To develop the *heat resistant, short duration varieties requiring minimal irrigation* there is the need of working on the genetically modified crops. Thus, regarding the GM crops, there is an urgent need to device a strong coordinating mechanism in the country. At this, a 'National Gene Technology Regulatory System' which will have the overall mandate of regulating the use of biotechnology products, be they plants, microbes, animals or drugs, needs to be established with the Office of the Gene Technology Regulator to protect the health and safety of the people and to protect the environment by identifying and managing risks posed by the gene technology. For this purpose, adequate infrastructure needs to be built up in terms of modern laboratory facilities, training of food inspectors and laboratory personnel; etc.

Suggestions: - Marketing of agricultural produce is the most important activity for the farming community, particularly for those who are small producers and have small surpluses for marketing. To protect the interests of farmers, the Government has promoted organized marketing of agricultural commodities through a network of regulated markets. Hence, the Government may:

1. Frame its own policy to control the supply of seeds and other necessaries like water, manures, equipments with proper testing and the arrangement of training the people with modern techniques of cultivation wherever necessary; can facilitate credits; can initiate direct purchasing of raw agricultural commodities at a price fixed by the experts in the open market through the State run Agricultural Commodities

Marketing Board/ so formed Corporate Body⁶³⁹ and supply the same to the purchasers, be it big private investors (Corporate Bodies) or Retailers in the open market;

2. Can monitor the storage, grading and packaging;
3. Control the payment by the way of cash or kind to the labour and;
4. The Government should appoint the Agricultural Labour Inspector at panchayat level to monitor the conditions of work and protection of workers while engaged in their work, such as working hours, weekly rest, safety, health and welfare,

Regarding the corporatisation of land for non- agricultural purposes, the government and the corporate bodies must pay attention to choose uncultivated, barren, lands. The government should facilitate the necessary infrastructural facilities in those lands. In addition to these, to pave smoother acquisition of land the government may initiate-

1. Prime farmland must be conserved for agriculture except under exceptional circumstances, the appropriate government acquisitioning land should hand over the land to the corporate bodies only when the entire facilities are ready for the 'would be' displaced people. The creation of land bank is a positive step at this end.
2. In cases where the non- corporate bodies to use the land for non- commercial purposes the '*persons interested*' must be provided with land maintaining status quo as much as possible regarding the types of interests they had with the land prior to the acquisition. In addition to these, duly attracting private players to set up the wayside amenities

⁶³⁹ In this regard the strategy laid down under the WB Land Reforms Act, 1955 under the provisions of Share of Produce u/ Sec. 16 of the Act by a bargadar may be followed.

like- *hotels, parking lots, snack bars, restaurants, restrooms for short stays, petrol pumps and kiosks* along the respective stretches and thereby facilitate the landlosers to get engagements and also giving preferences in setting up of godown, cold chains etc.

3. The present practice of paying a lump sum amount for the land purchased or acquired, the livelihood of the people, basically, who are illiterate, ignorant and dependent on land is taken away, is not safe and unjustified, as they mostly do not know the proper use of this sum of money and hence, to ensure the livelihood security of such people, the government should take steps. Some of the corporate bodies prefer the allotment of share of the relevant company in terms of the compensation to be paid to the displaced. But there is sheer possibility of incurring loss of the investors in the stock as it fluctuates with the Stock markets which a farmer can not bear with. At this, on creation of a separate fund is needed.
4. The Act doesn't provide the replacement value including the cost of shifting to the persons interested. Hence, a comprehensive policy as suggested may be implemented.
5. Involvement of Panchayats and the opposition parties in the acquisition process is necessary.
6. At least one member of the family whose land has been acquired must be provided with job after duly training him in the very project, provided, the very person is lacking the required skill and qualification. The people not being engaged in the establishment should be provided with the commercial site near the project area if they have not shown interests in cultivation.
7. There is no scheme for providing the alternative land of same nature nearby through a preferential treatment in giving 'Patta' to the people near the project area atleast to the

people who do not have any other skill or who are not willing to involve themselves into some other works by which they can earn livelihood in alternative means.

8. The government following the Norway model should enact the CSR⁶⁴⁰ Act to compel the corporate bodies to undertake social activities of various natures.

Corporatisation of seed has posed many problems. To solve these problems in an efficient way, the followings need to pay great attention-

1. The provision regarding benefit sharing under the PVPFR Act of 2001 should be suitably amended to the provision on lawfully acquired must be amended to acquired by 'prior informed consent' of the Panchayat of the village or head of tribal community, such declaration should be strictly scrutinized.
2. With the Patents Act coming into force and monopolies being legitimised in the form of IPRs, seed prices are spirally increasing which mounts pressure on farmers. This is already seen in the case of the first transgenic crop in India, Bt Cotton. This should be checked.
3. Furthermore, the Seeds Bill is also incompatible with the Environment Protection Act, the Biological Diversity Act and so on. For example, it is the EPA which lays down the procedure for approvals and permissions related to genetically modified organisms. But the current bill seeks to

⁶⁴⁰ Corporate Social Responsibility is the continuing commitment by business houses to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large.

circumvent those rules by talking about provisional registration for GM varieties.

4. The existing State Level food control systems need to be linked up with the State Biotechnology Coordination Committee (SBCC) and the district level health officials involved in food control activities need to be associated with the District Level Committee (DLC) and it should link up the local bodies even panchayat which will guarantee public involvement in the participation programs.
5. In India the seeds must be successfully gone through multi-locational agronomic trials (*Agronomic Performance*) from the end of parameters like yield, growth, pest/ disease/ drought/ other resistance, quality, global warming etc. undertaken in a scientific manner before the seed is sought to be commercialised.
6. In India there is a need to compulsorily label a food if it contains novel DNA/protein or has altered characteristics. In this regard, the EU model, Chinese model or the African model may be a guide.
7. Transparency in decision making process is essential both at the international and domestic level to satisfy the concerns raised by the Civil Society groups.
8. Accountability and liability should be fixed both in terms of civil and criminal damages against the seed traders.
9. There should be the clear reference to the centres of origin of the crops as per *Article 4* of the Biosafety Protocol.
10. There should be complete ban to the release of GMOs in the vicinity of the centres of origin and organic farm as well as conventional farming.

ANNEXURE- 1

QUESTIONNAIR

Name of the village

P.O.

Mouza:

District

1. Name of the Farmer-
2. Age of the farmer-
3. Sex – M/ F
4. Are you a full time farmer? Yes/No
5. If no, what other Work/ Job/ Business do you do?
6. What is your status as a farmer- Raiyat (Owner of land)/
Member of Coopeartive or Group Farming/ Bargadar/
Agricultural labourer/ Casual Worker/ Tenant.
7. Did you acquire the farm or inherit the farm?
8. How many members are there your family?
9. Number of dependent in the family-
10. Number of children in the family-
11. Educational status of the children in the family-
12. Do/ will you allow your children to be farmers? Yes/No
13. If no, please cite the reason.
14. Would you educate your children in the science of
agriculture? Yes/No
15. If no, please state the reason?

16. How many of the family members work in the farm with you?
17. Approximately how many hours a day do you work in the farm?
18. Approximately how many days in a year do you work in the farm?
19. What is your activity during rest of the year?
20. Area of land holding-
 - Largest [More than 10 acres]
 - Large [5- 10 acres]
 - Medium [2.5- 5 acres]
 - Small [1.5- 2.5 acres]
 - Marginal [0- 1.5 acre]
21. Nature of yeild - Monocrop/ Doublecrop/ Multicrop
22. Crops cultivated- Paddy/ Wheat/ Pulses/ Jute/ Vegetables/ Others
23. Productivity of yield per crop (in Mounds)-
24. Procurement of Seeds- Purchase/ Home grown/ Government Supply/ Corporate house supply/Any other source.
25. What is the nature of Seed? Natural/ Hybrid/ Genetically modified/ Any other variety.
26. If purchased from any other source, is the price/ cost of seed affordable? Yes/No

27. Have the prices of seed gone up in last ten years? Yes/No
28. If yes, how many fold increase is there? [give reasons]
29. How do you irrigate? Irrigation is manual/ mechanical
30. If irrigation is manual what is the source of water? Canal/
Well/ River/ Pond.
31. If the source is pond or well, do you own it? Yes/No
32. If no, who is the owner? Government/ the owner of the land
33. If irrigation is electrical, what is the source of electricity?
34. Does it have to be purchased? Yes/No
35. If yes, who pays for it?
36. Is there any subsidy for water and electricity? Yes/No
 - If yes, how much?
 - If no, how are you affected by lack of subsidy?
37. How do you cultivate? Manually/ Mechanically
38. If mechanically who supplies the equipments [Tractor, Power tiller etc.] – Raiyat (Owner of land)/ Co- operative or Group/
Corporate body/ Government
39. Supply of manures, pesticides whether- Raiyat (Owner of land)/ Co- operative or Group/ Corporate body/ Government
40. Have the cost of production increased in recent times (especially between 1996 and 2008) - (Yes/ No)
41. If yes, how many fold increase is there? [give reasons]
42. How do you sell your produce? Through Raiyat (Owner of land)/ Co- operative or Group/ Corporate body/ Government

43. Do you get the support price for the crops - (Yes/ No)
44. If not, give reason for your answer-
45. If yes, what is the margin of profit?
46. What is the approximate income from the land you have or you cultivate?
47. Suppose, a system has been introduced where a Corporate house tells you that you must have to cultivate only one crop (say, tomato, or pineapple, or broccoli) which is commercially viable, but you will only be a worker and sharer of the land you have, you will be paid good salary, they will supply the seed, water, electricity, equipments, fertilisers, manures, pesticides and all other necessities of cultivation, will you agree to that arrangement? Please give reason to your answer.
48. Suppose the land is to be acquired for setting up of an industry, will you give your land to them for monetary compensation at market price/ compensation fixed by the government/ in exchange of employment/ alternative land?- Give reasons to your answer.
49. What changes would you like to make in the present system of agriculture?

ANNEXURE- 2

Report of the Field Studies

During the course of my work field study has been conducted in the districts of Uttar Dinajpur, Dakshin Dinajpur, Hoogly, Purba Medinipur, Burdwan, North 24 Parganas, Jalpaiguri and Coochbehar of West Bengal. The said work has been undertaken with the farming professionals, Panchayat members as well as government officials of the relevant departments during the course of my work. The district of Burdwan, 24 Parganas, Hoogly and Midnapore has been selected to study the impact of corporatisation and the districts of Uttar Dinajpur, Dakshin Dinajpur, Jalpaiguri and Coochbehar has been selected to study the traditional agricultural system. The report of this work is as under-

- **Uttar Dinajpur:** - In the district of Uttar Dinajpur, study has been made over the traditional system of agriculture and the impacts of corporatisation in future on the basis of a structured questionnaire in the areas like- Bijgram, Barua. In these areas the people interviewed, mostly are small farmers and the land is not Irrigated Land⁶⁴¹ (Irrigation is self managed) but multicropped (3 crops are grown here). They use chemical fertilizers which adds burden to them along with the organic ones. In most of the cases, the whole family is involved in the agricultural activities. The major crops of the area are paddy, wheat, mustard, vegetables etc. They use the hybrid seeds for their cultivation and generally exchange seeds with the seeds of other areas every after two years. The soil of the area has not been tested for long time. However, the farmers get necessary advice, training from the Agriculture Department. In this field the comparatively big farmers are in advantageous position. There is the absence of crop insurance. So, they seldom

⁶⁴¹ Section 14K(d); The West Bengal Land reforms Act, 1955.

purchase seeds from the market. They use modern equipments like- tractor, power tiller on hire. The framers in the area face further struggle when they go for selling out the produces. In this front, due to the presence of corrupt government officials and slackness in the government monitoring through the Agriculture Department is resulting to the domination of the middlemen. At this, they (the farmers) are compelled to sell out their produces at a price lesser than the MSP (Minimum Support Price) fixed by the government for a particular season as they have poor bargaining power and lack of patience and absence of proper mechanism of information about the price of the produces. This is what the tale of the farmers today in this region. Thus, they want their children get proper education so that they (children today) may be engaged in some jobs in future while agriculture will be the last resort for them. Still, the farmers are not ready to accept the model of corporatisation in toto as I have proposed. They have reservation on the issue of receiving payment for doing agricultural works and letting the land for corporate cultivation where the corporate body will purchase the crops from them. In this regard, they want to share the crops to the corporate body after securing the food for his family⁶⁴² which is expected to ensure food and income security in a greater way. Again, the farmers are not much interested to part their lands with the corporate bodies of any type. In this regard, they may share the land with the agri based industrial houses like- Jute Mills; Rice Mills, Food Processing Units etc. However, they want remunerative value for their land or alternative land in nearby locations and they consider the government is the best party to purchase land from them.

- **Dakshin Dinajpur:** - In the district of Dakshin Dinajpur, study has been conducted on the traditional system of agriculture

⁶⁴² System of Bargadar and share cropping ratio to study under the WBLR Act, 1955.

and the impacts of corporatisation in future on the basis of a structured questionnaire. Here I have visited the areas like- Paschim Rainagar of Khanpur near Balurghat and Gangarampur. The people involved in agriculture as interviewed mostly are the owners of medium sized farms. They generally do not involve their women in farming but hire outside labourers to run the agricultural works. These people want their children get proper education so that they (children today) may be engaged in some jobs in future while agriculture will be the last resort for them. Generally single or double crops are grown here but, multicropping is also possible if the labour was available. In this region, there is crisis of agricultural labourers as they prefer to migrate in some other states like- U.P; Punjab; Karnataka etc. for better earning. Here, the farmers in most of the cases, prefer purchase of seeds from the market, rather preserving the same for future cultivation because of the fear of non- germination due to non- purification of the same. There is no government supply of seeds during the season while, sometimes few people get seeds of bad quality when the season is over. However, water supply is arranged by the government at a subsidized rate of Rs.816/- per acre through shallow or deep tubewell. Here the people utilize the equipments like- tractors, power tillers either on hire or by their ownership. The cost of agricultural production has been increased by nearly three times while the cost of agricultural produces has not been increased too much. Still, the farmers are compelled to sell out their produces at a price much lesser than the MSP (Minimum Support Price) fixed by the government for a particular season as they have poor bargaining power and lack of patience and absence of proper mechanism of information about the price of the produces. Again, the procurement of crops is very much irregular. At this, some mill-owners or co- operatives having personal relationships with the Officials get the information of such notice of which the rest of the

people remain in dark. This is what the tale of the farmers today in this region. The farmers of the region have accepted the model of corporatisation of agriculture that has been proposed. But, they farmers are not much interested to part their lands with the corporate bodies of any type. They have bitter experience in this regard. Regarding this, as per their statement, at Rainagar, nearly a decade ago, 10 acres of land had been given to the well to do people to set up a ganjee factory. But unfortunately, no such initiative has been surfaced yet. Again, regarding the erection of electric poles for laying the high tension wire, the land owners, in recent times, have experienced the unfriendly, rather uncompromising attitude towards the price. Moreover, they demand a comprehensive scheme for fixing the price of land and other compensatory measures including the option for jobs as they have seen in practice while there was acquisition of land for setting up the depots of the North Bengal State Transport Corporation in early 50's. In this regard, they may share the land with the agro- based industrial houses like- Jute Mills; Rice Mills, Food Processing Units etc. However, they want remunerative value for their land or alternative land in nearby locations and they consider the government and private parties equally depending upon the package of compensation. Another shocking story in the District of Dakshin Dinajpur especially is, at the outskirts of Balurghat, in Danga region the brick field owners are enticing the local tribal people and thereby displacing them for the want of good quality top soil to manufacture of bricks with inadequate price due to their lack of bargaining capacity.

- **Jalpaiguri:** - In the district of Jalpaiguri, the survey has been conducted over the traditional system of agriculture and the impacts of corporatisation in future on the basis of a structured questionnaire in the areas like Bahadur Mouza of Nayapara, Kharia Mouza of Banabhasapara. Here the farmers interviewed were of

mixed type. They mostly have inherited lands from their ancestors. However, some of them have purchased. Mostly they are dependent on full time farming activities along with their women and outside labourers if required but they do not prefer to involve children in agriculture. They want their children do study and consider agriculture as a last resort. Here, the farmers cultivate paddy, jute and potato even if there is absence of proper irrigational facilities hitting the productivity. The governmental support especially the supply of seeds in time, irrigational and other agricultural implements don't reach to the common farmers. But the story is different for the relative of the Panchayat Members. However, the farmers manage to get 18- 19 mound of paddy and 7- 8 mound of jute if the rainfall is fine. Here, farming is done both manually and mechanically. The mechanical implements like- tractors, power tillers are used on hire. The farmers purchase seed from the market and they consider the price is rising at a great rate, nearly three- four folds in last 10 years; while, the price of seed was Rs. 14/- two years back, they purchased last time at Rs. 28/- per kg. The using of such seed has resulted into the increment of production but at the same time it is becoming dearer to the users. Among the crops, farmers in the locality reserve paddy first to ensure food security for the family of the year, while, they sale jute and potato, personally in nearby hats or markets to middlemen and hence, they are deprived of getting the MSP. Sometimes, they also receive higher price to MSP. The profit out of farming is gradually diminishing at the instance of increase in the price of seed, fertilisers, increase in the wage of daily labourers. Roughly a farmer having 10- 12 bighas of land earns Rs. 40- 50k per year but the farmers having lesser farming area can only survive. Recently, a trend has been started of giving lands on lease to the local investors for potato cultivation. In the nearby area, it has been noticed that such investors could have bring nearly 80 bighas of land. Under this

system, the farmers allow such investors on minimum terms and conditions even for 2- 5 packets of potato for one bigha of cultivation with an expectation that such investors would go for using the fertilisers to suit the land for next cultivation as such farmers do not have the means to use the fertilisers. At this juncture, most of the farmers gave positive nod to the proposed model if the remuneration for farming activities is fine but, the response to corporatize land for industrial activities is a mixed one. Some of the people accepted the model of proposed model of rehabilitation and resettlement while the other section of people raised the issue of purchasing land and not using the same for long time along the stretches of highways or important locations for which farming is halted.

- **Coochbehar:** - In the district of Coochbehar, survey was conducted over the traditional system of agriculture and the impacts of corporatisation in future on the basis of a structured questionnaire in the areas like- Dhaniguri mouza of Konamalli and interviewed. The farmers interviewed were of mixed type over here. They mostly have inherited lands from their ancestors. However, some of them have purchased. Mostly they are dependent on full time farming activities along with their women and outside labourers if required but they do not prefer to involve children in agriculture. They want their children do study and consider agriculture as a last resort. Here, the farmers cultivate paddy, jute and potato even if there is absence of proper irrigational facilities hitting the productivity. The governmental support especially the supply of seeds in time, irrigational and other agricultural implements don't reach to the common farmers. But the story is different for the near ones of the Panchayat Members. However, the farmers manage to get 8- 10 mound of paddy and 5- 6 mound of jute if the rainfall is fine. Here, farming is done both manually and mechanically. The mechanical implements like- tractors, power

tillers are used on hire. The farmers purchase local seed from the market and before sowing they mix up with the preserved ones as they experienced impurities in packed seeds. They consider the price is rising at a great rate, nearly three- four folds in last 10 years; while, the price of seed was Rs. 14/- two years back, they purchased last time at Rs. 27- 28/- per kg. The using of such seed has resulted into the increment of production but at the same time it is becoming dearer to the users. Among the crops, farmers in the locality reserve paddy first to ensure food security for the family of the year, while, they sale jute and potato, personally in nearby hats or markets to middlemen. Some of them don't have the knowledge of MSP and hence, are deprived of getting the MSP. The farmers having knowledge on MSP however, sometimes receive price higher price to MSP. The profit out of farming is gradually diminishing at the instance of increase in the price of seed, fertilisers, and increase in the wage of daily labourers. Roughly a farmer having 10- 12 bighas of land earns Rs. 30- 40k per year but the farmers having lesser farming area can only survive. Thus, they are in search of alternative means of livelihood and a tendency found to go to the nearby township for work. At this juncture, most of the farmers gave positive nod to the proposed model if the remuneration for farming activities is fine. Some farmers have also expressed their concern that such corporate farming may lead to the destruction of the fertility of soil and may leave the farmer in danger due to chemical fertilisers. They have informed that in a nearby area, some people using such improved fertilisers got very good yield for three-years but from the fourth time they experienced low yield and presently the situation is so that if they do not replace the top soil immediately, no further cultivation can go on.⁶⁴³ Further they are not sure over the contractual terms may be offered by the corporate bodies. However, the response to corporatize land for non-

⁶⁴³ At this long time contract along with fixation of liability is only the answer.

agricultural activities is a mixed one. Some of the people accepted the model of proposed model of rehabilitation and resettlement while the other section of people raised objection that they will not give land to such establishments because, they have close touch with the land which fed them and it is land from which they could have been able to maintain their status.

- **Hoogly:** - The district of Hoogly, has been selected to study the impacts of corporatisation in agriculture on the basis of a structured questionnaire. Here the people of Gopalnagar, Rupnarayanpur near Singur have been interviewed. This area, in recent times, came to the lime light for the setting up of the Tata Motor's Project Nano. During the process of acquisition of land for the setting up of the project, question raised regarding the forceful acquisition of land. At this context, the study reveals - the farmers in the locality even if the so called unwilling farmers realise that per capita land is shrinking as the number of family members increase and at the same time the agricultural expenses are rising. At this, they feel it is difficult to meet both the ends for a family even if they own medium sized farm as the price graph of seed, fertilizer, insecticides, pesticides, and the wage of the labourers are moving by leaps and bounds. The people in the area as interviewed, purchase seeds from the market the price of which has been increased three fold in recent times. There is no mahajani system in the village and the landowners in most of the cases hire outside labourers to conduct cultivation while the owners are engaged in some other profession. They are educating their children and want their children not get involved in agricultural activities but involve themselves in some jobs. The land in the area is fertile and the land is irrigated. The farmers need to pay only Rs. 375/- per bigha area for one year. Here agricultural works are done manually as well as by some machines (in most of the cases hired) like tractors, power tillers, threshers etc. Generally four crops are being

cultivated viz. paddy, potato, jute and vegetable. There are co-operatives facilitating the supply of seeds, fertilisers, pesticides, irrigation etc. Crops are generally purchased by the Mahajans in the locality who always reluctant to pay the MSP as fixed by the government instead they fix the price of the produces.

On the issue of the corporatisation of agriculture, the model, as proposed, has been proved to be attractive to them with one exception, i.e. on the issue of sharing of land with the corporate bodies. On this front, they proposed that there should be a system of payment of rent separately along with the payment of money for the putting of labour and the application of their skill involved in the production of crops. In the same way, the people are realizing the importance of corporatisation of land (setting up of factories) when the agriculture is not much a profitable occupation as yet in comparison with other professions. Presently, many of the people who once were unwilling are not opposing the setting up of the plant looking at the future of the newer generations if they are ready to pay remunerative price (Rs. 20 lakh per bigha) for the land, manage job of one person per family etc.

- **Purba Medinipur:** - In the district of Purba Medinipur, study has been conducted over the impacts of corporatisation in agriculture on the basis of a structured questionnaire on the people of Nandigram. The people here I interviewed mostly have inherited property from their ancestors. But, they want their children get job in the corporate establishments as the price of the crop is not good. Again, the children of them are not willing to come to the fields because they want to avoid clay and mud. That is why they are much interested to educate their children. They like to see agriculture for their children as the last resort. The land in this area is multi-cropping and the crops like brinjal, potato, tomato, paddy, sweet beetle leaf etc. Generally, the seeds are homegrown or certified seeds. The price of the seeds has been doubled in last five

years. They manage the water for cultivation by themselves form pond or by shallow run by diesel. They run the agricultural works manually or with the help of some machines like- tractors, power tillers etc. They get MSP or nearby price for the crops they produce. Generally they earn Rs. 10,000/- from one crop. Regarding the corporatisation of agriculture, they don't have much objection if for land rent is given, for labour payment is made and necessary trainings, equipments, seeds and other agri- implements are supplied by te corporate houses. And finally, on the issue of corporatisation of land, the people will accept if the relevant corporate body provides them with the job, shelter, good price for land alongwith manage alternative land for the people who doesn't get job.

- **Burdwan:** - In the district of Burdwan, I have studied the impacts of corporatisation in agriculture on the basis of a structured questionnaire on the people of Moiramajipara near Ukhda of Aandal. Here the acquisition of land is going on for the Bengal Aerotropolis Project. One of the most interesting features of this project is that here, the local people in and around Panagarh want acquisition to take place faster. With agricultural labourers scare in this industrial belt- the land being mostly mono- crop- the landowners are keen to part with their plots as the price being offered is much more than what they would be able to earn profit from it. According to the officials, the average market price of the land here is Rs. 1.5- 2 lakh per acre, after a series of discussions with farmers and political parties, the price of land the West Bengal Industrial Development Corporation (WBIDC) is offering them has even gone up to Rs. 10.8 lakh per acre depending on the fertility of the land as well as the vicinity of the land from the highway etc.

Being it a coalfield area and there is absence of canals or shallow, there is shortage of water; in last 5 years monocropping takes place. Being it a coalfield area, the owners of land were engaged in

some other professions and less interested in agriculture. Here the people, I interviewed, mostly were the 1st generation bargadars. Generally, they do not involve school going children in farming and opt their children prefer some occupation other than agriculture however; they share leisure time, behind farming because of the reasons like- increase in the expenditure of cultivation; decrease in production as well as fragmentation of holding. The people in this region purchase seeds once in two years to get better yield result and cultivation mostly goes manually. The agricultural labourers, as interviewed, get the wage of Rs.80/- per day (became double in last 5 years). The share croppers after satisfying the dues of the Raiyat prefer stocking of foods for the year and sells out the rest. Interestingly, the farming community receives almost the MSP (May be Rs. 50/- 100/- less at times) even if the same is purchased by Mahajans because of a strong public awareness campaign by the Panchayats as well as by the local political parties. However, on the issue of the corporatisation of agriculture, the model, as proposed, has been proved to be attractive to them. However, in regard to the setting up of corporate bodies, the people are more interested. In the on going land acquisition process, the landowners are getting on an average 2.5 lakh/ bigha while a bargadar is getting Rs. 70 thousand/ bigha.

North 24 Parganas: - In the district of North 24 Parganas, study has been conducted over the impacts of corporatisation in agriculture on the basis of a structured questionnaire. Here I have visited some parts of Rajarhat. Rajarhat is the area which has attracted the industrialists' eye for real estate business. The land prices in Rajarhat, under the jurisdiction of the Bhangor- Rajarhat Area Development Authority (BRADA) have increased at a great extent. Ten years ago, a cottah fetched about Rs. 2000 in the fringe areas of Rajarhat. Now that has shot up to Rs. 2- 3 lakh.

Naturally, the farmers who have sold off their lands even a year ago feel cheated. In many cases middlemen, working for private firms, are buying land from the farmers and selling it to the firms. With a number of firms or companies are buying land in several places, those whose lands fall in the middle of these acquired plots are under pressure to sell their lands. In addition to this, many private companies are directly purchasing land from the land owners without paying attention to the bargadars and other 'persons interested'⁶⁴⁴. Further, the Hidco Authority also pressurised the owners to sell back land for only Rs. 8000/- per cottah. Now, being faced with the refusal of the localities to hand over the land at such a cheaper price and the Court's status quo, it is reported that the Hidco Officials are threatening the land owners to not to sanction the building plans, the necessary electricity and water connections etc. in the relevant area.. The recent Vedic Village controversy is another issue to discuss. Here, the character of lands were so rashly changed that even if original dwellers could not take necessary legal steps, so that such lands may be brought in original form. In such deals, the agents of the Land Reform's Department give detailed history of the land they require. In the second stage, the land sharks reach to the landowners. In the third phase, on assessing the influence of the landowner, three separate treatment is administered-

- If it is found that the landowner is not much influential, then forcible stoppage to agricultural activities. If any protest comes from the owner, then causing intimidation and hurt to the owner. Such activities go on in such a way that the information in many occasions do not reach to the police station. Thus, the owner sells out the land at a price fixed by them.

⁶⁴⁴ Section 3 (b): the Land Acquisition Act, 1894.

- If the owner of land is a bit influential, then the measure of enclosing his land from every corner gets the priority in the list. In this course of affairs, if necessary, they purchase the land at a bit higher price.
- If the owner stays outside, then on preparing fake papers they purchase the said land and thereafter, erecting the boundary wall along the boundary of the land.

The agricultural activities in the area have been stopped and the farmers presently are converting themselves into casual labourers, guards, rickshaw pullers, petty businessmen to earn their bread. The farmers now are not willing to get back such land as construction of roads or buildings have taken place over such lands. Here, what the peasants want is the payment of proper price for the land that has been disowned by them in recent times. The land sharks and lumpenised touts may benefit the government, industrialists but not the people holding land and more specifically the peasants.

FINDINGS: - On completion of the survey, the following findings may be highlighted-

- Farming is not at all profitable due to the problem of marketing the agricultural produces but people consider it as a means for subsistence due to the problem of irrigation, increase of the price of seeds, fertilisers, pesticides, wages of labourers etc.;
- Mostly the farmers use the certified seeds and the seeds they preserve. The seeds so used along with fertilisers increased productivity but still
- It has not been remained as a subject of profession for the young generations;

- Regarding the corporate control of agriculture the farmers have mixed response. Many of them accepted the proposed model if there is proper remuneration and rent given to them. While, others fear that at the instance of corporate control, the farmers may become looser from the end of receiving improper remuneration for their labour, they will not be able to ensure the demand of the corporate bodies regarding the quality and productivity and moreover, if the corporate bodies are not properly bound by law of the land for longer time of operation, then they may damage the fertility of the soil and shift to some other place which will be very dangerous because, in some cases it has been found that the utilisation of chemical fertilisers on soil results damage on the condition of soil.
- Regarding the corporate entry for non- agricultural objective i.e. corporatisation of land, the farmers on the one hand interested to part their land if they receive proper rehabilitation and replacement value for the land along with job guarantee for the eligible people in the family as agriculture has no longer been profitable. Again there are people who are not willing to part their land because they consider land as the provider of all the needs. They also fear that land once corporatized, cannot be used for other suitable purposes to satisfy the livelihood of the land looser and there remains possibility to keep the land idle for long without any further initiative e.g. the huge tracts of land kept idle by the big businessmen along the stretches of the Highways or other important locations at many places like along the highway stretch of Siliguri- Jalpaiguri with an expectation of higher price for their land. In addition to these, there is also possibility of closure like Tata Motor Works at Singur.

- Corporatisation of seed sector has caused great hardship to the farmers as it has led the higher price for the seed. As the seeds now made sensitive to specific fertilisers or pesticides by the chemical seeds men if they use different fertilisers the farmers do not get proper yield. The seed impurities have further added to the plight of such people. The impure seed causes no yield even in many cases no germination e.g. the impure seeds in Malda has caused great hardship to the farmers in recent times. There is no guarantee system developed to ensure the security to the farmers in this regard.

Sum up: Thus, to sum up the government should pay proper attention to pay respect to the various interests of the farmer by designing a system in which they may take full breath without any uncertainties in their mind. To device such situation, a concerted collaborated approach of government and the corporate bodies is necessary where the farmers enjoy freedom of choice over crops, organic ways of cultivation with necessary inputs (seed, water, fertilisers etc.) supplied at a reasonable rate for sustainable agriculture, get necessary technical and proper marketing of their crops, or get proper rent for sharing land and remuneration for putting labour under corporatised cultivation. If the land is to be used for non- agricultural activities before displacing the people for the project, proper rehabilitation is to be made. In addition to this, they should not be exposed to improper use of the compensation (price of the land after corporatization of the land+ replacement value of the land) amount received. Further the corporate body should share a certain percentage of annual profit from the unit with the displaced and engage itself for the socio- economic development of the area. To secure the livelihood of the displaced people the corporate body should engage the local people on priority basis.

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