

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 sui generis 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.