CONSUMER *corner*

Corporate control of the food chain

DR SOTHI RACHAGAN

THE food chain is long and many people contribute to ensuring that safe, adequate and nutritious food reaches the consumer. Farmers were always the mainstays of this chain. Their toil and sweat, though never adequately recognised, ensured the food security of individuals, families and the nation at large. A grave new development threatens the status and role of farmers and the food security of the peoples of the poor countries of the world.

Such laws deny farmers the right to save, re-use, exchange and sell seeds. These are practices farmers have engaged in for millennia. By such practice farmers ensured genetic diversity and breeding of new plant varieties. Many developing countries have been pressured to provide for breeders' rights without also recognising their own farmers' rights.

Corporate control over food

The trans-national companies (TNCs) in the agribusiness already have considerable control over the food chain. They now have a new tool at their disposal to gain even greater control. That tool is genetic modification (GM) technology.

The TNCs are pushing for patent protection, surreptitiously foisting their products on unsuspecting consumers, contaminating non-GM crops and campaigning for legislation that absolves them of liability for the hazardous effects of their crops. They masquerade as the saviours of the starving masses of the developing world. In reality, they seek to effectively padlock the food chain with them holding the key.

The ownership of GM crop technology is concentrated in one company - Monsanto. The products of Monsanto accounted for 91 per cent of the total area sown to GM crops in 2001. Three companies, Monsanto, Syngenta (formerly Novartis/AstraZeneca) and Aventis CropScience, account for virtually 100 per cent of the commercially grown GM crops. Most GM crops are designed to be herbicide tolerant (77 per cent). Others are insect resistant (15 per cent) or combined herbicide and insect tolerant (8 per cent).

GM technology, a necessary evil

Consumer International (CI) accepts that the science of genetic engineering holds much promise to help solve the food production problems of the developing world. But, it is as yet a science that has not been adequately tested for its safety and efficacy. Companies in a hurry to recoup investment have rushed the products of GM technology to supermarket shelves.

Developing countries need crops that can withstand drought, salinity, frost, infertile soils or crops that are nutritionally rich, disease resistant or produce bumper yields. Yet it is in these areas that the R&D is absent.

Increasing farmer income is very important in the developing world. There is as yet no evidence that GM crops will have such an outcome. In fact, evidence has now emerged of cross-contamination into the fields of non-GM crops. Organic and indigenous farmers all over the world are under threat!

Developed world consumers are rejecting GM foods. In Japan, Monsanto's herbicide-tolerant GM rice has been halted because of consumer opposition. GM tomatoes and GM tobacco, the first crops to be commercialised, have failed to win consumer acceptance. They too have been effectively abandoned. Similarly, market rejection led to the withdrawal of GM potatoes from the US market in 2001.

Biotech corporations have redoubled their efforts in the developing countries. They employ a range of tactics to promote GM technology and products. They lobby governments for favourable laws. They plant misinformation in the media. They sponsor national seminars in developing countries to influence scientists, policy makers and public opinion to a pro-GM stance. And, they get the backing of powerful governments to pressure other governments to accept GM foods. The US government is most vocal on behalf of these corporations.

In September 2001, the US forced Sri Lanka to abandon its ban on GM imports. It did so by threatening sanctions via the World Trade Organisation (WTO). Sri Lanka had little option but to surrender to the US threats.

Blameworthy strategy

Perhaps even more reprehensible is the strategy of the TNCs to flood the market with GM foods without informing consumers. Unlabelled GM foods have been shipped to developing country recipients since 1996. This has been done even through the UN World Food Programme (WFP). India, Colombia, Guatemala and many African countries have received such unlabelled GM food aid. Independent tests carried out in many developing countries detected GM ingredients in imported foods. Yet, these imported foods had not been labelled as GM food.

TRIPS, another tools to control food production

Biotech corporations rely on yet another potent tool to dominate the food chain. The Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement of the World Trade Organisation provides governments the option to not patent plant varieties, but this is an option that the US and the European Union will not permit developing countries to exercise. Pressure has been applied to adopt laws that permit the corporations to patent seed varieties. Such laws deny farmers the right to save, re-use, exchange and sell seeds. These are practices farmers have engaged in for millennia. By such practice farmers ensured genetic diversity and breeding of new plant varieties. Many developing countries have been pressured to provide for breeders' rights without also recognising their own farmers' rights.

Patents were designed to protect inventions, not discoveries. Yet, they are now being used to patent living things as if they are human inventions. Genes and gene sequences of microorganisms, plants, animals and even human beings have been patented. Such a patent regime has the effect of surrendering all life to the corporations.

Concluding remarks

Consumer rights must come before profits and corporate control in determining what food we eat. Consumers deserve the right to choose the food they eat because it is they who incur the risks. GM technology cannot be an exception. The hold of biotech corporations over the global food market would appear to be unassailable. But might is not right. And consumers must stand up and voice their concerns. They can make a difference.

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FACT *file*

Poor women are deprived of justice

MARY BAIDYA

Barely 15, Latifa Banu has been in deep trouble. She has conceived a baby even though she is not married. She has blamed the pregnancy on a man in whose house she worked as a maid. She has taken the man to court. She has lost because of what she said negligence of police.

She lost her job when the man came to know about the pregnancy. However, Latifa's father wanted to get the man punished. Latifa's court case went nowhere as the investigating officer (IO) failed to appear in court repeatedly. Moreover, the IO of the case was changed allegedly to protect the accused, who happened to be a man of wealth and political might.

"The accused was acquitted as we could not prove the allegations," the battered woman said adding, "Then I went to Ain O Shalish Kendra for further legal proceedings." The legal rights group is preparing to appeal in the High Court Division. Latifa is going to be a mother very soon but she would not be able to tell her baby who is the father. She knows it, but cannot tell unless the higher court gives a verdict in her favour.

The case of Latifa was not properly investigated and that's why she believed she lost. She did not get adequate legal supports, as her poor father could not hire a prominent lawyer. And finally she had to see the culprit going unpunished because of the loopholes of law. Latifa's case is not unique in Bangladesh. There are many such women who suffer this way and do not get justice. Lack of proper legal aid is one of the factors that work against such victims - who are mostly poor. The women's access to legal aid is very limited in the country.

Jobeda Khatun is another rape victim. Her case is pending in the court and she sees no prospect of immediate trial. Police delayed by four months submitting the final investigation report. Even the case documents were not produced before court at the time of hearing. Jobeda said she fell victim to harassment in every step of legal procedure. The harassment is greater in case of women than men. As a result, they are not only deprived of justice, but they are also gradually losing their confidence in law enforcers and the judiciary.

The backlog of huge number of pending cases creates the complexities in legal process. According to official sources, there are 10 lakh pending cases in different law courts of the country. Each judge has over 600 cases in their hands to dispose of. The victims suffer also because of corruption and irregularities. According to a World Bank report, about 25 percent people do not go to the court due to lack of financial ability to run a case and the delay in getting justice. The women, especially those from the poor class, are the worst victims of deprivation of justice, it further said.

The lawyers of defendants sometimes ask woman complainants some embarrassing questions in the court that she cannot answer in public. Thus they are also harassed in the courtroom,. In the rape cases, it is observed that the government witnesses, including investigation officer and doctor, do not appear in the court on the hearing dates. For this reason, many rape cases remain unsettled for years.

In Bangladesh, justice is still a far cry for poor women and there is no alternative to total reforms of the judicial system to provide the women with access to legal aid, experts said.

-- News Network.

LAW *analysis*

Judgement of Indian Supreme Court

Blanket ban on information of election candidate is against fundamental rights

THE points of disclosure spelt out by this Court in the Association for democratic Reforms case [(2002) 5 SCC 294] should serve as broad indicators or parameters in enacting the legislation for the purpose of securing the right to information about the candidate. The paradigms set by the Court, though pro tempore in nature, are entitled to due weight. If the legislature in utter disregard of the indicators enunciated by this Court proceeds to make a legislation providing only for a semblance or pittance of information or omits to provide for disclosure on certain essential points, the law would then fail to pass the muster of Article 19(1)(a) of the constitution. Though certain amount of deviation from the aspects of disclosure spelt out by this Court is not impermissible, a substantial departure cannot be countenanced. The legislative provision should be such as to promote the right to information to a reasonable extent, if not to the fullest extent on details of concern to the voters and citizens a large. While enacting the legislation, the legislature has to ensure that the fundamental right to know about the candidate is reasonably secured and information, which is crucial, by any objective standards, is not denied. It is for the Constitutional Court in exercise of its judicial review power to judge whether the areas of disclosure carved out by the Legislature are reasonably adequate to safeguard the citizens' right to information.

The Court has to take a holistic view and adopt a balanced approach, keeping view the twin principles that the citizens right to information to know about the personal details of a candidate is not an unlimited right. And that at any rate, it has no fixed concept and the legislature has freedom to choose between two reasonable alternatives. It is not a proper approach to test the validity of legislation only from the stand-point whether the legislation implicitly and word to word gives effect to the directives issued by the Court as an ad hoc measure when the field was unoccupied by legislation. Once legislation is made, this Court has to make an independent assessment in the process of evaluating whether the items of information statutorily ordained are reasonably adequate to secure the right of information to the voter so as to facilitate him to form a fairly clear opinion on the merits and demerits of the candidates. In embarking on this exercise, as already stated, this Court's directives on the points of disclosure even if they were tentative or ad hoc in nature, cannot be brushed aside, but should be given due weight. The right to information couldn't be placed in straight jacket formulae and the perceptions regarding the extent and amplitude of this right are bound to vary.

Section 33B inserted by the Representation of People (3rd Amendment) Act; 2002 provides that notwithstanding anything contained in the judgment of any Court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the Rules made thereunder. The constitutional validity of section 33B has to be judged from the above angle and perspective. Considered in that light it can be said that Section 33B does not pass the test of Constitutionality. The reasons are more than one. Firstly, when the right to secure information about a contesting candidate is recognised as an integral part of fundamental right as it ought to be. It follows that its ambit, amplitude and parameters cannot be chained and circumscribed for all time to come by declaring that no information, other than the specifically laid down in the Act, should be required to be given. When the legislation delimiting the areas of disclosure was enacted, it may be that the Parliament felt that the disclosure on other aspects was not necessary for the time being. Assuming that the guarantee of right to information is not violated by making a departure from the paradigms set by the Court, it is not open to the Parliament to stop all further disclosures concerning the candidate in future. In other words, a blanket ban on dissemination of information other than that spelt out in the enactment, irrespective of need of the hour and the future exigencies and expedients is impermissible.

It must be remembered that the concept of freedom of speech and expression does not remain static. The felt necessities of the times coupled with experiences drawn from the past may give rise to the need to insist on additional information on the aspects not provided for by law. New situations and march of events may demand the flow of additional facets of information. The right to information should be allowed to grow rather than being frozen and stagnated; but the man-

The legislative injunction curtailing the nature of information to be furnished by the contesting candidates only to the specific matters provided for by the legislation and nothing more would emasculate the fundamental right to freedom of expression of which the right to information is a part.... Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate.

date of Section 33B preface by the non-obstante clause impedes the flow of such information conducive to the freedom of expression. In the face of the prohibition under Section 33B, the Election Commission which is entrusted with the function of monitoring and supervising the election process will have to sit back with a sense of helplessness inspite of the pressing need for insisting on additional information. Even the Court may at time feel handicapped in taking necessary remedial steps to enforce the right to information. The legislative injunction curtailing the nature of information to be furnished by the contesting candidates only to the specific matters provided for by the legislation and nothing more would emasculate the fundamental right to freedom of expression of which the right to information is a part. The very objective of recognizing the right to information as part of the fundamental rights under Article 19(1)(a) in order to ensure free and fair elections would be frustrated if the ban prescribed by Section 33B is taken to its logical effect.

The second reason why Section 33B should be condemned is that by blocking the ambit of disclosures only to what has been specifically provided for by the amendment, the Parliament failed to give effect to one of the vital aspects of information, viz., disclosure of assets and liabilities and thus failed in substantial measure to give effect to the right to information as a part of the freedom of expression. The right to information which is now provided for by the legislature no doubt relates to one of the essential points but in ignoring the other essential aspect relating to assets and liabilities as discussed hereinafter. The Parliament has unduly restricted the ambit of information, which the citizens should have and thereby impinged on the guarantee enshrined in Article 19(1)(a).

Now the new legislation has to be tested on the touchstone of Article 19(1)(a) of the constitution. Of course, in doing so, the decision of this Court should be given due weight and there cannot be marked departure from the items of information considered essential by this Court to effectuate the fundamental right to information. Viewed in this light, it must be held that the Parliament did not by law provided for disclosure of information on certain crucial points such as assets and liabilities and at the same time, placed an embargo on calling for further information by enacting Section 33B. That is where Section 33B of the impugned amendment Act does not pass the muster of Article 19(1)(a), as interpreted by this Court.

Securing information on the basic details concerning the candidates contesting for elections to the Parliament or State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the Press and electronic media, though, to a certain extent, there may be overlapping. The right to vote at the elections to the House of people or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter. The directives given by this Court in Union of India Vs. Association for Democratic Reforms were intended to operate only till the law was made by the Legislature and in that sense 'pro tempore' in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/ citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure therefrom cannot be countenanced.

The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right. Section 33B does not pass the test of constitutionality, firstly for the reason that it imposes blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients. And secondly for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate. The right to information provided for by the Parliament under Section 33A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by Court from the ambit of disclosure. The provision made in Section 75A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to achieve the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of spouse or dependent children, the Parliament ought to have made a provision for furnishing this information at the time of filing the nomination.

However, voters' fundamental right to know antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate.

This article is extract of a judgment of the Indian Supreme Court given in the case of People's Union for Civil Liberties (PUCL) & another Vs Union of India and another with Lok Satta and others Vs Union of India and Association for Democratic Reforms Vs Union of India and others. The judgement was delivered by Mr. Justice MB shah, Mr. Justice Venkatrama Reddi and Mr. Justice DM Dharmandhikar on March 13, 2003.