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Critical Analysis of Protection of Plant Varieties and Farmers Rights in Pakistan under the Plant Breeders' Rights Act 2016

ABSTRACT

The Government of Pakistan passed the Plant Breeders' Rights Act 2016, the approval of which took more than one and half decade. The bill of the Plant Breeders' Rights Act was presented for approval several times with amendments. Though, the Act is still considered controversial between the Federal and Provincial governments. The Provinces claim that legislation of PBR Act is unconstitutional as the subject of Plant Breeders' Rights Act is a provincial subject over which the Parliament cannot exercise legislative jurisdiction under the Article 141 of the Constitution (Eighteenth Amendment) Act, 2010. Federal government without the consultation of provinces; however, the provinces claim that the Parliament does not have the constitutional right after the eighteenth

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amendment in Constitution of Pakistan to pass the Act. It is legal right of the provinces to make law for the protection of plant varieties with safe guarding farmers' rights. The protection of Breeders' rights is essential according to the International mechanism like TRIPS and CBD for the development of seed sector in Pakistan. In addition to that the protection of indigenous communities' rights is also necessary.

Keywords: Plant varieties, Farmers' Rights, Legal, Plant Breeders' Rights, TRIPS, CBD.

Abbreviations

CBD	Convention on Biological Diversity
FGROB	Federal Government Rules of Business
FSC&RD	Federal Seed Certification and Registration Department
HKH	Hindu Kush Himalaya
IP	Intellectual Property
IPR	Intellectual Property Rights
ITPGRFA	Treaty on Plant Genetic Resources for Food and Agriculture
MNCs	Multinational Companies
PBR Act	Plant Breeders' Rights Act 2016
PLD	Pakistan Legal Decisions
PPV&FR	Protection of Plant Varieties and Farmer's Rights Act 2001
SCMR	Supreme Court Monthly Report
TK	Traditional Knowledge
TRIPS	Trade Related Aspects of Intellectual Property Rights Agreement
WTO	World Trade Organization

WIPO World Intellectual Property Organization

Introduction

The Government of Pakistan passed the Plant Breeders' Rights Act 2016, the approval of which took more than one and half decade. During the process, the bill of the Plant Breeders' Rights Act was presented for approval several times with amendments. However, the Act is still considered controversial between the Federal and Provincial governments. The Provinces claim that legislation of PBR Act is unconstitutional as the subject of Plant Breeders' Rights Act is a provincial subject over which the Parliament cannot exercise legislative jurisdiction under the Article 141 of the Constitution (Eighteenth Amendment) Act, 2010. According to the 18th amendment, the laws may be made by the Parliament for the whole country or any part of Pakistan. Furthermore, provinces have also the right to pass the laws for the province or any part thereof.

However, the Parliament does not have the authority to pass any law which is not mentioned in the Federal Legislative list. The civil society's activists, NGOs and indigenous communities of farmers are opposing the Act. They claim that the proposed legislation only protects the breeders' rights and secludes the farmers as well as traditional knowledge of indigenous communities from the sphere of legal protection. It aims to give breeders complete monopoly over the seed market and entitles the companies to royalties for at least 20 years (Section 24 of Plant Breeders' Rights Act 2016) on each variety for which they hold PBRs. The main purpose of this paper is to take critical overview from different aspects of Plant Breeders' Rights Act.

Background History of Legislation

It is submitted during the 1960s and 1970s that developed countries began to grant plant breeders' rights and patent rights on seed varieties. The background history of PBR Act, 2016 has close link with international legal regulatory framework. Pakistan has ratified to the World Trade Organization (WTO) (The World Trade Organization (WTO) is the main worldwide global association managing the guidelines of exchange between countries. It regulates the international trade among different countries around the world), World Intellectual Property Organization (WIPO) (WIPO is a global Intellectual Property Organization; it deals with the international Intellectual Property matters. It has 189 members and it was established in 1967), and Trade Related Aspects of Intellectual Rights (TRIPS) (The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a global lawful assertion between all the part countries of the World Trade Organization). According to FSCRD 2002, *Focus on Seed Programs*, Federal Seed Certification and Registration Department, Islamabad. It is obliged to provide minimum level of protection to the plant varieties either by an operational sui generis system or patents or by the mixture of these systems under the 27(3b) of TRIPS agreement () FSCRD, 2002). The IPR regime in Pakistan consisted of Trade Mark Act 1889, Patents and Designs Act 1911, Patents and Designs Rules 1933, Secret Patents Rules 1933, Trademarks Act 1940, Copyright Ordinance 1962, Trademarks Rules 1963, Customs Act 1969, and Pakistan Penal Code. The objective statement of the 'Plant Breeders Rights Act 2016', Pakistan, has already introduced several laws to comply with the WTO and TRIPS Agreements in the

area of IP law such as patents, trademark, industrial designs etc (Plants Breeders Rights Act, 2016).

The Government of Pakistan opened its agricultural market under international trade agreements to foreign investors. Moreover, the country also introduced the Plant Breeders' Rights Act to satisfy the commitments under the TRIPS agreement as per the demand of multinational organizations (FSCRS, 2002). The first draft of PBR Act was drafted by the Federal Seed Certification Department (FSC&RD) in 1999 (Seed Industry Pakistan, 2014), and after that several versions of the bill were prepared on different occasions in 2000, 2007, 2010, 2014 and finally in 2016.

Controversies Federal verses Provinces:

The Plant Breeders' Rights Act 2016 is controversial between the Federation and the Federating Unites. The provinces claim that the subject of Plant Breeders' Rights is a provincial subject over which the Parliament cannot exercise legislative jurisdiction .In this regard it is submitted:

Article 141 Constitution of Islamic Republic of Pakistan, as amended by the Constitution (Eighteenth Amendment) Act, 2010 "18th Amendment", provides that Parliament may constitute entire laws or any part of the country.

Article 142 provides that:

- (a) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List;
- (b) Majlis-e-Shoora (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence; (Sub-Section Constitution Act, 2010)
- (c) Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make

laws with respect to any matter not enumerated in the Federal Legislative List; (Sub-Section Constitution Act, 2010)

- (d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province (Constitution of Islamic Republic of Pakistan, Section 143).

The growth of new plant cultivars and to guard the rights of breeders and Plant Breeders' Rights are not discussed in the Federal Legislative List. It is, therefore, submitted that Parliament had no authority to make the impugned legislation and the same is an attempt to subvert the object and purpose of the 18th Amendment. Without prejudice to the above, the Impugned Legislation has not been passed according to the provisions of the Constitution. Article 144 of the Constitution sets out the authority of Parliament to constitute for one or more provinces by consent as under:

If one or more Provincial Assemblies pass resolutions to the effect that Majlis-e-Shura (Parliament) may by law regulate any matter not enumerated in the Federal Legislative List in the Fourth Schedule, it shall be lawful for Majlis-e-Shoora (Parliament) to pass an Act for regulating that matter accordingly, but any act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province (Constitution of Islamic Republic of Pakistan, Section 143).

Although the Preamble to the Impugned Legislation states that it has been approved with the confirmation of the provisions of Article 144 while it is unable to locate a single resolution from any Provincial Assembly requesting Parliament to control and formulate the law on Plant Breeders' Rights and matter linked therewith. If it can be

argued that the Impugned Legislation was passed in harmony with Article 144 of the Constitution, the Impugned Legislation is still violation of the procedure prescribed for such legislation in the Federal Government Rules of Business (FGROB) (Rob, 2015) as changed up to 18 December 2015.

The FGROB are issued under the powers conferred by Article 90 and 99 of the Constitution onto the Federal Government to make rules of the distribution of its business. The Rule 15 of the FGROB states that without the approval of the Prime Minister, order will not be issued in cases where it is intended that the Federal Government undertake the execution of agreement regarding to a matter in the provinces.

Plant Breeders Rights and seed are subjects within the exclusive legislative domain of the Provincial Assemblies. However, the preamble of PBR Act states, "It is imperative to give effect to the sub-paragraph (b) of paragraph 3 of Article 27 of Part II of the Agreement of Trade Related Aspects of Intellectual Property (TRIPS) which the Government of Pakistan has ratified" (Plant Breeders Act, 2016).

The language of the relevant provisions of TRIPS and the preamble of the PBR Act clearly allows Member States to prohibit from patentability plants and animals, but nevertheless requires protection of plant varieties. As the subject of plants and animals and protection of plant varieties are provincial subjects. It is not enumerated in the Federal Legislative List of the Fourth Schedule to the Constitution; the implementation of TRIPS could only be accepted by Parliament (i) in compliance with Article 144 of the Constitution; and (ii) pursuant to the requirements of Rule 15 (1) (c) of the FGROB. It is submitted that as neither the requirements of Article 144 have been fulfilled nor the

provisions of the FGROB followed, the Impugned Legislation is violation of the Constitution and merits to be struck down.

The PBR Act attempts to vest the Federation with executive powers it cannot and does not possess. In this regards, it is submitted:

The Constitution limits the (i) executive and (ii) legislative jurisdiction of the Federation and of Parliament and the Provincial Assemblies, respectively, as under:

Extent of executive authority:

The article 97 of the Constitution states, "Subject to the Constitution, the executive authority of the Federation shall extend to the matters in respect to which Parliament has powers to make laws, including of rights, authority and jurisdiction in and in relation to areas outside Pakistan" (Constitution of Islamic Republic of Pakistan, Article 97) The proviso to Article 97, however, provides the executive authority of the Federation "shall not, save as expressly provided in the Constitution, or in any law made by Parliament, extend in any province to a matter with respect to which the Provincial Assembly has also power to make laws" (Constitution of Islamic Republic of Pakistan, Article 97)

Article 137 of the Constitution provides, "Subject to the Constitution, the executive authority of a Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws". The proviso to article 137, however, provides "that, in any matter with respect to which both Parliament and the Provincial Assembly of a Province have powers to make laws, the executive authority of the Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by Parliament upon the Federal Government

or authorities thereof" (Constitution of Islamic Republic of Pakistan, Article 137)

Limits of legislative authority:

Article 141 of the Constitution, as amended by the Constitution (Eighteenth Amendment) Act, 2010, offers that the Parliament may constitute laws for the entire or part of Pakistan. Article 142 provides theme of Federal and Provincial Laws.

It is therefore submitted that the policymaking right of the Federation is limited to those subjects over whom it has power to make laws, namely subjects determined in the Federal Judicial List or provided for in Article 142(b) of the Constitution. Conversely, it is submitted that, following the 18th Amendment, Provincial Assemblies and no other shall have the right to make.

Laws regarding subjects are not mentioned in the Federal Legislative List and to exercise executive authority with respect thereto.

The growth of new plant variabilities and to guard the rights of breeders and "Plant Breeders' Rights" is not found in the Federal Legislative List. It is already submitted that Parliament had no power to pass the Impugned Legislation and the same is an attempt to subvert the object and purpose of the 18th Amendment and so it is further submitted that the executive authority of the Impugned Legislation seeks to confer onto the Federal Government is also unconstitutional. The numerous provisions in the Impugned Legislation for procedures to be prescribed by rules exemplifies the extent of policymaking right of the Federation which seeks to snatch from the federating units and are all challenged on the grounds above.

It is clear that "development of new plant varieties and to protect the rights of breeders" and "Plant Breeders' Rights" is not in the Federal Legislative Lists of the Fourth Schedule of Constitution. Furthermore, the Impugned Legislation has not been passed in accordance with Article 144 of the Constitution. Therefore, it is submitted that neither the Federation nor the Parliament have the executive or legislative jurisdiction, respectively, to regulate and make on the "development of new plant varieties and to protect the rights of breeders" and "Plant Breeders' Rights" unless in agreement with Article 144 of the Law, it was observed in case of Syed Imran Ali Shah vs. Government of Pakistan (2013 PLC 143) (<http://sys.lhc.gov.pk/appjudgments/2016LHC1410.pdf>) and Ashraf Industries (Pvt) Ltd. Vs. Federation of Pakistan and others (2013 PTD 1732) (<https://joshandmakinternational.com/oil-gas-and-energy-law-projects/oil-and-gas-court-decisions/ashraf-industri>) Without prejudice to the above, the Act is violation of the Fundamental Rights to the public-at-large.

Challenges to the Farmers' Rights:

The Farmers' Rights as described in the ITPGRFA (ITPGRFA was come on 3 November 2001, by the 31st Session of the Conference of the Food and Agriculture Organization of the United Nations) and their supporting principles as set out in the CBD (The Convention on Biodiversity was all around the world received on 29 December 1993. It was the main universal settlement that recognized the part of biodiversity in reasonable improvement) and elaborated above. Pakistan is a signatory to the ITPGRFA and CBD and obliged to enact local legislation in light of their provisions. However, the PBR

Act, being the first time since accession to the ITPGRFA, has completely failed to consider the Farmers' Rights.

Therefore, it is asserted that Farmers' Rights are composed of separate rights, as follows:

Farmers' Rights on Seed:

All along the history of the agriculture farmer's rights on seeds is a traditional right enjoyed by the farmers. This right comprises many things like the right to protect the seed from one's crop and use the saved seed for planting, sharing, trading to other farmers. The method of conservation covers the complete genetic variability in time and space, including traditional and new varieties. The farmer's rights on seeds cover the complete genetic variability, including protected varieties (Anderson, 2008)

Farmers' Rights to Register Traditional Varieties:

Traditional varieties of plants are either preserved or formulated by a group of farmers and thus new varieties formulated by them are eligible for registration. It is necessary to involve all communities associated with its conservation, in the case of registration of a traditional variety (Ravi, 2004).

Farmers' Rights for Reward and Recognition:

Farmers should be rewarded and recognized for their contributions in terms of incentives to support the preservation undertaken by the farming communities (Ravi, 2004).

Farmers' Rights for Benefit Sharing:

The farmers' varieties or their derivatives are used as parents to develop new variety. The variety may be discovered to have been led by one farming community. It cannot be denied that the new registered variety has become popular among the farmers. Due to its registration, its plant breeding rights holder alone is allowed to market and commercially produce its seed. Here, it is possible that special marketing right may lead to vast seed sale and profits to the right holder (Philippe, 2003).

Farmers' Rights to get compensation for the Loss Suffered from the Registered Variety:

By registering a plant variety gives special commercial right on the variety to the farmer. A breeder enjoys commercial right after the registration of plant variety (Dhar, 2002) Commercial demand depends on the quality of the variety for improved agronomic performance. Companies encourage and promote their seeds by raising claims on the agronomic performance of their varieties. At the time of cultivating such seeds, farmers may realize the fact. The country seed's laws should include such unsuitable provisions to verify such marketing practices by seed sellers and breeders.

Farmers' Rights for the Seeds of Registered Varieties:

The objective of local legislation on seeds should support the easy use of good quality seed and growing material to agronomists for accelerating agricultural growth. The local legislation should try and attain this goal by ensuring sufficient accessibility of registered varieties to farmers at the sensible price tag.

Farmers' Rights for Receiving Free Services:

Local laws should completely free the farmers from paying any fees. In view of considering that this economic weakness shall not be a problem for accessing farmers' rights. This facility should include to the single, group or community of farmers. They should be free from the required fees to be paid for registration of farmers' varieties, for managing tests on them, for the renewal of registration and the fees defined for opposition, profit claim etc.

Farmers' rights for Protection against Innocent Infringement:

In legal Jurisprudence, infringement of law committed out of ignorance is not detained as permissible innocence. In country like Pakistan, farmers are economically poor and uneducated; there is a need to safeguard their rights against the innocent infringement. Exceptional provision should be given in local laws while considering the legal knowledge of traditional-bound farmers and to put off minor legal persecution to farmers from seed companies.

The PBR Act fails to recognize the Farmer's Rights elaborated and asserted above. The phrase "Farmers' Rights" is not even properly acknowledged in the Impugned Legislation, even though Pakistan is signatory to the ITPGRFA and is deemed to have recognized the same. On the other hand, the Farmer's Rights legislation passed in India mentions Farmers' Rights in its title, preamble and throughout its text. This oversight in recognizing and protection the Farmers' Rights stems from Parliament's usurpation of a legislative subject in the provincial domain.

Criticism on PBR Act:

Many NGOs, civil society activists and indigenous communities of farmers have criticized the Plant Breeders Rights Act (PBR). Their main objection is that the Act does not give anything new instead it is only a replication of a previous legislation (*The Nation*) they have demanded the farmer's protection provisions in the act according to convention on biological diversity (CBD) and international treaty on plant genetic resources for food and agriculture (ITPGRFA) because of this criticism, the PBR Act was not passed quickly by the parliament, rather it was presented in the legislature multiple times and finally passed by the parliament after a period of sixteen years. Mushtaq Gaddi, a lecturer, NIPS, Quaid-i-Azam University Islamabad stated that "the propose bill is a form of neo-imperialism; it is an attempt to give rights to the multinational corporations to exploit people and the resources of third world" (*The Nation*)

Progressively evolving a sui generis and plant variety protection in an agriculture economy especially Pakistan calls for a farmer-friendly legislation because it is the indigenous community's hard work, labor and traditional knowledge (TK) free application which could make the agricultural economy grow and develop. Therefore, satisfying the indigenous farming society by a positively proactive role of corporate sector and the civil society is significant. Moreover, the opponents of this law claim that agricultural techniques of sub-continent would affect centuries old traditional methods of cultivation and seed harvesting practiced by farmers in Pakistan.

The conflict arising from this debate is creating Monsanto and Syngenta (excessive seed patented have allowed these companies to maintain monopoly in the seed markets around the world, which adversely affected farmers, now each year farmers have to buy protected seed in return of royalties to these companies) like controversies in Pakistan, where these companies seek dependence of farmers on their products. This type of protection mechanism of privilege plant breeders would cause destruction to Pakistan's agricultural sector, since a significant portion of national economy as the country cannot afford to lose labor force is constituted by the agriculture sector.

The famous case of a Canadian farmer "Percy Schmeiser" is a good example, wherein he was blamed of using Monsanto seeds illegally and in April 2001 supreme court of Canada ordered him to pay eighty thousand Canadian dollars to Monsanto for not obeying the patent laws, although the truth was that infringement was accidental, taken place through flight of pollens from Monsanto fields to the farmers' fields (Hasnain, 2001).

The following are some other objections and reservations on PBR Act:

Breeders' Rights Protection:

The PBR Act protects the breeders' rights, and secludes the farmers as well as the traditional knowledge (TK) of indigenous communities of Pakistan from the sphere of legal protection. Under the Act, breeder will enjoy complete monopoly over the seed market and entitle the seed companies to royalties for at least 20 years (PBR Act, 2016) on each variety for which they hold PBRs.

Lack of Protection of Farmers Rights:

The PBR Act does not provide and explain the farmers' rights as compare to Indian Protection of Plant Varieties and Farmers' Rights Act in 2001. Though protecting the farmer's rights is a key in ensuring food security and sustainable agriculture, the Act does not discuss the farmer's rights as required by CBD and ITPGRFA, and demanded by the farmers, civil society activists and NGO's, like benefit sharing mechanism, legal protection for innocent infringement, PIC (Right of Prior Informed Consent of a Local Community as acknowledge in Article (15) of CBD)

Farmers' Rights established the accustomed rights that farmers have had as state manager of agricultural diversity as the origin the of farming to protect, plant and establish plant varieties, of their authentic right to be waged for their input to the worldwide group of genomic resources as well as to establish new viable varieties of plant (Mushita, 2008) It is essential to protect the breeders' rights for the sake of seed sector, but depriving farmers from their inherent rights is highly inappropriate (Koluru, 2003)

Monopoly of Plant Breeders Companies:

The Act regularizes the sui-generis regime, attempts to empower the private corporate sector, especially by rendering all the exclusive commercial right (Koluru, 2003) to the Multinational Companies (MNCs), a monopoly will be created over the seed industry of Pakistan and all the benefit arising out of agricultural activity by the use of protected seed will go to them, and the poor farmers will suffer, and have to pay royalties to the breeders. These given rights to breeders would also restrict farmer's rights to freely use, reuse and exchange of seed, and "this treat becomes more severe for the fragile and vulnerable areas such as Hindu Kush Himalaya (HKH) region where livelihood depends upon local produce and the people have to save the grain and seeds for future consumption" (PBR Act, 2016).

Deficiency of Damage Clause:

The absence of damage clause shows the government's intention to give priorities to protect the breeder's rights over the farmers. The damage clause for the benefit of the farmers was not inserted in the Act which was widely demanded by the farmers and the civil society, whereas, the

demand of removal of damage clause by the major seed selling companies was accepted overnight.

Conflict between Breeders and Farmers:

The Act has created a conflict amongst the farmers and breeders of the country. Breeders and MNCs being educated and well aware of new technology are able to protect more varieties of Plants and GM crops based on traditional farming methods and TK, rendering farmers their sole dependent.

There was much need to include the provision of PIC, so that farmers may now which varieties are protected and which not. This provision can also safeguard them against infringement.

Lack of Compensation Clause:

The PBR Act 2016 does not provide any remedial provision in case of crop failure and for the security of a farmer's future and money, whereas this provision is necessary in the legislation. This is one of the main rights; Indian government has provided this right to its farmers in Protection of Plant Varieties and Farmer's Rights Act 2001(PPV&FR).

Absence of Women Farmer Rights:

The Act is also silent about the rights of women farmers. The role of women farmers in agriculture sector is significant. Agriculture is impossible without the contribution of women farmers in Pakistan. The Act should include some provisions to protect the rights of women farmers which are not indicated.

Protection of Traditional Knowledge:

The PBR Act does not explicitly protect and recognize TK of indigenous people. The Act should protect the TK and genetic resources which should be properly documented. The proper documentation of TK may consequently help in challenging the issue of bio-piracy by the breeders and developed world. The Act should include the provisions conforming to the legislation on access to Biological resources and community rights (PPV & FR Act, 2016).

Danger to Genetic Diversity and Environment:

Intellectual property on plant varieties have created an atmosphere of competition, breeder's and MNCs are in effort to have more protected varieties causing damage to world's biological diversity, centuries old traditional methods of farming and etc. It is accepted that licenses and other type of IP security on the genetic assets for food and agri-business diminish the agriculturist's entrance to seed, decrease endeavors in openly financed plant reproducing, increment the loss of genetic assets, forestall seed sharing and could make farmers out of business (<http://www.farmersrights.org/database/pakistan.html>).

As Pakistan's plant genetic resource is subject to the Doctrine of Public Trust, the PBR Act violates the Doctrine as it places the public resource into a system that diminishes Pakistan's genetic resource in favor of private seed companies.

Environment is defined by the Pakistan Environment Protection Act, 1997 and the Punjab Environment Protection Act, 1997 is meaning, inter iliac, all organic material and living creatures, the biome and environmental interactions. The plant genetic resource of Pakistan is well within the legal definition of the word environment.

Doctrine of Public Interest:

The plant genetic resource of Pakistan, as a public resource, falls under the protection offered by the Doctrine of Public Trust. Reliance is placed on *Sindh Institute of Urology and Transplantation vs. Nestle Milkpak Limited* (2005 CLC 424), *Muhammad Tariq Abbasi vs. Defence Housing Authority* (2007 CLC 1358), *Arshad Waheed vs. Province of Punjab* (PLD 2010 Lahore 510), *In re: Cutting of Trees for Canal Widening Project, Lahore* (2011 SCMR 1743), *Chamber of Commerce and Industry in Quetta, Balochistan vs. Director-General, Quetta Development Authority* (PLD 2012 Quetta 31), *Maulana Abdul Baque Balock vs. Government of Balochistan* (PLD 2013 Supreme Court 641) and *Young Doctor's Association vs. Government of Pakistan* (PLD 2015 Lahore 112). The Doctrine of Public Trust orders upon the Government to secure common assets for the pleasure in the overall population as opposed to allow their utilization for private proprietorship or business purposes. The doctrine was absorbed in the following cases.

Asghar Leghari vs. Federation of Pakistan:

All people are qualified to be dealt with as per law and the Superior Courts have perceived the privilege to protect the healthy environment as a feature of the Fundamental Right to life enshrined in the Constitution. Recently, vide Order dated 4 September 2015 passed by the Green Bench of the Honourable Lahore High Court in the matter of *Asghar Leghari vs. Federation of Pakistan* (Writ Petition No. 25501 of 2015) (TRIPs, 2003), the Green Bench recognized Climate Change Justice in the following terms:

Climate Change is a significant challenge. On a lawful and Constitutional plane, it is a clarion requires the assurance of the Fundamental Rights of the residents of Pakistan. The current natural law must be molded to address the issues to something more earnest and overwhelming i.e. Environmental Change.

From Environmental Justice, which was generally restricted and constrained to our own biological systems and biodiversity, we have to proceed onward to Climate Change Justice. Basic rights establish at the framework of these two covering equity of frameworks.

Pakistan Chest Foundation v Government of Pakistan:

In Pakistan Chest Foundation v Government of Pakistan, (<http://delawarelaw.widener.edu/files/resources/pakistanashgarleghari.pdf>) for preventing tobacco advertisements from being broadcasted on Pakistani television, the petitioners filed a writ petition. The Lahore High Court, while accepting the writ petition, brought the case within the right to life principle pronounced in Shehla Zia (<https://pakistanilaws.wordpress.com/tag/public-interest-litigation/>).

Relating the code of law spoken in Shehla Zia's case (supra) to the evidences and conditions of the current case, the inhabitants of this country and predominantly the younger generation are in your own right to defense of law from being exposed to the risks of cigarette smoking, by advantage of the knowledge contained in Article 4 (2)(a) of the Constitution (Hassan, 2012)

Likewise, in Rana Ishaque vs. DG, EPA, (CLC, 1997) the Lahore High Court controlled one hundred and twenty one (121) industrial units of Punjab, apart from those that had

already put in treatment plants, from clearing sewages into drainage system and waterways on a petition declaring that these were being drained devoid of treatments (Writ Petition, Lahore High Court, 1995)

Conclusion

Pakistan passed Plant Breeders' Rights Act with efforts to make an effective sui-generis system for the protection of plant varieties. The Act, however, does not seem to protect and provide sufficient legal protection to farmers' rights like Indian PPV&FR rather it aims to protect only the breeders and multinational companies. The approval of the Act without protecting the rights of farming community would create chaos in the agriculture community and seed sector of Pakistan. The Act was passed by the Federal government without the consultation of provinces; however, the provinces claim that the Parliament does not have the constitutional right after the eighteenth amendment in Constitution of Pakistan to pass the Act. It is legal right of the provinces to make law for the protection of plant varieties with safeguarding breeders, civil society and the farmers' rights. The protection of Breeders' rights is essential according to the International mechanism like TRIPS and CBD for the development of seed sector in Pakistan. In addition to that the protection of indigenous communities' rights is also necessary.

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