

# INDIA'S NEW FARMERS RIGHTS LEGISLATION

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With the passage recently of the Plant Variety Protection and Farmers Rights Act, India has put in place a law to grant Plant Breeders Rights on new varieties of seeds, for the very first time. This legislation was necessitated by the commitments that India made in the agreement on Trade Related Intellectual Property Rights (TRIPS) when it ratified the Uruguay GATT Round in 1994. Farmers Rights, long resisted by successive governments, have finally been included in the legislation as a result of the determined and sustained campaign by civil society, spearheaded by the Gene Campaign. With this has ended a long and arduous struggle waged for the recognition of the rights of farmers in India's sui generis legislation.

Gene Campaign's position right from the start has been that if the status quo has to be changed and we have to grant Plant Breeders Rights, our legislation will have to grant a strong Farmers Rights at the same time. As against the generally articulated demand that Farmers Rights should constitute the right to save seed from the harvest to sow the next crop (plant back rights), we have maintained that plant back rights were no rights, only exemptions. Such exemptions, referred to as Farmers' Privilege, were granted by Breeders under UPOV. We insisted that Indian law has to grant rights, not provide exemptions, to its farmers.

Our key demand was for the farmer to retain the right to sell seed to other farmers, even if the variety was under a Breeders Right. This right to sell seed was crucial to maintaining the livelihood basis of the farming community and the nation's self reliance in agriculture. This clause, the right to sell seed, was the most fiercely resisted and was till now the major bone of contention.

The pivotal importance of the farmer having the right to sell seed has to be seen in the context of seed production in India where the farming community is the largest seed producer, providing about 87% of the country's annual requirement. Denying the farmer the right to sell seed would displace the farming community as the country's major seed provider. Their only replacement would be the Life Science corporations since budget cuts have seriously weakened the capacity and output of the other player, the public research institution. Any development that would give MNCs a significant share in seed production in India was fully unacceptable to civil society groups.

## **FARMERS RIGHTS**

In section 39 (iv) of the chapter on Farmers Right, the right to sell seed, even protected seed, has finally been provided .....

*The farmer shall be deemed to be entitled to save use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act.;*

*Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.*

### *Other kinds of farmers' rights*

There are provisions for acknowledging the role of rural communities as contributors of landraces and farmer varieties in the breeding of new plant varieties. Breeders wanting to use farmers varieties for creating Essentially Derived Varieties (EDVs) can not do so without the express permission of the farmers involved in the conservation of such varieties. A share of profits made from a new variety bred by using farmers' varieties, has to go into a National Gene Fund.

Further protecting farmers, the new Act stipulates detailed disclosure about the parentage of the new variety so that farmers are paid when their varieties are used. If breeders conceal the use of farmers varieties, their certificate stands to be cancelled. Breeders can not use terminator technology and have to submit an affidavit to this effect.

#### *Good clauses that need amendment*

The provision for payment for use of farmer varieties in the *Benefit Sharing* clause is welcome but modalities of implementation must be made simpler and less bureaucratic. The revenues earned should only be available for use by farming communities. There is also a clause protecting the farmer against the supply of bad quality seeds but the clause is weakly framed, leaving too much to the discretion of the Authority. There should be specific guidelines. Say, compensation should amount to at least twice the projected harvest value of the crop. In addition, a jail term should be provided for repeated offence.

#### *Breeders Rights*

Breeders Rights over the varieties they have developed are fully protected by the legislation. The Breeder has complete rights of commercialisation for the registered variety either in his/her own person or through anyone he designates. These unequivocal rights include the right to produce, sell, market, distribute, import or export a variety, in short, full control over production and commercialisation.

The strong protection granted to a plant breeder over his/her variety is seen in the section dealing with infringement of Breeders Rights where punishment in the form of substantial fines and jail terms have been prescribed for those who infringe the rights of the registered breeder.

#### *Researchers Rights*

The new law has provisions for Researchers Rights which allows scientists and breeders to have free access to registered varieties for research. The registered variety can also be used for the purpose of creating other, new varieties.

#### *Compulsory License*

The grant of a compulsory license is provided for if it is shown that the reasonable requirements of the public for seeds have not been satisfied or that the seed of the variety is not available to the public at a reasonable price. The breeder is entitled to file an opposition but should the charge be valid, the breeder may be ordered to grant a compulsory license under certain terms and conditions including the payment of a reasonable license fee. Compulsory License however will not be awarded if the Breeder can demonstrate reasonable grounds for his inability to produce the seed.

#### *Where the Bill needs improvement*

There is much that can be improved in the Bill. The drafting and language are poor and need improvement. The Authority should be made less bureaucratic, with greater participation of independent experts. In the interests of transparency, Essentially Derived Varieties should be dealt with in the same way as other conventionally bred varieties, providing the same opportunities for their examination and opposition, as has been provided for the registration of other varieties. Creating a separate, fast track for the clearance of Essentially Derived Varieties (EDV), which will often be GM varieties, raises questions.

After this law what next?