

INDIA'S NEW SEED LEGISLATION FINALLY HAS FARMERS' RIGHTS

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Parliament has finally passed the Plant Variety Protection and Farmers Rights Bill. With this has ended a long and arduous struggle waged for the recognition of the rights of farmers in India's sui generis legislation. India has now put in place a law to grant Plant Breeders Rights on new varieties of seeds, for the very first time. Farmers Rights, long resisted by successive governments, have finally been included in the legislation as a result of the determined and sustained campaign by NGOs, spearheaded by the Gene Campaign.

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. Any person, governmental or non- governmental agency is entitled to register a community's

claim and have it duly recorded at a notified centre. If the claim is found to be genuine, a share of profits made from the new variety has to go into a National Gene Fund.

Exemption from fees

Further protecting farmers from the new set of provisions being put in place, the new Act stipulates that if farmers wish to examine documents and papers or receive copies of rules and decisions made by the various authorities, they will be exempt from paying any fees.

Disclosure

Explicit and detailed disclosure in the passport data about the parentage of the new variety is required. If concealment is detected in the passport data, the Breeders certificate stands to be cancelled.

Terminator technology forbidden

Breeders will have to submit an affidavit that their variety does not contain a Gene Use Restricting Technology (GURT) or terminator technology.

Good clauses that need amendment

Benefit Sharing

The provision for payment for use of farmer varieties is welcome but modalities of implementing benefit sharing, must be made simpler and less bureaucratic. The revenues earned should only be available for use by farming communities, in the way that they decide.

Protection against bad seed

In providing a liability clause the farmer in principle is protected against the supply of spurious and/ or bad quality seed. However, 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.

Protection against innocent infringement

The Bill provides protection if farmers unknowingly infringe Breeders Rights. Nothing is however said about what would constitute an infringement. And what would constitute proof in a court of law that the farmer was unaware of the existence of such a right? This needs to be made unambiguous if farmers are to be really protected.

BREEDERS RIGHTS

Breeders Rights over the varieties they have developed are fully protected by the legislation. On registration, 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.

Penalties for infringing Breeders Rights

Violation of a Breeders Right can be construed at several levels. It applies to the variety itself as also to its packaging. Infringement will be established if the packaging is the same or even similar, such that the package could appear to be that of the Breeder. Legally, a similar looking package will be considered "Passing off" and so actionable. The registered name or denomination naturally can not be used by any one other than the Breeder.

In any prosecution for falsely using a denomination, the burden of proof is reversed and it is incumbent on the alleged violator to prove that the consent of the Breeder was obtained. This is designed to protect a breeder from unfair competition by other commercial breeders.

Penalties can range from Rs. 50,000 to ten lakh as well as a jail term ranging from three months to two years, depending on the severity of the damage caused. For repeated offence, fines can go upto Rs. 20 lakh and the jail term to three years.

RIGHTS OF RESEARCHERS

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. This flexibility is curtailed when the registered variety needs to be used repeatedly as a parental line for commercial production of another variety. In that case, new breeders will need the authorisation of the breeder whose variety they want to use repeatedly.

PROTECTION OF PUBLIC INTEREST

The legislation includes public interest clauses, like exclusion of certain varieties from protection and the grant of Compulsory Licensing. To secure public interest, certain varieties may not be registered if it is felt that prevention of commercial exploitation of such variety is necessary to "protect order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment".

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.

CORRECTIVES NEEDED IN THE BILL

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 A PLANT VARIETY LEGISLATION, WHAT NEXT?

Once we have enacted a Plant Variety Protection and Farmers Rights law, the next step will be to decide through which international platform India will interact with other nations. At

present the only international platform is the UPOV, a western platform regulating Plant Breeders Rights for the industrial nations. UPOV is controlled by the Life Science Corporations. No developing country is a member and neither should India become one.

Why India should not join UPOV

Gene Campaign opposes India joining UPOV because UPOV does not address our needs and because its working is totally alien to the conditions of agriculture prevailing in the countries of the south.

CoFaB, a developing country alternative to UPOV

Gene Campaign along with Centre for Environment and Agriculture Development, has drafted an alternative treaty to UPOV to provide a forum for developing countries to implement their Farmers and Breeders Rights. This treaty is called the **Convention of Farmers and Breeders, CoFaB** for short. CoFaB has an agenda that is appropriate for developing countries. It reflects their strengths and their vulnerabilities and it seeks to secure their interests in agriculture and fulfil the food and nutritional security goals of their people.

The UNDP Human Development Report (1999) describes CoFaB as a strong and coordinated international proposal which offers developing countries a far better alternative to European legislation, by focusing on the need to protect farmers interests and food and nutritional security goals. Gene Campaign's purpose in drafting an alternative to UPOV was to provide the basis for a discussion on what kind of non- UPOV platform developing countries should have. Once there is a comprehensive analysis and critique and consensus emerges among developing countries, it will not take long to come up with a minimum operational framework with which to start.