

REVISED PVP BILL MOVES IN RIGHT DIRECTION

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The Plant Variety Protection and Farmers Rights Bill (PVP Bill) was drafted to fulfil the TRIPS/WTO demand for a *sui generis* form of protection for plant varieties. It was presented to Parliament in December 1999. The Bill was subsequently referred to a joint Parliamentary Committee to hold public consultations in order to improve the bill since it was not found satisfactory. The Committee has been hearing the views of experts and it has now prepared a revised Bill.

The revised Bill has attempted to rectify many of the points against which there were strong objections. Primary amongst these are the definition and scope of Farmers Rights as also the nature and composition of the National Authority. The Farmers Rights have been dealt with in great, one might almost say, in populist detail! The revised Bill goes so far as to say that the farmer will not be liable to pay any fee to the Authority or the Tribunal set up under the PVP Bill or to the High Court in the event of being involved in any proceedings. This may be a more populist measure than practical but most people would agree that it is better to err on the side of caution.

The most significant change in the revised version is restoring the right of the farmer to sell seed. All previous drafts of the PVP Bill have denied the farmer to sell seed, even if the last version allowed them to save seed for their own sowing. The revised version of the Bill says in Section 40 "Notwithstanding anything contained in this Act, a farmer(iii) Shall be deemed to be entitled to save, use, sow, 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* ".

The Bill respects and rewards the innovation of the Breeder on the one hand, and on the other, does not allow such conditions to be created that would make farmers dependent on seed companies for seed supply. The Breeder is the only one entitled to derive commercial benefit from the registered name of the new variety. The Farmers Rights are restricted so as not to infringe the rights of the Breeder by qualifying "Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.

Such a situation would reward the effort made by the Breeder to create a new variety by allowing him/her the right to charge royalty and add profit in the first sale. It would however not allow farmers to be enslaved by perpetuating royalty collections on every sale of subsequent generations of seed. The farmers on their part would have to pay a reasonable amount in royalty for an improved seed provided by the breeder. But they would not be delivered into the hands of the breeder by having to forego their right to function as the producers and sellers of generic seed as they do today. Groups like Gene Campaign who has been leading the campaign to have a strong farmers right in the legislation, have been suggesting precisely this kind of balance between Breeders and Farmers Rights if we did indeed have to enact a *sui generis* legislation.

The farmer having the right to sell seed is an essential component of our food security.

The tussle over farmers' rights which has been going on for the last few years, reflects the tussle between the seed industry lobby and the pro-farmer lobby. Since the multinational companies are interested in capturing as much of the seed market as possible, they have been lobbying for a curtailed Farmers Rights, of the kind that has existed in all the versions of the Draft Bill prepared so far. It is a move in the right direction that the revised Draft Bill has come out firmly on the side of the farming community.

The implications of the farmer losing the right to sell seed would be several folds. For one, it would mean loss of income from seed sale. If the farmer were to lose the right to sell seed, it would mean losing control over seed production. This would ultimately threaten self-reliance in agriculture.

The farming community supplies over 85 % of the seeds required annually, amounting to roughly 52 lakh tons. The National Seeds Corporation and the various State Seed Corporations together produce less than 10 lakh tons. In other words, India's largest seed producer is the Indian farmer. If the farmers' right to sell seed were to be taken away, the shortfall in the market of 50 to 52 lakh tons of seed would ultimately be filled by MNCs. It would be sheer madness to allow that.

The rights of the farmer in the revised legislation are protected in other ways too. Since the new legislation will introduce proprietary seed for the first time in India, farmers will be unfamiliar with the notion of 'other' ownership of seed. In a public sector breeding program like ours, the institutions release new varieties over which farmers have complete rights. With seeds protected by Breeders Rights, there may be unwitting infringements. Here the new draft provides an important clause protecting the farmer against penalty if he was not aware of the existence of a breeders right. This is a real life situation and this protection is important.

Apart from changes in the farmers Rights, the PVP Authority has been improved, although it still needs working. There is now representation of farmers, adivasis, women's organisations, seed industry and state governments in addition to the bunch of babus in the original version. There is an extensive Tribunal with far reaching powers to regulate the practice of Farmers and Breeders Rights and substantial penalties (Rs. 50,000 to Rs. ten lakhs) and jail terms for offences and deceptions in declaring denominations. These are all steps in the right direction. The Bill should include provisions for farmers to demand compensation for bad seed. This again is a real life situation and should be included. The language in the revised version is shoddy and must be improved, if only to close avenues for legal wranglings. Above all, political will in this country must be firm and resolute that it will present a Bill like this, with its current ideology, to the WTO as India's sui generis legislation. The pressure will be great to cut down farmers Rights but India must stand firm.