

FARMERS RIGHTS AND FOOD SECURITY IN THE NEW LEGISLATION

Dr. Suman Sahai

The Plant Variety Protection and Farmers Rights Bill which has been in the making for some years was finally presented to Parliament in December 1999. This Bill is India's *sui generis* legislation in accordance with the commitments made in TRIPs. The Lok Sabha felt the Bill was deficient in significant ways and has therefore referred it to a Joint Parliamentary Committee. Members of this Committee have traveled around the country listening to views from various people on the draft bill. The Parliamentary Committee had to submit its recommendations by the beginning of the budget session but this did not happen so it will be deferred till later. The PVP legislation appears to be a priority with the government.

The first version of this *sui generis* legislation was drafted in 1994- 95 subsequent to the conclusion of the Uruguay GATT Round. At the time it was titled the Plant Variety Protection Act. It had no mention of farmers rights. This draft Bill was deeply flawed not only because it ignored the interests of farmers but also because it was modeled on the UPOV (Union for the Protection of New Plant Varieties), the forum regulating Breeders Rights in industrialized nations. The UPOV has no notion of farmers rights, food security, livelihoods and related concepts so crucial to not just the Indian condition but to the condition of all developing countries. The Indian Plant Varieties Act in its first version had as a result of its UPOV parentage, also neglected to address the issues fundamental to Indian agriculture and farming communities.

Even today the Bill remains a flawed legislation because although the title has been expanded to Plant Variety Protection and Farmers Rights Act, to send the signal about concern for farmers, the inequities that were originally drafted into the bill continue to be there. The philosophy and language of the draft legislation is not Indian. It is anchored in the WTO and UPOV. The preamble itself states that this Bill is being drafted in order to comply with the requirements of the TRIPs regime. In fact the Bill opens with the text....*to provide for the establishment of an Authority to give an effective system for protection of the rights of plant breeders and farmers, and to encourage the development of new varieties of plants and to give effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the Agreement on Trade Related aspects of Intellectual Property Rights.* The purpose of the Bill is to encourage the development of new plant varieties, as it is in UPOV, not to provide conditions to ensure food security.

The Indian Bill also sets out to essentially protect the rights of the Breeder as in UPOV. Farmers Rights found mention in the Bill only after aggressive campaigning by groups concerned with agriculture, food security, the issues of agriculture and Intellectual Property Rights. Gene Campaign and others who lobbied to get the Bill re-examined and introduced suggestions for strengthening Indian interests, were consistently opposed by the lobby of the seed industry which had just as much interest in keeping the Bill weak on issues like Farmers Rights and strong on Breeders Rights. Even today this tussle between the pro-farmer NGO lobby and the pro-breeder industry lobby can be seen. It is certainly reflected in

the tug of war within the Agriculture Ministry over the formulation of important clauses relating to the scope of Farmers Rights and restrictions on Breeders Rights.

The current version of the Bill has essentially three major flaws of which the most alarming is the weak farmers rights, the second is the irrational conditions for operationalising Compulsory Licensing and the third is the thoroughly inadequate, bureaucratic Authority constituted to oversee the implementation of the Act. The diluted Farmers Rights in the Act strikes at the very root of food security and hence it should not be accepted under any circumstances. What the Act contains under Section 31 which spells out Farmers Rights is, “Nothing contained in this Act shall affect the right of a farmer to save, use, exchange, share or sell his farm produce of a variety protected under this Act. Provided that *a farmer shall not be entitled for such right in case where the sale is for the purpose of reproduction under a commercial marketing arrangement.*”

Simply stated this means that once the farmer plants a variety of seed on which someone has a Breeders Right, Farmers Rights will allow that he or she can sell the produce of the farm. The farmer will also have the right to save this seed, it could be interpreted, to sow the next crop, although this is left ambiguous in the language. The Farmers Right does not clearly spell out that the farmer has the unequivocal right to save his farm produce in the form of seed for himself, to sow the next crop. The new law also allows the farmer to exchange and share his farm produce with others.

However, what the farmer can not do, according to the new law, is sell seed. And this is really the most devastating blow to the rights that farmers have today. According to Section 31, the farmer is not entitled to sell any part of his farm produce for reproduction that is for the purpose of seed. Any lawyer will tell you, and Gene Campaign has consulted them, that prohibiting sale of seed under ‘commercial marketing arrangement’ means a complete denial of the right to sell, whether the sale is of one kilogram or 1000 kilograms. It is clear that under the new law, sale of seed is prohibited to the farmer.

When confronted with this, the bureaucrats in the Agriculture Ministry have waffled endlessly and unconvincingly, that the wording denying sale under ‘commercial marketing arrangement does not impinge on the farmers’ right to sell seed. It only restricts they argue, the farmer selling seed branded with the Breeders registered name. The obvious question then is, if that is what is truthfully intended, why not just make the wording of the draft Act clear and unambiguous? Why do it in such a complicated way, saying one thing but meaning something else?

The second portion can quite easily read.... “*Provided that a farmer shall not be entitled for such right in case where the sale is for the purpose of reproduction under a branded marketing arrangement.*” Or another version could be “.....*not be entitled to such a right where the sale is in the form of packaged and labeled seed.*” These formulations would protect the rights of the breeder over his/her certified variety. They would also protect the rights of the farmer to sell seeds of a variety protected by a Breeders Right but the special advantage conferred by the registered name would be available only to the breeder, not the farmer. The breeder would be monetarily compensated by the royalty payment included in the price of the first sale but would not be allowed to perpetuate this royalty in every sale

The farmer having the right to sell seed is an essential component of our food security and simply can not be trifled with. The consequences of denying the farmer the right to sell seed will lead to impoverishment and dependence for farming communities. It will also impact on national security in a quite dangerous way.

The denial of the right to sell will lead to loss of income for the farmer, from seed sale. Far more worrying is that it will lead to the farming community losing control over seed production. This will ultimately threaten self reliance in agriculture. There is a real danger that farmers could become dependent on multinational seed companies for seed supply, with all the implications that this could have.

What are the implications for India of these curtailed farmers rights? The short answer to that is, a compromise with national security. Food security, as we are all aware, is a critically important part of national security. A nation that does not produce its own seed and its own food can not be a secure nation.

Today India plants over 60 lakh tons of seeds every year into its fields. The National Seeds Corporation and the various State Seed Corporations together produce less than 15 % of this requirement. Over 85 % of the seeds amounting to roughly 52 lakh tons that are planted in Indian fields every year are supplied by the farming community. In other words, India's largest seed producer is the Indian farmer.

This right and freedom to function as the biggest, most de-centralised supplier of locally well-adapted seeds has helped India to make the transition from a grain deficient to a grain surplus nation, even if it is a precarious surplus. Once the farmers' right to sell seed is taken away, the shortfall in the market of 50 to 52 lakh tons of seed will be filled by MNCs . If that happens, India will lose control of its seed production, its agriculture and its food security.

Given that India's food security is monsoon dependent and uncertain and given that India has just about emerged from the humiliation of food imports, it is amazing that the Agriculture Ministry can have the nerve to put out a draft legislation with such a threatening component for food security. It is even more amazing that there are still those who are promoting the thesis that self reliance in agriculture is an outdated concept. The shocking theory is doing the rounds with renewed vigor that India should sell roses and orchids and buy wheat from countries like the US and Canada who produce it more cheaply than we do. To those embracing this theory, it needs to be pointed out that the European Union, one of the most powerful economies in the world, is unshakably committed to self reliance in food. Its Bible like document called the Common Agricultural Policy, places this unashamedly as the central dogma. Most countries have a similar policy. It is pathetic that a country as vulnerable as us on food is so ready to chant the globalisation mantra, as to jeopardise the very basis of its security. First food and then the rest.