

A FARMERS RIGHT IN PLACE, FINALLY

Dr. Suman Sahai

On August 9, 2000, the Lok Sabha 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. We at Gene Campaign are greatly relieved to see that the Farmers Right section includes the elements we have been fighting for these last seven years. Recognition for a strong and comprehensive right which would not diminish the farmers' traditional rights has been the Campaign's principal struggle ever since India ratified the Uruguay Round and it became clear that we would have to put in place a *sui generis* legislation for the protection of new plant varieties, in effect, grant Plant Breeders Rights.

Gene Campaign has over the years been demanding a Farmers Right that would allow the farming community to retain the same control over seed production and use that they have always had. As against the widely expressed demand of civil society that Farmers Rights should constitute the right to save seed from the harvest to sow the next crop (plant back rights), Gene Campaign's position has been different. 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.

In addition to this, as part of Farmers Rights, we wanted payment for the use of farmer varieties and their informed consent. We also wanted compensation for the farmer if poor quality spurious seeds led to crop failure. To make certain the farmer does not get displaced by fancy new companies as a seed producer, the key element was to ensure that the farmer retained 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.

Curiously, the most determined opponents of a forceful Farmers Right, specially the right to sell seed, have not been the seed industry for whom it would be natural to oppose a strong farmers right, but the scientists of the ICAR system and the babus of the Agriculture Ministry. Minions of the Ministry and the Indian Council of Agricultural Research (great votaries of joining the UPOV system despite its distinct anti- farmer provisions) stood rocklike over the years in their determination to deny the farmers' legitimate rights as producers of seed.

ICAR and the Ministry at the bidding of who knows which munificent powers have been the principal opponents of the farmers' right to sell seed, drafting time and countless time again, as governments changed, that the farmer had the right to save, sow, exchange - but not sell seed. It took the intervention of a Parliamentary committee and strong NGOs to get past their blockade and get a reasonable Farmers Rights in place.

The pivotal importances of the farmer having the right to sell (not save, not exchange, but sell) seed has to be seen in the context of seed production in India. In India, the farming community is the largest seed producer, providing about 87% of the country's annual requirement of over 60 lakh tons. If the farmer were to be denied the right to sell, it would

result in a substantial loss of income for him. But far more importantly, such a step would displace the farming community as the country's major seed provider. Their only replacement if this happens will be the large Life Science corporations since budget cuts have seriously weakened the capacity and output of the other player, the public research institution.

The most difficult part of our campaign for Farmers Rights ,specially in the early years was pointing out over and over again to recalcitrant and unwilling governments, that there was nothing in TRIPS or Article 27.3(b), the section dealing with protection of plant varieties, that came in the way of granting strong Farmers Rights. That the sui generis definition was flexible , that granting Farmers Rights would be fully compliant with TRIPS provisions. And that even if there were to be any restraint on the granting of Farmers Rights, it would be impossible for India to accept such a restraint.

The Bill that has just been passed,contains most of the provisions we have wanted. Specifically in section 39 (IV) of the chapter on Farmers Right, the following is 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.

This formulation allows the farmer to sell seed in the way he has always done, with the restriction that this seed can not be branded with the Breeder's registered name. In this way, both Farmers and Breeders rights are protected. The Breeder is rewarded for his innovation by having control of the commercial market place but without being able to threaten the farmers' ability to independently engage in his livelihood, and supporting the livelihood of other farmers.

There is much that can be improved in the Bill.. It has areas of concern which need to be revisited, like the special treatment given to Essentially Derived Varieties (EDV), which will often be GM varieties. The creation of a separate track for their clearance raises questions. Why should there be a separate track if there is no covert intention of pushing through varieties which may be the subject of opposition? 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.

The Authority which will oversee implementation is wretchedly bureaucratic, packed with ex officio holders of transient posts, who experience shows, bring little knowledge and even less interest. What is needed in place of this babu pyramid, are an abundance of independent experts and stakeholders and NGOs. Another clause in need of serious improvement is the one that provides compensation to farmers if the seed provided by a breeder fails to perform. The intention is there to protect the farmer's interest but the clause is far too casually, even sloppily worded. There is too much reliance on the Authority's discretion and not enough firm guidelines. Some ball park figure should be mentioned, say, compensation should amount to twice the value of the failed harvest.

The text of the Bill needs a language overhaul. For one it is shoddily written. In some places the language is so poor and ambiguous that it could even lead to legal disputes. Once the Bill clears the Rajya Sabha, it will be important to frame appropriate rules that are clearly articulated and designed to enable the implementation of the specific goals of the Bill. Attention will have to be paid to detail. This is a task requiring specific knowledge and would be most successfully undertaken in consultation with independent experts having some experience in the field.