

FARMERS RIGHTS NOT PROTECTED IN NEW LEGISLATION

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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. In the Lok Sabha a month ago, some alert parliamentarians managed to stall voting on it and recommended it be sent to a Joint Parliamentary Committee for improvement. That is where India's draft sui generis legislation finds itself at present. This legislation is flawed as it fails to really protect the rights of the farmer as also the

The first version of the sui generis legislation was drafted in 1994- 95 subsequent to the conclusion of the Uruguay GATT Round in Marrakesh in 1994. 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 the 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.

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 working on food security, the issues of agriculture and Intellectual Property Rights. Gene Campaign and others who lobbied to get the Bill re-examined and make suggestions for strengthening Indian interests, were countered 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. Unlike now when plant breeders refers to agricultural scientists in universities and research stations, in the new scheme of things seed companies will be the breeders who will be getting Plant 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 over the formulation of important clauses relating to Farmers Rights, restrictions on Breeders Rights, Compulsory License conditions, and the nature of the regulatory authorities that will oversee the execution of the conditions of the new law.

The Bill will no doubt benefit from a better phrasing of certain sections but it has essentially three major weaknesses which must be corrected. The first is naturally, the rights of farmers, the second the constitution of the Authority which will oversee the implementation of the conditions and the third, the conditions of Compulsory Licensing.

A. The law says the farmer can save, use, exchange, share or sell his *farm produce*. This means he can sell his *fasal* and perhaps also save some of his farm produce to use as seed for himself for his next crop.

However the law clearly says that the farmer does not have the right to sell any part of his farm produce as seed. This means that the farmer's role as a seed producer has been finished off.

Q. What are the implications of losing the right to sell seed?

A. The consequences of this restriction will be:

Loss of income for the farmer

Loss of control over seed production

Loss of self-reliance in agriculture

Dependence of the farming community on multinational seed companies for seed

An ever-present threat that MNCs can withhold release of seed to apply pressure

Q. What are the implications for India of these curtailed farmers rights?

A. A compromise with national security since food security is in the forefront of national security. A nation that does not produce its own seed and its own food can not be a secure nation.

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, yet de-centralised seed supplier of locally well-adapted seeds has helped India to make the transition from a grain deficient to grain surplus nation.

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 . India will lose control of its agriculture and its food security.

OUR DEMAND: *The new law should clearly and unambiguously define a strong farmers right which ensures the farmers right to save seed for planting his own crop as well as the right to sell seed that he has produced, to others.*

to encourage the development of new varieties and ensure the food and nutritional security as also livelihood of the farming community.

include a fee to be paid by the plant breeder for using a land race or farmers variety for breeding a new variety which is registered.

(c) breeder means a person who has bred or developed a new variety.

Delete 'discovered'.

Composition of the Authority

The present authority consisting of only bureaucrats and ex officio members of govt. departments completely lacks credibility.

3 (5) (a) Since the Authority has judicial and semi –judicial powers , . Replace (a)with *The chairperson should be a judge of High Court level.*

3 (5) (b) There should be State representation.

Add.... There will be on the Authority, representatives from 3 states at a time by rotation There should be at least 2 judges (retired or sitting) in the Authority

The Biological Diversity Act has a better formulation (for the National Biodiversity Authority). This should be followed for the Authority here.

Add to the list ...Six non-official members to be appointed from amongst specialists, scientists conversant with agro-biodiversity, sustainable agriculture, equitable sharing of benefits, as also conservors of biological resources and creators and holders of knowledge, with due regard for gender representation.

. To enable registration of farmers varieties and land races, Add..... *Panchayats will be asked to appoint Beej Samitis who will be entrusted the task of recording and registering farmer varieties and land races. This registration will be done on the basis of commonly held oral knowledge in local communities. The lists of registered varieties will be collected by the Registrar appointed for that region and submitted to the central Authority.*

Add Penalty provision for suppression of details in passport data.

Add.....A penalty to be decided by the Authority will be imposed on the breeder if he suppresses information about the varieties used to breed the new variety. In the case of non-disclosure of farmer varieties and land races, the penalty will be Rs. 5 lakhs.

Page 12. Section 26. Determining benefit sharing. The onus for determining benefit sharing should rest with the Registrar General of Plant Varieties, the Authority, civil society, NGOs etc., as well as the breeder. Add.....*The breeder of a new plant variety will have to declare in his passport data the names of varieties used in breeding the new variety , specially underlining the use of farmer varieties and land races . This information will form the basis of a claim for benefit sharing. The Registrar general will have to take note and initiate action to claim a share of benefit for farmers.*

Page 15. Section 31. Farmers right.

This really is the single most important point of the whole legislation

The farmers' right can not be reduced to a mere exemption, allowing the farmer to save seed from his crop to sow the next crop. The Indian farmer has always had the right to sell seed. This must be protected.

The present formulation in the Bill denying the farmer the right to sell under 'commercial marketing arrangement' can apply to 500 kg of seed as also to 5 kg. It will demolish his right to sale.

Change line 8 and 9 to*Provided that a farmer shall not be entitled for such right in case where the sale is in the form of packaged and labeled seed.*

2. Since the multinational companies would naturally be interested in capturing as much of the seed market as possible, it would be illogical to expect that they would willingly grant farmers the right to produce seed. *The tussle over farmers rights in the current legislation reflects the tussle between the seed industry lobby and the pro-farmer lobby.*

3. The right of the farmer is the right to sell seed, not only to exchange it. *This right will have to be strongly defended.*

'Exchange' refers to a non-commercial transaction. If a farmer gives his neighbour some. The Indian farmer does not only indulge in 'traditional exchange.' - He sells seed, he sells more seed than the National and State Seed Corporations put together.

The implications of the farmer losing the right to sell seed

Loss of income for the farmer

Loss of control over seed production

Loss of self-reliance in agriculture

Dependence of the farming community on multinational seed companies for seed

An ever-present threat that MNCs can withhold release of seed to apply pressure

At the national level this could mean a compromise with national security since food security is in the forefront of national security. A nation that does not produce its own seed and its own food can not be a secure nation.

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UPOV vs CoFaB

The entire legislation is pegged to TRIPs and the bill says it is 'to provide for the establishment of an Authority "to give effect to sub paragraph (b) of paragraph 3 of article 27 in Part II of the Agreement on Trade Related Intellectual Property Rights."

Therefore a clear statement that our PVP legislation will be guided by a non-UPOV alternative like CoFaB should be put into the main body of the text. I am not sure that GOI will not succumb to pressure and accept UPOV 1991. So we are safer with a fuller Farmers Rights and a clear indication that we will not be joining UPOV.

This is also important because one of the features of the review of article 27.3(b) is to define the nature of the original sui generis option. Will it be left open or will it have to conform to UPOV 1991 as the Quad countries want?

India should promote the acceptance among developing countries of an alternative to UPOV (Union for the Protection of New Plant Varieties). Gene Campaign has drafted an alternative called CoFaB to provide a platform for regulating Farmers and Breeders Rights and aiming for food and nutritional security while granting protection to new plant varieties.

- UNDP , Human Development Report 1999 recommends **CoFaB** as an alternative for developing countries , describing it as a 'strong and co-ordinated international proposal which offers developing countries an alternative to following European legislation by focusing legislation on needs to protect farmers rights to save and reuse seed and to fulfil the food and nutritional security goals of their people'.
- The Commerce Ministry (nodal ministry for WTO) has formulated the official Indian position for the WTO: that India would not accept UPOV as its sui generis model; it would instead adopt an alternative like CoFaB.

Page 18. Section 41. Compulsory License. Add.....*After 3 years if the certificate holder is not able to provide sufficient seed and there is harm to public interest , the government*

will grant Compulsory License to farmers in possession of the seed of the said variety to multiply and sell that seed on behalf of the government

Page 18. Section 44. It is ridiculous to suggest that the National Gene Bank or similar repository will have sufficient volume of seed to serve as a source under Compulsory License arrangements. It will take several generations of crop cycles to produce sufficient material to serve as a seed source.

Add...When Compulsory License is granted, the certificate holder will be obliged to provide stocks of the said variety available with him for rapid multiplication by designated farmers, in order to alleviate the conditions harming public interest as fast as possible.

Page 21. Section 52. National Gene Fund. Revenues flowing in to the Gene Fund should include fees for using farmer varieties. Add.....*to article 52 (1) as (e)Fees paid by breeders for the use of farmer varieties and land races in the breeding of a new variety.*

Page 21. Section 52 . The Central Government should bear the costs of administering this Fund at least for the first few years till revenues begin to flow. Otherwise meager revenues instead of going to farming communities will go towards administration costs.