

India's Plant Variety Protection and Farmers' Rights Act

By Suman Sahai

The Indian Parliament has finally passed the Plant Variety Protection and Farmers' Rights Bill. India has now, for the very first time, put in place a law to grant Plant Breeders' Rights on new varieties of seeds. The law also grants Farmers' Rights. These have 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 was that if the *status quo* had to be changed and India had to grant Plant Breeders' Rights, our legislation would have to grant a strong Farmers' Rights at the same time. We maintained that 'plant back rights', i.e. the right to save seed from the harvest to sow the next crop, were no rights, only exemptions. Breeders under UPOV granted such exemptions, referred to as Farmers' Privilege. We insisted that Indian law had 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 protected by a Breeders' Right. This right to sell seed is crucial to maintaining the livelihood basis of the farming community and the nation's self-reliance in agriculture. The clause on the right to sell seed was the major bone of contention to the very end of the legislative process.

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 percent 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 major player, the public research institution. Any development that would give multinational corporations a significant share in seed production in India was unacceptable to civil society groups.

Farmers' Rights

In section 39 (iv) of the chapter on Farmers' Rights, 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.

However, the farmer is not entitled to sell '*branded* seed of a variety protected under this Act' (editor's italics).

Other Kinds of Farmers' Rights

The Act acknowledges 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. Anyone can register a community's claim and have it duly recorded at a notified center. 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 farmers

wishing to examine documents and papers or receive copies of rules and decisions made by the various authorities 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.

No terminator technology: Breeders must to submit an affidavit that their variety does not contain a Gene Use Restricting Technology (GURT) or terminator technology.

Protection against innocent infringement: Rightly assuming that farmers may unknowingly infringe Breeders' Rights since they will not be used to the new situation, the law provides for protection from prosecution for innocent infringement.

Good Clauses that Could Do Better

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: The clause protecting the farmer from spurious seed leaves too much to the discretion of the Authority. There should be specific guidelines, such as that 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.

Rights of Breeders and Researchers

Breeders' Rights are fully protected by the legislation. On registration, the breeder has complete rights of commercialisation for the registered variety. These include the right to produce, sell, market, distribute, import or export the registered variety.

Penalties for infringing Breeders' Rights: Violation of a Breeders' Right can apply to the variety itself, as well as to its packaging. 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.

The new law has provisions for Researchers' Rights which allow scientists and breeders free access to registered varieties for research. The registered variety can also be used for the purpose of creating new varieties. This flexibility is curtailed only when the registered variety needs to be used repeatedly as a parental line for commercial production of another variety.

Protection of Public Interest

The legislation includes public interest clauses, like exclusion of certain varieties from protection and the grant of compulsory licensing. To safeguard public interest, certain varieties may not be registered if it is felt that prevention of commercial exploitation

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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 licenses: 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 may file an opposition but should the charge be valid, the breeder can be ordered to grant a compulsory license under certain conditions, including the payment of a reasonable license fee. However, no compulsory license will be awarded if the Breeder can demonstrate reasonable grounds for his inability to produce the seed.

After Plant Variety Legislation, What Next?

Now that 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, and controlled by the life science corporations.

India Should Not Join UPOV

Gene Campaign opposes India's 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. We believe that developing countries must create their own platform, which will grant Farmers' Rights distinct from Breeders' Rights, and be geared to work towards food and nutritional security in our countries. There is no concept of Farmers' Rights in the UPOV system, rights are granted only to the breeder, which in today's context means the seed companies. UPOV laws are formulated by industrial, not agricultural economies. In these countries the farming community is by and large rich and constitutes from two to five percent of the population. These countries do not have the large numbers of small and marginal farmers that we do.

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 reflects developing country strengths and vulnerabilities and seeks to secure their interests in agricultural policy-making.

The UNDP Human Development Report 1999 commended CoFaB as a 'strong and coordinated international proposal which offers developing countries an alternative to following European legislation by focusing legislation on need to protect farmers' rights to save and reuse seed and to fulfil the food and nutritional security goals of their people.' 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 consensus emerges after comprehensive analysis and critique among developing countries, it will not take long to come up with a minimum operational framework with which to start.

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*China's WTO Membership, continued from page 9***Environment-Related Trade Implications**

Although WTO membership will provide opportunities to increase exports and many sectors are likely to benefit from it, these same sectors will face challenges from increasingly stringent environmental standards and various voluntary measures. Textiles, toys, leather, other light industry products and many agricultural goods are most likely to encounter environmental measures from western countries where consumers are more environmentally conscious.

Meanwhile, if imports of forest and food products grow, the chance to bring in alien invasive species will also increase. In order to protect human, plant and animal health and the environment, China needs to strengthen its sanitary and phytosanitary regulatory regime.

A high degree of policy preparedness will be necessary to enhance policy and administrative capacity to address the issues above.

First, it is imperative for China to adjust its environmental policy to address the consequences brought about by structural changes due to WTO membership. As changes in the economy will largely define the environmental agenda, more thorough assessments of the environmental consequences of WTO accession should be undertaken to ensure that the necessary policies are in place to address environmental challenges of trade liberalization and to promote sustainable trade. Policy guidance is needed to seize the opportunity that China's WTO accession provides to address environmental problems through restructuring. WTO membership may also bring excellent opportunities for China to gradually upgrade its environmental management systems and standards.

Second, China needs to make efforts to comply with its WTO obligations. WTO rules will limit the options available to public authorities to respond to changes in environmental threats since any measures that are adopted must be both non-discriminatory and comply with the transparency provisions in various WTO Agreements. To increase predictability and transparency, China must codify existing practices into written laws and regulations.

Third, China must integrate environmental concerns into relevant trade policies to address challenges both at home and abroad. Close cooperation will be necessary among departments responsible for trade, environment and technical standards, and others. "Green" measures in foreign countries should be studied to help enterprises meet the green challenge in international markets.

Fourth, there is a need to support Chinese officials in acquiring in-depth understanding of WTO rules related to trade and the environment and the policy issues involved. This will help them participate in future WTO negotiations, assist in the adoption of domestic rules consistent with WTO rules addressing trade and environmental issues, as well as resolve disputes within China's jurisdiction, at the bilateral level and under WTO auspices.

Finally, China's accession will bring changes in the "balance of power" between developed and developing countries in the WTO. As a participant in WTO decision-making and negotiations, China needs to develop a forward-looking and positive position in order to play an active role in promoting both trade liberalization and sustainable development.

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