

## INDIA

## For farmers or for corporations?

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India needs a radical system that protects the rights of its farmers, encourages them to grow more and preserves the tradition of not accepting privatised IPRs on life forms. What does the Plant Varieties Bill offer in this regard?

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ONCE again the Government of India is introducing a significant piece of legislation in the name of the masses, one that could, in its present form, make it almost impossible for the masses to be in control of their own lives. And once again there is the danger of the government submitting to international pressures and undermining national security, this time in the arena of perhaps the most critical element in our lives - food.

On December 14, 1999, the Protection of Plant Varieties and Farmers' Rights Bill (PPV Bill) was introduced in Parliament. Thereafter, the bill was submitted to a Joint Committee of Members of Parliament. The immediate question before the committee, which is expected to complete its appraisal by February end, should be: does the bill meet the Government's claims of aiming at improving food security by providing incentives to breed new crop varieties?

But first, a more fundamental question: what constitutes a nation's food security? By now it is clear that the total grain output is not an adequate measure of food security. What one needs to know is whether the food produced reaches where it should, namely, the poor; whether farmers are empowered to manage their own livelihoods; and whether the costs incurred in producing food are ecologically and financially sustainable. The current models of agricultural development do not fulfil these conditions, even if they result in higher aggregate foodgrain output. A third or more of the country's population still does not have enough quality food, or simply, enough food. Further, factors such as soil degradation, pollution of surface and groundwater, contamination of food by chemical residues, the debilitating dependence of farmers on centralised bureaucracies and markets, and the reduction in the diversity of seeds, livestock and farm practices are increasingly pushing us to a dead end.

National food security can be achieved only if these issues are addressed. It would be unfair to expect the PPV Bill to do this all by itself. But is the bill even oriented towards resolving these issues? Does it enable farmers to stand on their own feet (is it truly a "Farmers' Rights' Bill as it claims?), and the indigenous seed breeding and production sector to blossom in the service of the farmer and the nation's consumers? Will it actually lead us to greater food security?

Unfortunately, despite a number of progressive clauses in the bill, the answer is a clear no. The bill may well end up benefiting the large seed corporations, some large farmers and corporate farming agencies. In doing so, it will be playing into the hands of international operators who pushed for agreements and arrangements such as the Trade Related Intellectual Property Rights (TRIPs). This is a pity, since India could well exploit the loopholes in TRIPs and the solid mandate given to it by the U.N. Convention on Biological Diversity to push a boldly different plant varieties protection legislation. Such a step is still possible if the parliamentary committee is apprised of the issues involved and it, in turn, is willing to take cognisance of them.

LARGELY modelled on the 1978 version of the International Convention for the Protection of New Plant Varieties (UPOV), an agreement signed mostly by developed countries, the PPV Bill contains the following provisions:

1. Registration of new varieties of plants by their breeders, provided they fulfilled the NDUS (Novelty, Distinctiveness, Uniformity and Stability) requirements;
2. Protection for registered varieties for periods ranging from 15 to 18 years; this protection would include the exclusive rights (called plant breeders' rights, or PBRs) to produce, sell, market,

distribute, import or export the variety or its propagating material, and to give licence to other persons to do the same;

3. Exclusion of plant varieties from registering, if necessary, in public interest, or if commercial utilisation of such varieties threaten human, animal, or plant life or the environment in general;
4. Rights of researchers to use the registered variety for experiments;
5. Rights of farmers to save, use, exchange, share, or sell the produce of any registered variety (except selling for the purpose of reproduction under commercial marketing arrangements);
6. Revocation of protection if it is found that the breeder has violated the provisions of the bill, or if the registration was found not to be in the public interest;
7. Compulsory licensing in cases where the breeder fails to make the seed available at reasonable price, or quantity, or regularity;
8. Benefit-sharing arrangements with those claiming to have contributed genetic material to the registered variety;
9. Rights of communities and persons to claim significant contribution to a registered variety, and payment of compensation if such a claim is upheld;
10. Creation of a National Gene Fund for benefit-sharing and providing compensation to the farming communities, and for conservation and sustainable use of genetic resources.

The bill also provides for the establishment of a Plant Varieties and Farmers' Rights Protection Authority and a Plant Varieties Registry, which will maintain a National Register of Plant Varieties that are protected under the bill.

THE bill is meant primarily to provide incentives, particularly financial, to seed-breeders. This, it is hoped, will lead to continued and increased investment in plant-breeding and innovations in the field. The agricultural establishment hopes that farmers will indirectly benefit from gaining access to improved seed varieties.

The bill actually adopts a rather casual approach to the farming community. A Background Note circulated to the JPC recognises that the public sector breeding programmes are not meeting the increasing needs of farmers, and hence the growing importance of private (read corporate) sector breeding. Unfortunately, such an assessment entirely ignores the critical importance of a third sector, the farmers themselves.

Considering that for thousands of years Indian farmers have selected, bred and used hundreds of thousands of varieties of crops, it is amazing that they are not even mentioned as breeders. This only reinforces the dominant image of farmers as simply suppliers of 'raw material', which the formal-sector breeders use to develop new varieties.

This bias permeates the bill, although there are some well-meaning attempts to reduce it. Consider the following:

1. Does the PPV Authority include farmers' representatives? The Authority has representatives of neither farmers nor non-governmental organisations (NGOs); it is made up entirely of government officials (Section 3);
2. Can crop varieties get protection? In theory, farmers are included in the category of breeders and can apply for PBRs. However, their applications are unlikely to fulfil the stringent NDUS requirements for obtaining PBRs (Section 14); these requirements that are expensive and are technologically easier to achieve in the laboratory or in highly controlled conditions than in the fields. This can happen only if the state assists in carrying out the tests to prove these characteristics on behalf of the farmers. But the bill does not mandate this.
3. Will farmers' permission be taken? India is legally obliged, under the Convention on Biological Diversity, to ensure that local community consent is sought and equitable benefit-sharing arrangements are made before wider use is made of its knowledge and practices. Yet applicants for PBRs, under the provisions of Sections 17/18 of the bill, are not required to prove that such consent

has been sought and benefit-sharing worked out. Section 48 enables communities to make claims if they believe that they have contributed to the development of a registered variety. But the onus to prove this rests with these communities. How many farmers will ever know that their varieties and knowledge have been used in registered varieties? The bill makes it mandatory for applications to be advertised (Section 17); but again, will such advertisements even reach the rural population? The only consolation is that NGOs have been authorised to make claims on behalf of the aggrieved farmers. If the farmers or the agencies acting on their behalf manage to make such a claim and the claim is upheld, they may get some compensation, largely at the discretion of the Authority (Section 48(3)). There is no enabling clause to revoke the protection if the applicant is found to have appropriated unfairly farmer/community resources or knowledge.

4. Is the provision on farmers' rights adequate? The PPV Bill has a single paragraph on farmers' rights (Section 31), and it protects their ability to save, use, exchange, share and sell protected varieties. This is commendable, given the growing international trend to exclude even such basic rights. However, 'farmers' rights' should go beyond this and include the right to protect their varieties and knowledge, as also guarantee access to biological, cultural and economic resources that allow farmers to innovate and use crops sustainably. Such a definition has been proposed worldwide by farmers' groups.

5. Is the benefit-sharing provision adequate? To its credit, the Government has introduced a provision (Section 26) for benefit-sharing arrangements between breeders and farmers. However, the onus of claiming that they have contributed to registered varieties rests with the farmers. Moreover, claims can only be made for contributions of genetic material, not for knowledge - a rather strange oversight considering that information taken from local communities is a very common ingredient in breeders' work. Nor is there any requirement for this benefit-sharing arrangement to be "equitable", although the Statement of Objects and Reasons attached to the bill states that this will be the case.

6. Will the national registration process cover farmers' varieties? Unfortunately, the bill's registration process is not open to farmers, unless they apply for PBRs. The NGOs have for many years been demanding such a registration process so that there is proof of 'prior existence' of a variety and its related knowledge, making it easier to contest biopiracy. The PPV Authority is obliged to adopt measures for "compulsory cataloguing facilities for all varieties of plants, seeds, and germplasm". In theory, this could be used to register farmers' varieties, but the bill does not provide any legal protection to such a catalogue against piracy and misuse.

EVEN within the formal seed sector, the bill is likely to benefit primarily large private corporate houses. Public sector seed breeding has been the backbone of official agricultural programmes. Although these programmes have not involved farmers in research and development, they have at least been motivated by public needs. Secondly, reaching laboratory-bred seeds to farmers has been done mainly by small-scale seed industries. The bill not only acknowledges a move away from this, but encourages it. The Background Note with the bill states that the public research system will have to be made more "self-sustainable" owing to "decreasing levels of government support" (itself an outcome of the economic liberalisation and structural adjustment programmes of the 1990s). Doing this through intellectual property rights (IPRs) is a sure-fire way of increasing the role of the private sector, both in itself and in funding research in agricultural universities. Will corporate interests in seed-breeding allow farming populations to benefit, especially those farmers in the so-called 'marginal' areas (coastal areas, mountains) where profit margins for private companies may be extremely low if not negative? And if the small-scale seed sector has to pay increasing amounts of PBR-related royalties, will they be able to cope with the competition from big seed industries?

PROGRESSIVE clauses in the bill give the government the right to refuse or revoke registration of a variety that may in some way be contrary to the "public interest", or whose commercial exploitation may be harmful to human/animal/plant health and the environment. In extreme cases, these provisions may be effective. For instance, the bill justifiably prohibits registration of varieties that use genes involving the 'terminator' technology (which will render a crop sterile after the first generation). However, there are many other ways in which registered varieties may be harmful, but in the absence of a provision for a thorough Environmental Impact Assessment (EIA) of varieties proposed for registration, how will the Authority judge this?

In a way, all seeds on which PBRs are obtained could cause genetic erosion. For, obtaining protection under the PPV Bill will be an expensive proposition, and the holders will surely want to push their registered varieties into as large a farming population as possible. What is happening already with the Green Revolution thrust - the replacement of a large diversity of indigenous crop varieties that farmers had been growing by a handful of formal-sector-generated varieties - will only increase with the introduction of plant breeders' rights.

International obligations under TRIPs allow India to develop an "effective" sui generis (of new origin) system of plant variety protection. As the government has stated, what is "effective" should be judged nationally, not internationally. India could well develop a radical alternative system that protects the rights of its farmers and encourages them to grow more, preserves the tradition of not accepting privatised IPRs on life forms, and encourages seed breeders who are interested in contributing to the welfare of the nation. The following modifications in the PPV Bill would transform it into such a system:

1. Including farmers' representatives and NGO activists in the Authority and other institutional bodies set up under the bill;
2. Making it explicit that farmers are also breeders and researchers in their own right;
3. Building in a more comprehensive definition of farmers' rights, which includes the right to protect their varieties and knowledge and guaranteed access to biological material and other conditions that are important inputs for the farming system;
4. Making mandatory the consent of and appropriate benefit-sharing arrangements with farmers and communities whose varieties and knowledge are accessed in formal-sector breeding (and not leaving on the farmers the onus to claim such benefit-sharing);
5. Placing on formal-sector breeders the onus to prove that they have not wrongly or unfairly appropriated farmers' varieties and knowledge in developing a new variety, if such complaints are made;
6. Making the use of farmers' varieties and knowledge without prior consent a ground for opposition to and revocation of a variety;
7. Making the use of existing farmers' 'denominations' by plant breeders, without seeking the former's permission, a violation of farmers' rights;
8. Providing legal status to local, state, and national-level registers of farmers' varieties and knowledge, and not insisting on expensive-to-prove characteristics to accept such varieties for registration (where characteristics such as stability have to be demonstrated, it should be made obligatory for the state to help farmers conduct the necessary tests);
9. Making compulsory some kind of benefit-sharing arrangements in all further use of seeds and other genetic material already stored in ex situ gene banks (for instance, the National Bureau of Plant Genetic Resources). In the case of varieties whose origin can be traced to particular farmers or communities, such benefits should go to them; whereas in the case of other varieties the benefits can accrue to the National Gene Fund;
10. Facilitating a range of incentive measures for farmers and local communities to revive or continue practices and knowledge systems that promote the conservation and sustainable use of biological diversity. For instance, linkages with consumers wanting organic and diverse foods;
11. Making environmental impact assessments mandatory for any new variety for which a claim is made, in order to ensure that it does not in any way undermine the maintenance of biological diversity in the farms, or in other ways harm human/animal/plant health;
12. Reintroducing provisions for an Appellate Tribunal in order to settle disputes regarding plant variety protection, particularly complaints from aggrieved farmers (such a Tribunal was envisaged in a previous version of the PPV Bill but was dropped subsequently);
13. Providing formal-sector breeders incentives and protection, and taking measures to ensure that they are rewarded in proportion to their contributions, at the same time ensuring that compulsory

licensing is done for every variety that is given protection so as to guard against monopolies and benefit the small-scale seed sector. A partial step towards this already exists in Section 45(1) of the bill.

India has the option to develop a truly unique law that suits its social and ecological conditions. What is stopping it from doing so?

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