

Who does the Plant Varieties Bill Benefit - Farmers or Corporations?

The 'Protection of Plant Varieties Bill' is being examined by a joint parliamentary committee. It is seeking public opinion to present its findings and recommendations in the parliament. This article examines the intricacies of the current draft of the bill and makes suggestions to improve it to the benefit of the farmers.

On December 14, 1999, the Government of India introduced to Parliament the Protection of Plant Varieties and Farmer's Rights Bill, 1999. Soon after, it was decided to have this Bill (PPV Bill, for short), examined by a Joint Committee of Members of Parliament. This Committee, chaired by Sahib Singh Verma, is currently seeking public inputs to the Bill. The committee is yet to present the report to the parliament. It has held several public hearings across the country but of course at the moment no other details of its recommendations are available.

What should the Plant Varieties Bill Achieve?

The PPV Bill, provides for a "Plant Varieties and Farmers' Rights Protection Authority" to be chaired by a person of eminence in agriculture, and consists of various government officials from relevant ministries and agencies. Committees of experts can be appointed by this Authority. The PPV Bill also provides for a "Plant Varieties Registry", with a Registrar General and other Registrars to process applications. The Registry will maintain a National Register of Plant Varieties, which are given protection under the PPV Bill. Violations of these provisions will invite penalties ranging from 3 months to 2 years imprisonment, and Rs. 50,000 to Rs. 10 lakhs fine (see box).

Besides others, a very important question before the Committee should be: does the bill help the indigenous seed breeding and production sector to blossom in the service of the farmer and the nation's consumers? Or does it actually lead the country away from such security?

The provisions of PPV Bill

Though its name explicitly gives it a claim to protect farmers' rights, the PPV Bill is in actuality much more weighed in favour of the formal sector of plant breeder. Even in the latter category, it appears that the Bill will work to the advantage of the private corporate sector more than public sector breeders.

The PPV Bill is meant primarily to provide incentives to the seed breeding sector, in particular the financial incentives. This, it is hoped, will lead to continued and increased investment into plant breeding, and to innovations in this field. Indirectly, the agricultural establishment hopes this will benefit farmers, as they will get access to 'improved' varieties.

The Background Note circulated to the Joint Committee members with the PPV Bill, itself starts off on a dubious note. It recognises that the public sector breeding programmes are not meeting the

increasing needs of India's farmers, and hence the growing importance of private (read: corporate) sector breeding. Unfortunately, this entirely leaves out the critical importance of a third sector... farmers themselves! Considering that for thousands of years, our farmers have selected, bred, and used thousands of varieties of several hundred crop species, it is amazing that the government does not even think it fit to mention them as possible breeders. This continues the bias built into agricultural planning for decades, against the 'informal' sector, and perpetuates the image of farmers as simply supplying the 'raw material' that the formal sector breeders use to develop new varieties.

A critical look at the provisions...

1. Does the PPV Authority include farmer representatives?

The Authority set up by the PPV Bill has no farmers' representative on it, not even NGO representatives; it is made up entirely of government officials... with the possible exception of the Chairperson

2. Can farmers' varieties get protection?

In theory (and according to the Background Note given to the Joint Committee, though not explicitly mentioned in the Bill), farmers are included in the category of 'breeders', and can apply for protection to varieties that they would have developed. However, the Novelty, Distinctiveness, Uniformity and Stability criteria requirements that need to be fulfilled as per the bill, are expensive and technologically easier to achieve in the laboratory or highly controlled conditions, that only the formal sector breeders have access to. Given these stringent requirements for obtaining protection under the PPV Bill, it is unlikely that farmers' varieties will be able to receive protection. Finally, the Bill only talks of "persons" as being applicants for protection, and it is not clear whether communities as a whole fit this description.

3. What about the permission of the farmer(s)?

India is now legally obliged, under the Convention on Biological Diversity (CBD), to ensure that local community consent is sought, and equitable benefit-sharing arrangements are made with it, before wider

use is made of its knowledge and practices. Yet in the application requirements for those wanting plant variety protection in the PPV Bill, there is no mention of the applicant having to show whether his/her variety is based on farmers' knowledge, or whether permission has been taken from the farmer/community for the use of such knowledge or their varieties, and finally whether an appropriate benefit-sharing arrangement has been worked out with such farmer/ community. This is a violation of India's commitments under the CBD.

4. Is the provision on farmers' rights adequate?

A single paragraph in PPV Bill pertains to the farmers' rights over the ability to save, use, exchange, share and sell protected varieties. While this is in itself commendable (given especially the increasing international trend to exclude even such basic rights), it falls far short of the much fuller definition of farmers' rights that has been proposed by communities and NGOs across the world. This larger definition includes the right to protect community or individual farmer varieties and knowledge from being used without consent and benefit-sharing arrangements, as also to have guaranteed access to the biological, cultural, and economic resources that allow farmers to innovate and sustainably use crops.

Considering that for thousands of years, our farmers have selected, bred, and used thousands of varieties of several hundred crop species, it is imperative that the government recognises them as 'breeders'.

5. Is the benefit-sharing provision adequate?

To its credit, the Government has introduced a provision for benefit-sharing arrangements with farmers/communities in case claims are made for this with regard to a registered variety.

However, once again, the onus is on the claimant to prove a contribution, and the Authority is under no obligation to make its own enquiries about what contributions have gone into a registered variety. Moreover, claims can only be made for contributions of genetic material, and not for knowledge... a rather strange oversight considering that information and knowledge of local communities is such a common ingredient in breeders' work.

6. Will the national registration process cover the farmers' varieties?

The PPV Bill's registration process, unfortunately, is open only to varieties that get protection under the Act. Farmers will not be able to register their varieties in it. NGOs have for many years been demanding some such 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 Bill makes only one possible provision for this i.e., one of the duties it gives to the PPV Authority is to take 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.

The above elements make it clear that, despite undoubtedly progressive elements such as community rights to claim compensation, benefit-sharing arrangements, compulsory licensing under certain conditions, and farmers' rights to continue using protected varieties, the PPV Bill is not really a "farmers' rights protection" bill.

Suggestions for the proposed PPV Bill

While a comprehensive new legislation would be ideal, at the very least the PPV Bill needs to be modified to integrate the above provisions, in the following ways:

1. Adding farmers' representatives and NGO members 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 rights.
3. Building in a more comprehensive definition of Farmers Rights, which includes the right to protect their varieties and knowledge, and to continue having access to the biological material and other conditions which are important inputs into their 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 the onus on farmers to claim such benefit-sharing).
5. Putting the onus on formal sector breeders 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. Mandating the Authority to protect farmers against piracy of their varieties and knowledge.
7. Making, the use of farmers' varieties and knowledge, without prior informed consent, a ground for opposition to a variety; and making it mandatory to revoke protection to any variety which has been developed in violation of Farmers' Rights as defined above.
8. Making, the use of existing farmers' 'denominations' by plant breeders, without seeking the permission of these farmers, as a violation of Farmers' Rights.
9. 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 of stability etc. have to be demonstrated, the state should be obliged to help farmers in conducting the necessary tests.
10. Making explicit provisions for the functioning of the National Gene Fund.
11. 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 (e.g. that of the National Bureau of Plant Genetic Resources). In case of varieties whose origin can be traced to particular farmers or communities; such benefits must go to them;

Elements of the PPV Bill

The current draft is largely modeled on the 1978 version of the International Convention for the Protection of New Plant Varieties (UPOV), an agreement signed mostly by the industrial nations of the world. It contains the following major provisions:

1. Registration of new varieties of plants, by their breeders, provided they fulfil the criteria of novelty, distinctiveness, uniformity, and stability
2. Protection for registered varieties for periods ranging from 15 to 18 years (depending on the kind of plant variety), this protection would include the exclusive right to produce, sell, market, distribute, import, or export the variety or its propagating material, and to license other persons to do the same
3. Deposition of sample seeds or propagating material by the applicant, with the government
4. Exclusion of plant varieties from being registered if such exclusion is necessary for public purposes, or if the commercial utilisation of such varieties could threaten human, animal or plant life or the environment in general; such exclusion could extend to entire genera/species
5. Rights of researchers to use the registered variety for experimentation

whereas in the case of other varieties, the benefits can go the National Gene Fund.

12. Facilitating a range of incentive measures for farmers and local communities to revive, or continue, practices and knowledge systems which promote the conservation and sustainable use of biological diversity, e.g. linkages with consumers wanting organic and diverse foods.
13. Making environmental impact assessments mandatory for any new variety for which a claim is made, to ensure that it does not in any way undermine the maintenance of biological diversity in farmers' fields, or in other ways harm human/animal/plant health.
14. Reinserting the provision for an 'Appellate Tribunal', to settle disputes regarding plant variety protection, in particular to hear from aggrieved farmers and communities (such a Tribunal was envisaged in an earlier version of the PPV Bill, but has been subsequently dropped).
15. Providing to formal sector breeders incentives

6. 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)

7. Revocation of protection if it is found that the breeder supplied incorrect or inadequate information at the time of application, or did not provide the necessary seeds or propagating material, or if the registration was found not to be in public interest

8. Compulsory licensing in cases where the breeder is not making the seed publicly available in reasonable price or quantity or regularity

9. Benefit-sharing arrangements with those including farmers', claiming to have contributed genetic material to the registered variety

10. Rights of communities and persons to claim significant contribution to a registered variety, and to receive compensation if such a claim is upheld

11. A National Gene Fund built up with royalty fees from plant variety right holders, national and international contributions, etc., meant to be used for benefit-sharing and compensation to farming communities, and for conservation and sustainable use of genetic resources. ●

and protection, and measures to ensure that they are rewarded and facilitated, but ensuring that compulsory licensing is done for every variety that is given protection, so as to guard against monopolies and enable the small-scale seed sector to benefit.

THE PPV BILL CAN BE SUITABLY ALTERED TO ACHIEVE SOCIAL JUSTICE, ENVIRONMENTAL SUSTAINABILITY AND FOOD SECURITY IF THE INTERESTS OF THE MAJORITY OF INDIA'S FARMERS, AND THE CONSERVATION OF THE BIOLOGICAL DIVERSITY WHICH IS THE BASIS FOR ALL AGRICULTURE, ARE MADE ITS CORE THRUSTS. INDIA HAS THE OPTION OF DEVELOPING A TRULY SUU GENERIS LAW WHICH SUITS ITS SOCIAL AND ECOLOGICAL CONDITIONS. NOTHING SHOULD STOP US FROM DOING SO. ●

(The author is Director, 'Kalpavriksh', Environmental Action Group, Aptmt.5, Shree Dutta Krupa, 908 Deccan Gymkhana, Pune 411004)