

Submission to Parliamentary Committee on Agriculture on Seeds Bill, 2004
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- The new seed bill will replace the old Seed Act of 1966 which was meant to govern trading in seed. A law regulating the seed trade is necessary to ensure that farmers are protected against spurious seeds and that seed producers are obliged to put into the market only seeds of good and reliable quality.
- Such a seed law must encourage competitiveness to ensure good quality and low prices and not encourage monopolies.
- The Seed law must ensure that the seeds produced by farming communities (Farmer Varieties) are treated on par if not preferentially
- The law must provide for a transparent system of seed testing and evaluation of performance so that the farmers get good inputs and the nation's goals of agricultural and food production are met in the most effective manner.
- The Seed Bill facing Parliament fails on almost all of these counts.
- Seeing the Bill, one gets a sense that the seed industry, which has not hidden its great unhappiness over the distinctly pro-farmer provisions of the Protection of Plant Variety and Farmers Rights Act (PPVFR), has now succeeded in reclaiming ground by getting the PPVFR effectively scuppered.
- The draft Seed Bill undoes most of the pro-farmer provisions of the PPVFR.
- The Farmers Rights Act has been sidelined to make the Seed Bill the dominant legislation, sending the signal that in the seed sector, it is the industry that will hold sway, not farmers.

Specific Provisions

- The Seed Bill requires mandatory registration of the varieties/seeds which the PPVFR does not. In the PPVFR, the breeder applies for registration for a Plant Breeders Right. This right is valid for a period of 15 years for crop varieties and 18 years for trees. The Seed Bill allows the period of protection to be doubled so that the seed variety can be protected by the seed producer for 30 years and 36 years respectively. This extension of the seed owner's right will allow monopolies to be established.

Key differences between the Seed Bill and the PPVFR relate to

- i) declaring the origins (parentage) of the variety,
- ii) the conditions for multi location testing and who will conduct these tests,
- iii) level of transparency maintained on grant of registration,

iv) price control and

v) the treatment of farmer varieties. While the PPVFR requires the declaration of the origin of the variety with pedigree details, the seed bill does not.

- With respect to testing the new variety, the PPVFR lays down that the national authority will conduct the tests for distinctiveness, novelty and utility of the variety. The seed bill does not specify who will conduct the tests for establishing the *usefulness of the new variety*. This lacuna can be misused unless it is clarified.
- There is lack of transparency in the Seeds Bill. The PPVFR allows legitimate opposition to the grant of a registration for a new variety before registration is granted. People have an opportunity to raise objections if they have reason to think that the variety is not what is claimed. In the case of the seed bill, the registered varieties will be *made known only through periodic publications*. The public has no opportunity to object to a new variety for any reason. This lack of transparency could mean that varieties of dubious performance could get registered without giving people a chance to oppose such grants.
- The PPVFR accords recognition to the contributions of the farming community in many ways which is not the case in the seed bill. The PPVFR recognizes the farmer as conserver, cultivator and breeder of new varieties. The law therefore protects the farmer in all these roles. The farmer varieties are hence eligible for protection under the Act and such varieties can be registered without paying a fee.
- According to the seed bill, although farmer varieties are *eligible for registration, this can only be done after the payment of the necessary fees*. This will place a financial burden on small farmers who have good material to register but may not be able to afford the cost of registering their varieties.
- The Seeds Bill will require seed sold by farmers to conform to the technical standards laid down for commercial varieties of germination and genetic purity. This will be very expensive and difficult to implement. It will also jeopardize local agricultural security by making seeds costly and difficult to access. Over 85 % of farmers rely on farmer sources for their seed.
- Further cause for alarm are the provisions of the Seed Bill that deal with *price control*. In the PPVFR, regulation of seed supply and seed price is to be managed through a process of compulsory licensing. This safeguards the interests of the farming community since it places the responsibility of ensuring an adequate seed supply at reasonable price, on the government.
- The Seed Bill fails to provide any such protection to the farmer. There is no mechanism to regulate seed supply or seed price. This could result in a high cost of seeds fixed arbitrarily by the seed companies, leaving the government with no means to control the price.
- It could also mean that seed providers are under no obligation to ensure a reasonable seed supply to farmers. This will defeat the very rationale that had kept seed production in the public sector so far.

- The Seed Bill is silent on the origin and ownership aspect of a registered variety for trade. This will facilitate unrestricted commercialization of varieties in the public domain, including farmer varieties, by private parties. On top of this, there are no opportunities for benefit sharing post commercialization, as is the case in the PPVFR. The Seed Bill attempts to bypass the PPVFR in other ways.
- It seeks to nullify the need for seeking a Plant Breeders Right (PBR) in order to obtain rights to market the new variety. This allows evasion of the public interest liabilities that are linked to the PBR.
- The ambiguity of the Bill on multi location evaluation of varieties which is a standard practice followed by ICAR (Indian Council of Agricultural Research), can open the door to exaggerated performance claims which because they will not deliver, will hurt the farmers.
- Further, the grant of registration to a seed variety without concurrent registration for PBR , allows the seed owner to evade the onus of compulsory license provisions which protect the cultivators from high seed price and inadequate seed supply.
- Because the Seed Bill does not require the parentage of a variety to be declared, it allows *misappropriation of materials belonging to others*. These could be farmers or public sector institutions. The seed owners could in principle have free access to all available agrobiodiversity, without having to go through prior informed consent or engaging in benefit sharing. All this amounts to legalizing the piracy of valuable genetic materials like elite breeding lines as well as violating India's commitments to the Convention on Biological Diversity.
- The Liability and Compensation provisions of the PPVFR that allowed farmers to be compensated for spurious or poor quality seeds, has been dispensed with in the Seed Bill. Instead the farmer must try as best as he can, to claim compensation through District Consumer Courts. This will be a daunting if not an impossible task for small farmers.
- Apart from that, the district Forum or the State Council under the Consumer Protection Act has no expert knowledge in agriculture, to be able to award a fair decision.
- A straightforward insurance package linked to the seed would be a system that would work far better for farmers. If the seeds did not perform, the insurance claim would become automatic.
- The stringent punishment and large penalties for violating the law that was put in as a deterrent against bad seeds in the PPVFR, has been reduced to a token which no one needs to be afraid of.
- *The loophole that has been created to allow provisional registration of transgenic varieties is preposterous. It not only violates biosafety norms, but also clearly provides a particularly favored condition for the multi national companies who are the greatest producers of transgenic seeds.*

- Instead of a competent and transparent regulatory structure, with stakeholder participation, the Seeds Bill has a highly bureaucratic structure, such as to almost make it impossible to consider this a balanced document.
- The system of seed inspectors and central and state seed testing institutions with unbridled (often misused) powers, that have proved to be thoroughly incompetent in enabling an effective seed trade , have been retained in the Seeds Bill when there was an opportunity to come up with a better alternative.
- Everywhere in the Bill there are opportunities for bureaucratic interventions which provide an opportunity to maneuver and manipulate many critical aspects of the Bill. Not only does this indicate a complete lack of transparency in the implementation of the provisions, it allows opportunities for backdoor actions. The high level of bureaucratic intervention is likely to lead to biased actions and genuine wrong or misinformed decisions.
- Seed Inspectors especially have unbridled powers of search and seizure without a warrant. These draconian powers are likely to be misused.

Recommendations for revising the provisions of the Seeds Bill to make them protective of farmers as well as supportive of community and national food security.

A stakeholder consultation on the draft **Seeds Bill, 2004** was organized by **Gene Campaign** and the **National Commission on Farmers** on 15 March, 2004. The discussions concluded with a set of recommendations for substantially overhauling the draft Bill.

- The Seed Act should not favor one party but should balance the interests of all sections and be sensitive to the needs and vulnerabilities of farmers, especially small farmers.
- Although the Farmers' Rights Act was passed by Parliament in 2001, it has still not been brought into force whereas the controversial Seed Bill which makes almost reckless concessions to the seed industry is being pushed on priority in Parliament.
- The Seeds Bill, 2004, clearly violates the National seed Policy of 2002 and the policy statements implicit in the earlier PPVFR. Therefore the Bill must be amended and be made consonant with these policies and laws.
- Any legislation related to agriculture in this country must first and foremost ensure an enabling environment for farmers and their access to seeds at reasonable cost. Their rights must be ensured over their own varieties and they must be compensated every time their varieties are used by the seed industry. Above all , the rights of farmers can not be made subservient to the rights of breeders and the industry. Instead of taking a balanced approach, the Bill deprives the traditional rights holders and transfers these rights to the seed industry. At this rate it was felt, it is likely that in 10 years, the seed trade will be in the hands of the MNCs , with grave implications for the nation's political sovereignty.

RECOMMENDATIONS FOR CHANGE IN THE SEED BILL

1. The Seed Bill should be harmonized with the Protection of Plant Variety and Farmers Rights Act (PPVFR), 2001 and the Biodiversity Act, 2002.

2. Nothing in the Seed Bill shall dilute the rights and protections granted to farmers under the PPVFR.
3. Registration of varieties under the Seed Bill shall require a sworn declaration of the parentage of the variety and make provisions for Prior Informed Consent and Benefit Sharing in harmony with the PPVFR and the Biodiversity Act, when farmer varieties and public sector varieties are used.
4. Registration for sale should be required only for new varieties as in the Seed Act 1966 which limits the requirement to notified varieties. No registration should be required for extant varieties and landraces.
5. Seed sale by farmers must be governed by the provisions of the PPV-FR and not have to follow the provisions for commercial sale required by the Seeds Bill.
6. Wherever registration provides for marketing rights, there should be explicit provisions for ensuring adequate seed supply at a reasonable price.
7. The compensation for non-performance of seed supplied by agencies must be regulated through the National Plant Variety Authority, not the District Consumer Courts as in the present draft Bill.
8. The duration of protection granted to registered varieties in the Seed Bill should be commensurate with what is granted under the PPVFR. An extension of five years may be considered for those varieties that are very popular with farmers, provided the decision is taken transparently
9. The provisional permission granted to transgenic varieties is dangerous and violates principles of biosafety, it must be rescinded.
10. Multi location testing of varieties bred by the private sector must be done by the ICAR. It is proposed that industry contributes to a fund to pay for multi location testing but the testing itself should be done by the ICAR.
11. The small token penalties for violations contained in the Seed Bill must be revised. When the declared source of registered material has been accessed illegally, registration would be cancelled and criminal and civil liability will be determined.
12. To ensure transparency, a process for pre-grant opposition to registration of a seed variety must be included in the Seed Bill, like it is in the PPVFR.
13. An autonomous institution should be established to do seed testing by DNA finger printing.
14. A consultative process of governance should be established where the communities that will be affected are part of the decision making process.

15. The arbitrary powers granted to Seed Inspectors must be rescinded and subjected to provisions of the Code for Criminal Procedures.

16. The PPV-FR must be brought into force before the Seeds Bill is legislated.