Seed Bill in India
Policy Analysis and Implications

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Introduction

Described as the 'embodiment of life's continuity and renewability', the seed has been not only stated to be the source of culture and history but also importantly, the ultimate symbol of food security[1]. Whereas, the free exchange of seed among farmers have long been considered to be the very basis of maintenance of biodiversity as well as food security[2], it becomes essential to understand the implications of legislating on this very production and exchange.

While, legislations curtailing and penalizing the trading of uncertified seeds through direct sales or farmer exchanges and similar other mechanisms are already prevalent in countries such as Germany, Scotland, The United Kingdom, The United States, the repercussions of such related legislation in India is of greater interest due to the greater gamut of issues surrounding the issue. Issues of farmers' rights in India do not only have cultural undertones, but also massive economic implications, which can be related back to basic issues of survival. The National Seeds Policy of 2002, acknowledges these concerns and in acknowledging the pressures and opportunities for expansion that Globalization provide, also establishes as its main objective, "an appropriate climate for the seed industry to utilize available and prospective opportunities... safeguarding of the interests of Indian farmers and the conservation of agro-biodiversity."[3]

The paper will thus focus on what the legislative mechanisms and intellectual property instruments have been provided for specifically safeguarding the interests of Indian farmers and whether their constant evolution and coverage of areas can be expected to be of benefit or detriment to Indian farmers. The paper will further, briefly seeks to elucidate on comparative positions on seeds policy in other jurisdictions and chart their success or failure in conjunction with experience of the Indian context.

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[1] V. Shiva, *Patents: Myths and Realities* (Penguin: India, 2001) at p. 69.
[2] *Id.*
[3] "The National Seeds Policy, 2002", *cf:* http://agricoop.nic.in/seedpolicy.htm. The Government has approved the National Seeds policy and has adopted it aiming to raise India's share in global seeds trade to at least 10% from the current 1%. *Cf:* http://www.indiaagronet.com/indiaagronet/Technology_Upd/seedTech_3.htm

Research Questions

All through the paper, the following questions are being addressed to which answers found form the base of the project:

1. What is the Seed Policy?
2. What is the proposed Seed Bill? Why is the Seed Bill so important?
3. What are the equivalent legislations in other countries?
4. What are the main objectives of the Seed Bill and the Seed Policy?
5. Does the Seed Bill reflect the Seed Policy?
6. Were there any discussions undertaken before formulating the Seed Bill based on the Seed Policy?
7. What are the related issues of IPR that arise on a study of the Seed Bill?
8. How does the Seed Bill affect farmers and farmer's rights?
9. How does the Seed Bill affect the rights of producers and what repercussions does it have on Research and Development?
10. What have the reactions of the civil society been to the proposed Seed Bill?
11. What are the changes in the proposed Seed Bill being mooted by civil society organizations, academics, activists and farmers and why?
12. What are the enforcement mechanisms as proposed under the Seed Bill?
13. In compliance with what international mechanisms has the seed bill come into being?
14. What is the status of community level protection in India?
15. What are the legal remedies available to farmers for poor performing seeds?

Sources of data

The researcher has mainly relied upon secondary sources such as books and articles, though in numerous instances primary sources such as materials culled from interviews and communication with legal experts have been used to bolster the paper content.

Introduction

News of the seed bill, the National seed policy and new Seed Act being tabled in the Budget session of Parliament had evoked very mixed reactions. While one opinion on the proposed legislations and new legislation was that its presence would serve as a check on

sale of spurious and poor quality seeds by making registration of all crops varieties compulsory before marketing, and hence this would "augur well for the industry as a whole", other more active reactions came from farmers and NGO representatives who opposed the bill.[4] It is thus important to understand at the very outset what exactly the seed policy and the seed bill are, the history behind the proposed legislation and the legal mechanisms it provides for.

Evolution of Seed Policy in India

The question arises as to what was the need for such a bill to come into existence. For this it is essential that the history of Indian seed regulation be briefly looked into. Two decades after India's independence, during the 1960s, the formal seed sector in India was dominated by the Public sector. It was in 1961 that the National Seeds Corporation (NSC) was established under the Ministry of Agriculture and was at the centre of seed production of breeders, foundation and certified seeds and their quality control. In furtherance of their control in the seeds sector, the National Seeds Project (NSP) was undertaken by the Indian Government in 1967 along with the assistance of the World Bank.

While the NSP did set up huge seed processing plants in order to provide 'certified' seeds of food crops, mainly self-pollinating to farmers, most of these plants operated well below capacity and were stated to be examples of 'faulty technology being pushed into India'.[5] This was, of course, not the only big public sector project that failed to achieve the desired goals and gradually a distrust of the public sector set in. However, the private sector has not proved much more efficient or beneficial either for the cultivator or for the consumer. This led to the National Seed Policy of 1988, which involved a US $ 150m loan from the World Bank to help privatize the Indian Seed Industry. At this time, the import of seeds was still restricted but this sector was gradually opened up, to allow more private participation. Further, after India signed the GATT agreement and joined the WTO, these

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[4] http://www.hdfcsec.com/company/resAnalShow.php?fileR=2002012816510526&icode=SYNGENTA&dir=2002/01/28, visited on the 30th of July, 2006.

[5] D.Sharma, *In the Famine Trap* (New Delhi, 1997).

agreements required that India make some changes to its law, especially regarding Intellectual Property Rights. These requirements were met through the Protection for Plant Variety and Farmers' Rights Act, 2001. In 2002, a new National Seed Policy was released, and as mentioned above, to meet the goals of this policy the new Seed Bill was drafted and tabled in Parliament in 2004.

The objective of the new seed policy seems to be to reduce the direct involvement of government in seed production and marketing, and to actively encourage the private sector to engage in research and development of new varieties. The dominance of the public sector is blamed for the backwardness of Indian agriculture, and one of the stated aims of the National Seed Policy, 2002 was to encourage more private participation in agriculture and seed production, specifically, to complement the existing structures and to replace them, when necessary. However, this is not to say that the Seed Policy is an insidious conspiracy to betray small and medium-scale farmers. Liberalization has been targeted towards certain components of national seed policies, retaining regulation of some components to safeguard national interests.[6] As the Food & Adulteration Organisation has noted, the change in the structure from one geared towards the public sector to a more private sector – centric approach is an extremely complex one and would take time. Public and private sectors need to complement each other, perhaps on the basis of a division between cash crops and essential food crops. It is a fact that neither the private nor the public sector can fulfil India's agricultural requirements by itself. Only effective cooperation and coordination will allow farmers to have access to quality seed and thus contribute to sustainable agriculture and food security.[7]

The National Seed Policy, 2002 clearly identifies the twin aims of encouraging the seed industry, especially the domestic industry and of ensuring maximum prosperity and security for farmers. A number of the National Seed Policy's recommendations have been addressed in the Protection of Plant Varieties and Farmers' Rights Act, 2002, including the establishment of a National Gene Fund and a Plant Varieties' authority to regulate the

[6] Food and Agriculture Organisation of the United Nations, *Seed Policy and Regulations in the light if the international treaty on PGRFA and the Cartagena Protocol on Biosafety*, Twenty-Seventh FAO Regional Conference For Asia And The Pacific, 2004.

[7] *Id.*

quality of seeds in the country. The further aims of the National Seed Policy that include building up infrastructure, ensuring good quality of seeds and facilitating international trade in seeds, are sought to be addressed through the proposed Seeds Bill, 2004.

The Seed Bill, 2004

At the very outset, the preamble of the bill makes clear its intention. The Bill states that it is to "*provide for regulating the quality of seeds for sale, import and export and to facilitate production and supply of seeds of quality and for matters connected therewith or incidental thereto*".

Rationale for the Seed Bill

The new seed bill is a tool to address the grievances and the concerns which the Seed Bill of 1966 does not cover. Even though a large majority of our population depends on agriculture for their livelihood, agriculture in India remains, to a large extent, backward and relatively unproductive. The much touted Green Revolution did have a positive impact but the lot of marginal and small farmers has not improved much over the past few decades. As such, a need was felt for using new techniques and methods to increase the productivity of Indian agriculture. At the same time the Bio-Technology sector came up with promises of extremely productive Genetically Modified (GM) Crops. These new scientifically manipulated crops caught the imagination of the Indian Government, and to some extent, that of farmers as well. On one hand, there were reports of farmers' suicides owing to failure of crops, including Bt Cotton, and on the other, stories of farmers who found the highway to prosperity through the use of the same Bt Cotton. It is believed that this new technology has the potential to improve living standards, and as such, several powerful groups support the commercialization of such GM crops (especially Bt cotton), including the Indian Council of Agricultural Research, Ministry of Environment & Forests, Government of India and the Federation of Indian Chambers of Commerce and Industry (FICCI). [8]

[8]Council for Biotechonlogy, *Article: Farmers (India),* http://www.whybiotech.com/index.asp?id=4515

About 50% of the total investment in agricultural research in developed countries is contributed by private sector.[9] The idea behind the Seeds Bill, 2004 is that effective implementation of this new law can be expected to promote private plant breeding in the country in the long run. The major rationale behind the policy is the hope that these developments would provide Indian farmers multiple choices and increased access to improved seeds. As such, the Seed Bill 2004 also seeks to address the concerns of the Seed Industry. The Seed Association of India and the Association of Seed Industries raised certain demands at the National Seeds seminar organized by them in 2005. They demanded a level playing field for the private sector, for subsidies and support to the private sector for R&D (specifically to facilitate exports). Another major demand was that seeds be taken out from the purview of the Consumer Protection Act, 1986 and that a scientific system of scrutinizing claims, along with a system of crop insurance, should be developed to study the causes of crop failure.[10] While the Seeds Bill, 2004 does take care of the infrastructural demands but it retained the right of the farmer to go to the Consumer Courts under the Consumer Protection Act, 1986. One cannot be sure if, in the present situation in India, where a majority of farmers are not only small landholders, but they are also illiterate and/or uneducated, a system of crop insurance can work to their advantage. It was in this atmosphere that the National Seed Policy was formulated in 2002 with the National Seed Bill being drafted in 2004.

Sale of Seeds: A Prerogative of Big Industry?

The Seed Bill 2004 aims to regulate the quality of seeds sold in India. It requires registration of all varieties of seeds sold in India.[11] The Bill states in S.1 (3) that it applies to every dealer[12] and every producer of seed except when the seed is produced by him for his own use and not for sale[13]. Thus, the only exception to the rule is the exemption

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[9] Ramesh Chand and Suresh Pal, *Policy and technological options to deal with India's food surpluses and shortages*, Current Science, 84(3), 10 FEBRUARY 2003.

[10] Bureau Report, *Seed industry seeks infrastructure status*, The Hindu Business Line, March 16, 2005.

[11] S. 13 (1), Seed Bill, 2004.

[12] *See* definition clause in S.2(7) wherein dealer is defines as follows: a person who carries on the business of buying and selling, exporting, or importing seed and includes and agent of the dealer.

[13] The definition of farmer as provided in the definition clause in S.2(9) is also inherent in this provision. The definition of farmer as provided for under this Bill states that a farmer means "any person who cultivates crops either by cultivating the land himself or through any other person *but does not include any individual, company, trader or dealer*

granted to farmers to use and sell seeds from their own farms, as long as such seeds are sold unbranded. However, such seeds will also have to meet the minimum standards set for registered seeds, a requirement which will obviously be hard to fulfill for a small farmer and probably as hard to detect for the enforcement authorities. This has been criticized as an assault on the freedom of farmers, a denial of their time-honoured rights, as "an undermining of seed sovereignty of farming communities. Farmers care for their own seed quality more than a centralized authority can. Regulation of farmers' own seed varieties needs to be left to farmers. That is why we have established Community Biodiversity Registers and Jaiv Panchayats".[14] Further, in India, where up to 66% of the seed requirements are met by farmers, declaring all of this to be non–commercial does not make much sense.[15]

Farmers' Rights have to be recognized for one major reason; they are the original source of the germ-plasm. Under most IPR Regimes all over the world, farmers are not recognized as innovators, and it is the providers of technology who acquire Intellectual Property Rights.[16] For the sake of conservation and to give the farmers a fair share of the economic benefits arising out of usage of their seeds, there should be provisions for recognizing and awarding community rights. The Seeds Bill, 2004 has no such provision although the Plant Variety Protection and Farmers' Rights (PVPFR Act) does include provisions for compensation for communities for their role in research and development.

A feature of the policy and the bill is that they start off with complete acceptance of GM crops. There is no longer space for argumentation and debate on that particular issue. India, as mentioned above, has taken to GM crops in a big way.[17] GM crops have not

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who engages in the procurement and sale of seeds on a commercial basis".(Emphasis added). Thus, it is important to note the clear distinction made between a farmer and a dealer in the exclusionary terminology used in this provision.

[14] Vandana Shiva, *Critique of Seed Bill, 2004*, http://www.navdanya.org/articles/seed-bill-2004.htm

[15] C Niranjan Rao, *Indian Seed System and Plant Variety Protection*, Economic and Political Weekly, February 21, 2004.

[16] Patricia Kameri Mbote, *Community, Farmers' and Breeders' Rights in Africa: Towards a legal framework for sui generis legislation*, University of Nairobi Law Journal (2003), P. 120

[17] GM Crops and their promises of high yields with low utilization of pesticides hold an irresistible allure, not only for India, but for other developing countries as well. In Brazil, the government is the strongest votary of GM crops in that country.

found the same level of acceptance everywhere. Several EU countries continue to block entry of GM products based on concerns for their environment and public health.[18] The seed policies of the European Union have been described as 'control-oriented' seed legislations. Seed quality control and certification agencies in Europe are run by the Government in countries like Germany or by an independent foundation like in the Netherland. These independent foundations are usually a representative of farmers' societies, and owing to the sheer magnitude of India's population, may not be the ideal solution for Indian agriculture. Also, in Europe, especially in the horticultural sector, certification agencies can perform a full control or they may concentrate on certifying the internal quality control operations of the seed companies, rather than certifying each and every seed lot throughout the seed production-marketing-user chain.[19] All these systems monitor GM crops and their effects from the stage of production of seeds till food processing and consumption.

Once GM crops are allowed entry into the market in a major way it becomes necessary to protect the Intellectual Property Rights (IPRs) of the organizations and industries which have patented such seeds. The Plant Variety Protection and Farmers' Rights (PVPFR) Act was passed in 2001 to take care of this need. The government has provided sufficient protection to the Intellectual Property Rights of the seed developers. It is possible that the implementation of the IPR regime will increase private sector activity. This would invariably lead to an increase in prices, which would adversely affect resource-poor farmers in marginal areas. Thus, the government will have to monitor the seed sector very closely and should effectively intervene if the market fails to serve the farmers.[20] This requires more decentralization and flexibility in operations of public seed agencies.[21]

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[18] Austria and Luxembourg have essentially refused to permit one product into their countries - Novartis corn. In mid October 1998, the EU's Scientific Committee on Plants refused to approve a genetically modified high-starch potato developed by a Dutch firm.

[19] International Center for Agricultural Research in the Dry Areas (ICARDA), *Seed Policy - a Widening Arena*, http://www.icarda.org/News/Seed%20Info/SeedInfo_25/news.htm

[20] *Pratibha Brahmi*, Sanjeev Saxena and B. S. Dhillon*, Current Science, 86(3), 10 FEBRUARY 2004 .

[21] *Id.*

Although, registration and certification of seeds under the Seeds Bill do raise certain questions regarding Intellectual Property Rights, the issues regarding Intellectual Property Rights are dealt with by the PPVFR Act. Through certification and registration, the Seed Bill only safeguards such rights acquired under the PPVFR Act. Under both Statutes, a degree of leeway is given to farmers. Under the Seed Bill, farmers are free to use and sell their own unbranded seeds while under the PPVFR Act, under Section 42 (1), farmers have been given protection in cases of 'innocent infringement', wherein if the farmer is not aware of breeder rights, at the time of infringement, she will not be liable for infringement.

It is perhaps a testament to the lack of progress on the PVPFR Act, that a need is still felt for a comprehensive database of seeds in India. The PVPFR Act itself has allowed for a National Register of Plant Varieties to be set up. Now, the proposed Seed Bill incorporates the requirement for a National Register of Seeds. The Bill proposes to establish a Central Seed Committee (CSC),[22] which is roughly on the lines of the National Seeds Board envisaged by the Seed Policy, 2002. The CSC will appoint a Registration Sub-Committee, which shall maintain the National Register of Seeds.[23] Further, State Seed Certification Agencies will be set up in each State.[24] These Agencies will have the authority to certify seeds.[25] Further, certain accredited agencies may also be allowed self-certification.[26] This is a risky proposition at best. Neither the public nor the private sector enjoy an unimpeachable reputation in India. It would be an unsurprising development should wake one up to newspaper headlines of companies and agencies having fudged data to grant certification to certain varieties. The State needs to be the ultimate overseer and guardian of farmers' rights and public health. In the United States, for example, seeds and the crops that they grow into have to secure approval from one, two or three government agencies, as the case may be, before being marketed. The Food and Drug Administration has to review whether the food that will ultimately be produce will be safe to eat, the U.S.

[22] S. 3(1), Seed Bill, 2004.
[23] S. 7 (1) Seed Bill, 2004.
[24] S. 11, Seed Bill, 2004.
[25] S. 28 (3), Seed Bill, 2004.
[26] S. 27, Seed Bill, 2004.

Department of Agriculture's Animal and Plant Health Inspection Service reviews whether the crop is safe to grow, and the Environmental Protection Agency studies whether the new crop is safe for the environment.[27]

Another aim of the National Seed Policy was to streamline the monitoring mechanisms regarding seeds and crops. As such, under the Seed Bill any type of seed for sale will have to be registered with the Registration Sub-Committee. The registration will be valid for 15 years for annual/biennial crops and 18 years for long duration perennial crops. On expiry, the registration can be renewed for a similar period.[28] This is a problematic proposition as usually IPRs are granted for a specific period, whereas in this case, the Registration sub – committee can renew the registration ad infinitum.[29] All registered seeds will need to meet minimum standards with respect to the proportion of seeds that must germinate, levels of genetic and physical purity, and the permitted proportion of diseased seeds. No transgenic variety of seed can be registered under the proposed Bill unless the applicant has obtained clearance under the provisions of the Environment (Protection) Act, 1986.[30] Any variety of seed that contains any technology considered harmful or potentially harmful cannot be registered in India under the proposed scheme.[31] It is hoped that this terminology excludes the use of terminator seeds in India, as such seeds cause great harm, especially to small farmers. Also, a major lacuna under the Bill is that there is requirement for disclosure of 'parental lines' at the time of registration. [32] Such a disclosure is essential for the sake of information and safety.

Under the proposed Bill, it is the responsibility of the Central Seeds Committee to set minimum standards for seeds and to decide which seeds are harmful to the environment or dangerous to public health. Further, Central and State Seed Testing Laboratories will be set up. These Laboratories will analyse all varieties of seeds. Lastly, the respective State

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[27] Donna U. Vogt and Mickey Parish, *Food Biotechnology in the United States: Science, Regulation and Issues*, Domestic Social Policy Division, June 2, 1999.
[28] S. 13 (5), Seed Bill, 2004.
[29] Philippe Cullet, *Seeds Regulation, Food Security and Sustainable Development*, Economic and Political Weekly, August 6, 2005, P. 3607.
[30] S. 15 (1), Seed Bill, 2004.
[31] S. 18, Seed Bill, 2004.
[32] *Supra*, note 30.

Governments will need to appoint Seed Inspectors.[33] The Seed Inspectors would be given powers of search and seizure relating to an offence under the proposed Bill.[34] This is quite a worrying component. Under these provisions, Seed Inspectors have been given wide powers and unlike under the Code of Criminal Procedure, no warrant is necessary nor are procedural safeguards applicable. It is not necessary to outline how this particular provision develops scope for abuse of power, but the safeguards against harassment by functionaries of the State exist for a very good reason, and such safeguards should be included here as well.

Remedies Available to Farmers

Apart from the success stories publicized by the Bio-tech industry to illustrate the success of their seeds, there are numerous stories of failed crops and economic ruin as well.[35] As such, one of the most important provisions in the Bill as far as Farmers' Rights are concerned is regarding the remedy available to farmers in case of defective seeds. Under the Seed Bill, 2004, in case the seed supplied to the farmer is found to be of inferior quality and does not give the desired results, the farmer can approach the Consumer Courts under the Consumer Protection Act, 1986 for compensation and redressal.[36] Also, under the PPVFR Act, under Section 39 (2) of that Act, a farmer or a farmer's organization can claim compensation if a variety fails to give the expected per-formance under given conditions. If the performance of the variety is not found to be as claimed by the breeder, the Authority can deal with claims of failure of performance and could decide about such claims independently, instead of the courts.[37] However, it is not clear whether the quantum of compensation awarded would cover only the cost of the seed but that of the crop as well.[38]

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[33] S. 34, Seed Bill, 2004.
[34] S. 35, Seed Bill, 2004.
[35] Muzaffar Assadi, *Seed Tribunal: Interrogating Farmers' Suicides*, Economic and Political Weekly, October 28, 2000, P.3808.
[36] S. 20, Seed Bill, 2004.
[37] *Supra*, note 9.
[38] M R Madhavan and Kaushiki Sanyal, *Seed Bill 2004: PRS Legislative Brief*, http://www.indiatogether.org/2006/jun/law-seeds.htm

Widespread opposition to the seed bill

The Seed Bill, 2004 has met with opposition from farmers' organizations, political parties as well as large swathes of society. The All India Kisan Sabha (AIKS) has come out openly against this Bill. The AIKS has decided to organise widespread campaigns and mass actions at village, mandal and district levels throughout the country in May and June on the issues concerning peasants in particular and people in general.[39] Political parties have also come out against this Bill. The Communist Parties have denounced this bill as being anti-farmer. On the other end of the political spectrum, B.S. Yediyurappa, Deputy Chief Minister of Karnataka and a member of the Bharatiya Janta Party(BJP), has also condemned the new Seed Bill.[40] Bharat Krishak Samaj (BKS), the ruling Congress party's farmers' outfit, has also opposed the legislation.[41]

Apart from concerns expressed by prominent activists such as Vandana Shiva and Devinder Sharma, the Bill has also been blasted by mainstream newspapers.[42] Dr. Suman Sahai, a noted geneticist and President of the Gene Campaign, has pointed out that the PPVFR Act, drafted to comply with India's obligations under the TRIPS Agreement, does a much better job of regulation and protection of farmer's rights. She notes, "Key differences between the Seed Bill and the PPVFR relate to declaring the origins (parentage) of the variety, the conditions for multi-location testing and who will conduct these tests, the level of transparency maintained on grant of registration, price control and 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. The Seed Bill does not grant any recognition to the contribution of farmers as conservers of agricultural gene pools, or as breeder of successful new varieties…… This violates the provisions of the Convention on Biological Diversity and the PPVFR according to which if farmer varieties have been used in

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[39] Ratna Ganguli, *Seed Bill won't find Safe Passage,* http://economictimes.indiatimes.com/articleshow/1056293.cms
[40] The Hindu: Special Correspondent, *Yediyurappa supports agitation against Seed Bill*, The Hindu, Thursday, Mar 09, 2006
[41] Ashok B. Sharma, *Farmers & NGOs oppose proposed sales bill,* The Times of India, August 15, 2005.
[42] Suman Sahai, *Seedy Affair: Put Draft Anti-farmer Bill Through House Scrutiny*, The Times of India, http://timesofindia.indiatimes.com/articleshow/1061662.cms

breeding a new variety, farmers are entitled to share in the profits through the benefit sharing mechanism……. The industry gets its way with seed pricing in the Seed Bill; there is no mechanism to regulate seed supply or seed price unlike the PPVFR which has a clear provision for compulsory licensing. Compulsory licensing safeguards the inte-rests of the farming community since it places the responsibility of ensuring an adequate seed supply at reasonable price on the government. As a result of the Seed Bill, we could have 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 is the most damning indictment of the proposed Seed Bill. The fact is that a legislation that adequately protects farmers' rights as well as the Intellectual Property Rights of the Industry is already in place. The National Gene Fund and the recognition of Community Rights under S. 41(1) of that Act are path breaking developments and go a log way in convincing skeptics of the fairness of the National Seeds Policy. Now, after hectic lobbying by the Seed Industry the new Seed Bill actually seeks to dilute the PVPFR Act. The PVPFR Act was drafted to ensure compliance with Article 27.3 (b) of the TRIPS agreement. After that agreement, India's obligations to the WTO as regard intellectual property rights of seed companies have ended.[43] There is no need to change the law once again. The government needs to take another look at the proposed bill to ensure that there is no overlap with the PVPFR Act, and especially that the beneficial provisions of that Act are not diluted.

The African Model Law: A Model Law for Developing Countries

The African Model Law was drafted by the Organization for African Unity (OAU), now the African Union as a model law for developing countries where the major and immediate issue is not profitability but security, both for the producers and the consumers.[44] The African model law expressly recognises that local communities possess certain rights over their biological resources and the technologies that have evolved over generations and

[43] *Supra*, note 9.
[44] Andrew T. Mushita & Carol B. Thompson, *Patenting Biodiversity? Rejecting WTO/TRIPS in Southern Africa*, 2 Global Envtl. Pol. 65 (2002).

that rights of a collective nature take precedence over rights based on private interests. [45] The African model law seeks to implement the relevant provisions of the Convention for Biological Diversity and includes protection of farmers' rights, breeders' rights as well as protection of collective and traditional knowledge.[46] Access to such biological resources, knowledge, or technologies of local communities is granted by the simple act of submitting an application for prior informed consent and a written permit.[47] The application to the Competent National Authority has to disclose the full details of the project for which the resource is required. We can have similar systems in India as well, especially with the envisaged structure under the Seed Bill. The Central Seeds Committee can be the regulator not only of seed quality but of the quality of research as well. The arguments against the Seed Bill have been that it gives too much freedom to industries while curtailing that of farmers. However, the Bill can easily be changed to accommodate such concerns and instead of focusing on encouraging the private sector, it can focus on encouraging co-operation and participation of local communities with the capital and expertise brought in by private companies.

Under the Model Law, the researcher (or the collector, the term used by the Model Law) has to obtain prior informed consent of the community before embarking on research. An access permit is granted through a signed written agreement among the three parties: the National Competent Authority, the community or communities concerned, and the applicant or collector.[48] This agreement requires the collector to contribute financially to the efforts of the state and communities concerned in the regeneration and conservation of the biological resource. The collector can only apply for intellectual property protection of the biological resource, or parts or derivatives thereof, or for community knowledge or technology with the additional prior informed consent of the original providers. Article 9

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[45] Angela Riley, *"Straight Stealing": Towards an Indigenous System Of Cultural Property Protection*, 80 Wash. L. Rev. 69

[46] Art. 2(1) of the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (2000).

[47] Art. 3 (1) of the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (2000).

[48] Art. 7 (2) of the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (2000).

then goes on to provide that patents over life forms and biological processes will not be recognized and cannot be applied for, but does provide for plant breeders' rights. The model law drafted by the AU, along with the provisions of the Convention on Biological Diversity and associated law instruments serves to provide a more just and effective regime than the one under the TRIPS regime.[49] It is understood that India has certain obligations under the TRIPS agreement. However, many of the beneficial provisions in the African Model Law can be incorporated within the existing framework without India reneging on its international commitments.

Conclusion

The National Seeds Policy as it was laid down in 2002, laid down that industrial participation in agriculture but also recognized the need to protect "gullible" farmers. The Seeds Bill is an attempt at achieving this balance. However, as has been seen, the Seeds Bill has turned out to be more of an instrument that seeks to dilute existing laws in favour of industries rather than an initiative to find a balance between different sectors and different producers to obtain maximum productivity and efficiency.

By itself, the new Seeds Bill does not achieve much as far as farmers' rights are concerned. The formation of the Central Seeds Council and the National Register of Seeds are developments that will help in regulating seed manufacturers. However, other provisions of the Seeds Bill, as mentioned above, take rights away from farmers, making it very difficult for them to sell their own seeds. The drafters of this legislation should have realized that it is not possible for small farmers to have an in-depth knowledge of their seeds and their composition. It is not reasonable to hold them to the same standards; traditional knowledge and use must be accorded due respect and recognition.

What is most surprising is that the new seed bill seeks to update the Seed Bill, 1966, but has major conflicts with a much more recent legislation. The Protection for Plant Variety and Farmers' Rights Act, 2001 addressed a number of the issues that the new seed bill

[49] Debbie Collier, *Access to and Control over Plant Genetic Resources for food and agriculture in South and Southern Africa: How many wrongs before a right?*, 7 Minn. Jl. S.T. 529

seeks to address. It was an effective legislation and was appreciated in many quarters. However, because of overlaps between this Act and the new bill, complications are likely to arise which could possibly lead to a lot of litigation. As the National Commission on Farmers has observed, "The Farmers' Rights provisions of the Protection of Plant Varieties and Farmers' Rights Act (2001) should be enforced without further delay."[50]

Lastly, and especially, as the new Seed Bill has not been enacted yet, there is still time to learn both from past mistakes and from other's experiences. The African Union's model law has been appreciated around the world for its vision and emphasis on fairness, not profits. In terms of development indices and poverty figures, we are closer to Africa than the US or the European Union, yet we try and ape their systems. Perhaps we could adapt some of the features from the Model law, to incorporate community rights and community participation. The Seed Bill is an opportunity to develop the law, to make up for the shortcomings that already exist in Indian law. India has already complied with the TRIPS Regulations, and as such, there are no policy compulsions in drafting this Act. With adequate and reasonable discussion, the Seed Bill can be the answer to the problems of India's farmers as well as the agricultural industry.

[50] National Commission on Farmers, *Serving Farmers and Saving Farming*, Third Report of the National Commission on Farmers, 2006