



Food Security

Seed laws:

Imposing agricultural apartheid

GRAIN

"Seed laws" is a very vague term. But if you worked at the UN Food and Agriculture Organisation (FAO) or in the Ministry of Agriculture of any so-called 'developing' country in the late 1960s, it probably had a fairly clear meaning for you. Back then, seed laws referred to rules governing the commercialisation of seeds: what materials could be sold on the market under what conditions. From the 1960s through the 1980s, agencies like FAO and the World Bank played a very strong role in getting developing countries to adopt seed laws. The main idea, officially speaking, was to ensure that only "good quality" planting materials reach farmers in order to raise productivity and therefore feed growing populations. However, the marketing rules, that the FAO and the World Bank effectively pushed, came from Europe and North America, the very place where the seed industry is in place. And the seed industry produces seeds by specialised professionals and no longer on the farm by farmers themselves. In no time, it should have been clear to anyone that these seed laws had very little to do with protecting farmers at all and a lot to do with creating conditions for the private seed industry to gain and control markets worldwide.

If we look at them today, seed laws are all about repression. They're about what farmers can't do.

They dictate what kind of seeds can't be sold, can't be exchanged and in some cases can't even be used. All in the name of regulating trade and protecting food growers! In this sense, seeds laws go hand in hand with intellectual property rights (IPR) regimes like plant variety protection and patents. The two kinds of laws – marketing regulations and property rights – reinforce each other. In fact, depending on the situation, seed laws can be a lot worse. They ban farmers' seeds from the market thereby creating a kind of agricultural apartheid in countries where they are strongly enforced. IPR-protected seeds already can't be marketed except by those who own them. Seed laws tend to ensure that traditional varieties – seeds not produced by the seed industry and not protected by IPR – can't freely circulate either. All you can officially buy are a few government-sanctioned ideotypes.

As you might guess, seed laws and IPRs were to a large extent borne of the same process, entwined together like a helical twist of DNA. In Europe, seed marketing rules drawn up after World War I were the origin of what became the Union for the Protection of New Plant Varieties (UPOV) Convention in 1961. In the US, the process was similar except that the US were much quicker to set up a plant patenting system in 1930. In both

A new Indian Seeds Bill has been circulated by the government to overhaul the seed regulatory system. The stated objective of the proposed law is to regulate the seed market and ensure seeds of "quality". With the proposed changes the seed law would be harmonised with other seed laws around the world and ensure the Indian seed market is open to big business. The losers will be the millions of Indian small-scale farmers, while the winners will once again be transnational corporations. There is enormous pressure on the Indian government to embrace this new law, and voices of protest are crucial.



Recent government advertisement in Indian newspapers telling consumers ("Grahak") to wake up ("Jago") to the importance of branded seeds

India's new seed bill

GRAIN, with DEVINDER SHARMA*



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* Devinder Sharma is a New Delhi-based food and trade policy analyst

¹ The Seed Policy Review Group was an initiative of the Ministry of Agriculture. The Seed Association of India (SAI) is one of the major seed industry associations, and represents medium to large foreign and domestic firms. SAI actively engaged in debates with the Ministry on the new seed law.

² www.agricoop.nic.in/seeds/seeds_bill.htm

³ Section 13(1) of the Seeds Bill, 2004.

⁴ National Biotechnology Development Strategy <http://dbtindia.nic.in/biotechstrategy.htm>

⁵ Terminator Seeds - Plants genetically engineered to produce sterile seeds, forcing farmers to buy new seeds each year from a company.

In 1998, a Seed Policy Review Group¹ in India recommended a long-awaited shake-up and reform of the Indian seed laws; a new seed law would need to be passed that would replace the current 1966 Seeds Act (see box on p 26). In 2004, a new Seed Bill² was announced. Why the need for change? Proponents of the new Seeds Bill list a number of supposed deficiencies in the 1966 Seeds Act, including:

- Making the registration of varieties obligatory (previously voluntary)
- Creating a National Register of Seeds
- Regulating (make easier) the importing and exporting of seeds
- Accommodating new regulations on GM crops
- Improving market conditions for private seed companies

Ring in the changes

The proposed new seed law introduces the concept of mandatory registration of all seeds for sale.³ In other words, all marketed seed and planting material, whether domestic or foreign, will have to be registered. This is a significant change from the existing law, which sought to regulate the quality of only a limited number of varieties notified under the law. Now, however, any seed for sowing or planting cannot be sold unless it is registered.

All registered varieties will be recorded in a National Register of Seeds database. Registration will be granted for new varieties for a period of 15 years in the case of annual and biennial crops and 18 years for long duration perennials. As with registered varieties in other parts of the world, varieties need to be field-tested to determine their VCU (Value for Cultivation and Use). In addition, seeds

need to be correctly labelled on their containers, including genetically modified seeds. Furthermore, seed producers, seed processing units, seed dealers and horticulture nurseries all have to be registered with the State government where they operate.

The regulatory system governing GM crops is in the process of being revamped with the National Biotechnology Development Strategy.⁴ It is clear from the draft strategy that the government will be supporting the further introduction of GM crops. The new Seeds Bill does not prohibit the registration of GM seeds, though they are subject to environmental clearance under the Environment Protection law. However, in a gesture to keep critics quiet, the Seeds Bill does ban the use of Terminator⁵ seeds.

Under the new Seed Bill all imported seeds will also need to be registered⁶, though the government may allow the import of an unregistered seed for research purposes⁷. Apart from the registration of imported seeds, the new Bill does not make any other provisions, such as for phytosanitary standards, which still rely on other existing legislation (see box over page). However, the main basis for the registration of imported seeds is to support larger companies importing seed⁸, which has been increasing substantially recently (see box on this page). For example in 2001 to 2002, imports were around 860 tonnes, but within one year, this had increased to 1,766 tonnes, with a value of US\$ 18 million, 20% of which comes from the US. Exports of seed are even more valuable at around US\$ 21 million for the same year (2002-2003)⁹.

Does the Seed Bill benefit the farmer?

The official government line, when arguing in favour of this bill, is that *"if we don't know who is selling the seeds, we cannot control their quality"*. This, of course, is the same argument used by the seed industry around the world. So this new law is being presented as a "consumer protection" act for farmers. In the light of several reports of farmers' suicides and crop failure this has found favour with many unsuspecting civil society groups. So will this law be good news for farmers? What protection do farmers get if their legally-bought registered-varieties fail? Interestingly, farmers at this point can only turn to the Consumer Protection Act of 1986, an option which is available today without any new legislation. Meanwhile, the Indian Seed Industry is lobbying for the removal of seeds from the Consumer Protection Act¹⁰.

A cotton farmer from the state of Andhra Pradesh is currently fighting a case to get compensation for

Pressure for seed-potato imports

For several years now, the private seed industry with the support of the World Bank, have been exerting tremendous pressure on the Indian government to allow the bulk import of potato varieties, from the EU and US, for seed production. To this day such imports have been banned to protect India's own potato market from pests and diseases. Although the government was on the brink of caving in to the seed industry's demands to allow the imports of potato seed, the timely intervention from the Director General of the Indian Council of Agricultural Research (ICAR) has so far prevented such imports. The Director General had opposed such imports based on a committee report that concluded that potato imports would substantially increase pest and disease amongst local varieties of potatoes.

Source: D Sharma (2000): Diversity No. 3

very poor yields in the District Consumer Court, an option which is by its very nature a tedious one without any guarantee of success. His struggle has inspired activists to put together a legal manual for farmers seeking compensation for failed yields¹². Often, even if a government recognises that farmers' need to be compensated, the company might not be ready to pay up. In the State of Andhra Pradesh when farmers suffered losses from cultivating Monsanto's Bt cotton, Monsanto was only willing to pay for failure to germinate and for absence of the genetic purity promised by the company, and not for yield losses¹³. The Plant Variety Protection (PVP)¹⁴ law of India does make provision for farmers to claim, via a PVP Authority, compensation from the breeder of a variety if it does not perform as expected¹⁵, though such a body has not yet been set up. Such a body, when formed, would only rule on varieties which are PVP registered and such decisions would be on a discretionary basis.

The bill is essentially about seed registration and certification, but in mandating that only registered seed will be sold, it is not only about what it regulates but about what it does not. By mandating what the market will offer, it determines what it excludes. So what is in the Bill for the small farmer? Once again the proponents of the Seed Bill come rushing with their answer: *"Exemption for farmers to save, use, exchange, share or sell their seed without registration"*. Indeed the law does state that:¹⁶ *"[nothing] shall restrict the right of the farmer to save, use, exchange, share or sell his farm seeds and planting material"*.

But it continues with: *"except that he shall not sell such seed or planting material under a brand name or which does not conform to the minimum*

⁶ Section 36(1)(c) of Seeds Bill, 2004.

⁷ Section 36(2) of above.

⁸ The public notice issued by the Parliamentary Committee inviting suggestions on the Seeds Bill states that "(t)he proposed legislation aims to liberalise import of seeds and planting materials compatible with the World Trade Organisation (WTO) commitments". <http://pib.nic.in/release/release.asp?relid=8963>.

⁹ www.statpub.com/open/65830.html; www.fas.usda.gov/gainfiles/200410/146117690.pdf; see also www.fas.usda.gov/gainfiles/200312/146085513.pdf.

¹⁰ Seed industry seeks infrastructure status, www.thehindubusinessline.com/2005/03/16/stories/2005031600941000.htm.

¹¹ Of the Farmers' Commission of Experts on Agriculture in Andhra Pradesh, see *Done in by cash crops*, www.frontlineonnet.com/fl1926/stories/20030103004611200.htm.

¹² How to sue a corporation, Greenpeace India's legal manual for farmers - www.greenpeace.org/india/press/reports/how-to-sue-a-corporation.

¹³ A lesson from the field <http://flonnet.com/fl2011/stories/20030606005912300.htm>.

¹⁴ In this issue of Seedling, we have used both PVP and PBR (Plant Breeder's Rights) to mean the same thing.

¹⁵ Section 39 (2) of the PVP Act, 2001.

¹⁶ Section 43(1) of the Seeds Bill, 2004.



Registering and certifying a seed

A distinction needs to be made between registering a seed and certifying a seed under the Seed Bill in India:

Registering a seed: This is compulsory for all seed sold. The criteria for registering a seed are the Value for Cultivation and Use (VCU). This would involve growing the variety over a number of seasons (three seasons in the Seed Bill) and testing for their ability to be of commercial use.

Certifying a seed: This is an optional extra to the registering of a seed and the criteria are established in the "Indian Minimum Seed Certification Standards" from 1988. There are six phases of seed certification:

1. Receipt and scrutiny of application.
2. Verification of seed source, class and other requirements of the seed used for raising the seed crop.
3. Field inspections to verify conformity to prescribed field standards.
4. Post-harvest supervision, including processing and packing.
5. Seed sampling and analysis, including genetic purity test and/or seed health test, if any, to verify conformity to the prescribed standards.
6. Grant of certificate and certification tags, tagging and sealing.

¹⁷ A brand name is a name or symbol or design used to identify a manufacturer's or seller's goods, e.g. Monsanto's Bt cotton is marketed under the brand name 'Bollgard'.

¹⁸ The Seeds Bill differentiates farmers from those engaged in commercial seed activities. In Section 2(9) "Farmer" means any person who cultivates crops but does not include any individual, company, trader or dealer who engages in the procurement of seeds on a commercial basis.

¹⁹ www.ddsindia.com/anotherorganics.htm; www.masipag.org/news_india.htm

²⁰ Section 39(1) Proviso of the PVP law

²¹ For example, see Navdanya's "Alternative Agriculture Policy": www.navdanya.org/news/110305-1.php

²² www.organicconsumers.org/ge/indianwomen32505.cfm

²³ <http://economictimes.indiatimes.com/articleshow/1056293.cms>

²⁴ www.thehindubusinessline.com/2005/03/30/stories/2005033000240900.htm

²⁵ On the Concurrent List of the Constitution of India on which both State & Centre can make laws.

²⁶ On the Union List on which only the Centre has the power to make laws.

limit of germination, physical purity, genetic purity prescribed..." There is the catch - farmers cannot sell their seeds if they do not meet the standards of registration. Nor can farmers use a brand name¹⁷ and enter the seed trade.¹⁸ For the seed industry this is music to their ears; with this small piece of legislation all competition from non-registered seeds is done away with. Although farmer-to-farmer seed exchange can continue despite the proposed law, the ambiguity in the exception clause, coupled with wide powers given to Seed Inspectors, makes farmers anxious about how their small local sales, for instance in the village fairs, would be regulated. Even though today farmers produce around 80% of India's seed, selling their own seed is now being restricted. In reality, only formal breeders and big businesses can get their seeds registered.

So why don't farmers simply get their seeds registered? In this way, they could legally sell their home-grown varieties of seeds. However, under the proposed system it makes it impossible for farmers to register varieties. The process takes a long time, is extremely expensive for a farmer, and anyway farmers' seeds would probably fail to pass the required standards. A farmers' breeding criteria are very broad, incorporating ecological and social factors, rather than only yield; what is exchanged between farmers is determined by local needs and therefore farmers' varieties are best regulated by farmers themselves. As a result, there are some in India advocating for a community certification

process by, and for, small-scale farmers.¹⁹ So farmers can sell harvested seed which is a registered variety. But the problem here is that if the registered seed is also PVP-protected then the farmer is again prohibited by the PVP legislation from selling branded seed in the market²⁰.

As for farmers' varieties, the crops that they have been growing, exchanging and selling for many generations, evidence from around the world shows that these will die out. By following the letter of the law, there will be little incentive to grow and use farmer varieties and farmers will have no choice but to buy and use registered seed from a private company. On the other hand, stopping the sale of farmers' seeds will be very difficult to enforce. Indeed, the very survival of farmers' varieties may be very dependent on farmers simply ignoring this aspect of the law and continuing to sell and buy their own farmer varieties.

The Bill has come under severe criticism countrywide from all sectors of society, including farmers' groups and numerous non-governmental organisations. The demands range from a complete withdrawal of the proposed Seed Bill 2004²¹ to the recognition of farmers' absolute rights to indigenous seeds.²² Widespread campaigns and mass actions continue to be planned at the village and district levels.²³ Farmers are directing their ire at what they regard as restrictions on their time-honoured freedom to grow and sow as they please. They also see the Bill as an erosion of their rights to sell seeds and are dissatisfied with the lack of provision for corporate liability, be it for Indian or foreign seed companies. Other problems cited with the Bill include:

1. **Consolidation of the private sector:** Many fear that the Bill will hand over the seed business to seed transnational corporations.²⁴
2. **Introduction of GMOs:** There is growing concern that the Bill will ease entry of GM crops with the possible contamination of traditional varieties with GM agriculture.
3. **Prices:** Many believe that seed prices will go up. Private companies would pass on the costs of registration to farmers.
4. **Centralising power:** Many are concerned that the Seed Bill will move decision-making away from the state level. Under the Indian constitution, agriculture is under the jurisdiction of the state, with the exception of cotton and oil seeds,²⁵ and tradable commodities²⁶. The central government treats seeds as a "tradable commodity" to constitutionally justify its lawmaking on the subject.



A Seed Bill for the private sector

The main beneficiaries of this new law are clearly the private seed sector. With the opening up of the seed market only to those who are able to certify and register seeds, coupled with the suppression of the sale of farmer's varieties, it is in particular the transnational corporations that will benefit. Such corporations make up an estimated 30% share of the market (see table below).

Big Indian companies will also benefit through sales of exported seed. With an extensive and rich agricultural genetic resource base, coupled with the associated knowledge and cheap labour provides a fertile ground for seed production. Asia is becoming the largest seed market in the world and is the biggest agricultural trading partner for the US²⁷. The US Department of Commerce has identified India as one of the world's top ten "*Big Emerging Markets*". With China the largest seed producer, India is in second place. The US government is taking special interest in the economic and legislative "reforms" in this part of the world²⁸, as in India it is keen

Transnational seed companies in India

1	Monsanto
2	Bayer Crop Science
3	Syngenta
4	Advanta India Ltd (formerly ITC Zeneca Ltd)
5	Hicks-Muse-Tate Inc.
6	Emergent Genetics
7	Dow Agro
8	Novartis
9	Bioseed Genetics International Inc.
10	Tokita Seed Co.

to encourage conformity to US standards²⁹ and to simplify seed trade³⁰.

Seed legislation was originally meant to be about government being able to ensure good quality seed and safeguard farmers from bad seed distributed

²⁷ www.fb.org/views/com/boost_exports.html

²⁸ China's Food Import Standards Often Unclear, U.S. Officials Say, *Washington File*, <http://cayupply.notlong.com>

²⁹ E.g. pushing for amendments to India's patent law to allow patenting of GM seed.

³⁰ www.financialexpress.com/fe_full_story.php?content_id=59335



³¹ www.indiaseeds.com

³² Punjab, Haryana, Maharashtra, Andhra Pradesh, Karnataka, Rajasthan, Uttar Pradesh, Bihar and Orissa. Madhya Pradesh, Gujarat, West Bengal, Assam, Meghalaya and Arunachal Pradesh.

³³ D Sharma (1997): *In the Famine Trap*, UK Food Group and the Ecological Foundation, London/New Delhi, pp123-124.

³⁴ In 1969, the Tarai Seed development Corporation was started by a US \$ 13 million World Bank loan. This was followed with two NSPs, for which the WB gave US \$ 41 million between 1974-78. www.whirledbank.org/environment/agriculture.html

³⁵ World Resources Institute (1994): *'Second' India Revisited*.

³⁶ D Sharma (1994): *GATT and India: The Politics of Agriculture*, Konark Publishers, New Delhi, pp 60-62.

³⁷ www.indiainbusiness.nic.in/knowledgesociety/biotech.htm

³⁸ 10th Five Year Plan (2002-2007) <http://planningcommission.nic.in/plans/planrel/fiveyr/welcome.html>

by industry. The trend however seems to show, among other things, how industry standards are being adopted by the seed laws, which themselves are becoming a means to facilitate the entry of transnational corporations into the seed sector rather than "protecting" the informal seed supply system. While the private sector supports minimal government intervention in their business, they also lobby hard to receive the necessary government protection to maximise and protect their profits: protection of their intellectual property rights over a variety or gene (PVP or patents) and, now with the Seed Bill, protection of their market to trade in seeds on their own terms.

As companies trade across the globe, they seek to harmonise seed laws across the board. This is what the Indian Seed Bill is - yet one more country harmonising its law with the EU and the US.

Turning a Bill into an Act

India is seen as one the biggest markets in the world and as a result there is huge pressure on the government to adopt the Seed Bill and turn it into an Act. The Seed Bill is just one of the legislative changes in India to open up its markets and harmonise its laws with rich countries. These include amendments to the country's patent law and the model Agricultural Produce Marketing law. With the ongoing Parliament Session having concluded, the passage of the Bill has now been postponed to the next session (in July 2005). Meanwhile, the report of the Parliamentary Committee reviewing the Bill is awaited. Whenever the Bill is re-tabled, its rejection is unlikely without many voices of protest - the question is whether enough noise can be made about the Seed Bill, and whether these protests will go unheard.