THE LACK OF AWARENESS OF FARMERS ABOUT THEIR RIGHTS ON PLAN VARIETIES

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ABSTRACT

This paper examines how the Protection of plant varieties and farmers rights Act (2001) in India is not working in tandem with what actually occurs on the ground regarding the farmers. It demonstrates that, despite what the Act claims to be progressive, the majority of Indian farmers are unable to implement it due to complex processes, poor institutions and, in general, lack of awareness. Although the law has allowed farmers adopt varieties, retain seeds and reap benefits, in reality, it is controlled by large seed corporations. Using the legal documents, court hearings, and policy analyses, the article identifies the holes in the implementation, the biases towards formal breeders, and the conflict between the law and the life of the farm. It is found that until the law should be amended to be more transparent, more accessible and more communicated, this special system will remain a mere act- a mouthpiece of the law that fails to safeguard the people it purports to safeguard.

INTRODUCTION

It is believed that farmers are the backbone of India. However, when the true legal empowerment, no fluff, no real rights, is involved, the system goes completely dead. The problem? The majority of farmers have not even heard of it.

The law is there, but it is just floating in PDFs, policy briefs, and Courtrooms which farmers are not even able to access. The individuals that it has been created to accommodate cannot access it, cannot afford it, and are usually not aware of its existence. Meanwhile, the registration system is being overwhelmed with lawyers, labs and inside connections by seed companies and formal breeders. Instead, farmers only have WhatsApp circles and intermediaries. That's the power gap. [1]

It is not an article about hype and celebrity growers, but it explores what happens when a well-written law becomes a system that can actually be utilised by insiders. It demolishes the bogus promises of profit sharing, the obstacles of registration of farmer-bred varieties, the reckless complaint scheme and the chuckle-headed history of outreach by the PPVFR Authority. It examines battles in court, apathy on the part of the state, and the lack of connection between the rights on paper and the world of facts. And it poses the question that alone counts, whether the law cannot be used by the people it is meant to safeguard, how is there any point?

PLANT VARIETY PROTECTION IN INDIA

Protection of Plant Varieties and Farmers Rights Act, 2001 (PPVFR Act) of India is essentially a unique mechanism which was established to comply with the WTO TRIPS requirements and attempt to accommodate both large commercial breeding and the old fashioned seed sharing communities. The preamble in essence requests to create a successful system of protection of plant varieties, rights of farmers and plant breeders and promote the creation of new varieties of plants. It is not only about patents but also about the farmers saving and breeding their own seeds. In a nutshell: India made a choice that it was more preferable to introduce plant varieties as something that could be innovated with private rights, but with the interests of the farmers at the forefront. The Act goes so far as to establish a Plant Authority to register and enforce all those rights.

[1] Protection of Plant Varieties and Farmers' Rights Act 2001 (India)

Article 27.3(b) of TRIPS internationally instructed members of the WTO to safeguard the plant varieties by patent or a variety of effective sui generis system. India chose the latter.[2] In contrast to UPOV 91, which puts much emphasis on the rights of breeders, the Indian law combines the traditional UPOV DUS (novelty, distinctness, uniformity, stability) and a series of rights of farmers. Practically, it is impossible to patent a plant or a seed in India - the Patents Act (amendment), 2002 expressly ensures that.[3] And thus PPVFR Act was created as an alternative IP regime. Courts have fallen in line: in 2018, the Delhi High Court indicated that Monsanto was not eligible to patent GM cotton seed because of the exclusion of seeds and plants under the Patent Act. Such innovations were pushed by that ruling into the PPVFR system instead of patents. Concisely, the Act certifies plant varieties, but not patents.[4]

The PPVFR Act stipulates detailed rights to both the breeders and farmers. New varieties (with or without essential derivation) can be registered and the breeder is permitted to produce, sell or license seed under a limited term (in the case of most crops, 15 years; in the case of trees and vines, 18 years). The requirements of registration are similar UPOV stuff (novelty, etc.). The registration of extant varieties (legacy seed-materials discovered prior to 1995), and farmers varieties (seed lines produced by farmers or rural communities) is also allowed by the Act. In any case the Authority issues a certificate having a renewable term (6+9 years or 9+9 years respectively). This provides the formal IP protection in lieu of patenting, and may be appealed or enforced in court, which is a huge motivation to invest in commercial breeding.[5]

Most importantly, the Act mentions a comprehensive list of rights of the farmers (Chapter V). It provides farmers with among other things:

- Any breeder (or group/community) may obtain a new breed of the same type of variety, or any existing farmer's type and obtain IP rights on it.

- The farmers expressly may save, use, sow, re-sow, exchange, share or sell the seeds of varieties under protection. To allow a farmer to freely re-plant some seeds of a registered (or unregistered) variety without violating the rights of the breeder, it must

[2] Agreement on Trade-Related Aspects of Intellectual Property Rights (15 April 1994) 1869 UNTS 299, art 27(3)(b).
[3] UPOV Convention, Act of 1991 (International Union for the Protection of New Varieties of Plants)
[4] Monsanto Technology LLC v Nuziveedu Seeds Ltd [2018] Delhi HC
[5] Torsvik, G. "Intellectual Property Rights in Agriculture: The Indian Case." Journal of World Intellectual Property (2018) 21(3) 123-147

be that the seed was obtained or otherwise legally obtained. This is a major carve out with stricter regimes.

- In case a registered variety (typically a breeder variety) was created using a farmer provided traditional variety or gene resource, farmers and communities may receive monetary benefits that is shared. The Authority can reward such contributions by making part of the license fees, royalties, etc. go into a National Gene Fund.

- Farmers/ communities can receive recognition and reward in conserving or enhancing the traditional varieties that are donors of genes. The Act goes to the extent of establishing a central Gene Fund to fund these awards and training.

- A failed new variety which is under a promise of performing must be paid up by the developer/breeder to the farmer (the effective seed -buy-back guarantee).

- The new or existing varieties of farmer-bred are provided with some protection against innocent infringement. Besides, in case breeders develop an essentially derived variety (EDV) based on a registered variety of the farmer, the latter may claim equitable remuneration.

- The farmers and their organizations are not chargeable with the application and renewal fees.

The Act attempts to make farmers de facto formal stakeholders, seed savers of a kind, with a right to share the commercial fruits of their traditional knowledge. According to one commentator, these rights in India go way beyond the modest UPOV/ITPGRFA standards (which provide a farmer with the right to save and exchange seed only). The law extends to the extent of enshrining the traditional collective breeding that is legally recognised by the law as well as the farmer communities as the breeders of varieties.

IMPLEMENTATION AND ITS PRACTICALITY

I believe the legislation was meant to be universal, but when it comes to the reality it has been somewhat everywhere. PPVFR regime was proclaimed as special and farmer friendly, yet there has been a low uptake. As of 2011, there were just seven farmers that had applied to register their own varieties. Groups of farmers did make a little more but a total of only a few hundred

by 2012.[6] The PVP certificates are dominated by commercial breeders and companies. A review even claimed the Act has not helped bring on innovation and the registration of farmers has largely been as a recognition of their past efforts and no actual cash has been earned.

This gap is partly explained by a number of reasons. The majority of the farmers are unaware of having IP or even the process. Government outreach and training is spotty. The registration requires DUS tests based in the lab and a lot of paper work that most small growers cannot handle. It usually must be led through by NGOs and research institutes. A farmer who registers a variety will hardly receive direct money even when they do register a variety they will have only a few instances of receiving a benefit-sharing award and never obtaining a compensation.[7] According to the PPV Authority itself procedural delays and limited capacity have also been acknowledged and those in charge say that benefit-sharing remains more of a dream than a reality. Concisely, the high promises of the law are all on paper.

The system has been more convenient to the breeders and seed firms, however. The law provides commercial incentives by giving 15-18 year monopoly on new varieties, which the hybrid dominated seed industry of India lacked. There is a slight increase in private breeding, indicating that some minor improvement in this area since 2005. Seed companies claim that the Act safeguards their research and development efforts, and the legislation points specifically to the goal of spurring investment towards research and development. Technically speaking, in terms of pure IP, the system is mostly UPOV-inspired and provides a legal avenue to breeders. As an example, sellers of shielded seeds can be regulated and even licensed to foreign companies by the breeders.[8]

The Act has been put into practice by the seed industry. It has issued hundreds of PVP certificates on commercial hybrids and ornamentals, including Bt cotton hybrids of Monsanto (which left the market). Breeder has the right as the PPV Authority can grant damages or issue injunctions. Nevertheless, the Indian regime is inferior to UPOV 91: the farmers are free to plant new seeds, and the mandatory licenses (EDV clauses) weaken the monopoly of breeders. Other industry people cry foul about these limitations. As a matter of fact, the issue of royalty fees has occasionally discouraged foreign investment such as Monsanto. On the whole, the law

[6] PPV & FR Authority Annual Report 2011-12.
[7] Shalini Bhutani and Kanchi Kohli, 'The Farmers' Rights Act – Not Quite a Farmers' Act' (2013) Economic and Political Weekly 48(20).
[8] Smita Gupta, "Farmers' Innovation and Plant Variety Protection in India" (2014) 17 Journal of Intellectual Property Rights 213.

is viewed by the seed companies as a net positive one, it is a sui generis system, which safeguards varieties instead of patents.

CRITICS AND CHALLENGES

The PPVFR Act continues to fail farmers, says its critics. The chapter on farmers-rights is frequently disregarded as a scenario of myth or reality: strong on paper and but weak in reality. There are some very blunt judgments that refer to it as toothless or window-dressing. The majority of the higher provisions (benefit-sharing, awards, compulsory licenses) have not been adequately put into the test. The promised Gene Fund has not been fulfilled much. One of the authors reproaches the Authority in its rather lax attempts to adopt major duties.

The poor intentions of the law are hindered by major implementation hurdles: procedural complexity, poor institutional capacity and enforcement are recurrent problems. Farmers accuse DUS testing of cost and time wastage. There is laxity on implementation: the seed sales are not registered and there is little policing. It is opaque even when a farmer is interested in receiving compensation (say, in the case when one of the varieties has failed). The point is that many scholars have arrived at the conclusion that most of the rights in the Act cannot reach the claimants. No systematic information on benefit-sharing payouts and the knowledge of the entitlements of the farmers is low.

The other criticism is that the Act is biased towards the formal breeders in a subtle way. India by outsourcing protection to a PVP certificate scheme provided the seed industry with IP tools but the tools were non-patent. As it has been noted by some agrarian activists, the 15+ years exclusive rights may enhance corporate domination of seeds. Even with exemptions of farmers, they caution, a small number of large firms may control the market (the departure of Monsanto-Bayer is frequently used as a cautionary example). A court case in Delhi (Navbharat vs. Monsanto, 2013) emphasized that the PPVFR law has priority over patents because developers do not have any patent right and should use the Act. The same ruling was hailed by farmers interest groups as the defence of traditional seed-use, yet demonstrated how controversial the area is: firms declare that stringent royalty regulations will have far-reaching, adverse effects on biotech development.[9]

[9] Navbharat Seeds v Monsanto Co. (2013) Delhi High Court.

Contrastingly, the policy analysts mention that the Act has done a great job to legitimise the contributions of farmers in the world-first. The Indian law is commonly used as a model that developing countries should follow (a middle way sui generis solution to UPOV) in the global discussion. An analysis of sustainability within the latest years discovered that the Indian system is fairer and more SDG-friendly than strict UPOV due to the fact that it takes into consideration the farmers, community and environmental protection as well as breeders. In foreign countries, the example of India had an impact on United Nations deliberations on UPOV and Farmers Rights treaty of the FAO. Domestically, there are those policymakers who emphasize that the Act, albeit flawed, has safeguarded seed sovereignty of farmers better than UPOV would have done, and they oppose being pressured to make changes in favour of the breeders.

CASE STUDIES: PATENTS vs PVP

The regime can be characterized by a few big cases. PepsiCo potato case (2024) demonstrates the tug-of-war between the patent law and the PVP system. In 2016, PepsiCo had developed a potato (FC5) in the US and secured a PVP certificate in India. PepsiCo counterattacked when an Indian-based authority attempted to repeal it citing the reasons that seed varieties could not be patented under Indian laws. The Delhi High Court reversed the company eventually, which established the rights of the company as a matter of circumstance, and the PVP certificate was no different but was considered as a patent so as to apply it in another enforcement. Meanwhile, PepsiCo previously (in 2019) attempted to sue farmers who had planted FC5 variety on the grounds of patent infringement, but withdrew the claim.[10] The episode itself was politically charged, and it focused on how farmers felt that the Act was being overstretched by corporations.

To IP analysts, it puts a stress on the grey area: the Indian law safeguards varieties but does not refer to a patent (indeed the Patents Act prohibits patents on plants lexology.com, so the claim by Pepsi had to be reworded). The courts retained PPV powers yet emphasized that it should exercise caution when dealing with the rights of farmers.

Another case in point is Monsanto/Bt cotton saga. In Navbharat Seeds v. Monsato Co., Indian firms complained that Bt cotton patent was against the Indian law (Monsanto, 2013). The court

[10] Devinder Sharma, 'PepsiCo Potato Case is a Wake-Up Call' (The Wire, 2019)

sided with it and found that Monsanto could not pay royalty according to the patent law since India Patent Act did not permit any patent protection on its GM cotton seeds. Monsanto was left with no other option but under PPVFR (although it pulled out of India shortly thereafter). This demonstrates that the regime of PPVFR became the predominant IP regime of biotech seeds.[11] Critics argue that in case India had permitted patents, the farmers would be forced to purchase seeds on a seasonal basis. The supporters respond that the PPVFR system did not eliminate the ability of Monsanto to recover the R&D expenses by licensing but retained the right of farmers to replant.

I believe that the plant variety law in India is well-intentioned but lacks a balance of outcomes. It seemed to be creative in meeting the TRIPS requirements, but did not patent it, opting instead to use a tailor-made regime. The right of farmers is expressly mentioned in the law, and its goal is to share the benefits, which is conceptually forward-looking. The system in India gives much more freedoms in seed saving compared to a strict UPOV-91 regime. Also, any legal framework whatsoever provides Indian breeders with a statutory certainty and has arguably contributed to the increase of the seed industry.

The rights provisions of the farmers are, however, still mostly performance. With 200million smallholder farmers in a country, a handful of PVPs registered by farmers (with NGOs helping in most cases) are indeed a drop in the ocean. The intricate apparatus of benefit-sharing and gene funds is still not working satisfactorily. According to many professionals, governments should do more outreach, streamline procedures, and in fact introduce compensation programs. In order to balance rights effectively, it is proposed to simplify the registration system, finance regional testing laboratories, or reconsider the norms of periods. At least, the trust could be gradually shaped by remaining cooperative with farmers.[12]

The model used by India is frequently referred to in the rest of the world as a model that other developing nations should follow in order to support the farmers. Nevertheless, both sides of critics admit that it might have been fine-tuned. In the case of industry, such changes as the increased fight against counterfeits and more transparent information about royalties would be beneficial in encouraging R&D. As far as civil society is concerned, it is vital to make sure that farmers have a tangible benefit-sharing or community seed banks.[13] Any changes in legislation

[11] Choudhary, B and Gaur, K, "Bt Cotton in India: A Country Profile" (ISAAA, 2020)
[12] Niranjan, R. 'Legal Literacy and the Rural Disadvantage' (2020) 42(2) Indian Bar Review.
[13] PPV&FR Authority, 'Status of Benefit Sharing and Gene Fund' (2023).

will be a hot- discussion: increasing the influence of breeders (e.g. becoming a member of UPUV) would be strongly opposed by farmers. On the other hand, breeders could be too weakened and thus discourage innovation.[14]

I believe the law on the protection of plant varieties in India is a sensible concession. It has helped keep it from completely turning into the patenting of seeds, and at least formally recognize farmers. But it has not succeeded in realizing its noble pledges to enlighten the rural populations. It is not much different than in the past as traditional seed exchange is still being carried out by farmers, arguably no worse off than at the beginning, but with limited new benefits of the Act. Radical reformation of implementation is long overdue.[15] Assuming the law is to work in the best interest of sustainable development (as the scholars have wished) India should not just retain her sui generis system but she needs to utilize it to the benefit of the people she was intended to.

CONCLUSION

The Protection of Plant Varieties and Farmers' Rights Act, 2001 was advocated as a new equilibrium between breeder innovation and protection of farmers. That is not what it turned out to be. Now, it is symbolic law that appears strong at least in theory but practically does little or nothing. The bureaucracy is crammed in the system and is out of touch with the realities at the rural level, and is predominantly played by the big seed companies, who are aware of working the mechanics. Farmers, particularly small farmers, women and tribal cultivators remain locked out.

Legally, farmers are allowed to apply their own varieties but the requirements of DUS testing are so technical that NGOs or universities are the only ones that can help them through. They are supposed to compensate in case of failure in a seed, it says but hardly any farmer had ever taken it, evidence and legal obstacles to the process are like the clap of thunder. It claims that they have a right to share the benefits in case the firms employ traditional varieties but the Gene Fund is practically dormant. So what is the use of legalising rights that you cannot even get to?

It is not an issue in the legislation itself- the text is ambitious. The actual one is design, enforcement and state capacity. Legal theory and economic justice are divided by

[14] Vandana Shiva, "Seed Sovereignty and Intellectual Property Rights in India" (Navdanya, 2017).
[15] Ruchi Pant, "Farmers' Rights and Access to Seeds: A Legal and Policy Analysis" (2016) 8 LEISA India

implementation. And in that regard, India has failed in farmers. It lacks a systematic outreach, no government-sponsored legal assistance of farmer-IP problems, no institutional responsibility of the laziness of the Authority. The awareness drivers are primarily the slide decks and reports and not the real villages.

Formality is rewarded and informality is punished in the system. That's the real problem. The innovation of farmers happens informally in the form of years of selection, saving, and sharing. Yet the state is demanding formal IP filings, DUS data and legal ownership structures. It's a cultural mismatch. The system will continue to fail the rural Indian farmer until it becomes accustomed to the real-life rural Indian system, low literacy, collective knowledge, oral transmission, etc.

In case India is indeed interested in protecting the rights of farmers, it must abandon the conception of creating systems that could only be maneuvered by lawyers and bio-tech companies. Legalise agri-extension centres, subsidise registration fees of varieties that are bred by the farmer, employ local outreach staff who can communicate in the language of the farmers, both literally and legally. And, do not be an afterthought awareness. A right and no right to it is a fixed game. You cannot correct this by another policy announcement. You correct it by developing state capacity top down. The PPVFR Act will continue to remain a promise full of dust until the same old inequalities continue to be entrenched.