

The experience of Indian NGOs in their campaign to gain recognition of Farmers' Rights in India

The Issue

In India, NGOs have been long struggling to protect and assert farmers' rights in relation to innovation and traditional practices in agriculture. Over 200 million poor people in rural India depend upon agriculture for their livelihoods,¹ and a third of the population depends either directly or indirectly from the agriculture sector. Currently, agriculture accounts for 22% of the country's Gross Domestic Product (GDP). Given these figures, the importance of agriculture in India is greatest in terms of domestic food security and rural livelihoods.

In the recent past, the emphasis of Indian agricultural policy has been shifting away from sustaining food sufficiency to commercialising agricultural production. A central part of the more market-driven approach to increase the productivity and competitiveness of the Indian agricultural sector is to boost agricultural research and applied technology. Nonetheless, NGOs are concerned that the changes in the technology and research in agriculture² can have negative impacts on the livelihoods of Indian farmers. Accordingly, they have continuously been pressing the government for over 15 years to provide alternative approaches to industry-led agricultural development that recognizes the rights and adequately responds to the needs of Indian farmers.

One of their main concerns is the granting of intellectual property rights on plants, particularly patents on plant genes and the protection of plant varieties (PVP), also known as plant breeders rights (PBRs), on the cost and access for farmers to seeds. Traditionally, farmers could freely replant, exchange and sell seeds. However, patents and PBRs normally impose restrictions on farmers' ability to sell grown seed, and in some cases to reuse it, and thus enhance the market for the breeder's seed.³ Thus, it is private plant breeders that are interested in obtaining patents or PBRs for new plant varieties developed.

NGOs pinpoint that farmers produced, selected, and improved plant varieties through traditional methods and that their role in relation to innovation and conservation of plant genetic resources should be rightly recognised, rewarded and balanced against those of private plant breeders. They are also concerned that PBRs to breeders of new plant varieties may give monopoly markets, displacing small-scale farmers and driving up the cost of agricultural production for farmers.

In this regard, Indian NGOs have focused on pressuring the government to abstain from introducing patent protection for plant varieties in India and to promote the introduction of national legislation to effectively protect farmers' rights.

The campaign on farmers' rights in India

The NGOs campaign in relation to intellectual property rights and protecting the livelihoods of Indian farmers has centred around strengthening farmers' rights, maintaining traditional farming practices and opposing patents on life forms. It has been characterised by strong individual leaders and core organisations closely linked to farmer movements.

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The campaign for farmers' rights in India evolved from and was supported by other movements, such as the farmers', women's' and environmentalist movements that emerged in the 1970s. Strong, high profile individuals and the NGOs associated to them have been significant in the Indian experience. Leadership and close relationships between the NGOs and rural communities at the grass root level have been central to the successes of campaign.

The Research Foundation for Science, Technology and Ecology (RFSTE)/Navdanya⁴, founded by Dr. Vandana Shiva,⁵ was one of the first NGOs that became involved in farmers' rights in India. Navdanya has been actively working with rural farmers to conserve agricultural biodiversity through seed saving, promoting alternatives for sustainable farming, and challenging patents on plants and food crops.⁶ In the early 1990s the Gene Campaign⁷, under the leadership of Dr. Suman Sahai⁸, became deeply involved in the national debate on intellectual property and agriculture and spearheaded the efforts to introduce national legislation to protect farmers' rights. Personalities such as journalist Devinder Sharma⁹, patent expert B.K Keayla¹⁰ and farmer leaders Mahendra Singh Tikait¹¹ the late Professor M.D. Nanjundaswamy,¹² have also been important in mobilising support for the campaign.

The internal debate in India on intellectual property and agriculture surfaced in the early 1990s and intensified when NGOs and farmers' organisations became involved. During this time the Dunkel proposal for culminating the Uruguay Round of multilateral trade negotiations was under discussion, which was fiercely opposed by a cross-section of civil society in India.¹³ The Dunkel Draft incorporated the Agreement on Trade Related Aspects on Intellectual Property Rights (TRIPS), which included provisions that allow countries to exclude plants and animals from patentability, but mandates countries to protect new plant varieties by either granting a patent, an

effective sui generis system or by a combination of the two.¹⁴

NGOs feared that the Dunkel proposal on TRIPS would be accepted by the Indian government and that it would allow the patenting of plant genes.¹⁵ The initial strategy of NGOs was to increase public awareness of the perceived negative impact of the related TRIPS provisions on Indian farming communities. The Gene Campaign led the efforts through public meetings in villages where the campaign had district units, forming alliances with farmer organisations, liaising with the media, and engaging with top government officials and politicians.¹⁶ In 1992 and 1993 the NGOs and farmers' organisations teamed up to mobilise against the Dunkel Draft and carried out a series of rallies that were critical in raising awareness among the farming communities and in influencing the governments' position.¹⁷

The diverse groups were able to come together because they identified a clear target and focused on the issue they agreed on: No patents on seeds, the message of the campaign. The largest rally took place on October 2, 1993, when 500,000 Indian farmers protested against the Dunkel draft.¹⁸ Moreover, in November 1993 several leaders of farmers' organisations and NGOs drafted a Charter of Farmers' Rights that presented their demands.¹⁹

Indian NGOs have played an important role in protecting the culture and livelihoods of Indian farming communities. NGOs were able to make government increasingly accountable and responsive to the needs of farmers. They were able to influence government policy to reject patents on life forms and to introduce progressive national legislation that allowed for strong farmers' rights alongside Plant Breeders' Rights (PBRs.)

By 1995 when the TRIPS Agreement came into force, the NGO and farmers' organisations had succeeded in pressuring the government to reject the patent option for genetic resources as contained in TRIPS. They thus turned their efforts to establish what type of sui generis legislation to grant PBRs would be appropriate in the Indian context, given that the TRIPS agreement does not specify what such legislation should be. Moreover, India is not a member of the International Convention for the Protection of New Varieties of Plants (UPOV), which to date remains the most widely applied sui generis model.²⁰ UPOV is an international forum set up to recognise PBRs globally.

The position of NGOs has been that farmers' rights must be well defined rights that allow farmers to retain the same control over seed production and distribution as they have had in the past. Accordingly, they have advocated for the rights of farmers must be incorporated alongside the rights of breeders in the Indian sui generis legislation. They also called for the government to abstain from joining UPOV because farmers' rights as they pertain to plant genetic

resources are not included in UPOV and can only be limited exemptions to PBRs.²¹

The Gene Campaign was at the centre of the NGO-led effort to draft sui generis legislation that would include both well-defined PBRs and farmers' rights.²² The sustained effort over eight years was successful in achieving the government enactment of the Protection of Plant Variety and Farmers' Rights Act, 2001.²³ India is the only country that has implemented specific legislation to grant farmers' rights; giving farmers' not only the right to save, sow and exchange seed, but also to sell seed even if the variety is protected by a breeders right. NGO technical expertise and participation was important in the drafting and revision process of the Act, which suffered several modifications since 1999 when the Act was introduced in the Indian Parliament. NGOs lobbied and tried to find supportive positions with parliamentarians and political leaders and worked with other grass roots organisations to pressure for the inclusion of strong farmers' rights in the Act. However, NGOs emphasised at the outcome that there was more that could be done to improve the 2001 Act.²⁴

Although there seemed to be consensus that India would not follow the UPOV model, once the 2001 Act was in place, on the May 30, 2002 the Union Cabinet approved the government decision to join UPOV. The NGOs coalition reacted quickly against the decision.²⁵ NGOs strongly campaigned against India joining UPOV highlighting that farmers' rights under the 2001 Act could not be compatible with the international convention and the fact that there had been no discussions in parliament on this issue. The Gene Campaign who had been involved in drafting an alternative proposal to UPOV, the Convention of Farmers and Breeders (CoFaB),²⁶ presented CoFaB as a better model for developing countries to protect farmers rights and breeders at the international level. Once the channels of dialogue with government seemed exhausted, the Gene Campaign took legal action to challenge the government's decision to join UPOV.²⁷

Successes and lessons learned

Indian NGOs have played an important role in protecting the culture and livelihoods of Indian farming communities. NGOs were able to make government increasingly accountable and responsive to the needs of farmers. They were able to influence government policy to reject patents on life forms and to introduce progressive national legislation that allowed for strong farmers' rights alongside PBRs.

There were several elements in their success. The core NGOs involved had close relationships and built strong alliances with local communities and farmers, placing their concerns at the centre of the debate. Involving groups at the grass roots level was also important in mobilising public opinion by increasing their awareness and understanding of the issues and putting pressure on the government. Moreover, the NGOs and individuals involved were also well

connected and politically savvy – they knew the political structure and dynamics well, and were able to find support within the establishment. They also had networks abroad and were able to use the national and international media to draw public attention to the issues and increase government transparency and flow of information. NGOs demanded participation in policy-making processes and discussions, and helped spur the national debate both outside and inside government in Parliament.

The recent set backs for NGOs in the debate with the decision by the Indian government to join UPOV shows that there is a need for constant monitoring and quick response to changing dynamics and the need to coordinate civil society action. The most effective actions in the campaign were those which united many different organisations and activities under a concerted objective, such as “No patents on seeds”. In the later part of the campaign the level of involvement of different groups had diminished.

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¹ World Bank News Release, “World Bank Supports Agriculture Development and Innovation in India with US\$200 Million”, April 18, 2006.

² Such changes include biotechnology, increased private investment in agricultural research, and more recently, nanotechnology.

³ See “Agriculture and Genetic Resources”, in Integrating Intellectual Property Rights and Development Policy, Ch. 3, pp. 3, Report by the Commission on Intellectual Property Rights, UK, 2002.

⁴ RSFTE is a participatory, public interest research organisation. Navdanya is a movement that started as a RSFTE programme. See www.navdanya.org.

⁵ Vandana Shiva is a physicist, ecologist, activist, author and director of RSFTE and Navdanya. See http://org.eea.eu.int/news/Ann1096279340/cv_vandanashiva.

⁶ Navdanya has involved in successfully challenging patents on Neem, basmati and wheat. Refer to other NGO briefing on Campaign against Biopiracy.

⁷ The Gene Campaign is a research and advocacy NGO working in the field of bio resources, farmers' and community rights, intellectual property rights and indigenous knowledge, biopiracy, and issues related to genetically modified food and crops. See <http://www.genecampaign.org/>

⁸ Suman Sahai is a geneticist and convener of the Gene Campaign. She has been deeply involved in shaping Indian policy related to intellectual property rights and agriculture.

⁹ Devinder Sharma is a agricultural scientist, journalist, author and Chair of the Forum for Biotechnology & Food Security.

¹⁰ B.K.Keayla is convener of the National Working Group on Patent Law (NWGPL).

¹¹ Mahendra Singh Tikait is a farmer leader and former head of the Bharatiya Kisan Union (BKU).

¹² Professor M.D. Nanjundaswamy was a farmer and activist, President of the Karnataka State Farmer's Association (KRRS). See <http://www.nadir.org/nadir/initiativ/agp/new/swamy.htm>

¹³ On December 20, 1991, Arthur Dunkel, then Director General of the General Agreement on Trade and Tariffs (GATT), put forward a compromise proposal that included the TRIPS Agreement to break the stalemate in the Uruguay Round trade negotiations. For a sense of the discussions in

India, see Motion of the Implications of the Dunkel Draft Text on Trade Negotiations, Parliament of India, December 23, 1992. See

<http://parliamentofindia.nic.in/lsdeb/ls10/ses5/1923129201.htm>.

¹⁴ See TRIPS Agreement, Article 27.3 (b). Discussions on the review of Article 27.3(b), as the TRIPS Agreement requires, are on-going in the TRIPS Council.

¹⁵ See The Pioneer, “Indian not isolated at GATT talks”, October 10, 1992.

¹⁶ See The Hindu, “Silence on Dunkel issue criticised”, May 9, 1992.

¹⁷ See for example The Times of India, “Protest against patenting organisms”, July 1, 1992, and The Hindustan Times, “Seeds of a Satyagraha”, April 14, 1993.

¹⁸ See Sun Online “Indian Farmers Rally against GATT, Bio-Patents” October 4, 1993, <http://www.sunonline.org/trade/areas/intellect/10040093.htm>

¹⁹ See “A Charter of Farmers' Rights”, 1993, www.agobservatory.org/library.cfm?refID=29551.

²⁰ 61 Countries are currently members of UPOV 1978 or as amended in 1991. See <http://www.upov.int/en/about/members/pdf/pub423.pdf>

²¹ The 1978 UPOV Convention contained a provision that a PBR did not extend to the use of material for research purposes, the products of that research, or to farm saved seed (known as “the farmers' privilege”). The 1991 UPOV Convention does not refer to the farmers' right to save seed. It does however allow member states an option of restricting the breeders' right under certain conditions. For an explanation of the breeders' exemption see http://www.upov.int/en/about/pdf/breeders_exemption.pdf.

²² See Gene Campaign, “Gene Campaign's legal Action Against Indian Government”, <http://www.genecampaign.org/Publication/OPPOSEUPOV!S AVEFARMERS!.pdf>

²³ See Suman Sahai, “India's Plant Variety Protection and Farmers' Rights Act, 2001”, BRIDGES, <http://www.iprsonline.org/ictsd/docs/SahaiBridgesYear5N8O ct2001.pdf>

²⁴ See, for example Dr. Vandana Shiva, Afsar H. Jafri “The Need for a Genuine Sui generis Law to defend Farmers Rights as Traditional Breeders: the inadequacies of the PVP Act, 2001”, RSFTE/Navdanya, http://www.navdanya.org/articles/pvp_act2001.htm

²⁵ See Suman Sahai, “Civil Society Trashes India's to Join UPOV: NGOs Demand Discussion in Parliament”, AgBioIndia, New Delhi, 11 July 2002, <http://www.agbioindia.org/archive.asp?id=35>

²⁶ See Suman Sahai, “Protection of New Plant Varieties: A Developing Country Alternative”, Economic & Political Weekly Commentary Mumbai, March 6-12 and 13-19, 1999, <http://www.grain.org/bio-ipr/?id=34>.

²⁷ The Gene Campaign filed a Writ Petition in the form of Public Interest Litigation in the Delhi High Court on October 1, 2002. The main line of argument was that joining UPOV would violate the 2001 Protection of Plant Varieties and Farmers' Rights Act and the Indian constitution. The court accepted the petition and asked the government to reply to the petition, which filed its reply on April 2, 2003. On July 7, 2003 the Gene Campaign filed a rejoinder to the governments' reply.