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The Seeds Bill, 2010 – A Critical Appraisal

Harbir Singh and Ramesh Chand

BACKGROUND

It has almost been a decade when discussions on the need for a re-look on regulating the seed sector were initiated. These culminated in the form of a new bill –The Seeds Bill, 2004– which was first introduced in the Rajya Sabha on 9 December 2004. The proposed Bill aimed at: (a) regulating the quality of seeds for sale, import and export, (b) facilitating production and supply of quality seeds, and (c) addressing other matters related with seeds. However, some of the proposed changes like compulsory registration of seeds; procedures for seed certification, testing and quality control; specific standards for seeds sale; and the provisions related to compensation for poor performance of registered seeds were not appreciated by all the stakeholders, particularly the farmers' groups and the civil society organizations. Taking cognizance of the concerns of the stakeholders, the Government of India referred the Seeds Bill, 2004 to the Parliamentary Standing Committee on Agriculture (PSCA)¹. The major amendments suggested by the PSCA were approved by the Union Cabinet in March 2010, and the revised Bill was again placed before the Rajya Sabha on 23 April, 2010. With the amendments proposed by the Union Agriculture Minister, the Seeds Bill, 2010 is presently pending for consideration in the Upper House of the Parliament.

Notwithstanding the changes incorporated in the Bill to address the issues of farmers' traditional rights to seed-use and compensation for the poor performance of seeds, some of the states and civil society organizations have voiced strong concern about certain provisions in the Bill. These concerns mainly relate to: (i) inadequate role of the state governments in regulating seed quality, (ii) absence of the provisions for price and royalty regulation, and (iii) non-cognisance of the linkages between the Seeds Bill and other legislations relating to access and use of plant genetic resources (PGR)². It seems that the proposed legislation has got stuck in the never-ending process of consultations and accommodation of various (often conflicting) concerns of the stakeholders. As a result, the larger issue of ensuring farmers' access to improved agricultural technologies (seed varieties and hybrids) for raising and sustaining agricultural productivity in the country is getting

side-tracked. This brief attempts to put these larger issues in a proper perspective.

RATIONALE

Policy changes in agriculture and technological innovations in seeds have played a major role in shaping the growth of the seed sector in the country. While public sector meets the seed needs of a large section of farmers, particularly for self-pollinated crops, the private seed companies are supplying increasing proportions of hybrid seeds. Though there was no protection of intellectual property (IP) rights till 1990s, liberal seed regulations, particularly the Seed Policy of 1988 and the economy-wide reforms of 1991 in the country, attracted the private sector, including multinational companies, to the seed sector in a big way (Pray *et al.*, 2001). As a result of their R&D initiatives, the private seed industry now supplies most of the hybrid seeds in the country. Even in the self-pollinated crops like paddy, the private sector supplies 60-80 per cent of the commercial seeds (Tripp and Pal, 2001). However, the public sector continues to dominate in seed production and delivery of the high-volume seed crops like groundnut and potato, and there is lesser participation of the private sector in crops which have low seed-multiplication ratio. The moot question is whether public or private sector alone would be able to meet farmers' demand for all types of quality seed? Can we visualize distinct roles of the public and the private sectors in seed R&D, delivery and uptake? How can the proposed Bill improve farmers' access to quality seed? The following sections attempt to explore these issues.

MAIN PROVISIONS OF THE BILL

The Seeds Bill, 2010 seeks to replace the existing legislation on seeds – The Seeds Act, 1966 – which regulates only the notified varieties of crops. The new Bill proposes mandatory registration for seeds of any kind or variety for the purpose of sowing or planting by any person, in such manner as may be prescribed in the rules of implementation. The provisions of the proposed Bill are meant to address major concerns of all the stakeholders in the seed supply chain. Salient provisions and their implications for seed sector in the country are discussed here.

Farmers' Rights

The Bill removes the ambiguity about farmers' traditional rights to use seeds in the same way as is being practised by the farming community since centuries. The Bill recognizes farmers' contribution in conservation and use of plant genetic resources for agriculture. Clause 1 of the Bill clearly states that *'nothing contained in this act shall restrict the right of the farmers to grow, sow, resow, save, use, exchange, share or sell his farm seeds and planting material except when he sells such seed or planting material under a brand name'*.

This provision has been appreciated by several farmer groups and civil society organizations, as it protects farmers' traditional rights, except when they enter into commercial activities as sellers of branded seed. This provision also recognizes efforts of all those who conserve and preserve traditional varieties or add value to such traditional varieties through selection and identification based on useful characteristics. It implies that existing farmers' practices and mechanism³ of seed use and exchange will not be affected (adversely) by the provisions of the Bill. However, this can affect private sector's incentives to invest in seed production and supply of crops having low appropriability of the investment. Therefore, in such cases, the public sector will have to meet the farmers' requirements for quality seed.

Registration and Certification

Registration of any type of seeds for sale has been made mandatory. The duration of registration shall be 10 years for annual and biennial crops, and 12 years for long-duration perennials⁴. Farmers will be exempted from registering the farmers' variety of seeds. The Bill also allows for re-registration of seed for a similar period on the basis of the prescribed information to be furnished by the seed producer. This provision, however, needs further clarification. For example, if the seed does not have more economic value, there is no rationale in allowing its re-registration after 10/12 years, except for the purpose of allowing exclusive rights to the seed producers. Empirical evidences show that in most of the states no more than 30 per cent farmers wait longer than three years to replace the seed varieties (NSSO, 2005).

Though seed certification is optional, any person selling seed of any kind or registered variety may apply to the State Seed Certification Agency (SSCA) to have such seed certified by that agency for the grant of a certificate for the purpose. Further, the organizations owned and controlled by the central or state governments only will carry out the seed certification on the basis of prescribed standards and grant a certificate to the applicant. This provision is meant to check certification of low quality and sub-standard planting material. Though the provision is well intentioned, the present state of government seed testing laboratories in terms of infrastructure and skilled human resources is far from satisfactory. Thus, to meet the

requirement of seed certification in future, there is a need for strengthening of infrastructural facilities in the public sector and skill upgradation of the SSCA staff in the areas of frontier technologies which are being presently used in seed R&D.

Penalties for Infringements

The proposed Bill contains a clause of penalties for contravening its provisions. Any person who sells seed which does not conform to the prescribed standards will be punishable with a fine ranging from ₹5000 to ₹30000. Further, the penalty for furnishing false information relating to seed standards, misbranding the seed, supplying spurious seed or selling non-registered seed, will attract a prison-term which may extend up to six months or fine up to ₹100,000 or both⁵.

It may be recalled here that the main aim of the proposed Bill is to regulate the quality of seed for sale, import and export and to facilitate production and supply of quality seed. In this context, the proposed level of penalties appears to be inadequate to act as deterrent or to keep a check on the fly-by-night operators looking for windfall gains from the lucrative seed business, particularly in the event of seed scarcity. Further, the amount of penalty needs to be linked to the volume of (seed) business. Though monitoring and implementation agencies would be in place to keep a check on seed quality issues, that does not obviate the need for providing harsh and proportionate punishment to those involved in violating the provisions of the Bill.

Compensation to Farmers

The procedure of compensation in the event of seed failure has been one of the most debated issues in the original Seeds Bill, wherein the farmer was supposed to seek compensation, if any, under the Consumer Protection Act, 1986. The past experiences didn't point to any quick and fast redressal of consumer complaints through this mechanism. The latest Bill proposes that in the event of less than expected performance, the farmer can claim compensation from the seed producer, dealer/seller as decided by a Compensation Committee. This procedure is, no doubt, much simpler and more effective for a timely redressal of complaints about seed performance. The proposal of constitution of a Compensation Committee is a welcome step and will shorten the mechanism to deal with under-performance of seed. There is a further need to give teeth to this provision so that genuine cases are disposed off in the shortest possible time. The Compensation Committee should be accessible to the farmers at least at the district level⁶. The effectiveness of the Committee would be judged by the way in which timely and appropriate compensation/relief is provided to those affected by the low yield or crop failure on account of poor quality of seed. If this aspect is left entangled in the web of unduly long legal procedures,

the very aim of providing quality seed to the farmers shall get defeated.

Another way to compensate farmers for the damage due to poor quality seed is to evolve a mechanism of seed insurance so that in the event of crop failure due to poor seed quality, the farmers may get immediate relief equivalent to at-least the average yield level for a given crop in a particular region/area.

THE WAY FORWARD

Though the proposed Bill with the latest amendments addresses most of the concerns of the stakeholders, there are still some grey areas which need a closer examination. It needs to be kept in mind that the focus of the proposed Bill should be on ensuring farmers' access to quality seed at a reasonable price and it should provide incentives to the private sector for investments in agricultural R&D to produce quality seed embodying the latest technological innovations.

Quality Seed

Empirical evidences show that most of the farmers buy fresh seed from the market to get pure seed of popular varieties (Singh *et al.*, 2008). Thus, seed quality is the most important criterion for the farmers while going for fresh/ new seeds. Although the central aim of the proposed Bill is to regulate the quality of seed for sale, import and export and to facilitate production and supply of quality seeds, nowhere the Bill defines what a quality seed is. Though, one can discern that quality seed will have to meet all the prescribed criteria of germination, genetic and physical purity and seed health, it would be more prudent if standards of quality seed are specifically defined in the proposed Bill. For monitoring and implementing the seed quality standards, adequate emphasis should be accorded to the strengthening of institutional capacity and infrastructural facilities with advanced technical know-how about the seed.

Seed Price Regulation

There are lots of apprehensions on how the proposed Bill will ensure adequate supply of quality seed at a reasonable price? At this juncture, it is quite obvious that the new intellectual property (IP) regime will most likely add to the transaction cost for utilization of plant genetic resources by the seed industry. Under such circumstances, consolidation in seed industry through mergers and acquisitions cannot be ruled out. In the absence of adequate competition in the seed sector, a few seed producers might be tempted to raise seed prices for realizing their R&D investments in the shortest possible time. Increased privatization of the seed industry is found associated with enhancement in seed prices, which is likely to continue and the cost for establishing and maintaining plant variety rights will further add to seed cost (Pal *et al.*, 2007).

The moot question, therefore, is whether the proposed Bill should have provisions for regulating seed price? Are there other effective ways for ensuring supply of quality seed at a reasonable price? Before jumping to any conclusion, one should remember that the private sector will invest in seed development and delivery only when it visualizes a favourable institutional and policy environment for reasonable returns on its R&D investment in seed sector. If the public sector alone can meet farmers' demand for quality seed, price regulation would not be a serious concern. There is a need to identify and recognize the distinct roles of the public and the private sectors. Past experiences show that the public sector has an edge over the private sector in terms of seed R&D, particularly for open-pollinated crops, while the private sector has been more proactive in meeting the demand for hybrid seeds. Based on the strengths and weaknesses of public and private sectors, the former should focus more on developing a strong IP portfolio which will be crucial for fostering a successful and much talked about public-private partnership in the seed sector. While there are other institutions like, Competition Commission of India to deal with the situations of monopoly controls and mergers and acquisitions, one of the effective ways to ensure a reasonable seed price would be to create conditions for competition among the seed providers, and allow seed companies to compete with one another and in some cases, even with the public sector. This would help in making seeds available to the farmers at a reasonable price.

Relevance of Other Legislations

IP protection to plant varieties in the country is provided under the 'Protection of Plant Varieties and Farmers' Rights Act (PPVFRA), 2001'. One of the provisions in the PPVFRA deals with compulsory licensing (Section 41). It states that at any time, after the expiry of three years from the date of issue of a certificate of registration of a seed variety, any person interested may make an application to the PPVFRA Authority alleging that the reasonable requirements of the public for seeds or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory license to undertake production, distribution and sale of the seed or other propagating material of that variety. Therefore, it may be useful if registration of seed is linked to varieties which are protected under PPVFRA. In the absence of such a harmony of seed legislation with PPVFRA, there is a room for unscrupulous seed producers/dealers to get any useful seed registered through the route of the Seeds Bill, 2010, without sharing the benefits (as provided under PPVFRA), with those who make efforts in evolving and conserving a particular plant genetic resource.

CONCLUSIONS

Quality seed/planting material plays a vital role in realizing the yield potential of any crop. Therefore, the proposed Bill with its central aim to enhance production and supply of quality seed to meet the future requirement for sustainable agricultural production is a laudable attempt. It is widely accepted that the public sector alone cannot meet all the seed demand of our farmers. The private sector has shown the way for harnessing the benefits of technological innovations in the seed sector, as is evident particularly from the examples of Bt-cotton, maize and pearl millets hybrids. A large number of farmers are benefitting from such seeds supplied by the private sector. The private sector has an edge over the public sector in capturing the market signals and delivering the desired product (seed) in time. However, there have also been instances of fleecing of farmers through supplying of spurious and low-quality seeds and charging of exorbitant prices by some private firms.

In nutshell, the best strategy seems to be to regulate the seed sector, promote competition, and encourage both the public and the private sectors to contribute to the healthy growth of seed sector. Experience shows that the interest of consumers (farmers) and society at large – in the case of products like seed – would be served better if the public and private sectors focus on their respective comparative strengths, and competitive environment exists for operation of the private firms in the seed market. Therefore, the Seeds Bill, 2010 should not put excessive curbs on the private sector, and any tendency to acquire control of the market through monopoly and cartelization may be checked through competition, effective monitoring and strong regulation. There is always scope for revisions and amendments in the legislation for serving the farmers' interests. The unreasonable delay and indecisiveness on these important issues is doing more harm than good. The Seeds Bill, 2010 has tried to incorporate the interests of all the stakeholders, and it should become an Act at the earliest for ensuring farmers' access to quality seed and realizing the yield potential of agricultural technologies.

Notes

¹The Committee chaired by Prof. Ram Gopal Yadav, submitted its report on 28 November 2006, suggesting several amendments in the Seeds Bill, 2004.

²For example, the Protection of Plant Varieties and Farmers' Rights Act (PPVFR) 2001, and the Biological Diversity Act, 2002.

³It consists of farm-saved seed and farmer-to-farmer seed exchange mostly of open-pollinated varieties, and meets more than 70 per cent of the seed demand.

⁴This has been reduced (from 15 and 18 years, respectively) as suggested by the PSCA in its report.

⁵Recently, the Union Cabinet approved additional amendments in the proposed Bill that include raising penalties for the offences like sale of spurious seeds (Source: PTI, New Delhi, 20 October, 2010).

⁶Though the Consumer Courts exist at district level, their performance was far from satisfactory, as reported by the farmers during field surveys.

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Harbir Singh and Ramesh Chand are Senior Scientist and Director, respectively at National Centre for Agricultural Economics and Policy Research, New Delhi. Correspondence email: harbir@ncap.res.in.

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