

## THE SEEDS BILL 2011

### *Seeking to Promote Use of Quality Seeds by Regulating Production, Distribution, Sale, Export and Import*

India's seed industry is presently regulated by the Seeds Act of 1966, its implementing rules 1968, the Seeds Control Order, 1983, and the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR Act). The Seeds Act 1966 contributed and supported India in increasing agricultural yields culminating in green revolution. However, the formal seed market has drastically altered, since the 1960s mainly because of changing seed technologies. In line with the changing global dynamics, the Government of India has been for quite some time working on a re-enactment of this law. A Bill to this effect was introduced in the Rajya Sabha on December 09, 2004. Popularly known as the 'Seeds Bill 2004', it sought to usher in an era of greater accessibility to quality seeds by regulating production distribution and sales of seeds. It would replace the Seeds Act, 1966.

The Seeds Bill 2004, since its introduction, had been shrouded in controversy – it met with severe opposition from various stakeholders, particularly farmers, who recognised it as a threat on their traditional rights over seeds. The draft of the Seeds Bill 2004 has been revised three times, since its first introduction in 2004 to accommodate concerns expressed by farmers' bodies, civil society and also the parliamentarians. The latest version prepared in 2011 is still pending and likely to be presented in the forthcoming session of the Parliament.

#### The Bill at a Glance

##### Highlights

- ◆ To be known as the Seeds Act, 2011, it extends to cover the whole of India, every dealer and every seed producer
- ◆ The Bill seeks to liberalise import and export of seeds and is consistent with India's World Trade Organisation (WTO) commitments
- ◆ Once enacted, it will regulate the quality of seeds in India and would replace the Seeds Act, 1966
- ◆ The Bill requires all varieties of seeds for sale to be registered, and every registered seed is required to meet the minimum prescribed standards
- ◆ The farmers would be allowed to use or sell his farm seeds and planting material. However, farmers are not allowed to sell them under a brand name
- ◆ Seeds sold by the farmers need not conform to the standards (as applicable to registered seeds)
- ◆ Compensation to the farmers, in case a registered seed used by them fails to meet the expected standards, is provided for in the Bill
- ◆ The Bill allows for self-certification by accredited agencies. Further, it allows recognition of certification by foreign seed agencies by the Central Government

##### Lowlights

- ◆ There seems to be inadequate representation of the States in the Central Seed Committee and agriculture is in the State list of the VII Schedule of the Constitution, yet no effective regulatory powers are entrusted with the States for effective implementation of the Act. State governments' role is merely advisory in nature
- ◆ There is lack of clarity whether the Bill allows or restricts genetic engineering technologies – 'genetic use restriction technology' and 'terminator technology'. It is very likely that allowing use of such technologies might restrict the farmers' right to use saved seeds
- ◆ Under the Seeds Bill, registration made shall be valid for a period of ten years in case of annual and biennial crops, and twelve years for long duration perennials crops. This is in contrast to the provisions, under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR Act), which provides for the validity of registration for nine years in case of trees and vines and six years in case of other crops. This could be renewed subject to the protection period not exceeding 18 years in case of trees and vines and 15 years in case of other crops. These need to be made consistent
- ◆ The Bill advocates for constitution of a Compensation Committee for addressing issues relating to farmers compensation. However, the Bill does not indicate the timeframe for redressal of farmers' grievances

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## Introduction

Seed, also known as *Bija* in Sanskrit, is the source of life and the first link in the food chain. It is, therefore, critical that good quality seeds are made available and accessible to the farmers. Seed production, marketing and distribution of seeds in India are primarily regulated by the Seeds Act of 1966, its implementing rules 1968, the Seeds Control Order, 1983.

The Seeds Act 1966 in combination with rules (1968) and the Seeds Control Order (1983) supported India in increasing agricultural yields culminating in the green revolution, and making India self-sufficient in

grain production. However, the formal seed market has drastically changed, over the three decades. This is primarily because of changing seed technologies, and also due to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), under the auspices of WTO, to which India is a signatory. Article 27.3(b) of the TRIPs Agreement states that plant varieties have to be eligible for protection either through patent protection or a system created specifically for the purpose (*sui generis*), or a combination of the two. As a signatory to the TRIPs agreement, to address issues related

to intellectual property rights (IPRs) in seeds, and also to protect the interests of the farming community, the Government of India passed the PPVFR Act (2001).

It might be recalled that when the Seeds Bill 2004 was first prepared, the focus was to gear Indian seed industry towards better availability and accessibility to quality seeds. The Bill seemingly has four basic components:

- allowing the Government to control and provide direction to seed industry in India to meet the growing demand for food and ensuring livelihood security;

**Box 1: Seeds Bill 2011 and Seeds Act 1966 – A Comparison**

Particular	Seeds Bill, 2011	Seeds Act, 1966
<b>Definitions</b>	'Agriculture' includes horticulture, forestry, and cultivation of medicinal and aromatic plants	'Agriculture' includes horticulture
	Definitions of 'Seed' and 'Variety' have been changed to make them more specific and technical	
	Defines the terms 'Dealer', 'Essentially Derived Variety', 'Extant Variety', 'Farmer', 'Horticulture Nursery', 'Misbranded', 'Spurious Seed', and 'Transgenic Variety'	Does not define these terms
<b>Registration</b>	All seeds for sale must be registered	Only the varieties notified by the Government need to be registered
<b>Seed Committee</b>	Constitutes Central and State Seed Committees. A Registration Sub-committee would register seeds of all varieties	Constitutes CSC. The Central Government, after consulting with the CSC, may notify a seed in order to regulate the quality of seed
<b>Transgenic Varieties</b>	Includes special provisions for registration of transgenic varieties of seeds	No provision for transgenic varieties of seeds.
<b>Compensation to Farmers</b>	Provides for compensation to the farmers through specially constituted 'Compensation Committee'	No specific provision for compensation mentioned in the Act
<b>Export and Import</b>	All seed imports are regulated by the Plant Quarantine (Regulation of Import into India) Order, 2003 or any corresponding order of the Destructive Insects and Pests Act, 1914; shall conform to the minimum limits of germination etc. Exports can be restricted if they adversely affect the food security of the country	A person is restricted from exporting or importing notified variety of seeds unless it conforms to minimum limits of germination etc
<b>Penalties</b>	Any person who contravenes any provisions of the Act or imports, sells or stocks seeds deemed to be misbranded or not registered, can be punishable by a fine of ₹5,000 to ₹30,000. The penalty for giving false information might lead to prison term up to six months and/or a fine up to ₹100,000	Any person, who contravenes any provisions of the Act, prevents a Seed Inspector from taking samples etc. shall be punished for the first offence with a fine, which may extend to ₹500. If the offence is repeated he may be imprisoned for a maximum term of six-months and/or fined up to ₹1,000

- facilitating seed producers, including private sector, to produce better quality seeds;
- facilitating seed sellers to market seeds efficiently leading to creation of an efficient seed supply chain; and
- helping the farmers to avail and access better quality seeds at right time and affordable prices.

Presently, access to good quality seeds in India is marred by inadequate production and inefficient supply chain. Farmers find it quite difficult to access good quality seeds at the right time and at affordable prices. Often, farmers get spurious quality seeds, and in many cases, prices charged by the seed producers/dealers are found to be unaffordable. Such a situation leads to an increased use of low quality farmers' stored seeds. This is indicative of a huge untapped potential that exists in the Indian seed industry.

The potential could be realised through higher compliance with IPRs, greater technological innovation, and at the same time, protecting the interests of the farming community. In other words, a need is felt for holistic seed law, which comprehensively addresses the challenges relating to seed production, marketing and distribution.

This briefing contains examination of the Bill in the following two sections, and makes recommendations for enhancing it:

- Background and context
- Specific Issues

## Background and Context

Popularly known as the 'Seeds Bill 2004', it seeks to usher in an era of greater accessibility to quality seeds by regulating production, distribution and sale of seeds. It will replace the Seeds Act, 1966. In this section, a comparison of the Seeds Act 1966 and the Seeds Bill 2004, and the evolution of the Seeds Bill ever since its introduction are being presented.

## Comparison of Seeds Bill 2011 and The Seeds Act 1966

The Seeds Bill 2004 and its evolution to its present form should be considered in the light of the Seeds Act 1966, and major changes proposed. There are several changes proposed. Some major ones include registration; transgenic varieties; compensation to farmers; export and import; and penalties. These seem to be in line with changing global and domestic dynamics, where the role of private sector has undergone a significant change. The broad proposed changes have been mentioned in (Box 1) on page 2, which sums up the changes proposed in the Bill in comparison to the Seeds Act 1966. The Bill realises the changing seed dynamics in India and at the global level. It proposes comprehensive overhaul proposed starting from broadening of definition of agriculture to compensation to farmers and further to the penalties on producers/suppliers of spurious quality seeds.

### Evolution of Seeds Bill 2004

The Seeds Bill 2004, since its introduction, has been shrouded in controversy – it met with severe opposition from various stakeholders, particularly farmers, who recognised it as a threat on their traditional rights over seeds.

Accordingly, the Seeds Bill 2004, incorporating some radical changes, was prepared and introduced in the Rajya Sabha on December 09, 2004.

Ever since the Seeds Bill 2004 was introduced, it has met with severe opposition, especially from the farmers who recognised it as an assault on their traditional rights over seeds. As a result, it was referred to a Parliamentary Standing Committee, which did recommend several amendments keeping in view the concerns of the farmers. In 2008, a revised edition of the Bill was introduced in the Parliament, which accepted many of these recommendations. However, that Bill

lapsed with the 14<sup>th</sup> Lok Sabha. Then again in 2010, the Cabinet approved a new edition of the Bill, and the Agriculture Minister moved several amendments in November 2010 and in February 2011. The Bill, incorporating the latest amendments, is presently called the Seeds Bill 2011, and is expected to be introduced in the forthcoming Winter Session of the Indian Parliament.

Box 2 on page 4 summarises major suggestions and recommendations that emerged and those which were incorporated in the revised Seeds Bill 2004 (also termed as the Seeds Bill II).

The revised Bill continues to remain controversial. Some of the specific issues that remain to be addressed are presented below:

## Specific Issues

**Farmers' representation in the Central Seed Committee:** Chapter II, Section 4(4) (iv) provides for the representation of the farmers in the CSC – one each from the geographical zones of the country as specified in the Schedule on rotation basis. It would be more useful, if better representation of farmers is provided for in the Bill. Since seed dynamics is different in each of the states, one representative from each state should be included.

**Penalties on selling spurious seeds:** Penalties for selling spurious seeds under the Bill should be made more stringent to deter producers and retailers from selling spurious quality of seeds. Presently, the penalties seem to be quite meagre and might not cause any fear in the mind of the seed producers and retailers.

Further, provisions like blacklisting of companies selling spurious and sub-standard seeds should also be inserted. The penalty should also be raised to an imprisonment for period of a 5 years and a fine of up to ₹5 lakh.

## Box 2: Comparison of Seeds Bill, 2004 and the Amendments to Seeds Bill, 2004

Seeds Bill, 2004	Amendments to Seeds Bill, 2004
<b>Exemption of farmers</b>	
<ol style="list-style-type: none"> <li>1. The Bill exempted the farmers from the requirement of compulsory registration. However, it stipulated that a farmer cannot sell any seed under a brand name and any seed sold by the farmer has to conform to the prescribed minimum limits of germination, physical purity and genetic purity</li> <li>2. Defines a farmer as 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 who engages in the procurement and sale of seeds on a commercial basis</li> </ol>	<ol style="list-style-type: none"> <li>1. The farmer can sow, exchange or sell his farm seeds and planting material without having to conform to the prescribed minimum limits of germination, physical purity and genetic purity (as required by registered seeds). However, farmers cannot sell any seed under a brand name</li> <li>2. Expands the definition of a farmer by including any person who conserves jointly with any person any traditional varieties or adds value to such traditional varieties. Excludes farmers from the definition of a producer</li> </ol>
<b>Transgenic varieties</b>	
<ol style="list-style-type: none"> <li>1. No transgenic variety of seed would be registered unless the applicant has obtained clearance under the provisions of the Environment (Protection) Act, 1986 (EPA).</li> <li>2. Allows transgenic variety of seeds to be registered provisionally for two years before clearance under EPA has been obtained</li> </ol>	<ol style="list-style-type: none"> <li>1. In addition to the requirement under the Bill, the registered seeds have to conform to specified standards for transgenic events and corresponding traits. The label of a seed container to indicate the above information</li> <li>2. The provision for provisional registration has been eliminated</li> </ol>
<b>Registration of seeds</b>	
Any type of seed for sale has to be registered with the Registration Sub-committee. The registration is valid for 15 years for annual/ biennial crops and 18 years for perennial crops	Amends the registration time limit. The registration is valid for 10 years for annual/ biennial crops and 12 years for long duration perennial crops. However, the provision for re-registration exists
<b>Central Seeds Committee</b>	
<ol style="list-style-type: none"> <li>1. Central Seeds Committee may specify minimum standard of germination, physical purity, and genetic purity applicable to registered seeds</li> <li>2. Composition of Committee includes a Chairperson and 7 ex-officio members and other members nominated by the Central Government</li> </ol>	<ol style="list-style-type: none"> <li>1. Amends the clause by stating that the central government might notify minimum standard on recommendation of the Central Seeds Committee</li> <li>2. Added 3 ex-officio members: Director, National Centre for Aromatic and Medicinal Plants, Chairperson, PPVFRA Act (2001) and Chairperson, National Bio-diversity Authority</li> </ol>
<b>Compensation</b>	
The Bill provides that in case the seed fails to keep its quality as promised by the seed producers, distributors and vendors of all registered varieties, the farmer can claim compensation from the dealer, distributor or vendor under the Consumer Protection Act, 1986	Amends the provision by setting up a Compensation Committee where farmers can claim compensation if seeds do not meet the expected standards
<b>Seed Certification Agencies</b>	
Any seller of seeds can get the seed certified by the State Seed Certification Agency or any other accredited certification agency; self-certification may also be permitted to accredited agencies. The accreditation shall be done by the CSC in consultation with state government and state seed committee	Amends the provision by allowing only organisations owned or controlled by the Central or state government to be accredited. The accreditation can be done only by the state government with prior approval of the Central Government

### Power of Seed Inspector

The seed inspector does not require a warrant to take samples of any variety from a seed seller; send the samples for analysis to the seed analyst; enter and search any place where he has reason to believe that an offence has been committed; and break open any container of seeds or any door where any such seed may be kept for sale

The provision has been amended by adding that the prior written authorisation of the District Magistrate is required by the Seed Inspector if he wants to enter and search a place

### Seed Producers and Seed Processing Units

Every seed producing and processing unit has to furnish periodic returns on the quantity of seeds produced or processed by the same to the Seed Certification Agency

Added that this information has to be furnished to the state governments also

Source: PRS Legislative Brief, The Seeds Bill 2004

**Disposal of complaints:** Section 20(1) provides for constitution of a Compensation Committee to resolve issues relating to farmers' compensation in case of low yield of seeds. It would be really helpful, if *Panchayat raj* institutions are included in the committee and given due role in determining the loss of crops and production and for fixing the compensation based on the value of the expected output and cost of the cultivation.

Further, the article does not specify time-bound disposal of complaints, especially when the complainant is not satisfied with the decision of the Compensation Committee. Time-bound disposal of farmers' complaints is very important and, therefore, should be clearly mentioned in the Bill.

**Regulation of seed price:** There is an urgent need for protecting, the farmers from arbitrary charging of seed price by the seed producers. This calls for regulating the seed price and providing the seeds at reasonable prices to the farmers. Inclusion of following points could yield beneficial results for the farmers<sup>2</sup>:

- a) empowering the State Committee to collect the data and review the prices;

- b) setting up a seed price control mechanism and fixing of maximum retail price; and
- c) entrusting state governments with greater power in implementation of the proposed Seeds Act. Further, the role of the state governments should be clearly specified, especially in relation with registration and dissemination of seeds.

**Import/export of seeds:** Provision of import/export of seeds in the Seeds Bill is laudable, mainly because of growing complexities in seed technology. However, in case of import, it is required that all seed imports should undergo mandatory seed testing process including multi-locational trials to ensure its adaptability to the Indian conditions. It will be useful to restrict self-testing or certificate from foreign seed certification agencies, unless there is a scientific evidence of similarity in agro-climatic conditions.

Further, a liability clause should be inserted making the seed exporter responsible for any pest outbreak.

**Notification for seed standards:** In case of seed standards, the Bill acquires provisions for notification

by the Central Government on the recommendation of the CSC. Since there is already a set of standards for seeds, relating to minimum germination, physical purity, and genetic purity applicable to registered seeds, the Bill should make it clear under what situation, the CSC might recommend and the Central Government might notify fresh set of standards.

**Promotion of innovation in commercial and farmers' sustained seeds:** Seed technology is changing quite fast in the recent periods. New challenges, such as climate change and its impact on food security make such changes an imperative. There is a need for the state to promote innovation in both the commercial seed system and also in the farmer seed system. Attending to this could benefit the poorest and the most marginalised farmers in developing countries.

**Need for consistency with PPVFR Act 2001:** The Seeds Bill provides that a registration made shall be valid for a period of 10 years in case of annual and biennial crops, and 12 years for long duration perennials crops.

This is in contrast to provisions, under the PPVFR Act (2001), which provides for the validity of registration for nine years in case of trees and vines and six years in case of other crops. This provision could be renewed subject to the protection period not exceeding 18 years in case of trees and vines and 15 years in case of other crops. These provisions need to be made consistent.

There is another inconsistency between the PPVFR Act (2001) and the Seeds Bill. The registration of seed is mandatory as per the Seeds Bill but is not linked with the varieties

protected as per PPVFR Act (2001). This will enable the seed producer not to disclose the details of the seed and get it registered under the Seeds Act thereby bypass the benefit sharing with those who have actually evolved/conserved the variety. This needs to be corrected and made consistent.

### Conclusion

The Seeds Act 1966 seems to have become redundant especially in the light of emerging global dynamics – continuous innovations in the seed sector, combined with entry of private sector and introduction of new

varieties of seeds. The government's initiative towards introduction of the revised Seeds Bill is laudable. However, to enable the Bill to fulfill its desired objectives, it is pertinent that concerns of each of the stakeholders, especially farmers and seed producers, are taken in consideration in enactment of this Bill.

The proposed Bill should be prepared and enacted in such a manner that the farmers of the country are able to access best quality seeds available in both domestic and global market.

### Action Points

- Agriculture being placed in the State list of the VII Schedule of the Constitution, state role needs to be made more prominent in implementation of the Act. Presently, the Bill provides for only advisory role in the Central Seed Committee to the state governments.
- The farmers are often charged exorbitant prices by the seed producers and retailers of seeds. There is a need for protecting farmers' interest, especially in the light of increasing participation from the private sector. This calls for the introduction of price regulatory mechanism.
- To protect the interests of the farmers from crop failures arising from low quality seeds and unethical marketing and sales by the seed producers and retailers, provision for farmers' compensation could be linked to Seed Crop Insurance – value of harvest – compensation to the farmers should not be arbitrarily provided; it needs to be based on the expected yield of the seed as mentioned on the seed package.
- Considering that farmers are the largest source of seeds, supplying nearly 60 percent of the total seed requirements, there is a need for exempting farmers from search and seizure provisions granted to seed inspectors.

### Endnotes

1. World Trade Organisation, TRIPs: Reviews, Article 27.3(B) and Related Issues, [http://www.wto.org/english/tratop\\_e/trips\\_e/art27\\_3b\\_background\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/art27_3b_background_e.htm)
2. Seeds Bill 2010. An Analytical View

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*Comments received from Dr R K Singh, Nand Education Foundation for Rural Development (NEFORD), Lucknow; Dr. Debdutt Dehura of Orissa University of Agriculture & Technology (OUAT), Bhubaneswar and Simi T Balakrishnan, Assistant Policy Analyst of CUTS CITEE, have been suitably incorporated.*

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