

Indian Plant Varieties law in comparison to other countries PVP law

A Presentation by

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Introduction

- Indian **PPV&FR Act, 2001** is a moderate version compared to the PVP Act being forced upon other signatories of TRIPS/WTO and are implementing the **Art 27.3.(b)** on their own way or are using a pre-existing PVP model.
- The **PPV&FR Act, 2001** has a separate chapter on farmers rights and protects farmers rights in an unprecedented manner compared to many such PVP laws. It has provision in **Chapter VI, Section 39 (1)** on Farmers rights, which says “**Notwithstanding anything contained in the Act**”.
 - (iv) a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act **in the same manner as he was entitled before the coming into the force of this Act.**
 - However it has only one restriction, i.e. farmer shall not be entitled to sell branded seed of a variety protected under this Act.
- Section 39 (1) makes farmers rights paramount, un-compromisable and more stronger than the rights of breeders enshrined in this Act.
- I would also discuss how PVP laws are being made more harsh for farmers.

Corporations strategies to control & monopolize seeds

- World over farmer's seeds and **seed systems are under attack**. Seed corporations are pushing for aggressive laws and seed regulations that **criminalise farmers for sowing, keeping, exchanging, and taking care of their seeds**.
- Seed corporations **wants farmers to face jail term or get harshly fined for doing what they have been doing over centuries**.
- Alarmingly, the **developing countries** are showing little or no will to resist, these harsher seed laws and they are **happily cooperating with these attacks on farmers rights**.
- Seed corporations are **using multiple strategies to control and monopolise seeds**. The fundamental one is **putting pressure on countries to privatise/protect seeds** through legislation that provides what is called plant breeders' rights or plant variety protection.
- Other regulations with similar aims like **Patent Laws for plants; Seed Certification laws; Seed Marketing regulations and Food Safety rules**.
- Purpose of all these are same : **handing over exclusive rights to corporations to control the seed supply**.

Regional & Bilaterals Trade deal to monopolize seeds

- Another strategy being used by the **seed corporations** is **push for seed privatisation & monopolization through bilateral or regional trade agreements**. To maximise control and profits of seeds corporations, farmers must be prevented from multiplying and saving seeds.
- In most of the trade agreements being negotiated or signed by the USA, Japan or Europe like US-Morocco Free Trade Agreement or the European Union – Egypt Association Agreement, it demands **negotiating countries to join – as a minimum – the UPOV 1991**, which gives corporate plant breeders IPRs over plant varieties. The **Trans-Pacific Partnership agreement (TPP)** is one step ahead, it demands not only for UPOV 91 type of legislation, but also for the **patenting of plants and animals**.
- Japan is increasingly using free trade agreements (FTAs) to tighten corporate control over seeds. Japan puts pressure on its trading partners to **accept patents on life and to toughen up laws that enable corporations to claim ownership over seeds** and thus force farmers to pay royalties. In the FTAs Japan has signed with Malaysia (2005), Philippines (2006), Indonesia (2007), Thailand (2007), Vietnam (2008), and Chile (2007), IPRs on seeds are among the issues that made it to the negotiating table.

Regional & Bilaterals Trade deal to monopolize seeds

- In the Japan-Philippines Economic Partnership Agreement, which was the Philippines' first ever FTA, Chapter 10 on IPRs has a **provision mandating Manila to provide some kind of system of plant variety rights and extend it to as many species as possible keeping in view the concerns of Japan.**
- In some FTAs, it is beyond UPOV 1991, e.g. the US-Colombia FTA, Resolution 9.70, **criminalized peasant seed saving, selecting and exchanging, giving the state the right to destroy non-compliant seeds.** The resolution gave preferential market access to U.S. and European seed companies, by requiring farmers to use certain industrial seeds to qualify for government credit and support programs. In 2011, the Colombian government confiscated and destroyed over 70 tons of peasant rice seed.

UPOV '91 restricts farmers rights & prohibits saving & exchanging seeds

- The UPOV Convention was first drafted in 1961 and has been revised three times (in 1972, 1978 and 1991), **each time to strengthen the rights of corporate breeders and re-strict what others (esp. farmers) can do with the seeds.**
- The 1991 revision was particularly controversial because it **eliminated the right of farmers to save privatised seeds and also limited what other plant breeders can do with that seed.**
- Under UPOV 91, if farmers infringe the regulation or are suspected of infringement, **they can have their houses searched without warrant, their crops, harvests and processed products seized and destroyed, and they could be sent to jail for years.**
- UPOV 91 also **makes it much easier for seed companies to privatise farmers' own farm-produced seeds and to ban the use of local varieties.**

UPOV '91 based PVP Laws to restrict farmers rights

- The PVP laws drafted in line with the UPOV 1991 version grant companies or institutions property rights over new plant varieties of any plant species (wild, cultivated, medicinal, etc.), and increasingly over fungi, bacteria and algae as well.
 - *Plant includes all fungi and algae. **Plant Varieties Protection Act 2004, Singapore***
- The above paragraphs indicate ONLY the company/breeder/institute that is granted property over a variety can produce, reproduce, sell, export or import that variety. If anyone else wants to do that, it requires a permit from the breeder/company and to fulfil the conditions that the breeder/company determines, such as **paying a fee and/or royalty** for keeping seeds for continued use in later seasons.
 - *Article 15. Acts in respect of propagating material of a protected variety for the production or multiplication, conditioning for the purpose of propagation, offering for sale, selling or other marketing, exporting, importing and stocking for any the purposes shall require the authorization of the breeder... The breeder may make this authorization subject to conditions and limitations. **Cambodian Law on Seed Management and Plant Breeder's Rights (7 January 2009)***

UPOV '91 based PVP Laws to restrict farmers rights

- Chapter 2 (**Creator/ breeder of a variety**), Section 6: The owner of the plant patent may, at his discretion, make any such authorization subject to conditions and limitations. **Law on Patents for Plant Varieties of April 13, 1995 (Latest Edition [Amendment] from June 14, 2004), Belarus**
- **What this means for farmers:**
 - a) S/he can legally get that seed only if they buy it from a store that has permission to sell it from the company/breeder/ institute that owns it.
 - b) Protected/ privatised seeds cannot be exchanged in any manner among peasants, not even as a gift.
 - c) Freedom to save seed for next season is restricted or banned.
- In some countries PVP law, farmer can re-produce and save seeds of protected variety, but only for use on their own farm. This is often restricted to certain crops and farmers are often restricted to saving only the same amount as they originally bought.
 - *Article 12 : The protection conferred by the plant breeder's right places no limitation on the right of farmers to use the variety freely for the purposes of planting their own field, ...**Law no. 010-2006/An Regulating Plant Seeds in Burkina Faso.***

UPOV '91 based PVP Laws to restrict farmers rights

- ARTICLE 23 - Exception to the breeder's right for farmers: *Those who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, store and sow on their own holdings harvested material which they have obtained by planting, on their own holdings, a protected variety or a variety covered by paragraph (c) of Article 18 of this Law shall not infringe the breeder's right. Fruit bearing, ornamental and forest species shall be excluded from this provision where they are planted for commercial ends. **LAW NO. 8631 ON THE PROTECTION OF NEW VARIETIES OF PLANTS, AS AMENDED BY LAW NO. 8686; Costa Rica***
- In other countries, farmers can reproduce and keep a protected seed for the next season if they use it in their own farm, and only if they pay a royalty to the Breeder/company that owns it.
 - Article 2: (1) Plant breeder's right shall not be violated in cases where harvested material of the protected variety for certain plant species, which the farmer obtained by planting on his own holding, is used for propagating purposes on his own agricultural holding.
 - (2) A farmer who realises the possibility referred to in paragraph 1 of this Article shall pay an equitable remuneration to the holder of plant breeder's right, which is lower than the licence paid by the seed producer. **Act on Amendments to the Plant Variety Protection Act of October 21, 2012, Croatia**

UPOV '91 based PVP Laws to restrict farmers rights

- **Croatian PVP Act also says in Article 2 (3)** A farmer who realises the possibility referred to in paragraph 1 of this Article shall, on request by the holder of the plant breeder's right, submit information on the sown/planted areas.
- In a growing number of countries, **no exceptions are granted to farmers, and hence reproducing a protected seed and keeping it for the next season is outrightly banned.**
 - *Article 23: The breeder's rights shall not extend to: acts done privately for experimental purposes without being of a commercial nature; (...) operations carried out as part of teaching or scientific research for the purpose of the creation of new varieties. **Tunisia Law No. 99-42 of May 10, 1999, on Seeds, Seedlings and New Plant Varieties.***
 - *Clause 39 (Scope of plant variety right)- Clauses 37 (1) (1-7) of this Act (on Basic rights of holder of plant variety right) apply also to the production of seeds or propagating material of specific species of a protected variety for the purpose of repeated reproduction (multiplication) for one's own use. **Estonia Plant Variety Act, 1998 (as amended by the Act of 19 January 2000)***

UPOV '91 based PVP Laws to restrict farmers rights

- Even when farmers and peasants are allowed to reproduce and keep protected seeds for the next season (with or without a royalty payment), they face an additional burden: they must tell government authorities and sometimes seed companies where they will sow the seed they kept and how much seed they will use, and they must accept inspections by public or private agents.
 - Section 6 (4): *A farmer is in obligation to give, upon request, the authority and the plant breeder's right holder the necessary information for establishing the payment obligation. **Plant Breeder's Right Act (No. 1279/2009), Finland***
 - Chapter IV, (Scope of Plant Variety Rights) Article 9 (13) *Growers and seed processors are obliged, upon request, to provide to the holder, information in writing about their name, surname, permanent residence address and identification number (...)* (15) *Growers are obliged, upon request, to provide to the holder, information in writing about the scope of use of farm saved seed. **Act No. 408 of 25 October 2000, on the Protection of Plant Variety Rights and the amendment to Act No. 92/1996 Coll., on Plant Varieties, Seed and Planting Material of Cultivated Plants, as amended (Act on the Protection of Plant Variety Rights) Czech Republic***

UPOV '91 promotes Biopiracy of farmers' varieties

- UPOV 91 and the patent laws allow the privatisation of farmers' and peasants' seeds through two mechanisms:
- a. Corporate breeders/institutes can take seeds from farmers' fields, reproduce them, do some selection to homogenize them, and then protect/privatise them as a variety they have "discovered".
 - *Article 3 (Definition) "Breeder" means a physical or legal person, or any employee who has bred, discovered and developed a new plant variety. **The Law No. 8880 Dated April 15, 2002, of The Republic of Albania on Plant Breeder's Right, Albania***
- b. To make matters worse, a second provision of UPOV 91 allows breeders to extend rights over a specific variety to any other varieties that are similar to the one they have protected/privatised.
 - *Chapter 2, Article 37. — The rights granted ...cover: a) the protected plant variety (...) b) any variety that does not differ significantly from the protected variety;... **Law of Algeria n° 05-03 of 27 Dhou El Hidja 1425 or 6 February 2005 relative to seeds, plants and the protection of plant varieties, Algeria***
- Using these two provisions, a seed company can take farmers' seeds from the field, privatise them, and then claim property over all similar varieties.

UPOV '91 promotes Biopiracy of Farmers varieties

- Property rights can't be granted to variety which is not "new" and "distinct". However UPOV '91 based PVP laws grants property rights to a variety which has not been "sold by or with the consent of the breeder". So if the company/breeder/institute claiming rights over a seed variety has not previously sold this seed – even if the variety has been circulating in farmers' markets for years – it is still considered "new" and can be protected/privatised.
 - *Article 7: A variety shall be deemed to be new if... it has not been sold or otherwise marketed, by or with the consent of the breeder... **Law on seed management & plant breeder's rights (7 Jan 2009) Cambodia***
 - *Article 4.2(a): A plant variety or animal breed shall be deemed to be new if, ..the seeds or breeding material of the given selection achievement has not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor in title, for purposes of exploitation of the selection achievement **Law on the Protection of Selection Achievements, Russian Federation***
 - *Article 2: A variety shall be considered to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application. **Law on Patents for Plant Varieties of April 13, 1995 . (Latest Edition [Amendment] from June 14, 2004), Belarus***

Certification & Registration to criminalize farmers seeds

- UPOV '91 has also been applied through certification and registration laws which criminalize non-commercial seeds.
- UPOV '91 also push toward seed 'uniformity' through registration and certification requirements, as opposed to promoting seed diversity.
- Some of the Seeds Act ban the marketing of seeds that are not certified or deemed homogeneous enough, which is in fact a way of banning farmers' or peasants' seeds, as they often do not meet such requirements.
 - *Article 7. The following cases will be considered as violations and infringements of the Act and the violators will be treated in accordance with the prevailing laws and regulations (...) v) Production and propagation of seeds and seedlings to be supplied to the market without obtaining of the certificate from the Institute. **Act of Plant Varieties Registration, Control and Certification of Seeds and Seedlings (August 2003), Islamic Republic of Iran***
 - *Article 8: A variety may be recognized [and included in the variety list] if (...) (b) it is sufficiently homogeneous having regard to the particular features of the reproduction or vegetative propagation thereof; **Seed Act (Act No.9 of 1996), Malawi***

- UPOV style Seeds laws also **ban the marketing, gift or exchange of varieties that are not registered.** A variety can be registered only after fulfilling a set of requirements, such as having a detailed and cumbersome but useless description.
 - *Article 12: An official list of varieties shall be established to register varieties that can be marketed in the country and in the region following the regional variety release system. The landraces and local varieties will also be registered with special provisions. **Model Seed Act For Southern Africa Countries. Southern African Seed Systems Development Initiative (2009). USAID/RCSA***
 - *Article 17. — only varieties that have been released and registered in that title on the official catalogue of varieties, under the terms and conditions laid down in this Law, are allowed to be produced, multiplied, imported, exported, distributed and marketed. **Law no. 05-03 of 27 Dhu al-Hijjah 1425 corresponding to 6 February 2005 in respect of seeds, plants, and plant breeders' rights, Algeria***
 - *Article 9. Only those seed and seedlings of plant varieties entered in the official catalogue in one of the categories referred to in Article 3 of this Law may be marketed. **Law No. 99-42 of May 10, 1999, on Seeds, Seedlings and New Plant Varieties, Tunisia***

- *Article 5: Only varieties that have been approved for release and notified and included in the variety list may be sold.(...) “sell” includes to exchange or barter (Art. 2) **Seed Act (Act N°9 of 1996), Malawi***
- *Section 81 (1): In the case of agricultural species, only propagating material of registered varieties shall be put on the market, further commercialised and exported. **Seeds and Planting Material Act. Consolidated Text of the Act of October 6, 1966, as Last Amended by the Act of January 28, 1999, The Netherlands***

Bans Unregistered Seed producers

- UPOV style seed laws **ban farmers and peasants from producing or exchanging seeds unless they are registered seed producers.** To become a registered seed producer, a farmer must get permission from the government to produce seeds, after informing the authorities exactly where he/she will produce seeds and fulfilling a set of requirements including having costly infrastructure and hired technical staff.
 - *Article 16 : Any physical or legal person may freely produce or multiply seeds if he is registered with the competent bodies (...) The conditions of registration shall be determined by a decision of the ministers responsible for agriculture and forests. **Law no. 010-2006/An Regulating Plant Seeds in Burkina Faso.***
 - *A person desiring to practice seed business shall be equipped with facilities prescribed by a Presidential Decree and register his business with the Mayor or Provincial Governor. (2) Any person desiring to practice seed business in accordance with Paragraph (1) shall have one (1) or more seed managers; **Seed Industry Act, Republic of Korea.***

No Production Outside Registered fields; Seeds as Gifts

- UPOV style laws ban the production of seeds outside registered fields. Those that produce seeds have to tell government authorities exactly where they will produce them,

- *[Farmers must] register their fields....indicating the plant material to be sown, number of hectares to be sown, placement and area of the farm, sowing date, seed category....***Resolution 970, Colombia**

- UPOV style laws also ban the exchange of seeds between farmers and/or peasants, even if they exchange their own seeds. This is done with the excuse that exchanging seed is a way of selling, and therefore falls within the scope of marketing and seed privatization laws

- *sell includes letting on hire and exchanging by way of barter.* **Plant Breeder's Rights Act 1994, Australia**
- *The word "sale" includes "gift"* **Seed Act (Act N°9 of 1996), Malawi**
- *"sell" means ... Convey or deliver in pursuance of the sale, exchange or barter... Article 1: Protocol for the Protection of New Varieties of Plants (Plant Breeders' Rights) in the Southern African Development Community Region (draft)*

- Together, these regulations can make it increasingly difficult or outright illegal for farmers and peasants to use their own seeds. They may find themselves forced to use privatized commercial seeds.

Seed saving & exchange a Crime, punished by fine & Jail

- UPOV 91 require member countries to put in place a set of sanctions for any possible infringement. Where UPOV 91 laws and the like are already in place, punishment for infringement are getting harsher.
- Fines are imposed for a long list of actions that will be treated as offences, from reproducing a privatized seed and keeping it for the next season, to keeping your own seed unlabelled or unpackaged. The severity of the fines changes from country to country, but in general terms they are significant, **they double in case of a second offence**, and the person fined can go to jail if the fine is not paid. In a growing number of countries, the punishment includes jail and / or a fine. Jail terms can range from months to ten years,
 - *Anyone who produces, multiplies, imports, fraudulently exports, distributes, or markets seeds or plants not registered or listed in the official catalogue is punishable by a prison term of two (2) months to six (6) months and to a fine of one million to one million five hundred thousand dinars [USD \$10000–15000 (Rs. 7 lakh to 10 lakh)]. The seeds and/or plants concerned by the offence shall be destroyed. The penalty is doubled in the case of a repeat offence. **Law no. 05-03 of 27 Dhu al-Hijjah 1425 corresponding to 6 February 2005 in respect of seeds, plants, and plant breeders' rights, Algeria***

- *Article 48 (1) Any person who wilfully offers for sale or markets propagating material of a variety protected in Barbados in contravention of this Act, is guilty of an offence, and liable on summary conviction to a fine of \$20000 [10000 USD], or imprisonment for 3 years, or to both. **Protection of New Plant Varieties Act, 2001—17, Barbados.***
- *Article 72: Any individual who knowingly commits an act which constitutes an infringement of plant breeder's right, ... shall be guilty of an offense punishable by a fine of between 5 million Riels and 20 million Riels [1250 – 5000 USD], or by a period of imprisonment of one to five years, or by both a fine and a period of imprisonment. Re-offenders shall have their previous sentences doubled. **Law on Seed Management and Plant Breeder's Right, Cambodia***
- *Article 67: Any person who has infringed a breeder's right or an exclusive exploitation right shall be punished by imprisonment with work for not more than ten years or by a fine of not more than 10,000,000 yen, or combination thereof. **The Plant Variety Protection and Seed Act (Act No. 83 of May 29, 1998) as amended by Act No. 49/2007, Japan***

- **If a protected seed is used without the permission of the owner** (if he or she got the seed from a neighbour, or bought seed one year and then kept part of the harvest to use the next season), **their crop can be seized and destroyed, as well as their harvest and the products obtained from their harvest.** This kind of sanction can be **imposed even before the farmer accused is actually declared guilty**, as was the case in Colombia, where tons of farmers' seeds have been confiscated and destroyed based on suspicion of infringement.
 - *Article 33 (2) The holder of a breeder's right or the holder of an exclusive exploitation right, ...may demand the destruction of the propagating material, the harvested material or the processed products which is a component of the act of infringement, or the objects used in the commission of the act of infringement, or other measures necessary for the prevention of such infringement. **The Plant Variety Protection And Seed Act (Act No. 83 of May 29, 1998) as amended by Act No. 49/2007, Japan***
- Tools & machinery used to manage the crops/ seeds can be seized.
 - *Article 48 (1) In the case of illegal reproduction of the variety, in addition to the fine and prison sentence, the propagating materials obtained, and the materials and equipment used in the process of propagating the variety illegally, shall be confiscated. **Law on Protection of Breeder's Rights for Varieties of Plants, Dominican Republic***

On Suspicion without any proof farmers are declared guilty

- UPOV 91 laws, as well as other laws related to seeds or granting property rights over plants, are imposing “reversal of the burden of proof”.
- This means that those who accuse farmers of infringement do not need to present strong proof of such infringement, while farmers must bear an increasing part of the burden of showing that they have not infringed the law. In order to do so, they must keep records of the seeds they use, buy and sell, and must accept inspections of their premises, fields and books when they keep them.
- This is in direct conflict with the Universal Declaration of Human Rights that states that everyone must be considered innocent until proven guilty.
 - *For the purposes of claiming the remuneration [for the use of privatised seed] ... any farmer who... may be deemed to have performed an exploitation [of that seed] ... is obliged to deliver ... data to the holder – upon his request..... If the authenticity of the data provided is disputed, the burden of proof shall be on the farmer. **Act XXXIII of 1995 on the Protection of Inventions by Patents, as last amended by Act XXVII of 2009. Part V. Protection of Plant Varieties, Hungary***

Peasants' houses and other buildings and vehicles in a farm can be searched without a court order, based on suspicion

- *An Inspector may, a) At any reasonable time, enter any place, premises or vehicles or receptacle where he/she believes there is any seed to which this Act applies, packaged or not, take samples for the purpose of ensuring that the provisions and regulations of this Act, are being complied with. (...) g) enter any public or private premises during or after regular business hours without notice of inspection when a suspected violation of this Seed Act and regulations. **Model Seed Act For Southern Africa Countries. Southern African Seed Systems Development Initiative. USAID/RCSA***
- *A seed inspector may, for any of the purposes of this Act and at all reasonable times a) enter upon any land, building, premises or vehicle at or in which there is reasonable cause to believe that any prescribed seed or restricted seed is being stored, sold or transported for sale in contravention of this Act, or is being packaged in packages or other containers which are marked or labeled.... in contravention of this Act.... (...) d) further, may seize and remove therefrom any prescribed seed or restricted seed (...) The word “sale” includes “gift” **Seed Act (Act N°9 of 1996), Malawi***

Crops, harvests and products made from the harvested material can be seized or destroyed before a farmer is proven guilty, based on suspicion...

- *The court may order the confiscation of the infringing variety as well as the materials and tools substantially used in the infringement of the protected variety. (...) The court may also decide to destroy the infringing variety as well as the materials and tools or to dispose of them in any noncommercial purpose.* **Coalition Provisional Authority Order Number 81. Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law, Iraq**

Searches and seizures can be carried out with the support of military force.

- *Article 67.- The local authorities at all levels, armed forces, customs and excise, airport and port offices, and other relevant authorities shall co-operate in the uncovering, prevention and suppression of seed offenses and in the temporary storage of evidence relating to seed offenses upon request by the Seed Inspector.* **Law on Seed Management and Plant Breeder's Right, Cambodia**

Private entities or individuals may be granted the power to act as inspectors or certifying authorities, creating de facto private police entities. Seed companies can set up such entities and become inspectors of small seed producers or other competing companies.

- *The accredited certification system shall allow individuals, third parties, seed laboratories, and/or seed entities to inspect fields, sampling and test seeds, and /or issuance of labels subject to the regulation of this Seed Act. **Model Seed Act for Southern Africa Countries. Southern African Seed Systems Development Initiative. USAID/RCSA***

Public Sector to be kept out of Seed Business

- Governments are also being forced to keep the public sector out of any seed breeding or distribution activities. For example, the government put in place after the US invasion of Afghanistan duly returned the favour by including the following requirement in its **new seed law**: “the Ministry shall take such steps as are necessary to ensure that the **production and trade in all kinds of seeds are undertaken by the private sector and that the Ministry shall divest itself of all seed production and trading enterprises and activities**”.

Thank You !