

The Legal Regime of Plant Varieties Protection, Seeds and Farmers' Rights in Bangladesh



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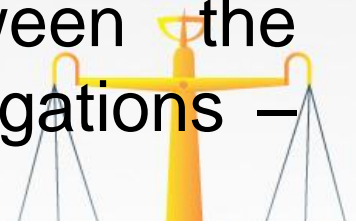
Background

- Plant varieties, seeds and farmers' rights are the quintessence of the country's agro-base.
- Obligations from Treaties – (a) Paris Convention 1883, TRIPS Agreement 1994 and BITs (b) the CBD 1992 and the ITPGRFA 2001 .
- There are several sporadic enacted laws – The Patents and Designs Act 1911, the Trademarks Act 2009, the GI Act 2013, Bangladesh Biodiversity Act 2017 and a number of laws are in the pipeline – The draft Patents Act 2016, the draft PVP Act 2001.
- Such laws arise either of the defunct colonial rule of continuity or of the property owners' necessity or of treaty obligations.



Background (contd.)

- Laws are treaty specific, not sui generis in offering the legal protection to plant variety and seeds, they cannot often cope with local needs and situations.
- Farmers are restricted from their traditional use of PGRs at all levels. This brings sufferings for sustainable agriculture and PGRs and impedes them in meeting their livelihoods and food security.
- Certain indications for balance between the property owners and users in treaty obligations – the CBD 1992 and the ITPGRFA 2001.



Problems in context

- The Patents and Designs Act 1911 an age old law.
- Seeds Ordinance not streamlined for purpose.
- Draft PVP Act not being approved.
- Unfair Competition Laws/other laws required.
- So, there exists **a legal vacuum** involving plant varieties, seeds and farmers' rights in laws already in use and upcoming.



Plant Varieties Protection

- **Patent for Plant Varieties** - The provisions of the Patents and Designs Act 1911 refer patentable invention to any manner of new manufacture, an improvement and an alleged invention.
- In that sense, plants or plant varieties which are new and derived from earlier varieties can be taken as patentable since they may meet the requirements of invention being any manner of new manufacture or an improvement and an alleged invention.



Plant Varieties Protection (contd.)

- **UPOV Style Protection (PBRs) for Plant Varieties** – As a Member of the CBD and the ITPGRFA, the country starts taking steps in lessening the creators' exclusivity in plant varieties by preparing a draft in 2001 titled the Plant Varieties and Farmers' Rights Protection Act (PVP Act).
- The draft Act seems to follow the *International Convention for the Protection of New Varieties of Plants* 1961 as revised in 1978 and 1991 (UPOV) the containing a plant breeders' rights (PBRs) style sui generis protection system and other linked issues.



Plant Varieties Protection (contd.)

- The draft PVP Act simplifies the eligibility for PBRs protection.
- It provides for the UPOV criteria of novelty, consistent specific traits, stability and distinctive traits for a variety.
- It also provides that breeding alone is not sufficient to justify commercial privileges and the variety must have immediate, direct, and substantial benefit to the people of Bangladesh.



Plant Varieties Protection (contd.)

- The draft PVP Act also contains a common heritage provision in line with the non-binding International Undertaking on Plant Genetic Resources for Food and Agriculture (IUPGRFA) by stating that all varieties that are developed in any national public research institute including universities and national agricultural research centres shall be considered common property.
- In addition, the draft PVP Act limits PBRs to any variety that may lead to genetic or cultural erosion or to any variety developed by nationals or juristic persons of countries that are not a party to the CBD.



Plant Varieties Protection (contd.)

- For new plant varieties, the Bangladesh Biodiversity Act 2017 proposes a National Biodiversity Authority (NBA) with power either to give 'citation of award' (where no protection for personal gain or commercial privilege is sought) or 'commercial permit' with a contract of benefit sharing.
- The Act authorises the NBA to refuse protection of a new plant variety that is potentially harmful to the environment, ecology, health and welfare of the public.
- For protection of transgenic plants, a positive Environmental Impact Assessment result and bio-safety assessment is required and upon payment of compensation for hazards and damages as may be caused by its use and handling, the product must be labelled and declared appropriately.



Seeds

- **Patents for Seeds –**
- **Trade Secrets for Seeds –**
- **Trademarks for Seeds –**
- **GI for Seeds –** seeds can be protected by GI if seeds originate in the territory of a Member, or a region or a locality in that territory, where a given quality, reputation or other characteristic of the seeds is essentially attributable to its geographical origin. Such GI can be used to market seeds along with trademarks.



Seeds (contd.)

- **Other Means to Assert IPRs for Seeds** – Plant innovators in Bangladesh rely on a few other means to assert their IPRs. The genetic use restriction technology (GURT) is one of them.
- It uses the terminator genes which run counter to the traditional right of farmers to save seeds.
- Further, with the use of the Seeds Ordinance and the Seeds Rules 1998, even the private sector can import and market any non-notified seeds. As a result, the importing and marketing of terminator or GURT seeds is also allowed under Section 17(3).
- Few years back, the McDonald Seeds in collaboration with the ACI commercialises the seeds of ‘shufala’ rice. Such seed-sponsors publicly advise the farmers not to reuse the seed, since it stops enhanced yielding, due to the terminator technology used therein.
- Farmers’ rights groups in Bangladesh vehemently oppose such technology seeds. They are trying to make people aware of the effects of the terminator technology and pressing the government to adopt a biosafety regulation in line with the *Cartegena Protocol on Biosafety* to manage such risks of technology and ensure traditional practices of seed saving.



Farmers' Rights

- **Farmers' Rights under the Draft PVP Act** – Farmers' rights include the right to preservation of traditional farming practices, the right to farmers' innovations by the selection and maintenance of seeds, the right to farmers' traditional conservation of biodiversity and the right to farmers' access and benefit sharing.
- However, it is not certain whether the draft PVP Act intends to offer PBRs to farmers as breeders, since the definition of farmers and farmers' rights do not have direct reference to farmers' innovations.



Farmers' Rights (contd.)

- **Farmers' Rights under the Bangladesh Biodiversity Act** – The Bangladesh Biodiversity Act 2017 recognises the global tendency towards affirmation of IPRs over biological resources. However, the Act ensures that the protection shall in no way affect the rights of farmers to have unencumbered access to the biological and genetic resources of Bangladesh and related knowledge.
- The rights to collect, conserve and use plants for personal and non-commercial purposes shall not be affected under the privileges proposed under the Act.
- The Bangladesh Biodiversity Act says that the State shall ensure payment of royalties or compensations to the communities where applicable for using biological and genetic resources and related knowledge and their derivatives within the jurisdiction of the country, both in situ and ex-situ.

New Strategies Needed

- Introducing patents for new plant varieties with redefining 'Invention'.
- Limiting PBRs through compulsory licensing.
- Trade Secrets law or unfair competition law requires to be enacted.
- The incorporation of farmers as breeders would recognise farmers' preservation of traditional farming practices, farmers' innovations by selecting and maintaining of seeds, farmers' traditional conservation of biodiversity and farmers' access to benefit sharing, thus meeting national priorities in agriculture-prone Bangladesh. This would also balance the interests of the variety of actors (especially commercial breeders and farmers) involved in agricultural trade.
- A review of the existing Seeds Ordinance, the Seeds Rules and the Seeds Policy is necessary the draft PVP Act and the Bangladesh Biodiversity Act by inserting provisions therein to regulate the sale, import and export of seeds.

Concluding Remarks

- Thus, it appears that the beginning of IPRs in agriculture sector including plant varieties, seeds, and others took place in agriculture-prone countries like Bangladesh either via the existing IPRs framework or by making necessary amendments to the framework.
- For Bangladesh, the Patents and Designs Act, the Trade Marks Act and GI Act already provide for IPRs in agricultural products and services in the name of patents, trademarks and GIs.
- However, plant varieties protection, farmers' rights and other related issues did not enjoy their subsistence until the arrival of the ITPGRFA, the CBD and the TRIPS.
- Compliance with the obligations of treaties like the TRIPS Agreement, Paris Convention and the likes secures interests of property owners – creating monopolies for them and causing concerns by restricting free uses of plant genetic resources or by raising the prices of agricultural products in the guise of patent monopoly, and pushing farmers into dependence on engineered seeds and other agricultural inputs.
- However, the treaties like the ITPGRFA and the CBD and certain exceptions and flexibilities of the TRIPS Agreement and Paris Convention came up for localising the purpose of securing farmers' rights, food security, sustainable agriculture and plant genetic resources.



Thank you



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