Plant Variety Protection and Farmers’ Rights in India:
Law-Making and the Cultivation of Varietal Control

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This article explores how proprietary claims to plant genetic resources (PGRs) are asserted and constructed in drafting India’s Protection of Plant Varieties and Farmers’ Rights legislation. These claims have assumed significance, particularly during the past two decades, at the global, national, and local levels. Globally, they are articulated in multilateral trade negotiations and institutions -- most notably through Article 27.3(b) of the Agreement on Trade Related Aspects of Intellectual Property (TRIPs), through the concept of plant variety protection (PVP). But increasingly proprietary claims to PGRs have also been articulated within global environmental and agricultural arenas, through the International Undertaking on Plant Genetic Resources (IU) and the Convention on Biological Diversity (CBD). Nationally, countries and regional blocs have, independently and in response to international obligations, introduced legislative initiatives to formalise proprietary claims to PGRs by instituting systems of intellectual property rights (IPRs). Local initiatives, also abundant, are often directed at strengthening the claims of indigenous and local communities to PGRs through the creation of community IPRs and biodiversity registers.

Indian legislation takes up the issue of proprietary claims to PGRs through the Protection of Plant Varieties and Farmers’ Rights Bill, which was passed by Parliament in the autumn of 2001. The Bill establishes two ways through which proprietary claims to PGRs may be made. First, it creates a system of Plant Breeders’ Rights (PBRs) that confers on the holder an exclusive right of ownership of a plant variety for a specified period of time. Second, the Bill introduces the concept of Farmers’ Rights to counter-balance Breeders’ Rights and address the issue of farmers’ proprietary claims to plant varieties. If the impacts of the Bill on India’s agriculture sector are to be fully discerned, it is important to locate the Bill in the politico-economic context in which it emerged and analyse the process through which it came to establish PBRs and Farmers’ Rights as legal mechanisms for asserting proprietary claims to plant varieties.

To examine the construction of proprietary claims to PGRs in India’s Protection of Plant Varieties and Farmers’ Rights Bill, the paper is organised as follows. The first section offers a brief overview of the Bill’s development. Section two examines global agreements on IPRs, knowledge and PGRs, and analyses the different (and sometimes competing) discourses about knowledge and property that exist around them. The agreements studied are: the Trade Related Agreement on Intellectual Property (TRIPs), the UPOV Convention, the Convention on Biological Diversity (CBD), and the International Undertaking on Plant Genetic Resources (IU). Section three examines the process whereby varietal control is cultivated through provisions on Plant Breeders’ Rights and Farmers’ Rights.

The paper concludes that the Protection of Plant Varieties and Farmers’ Rights Bill is not, as it is sometimes argued, a straightforward a response to the TRIPs Agreement. Instead, the issue of proprietary claims to PGRs emerges from the
interplay of international frameworks with domestic law-making processes, and the interaction of structural forces (the political economy of plant variety protection) with the agency of specific actors. In advancing this argument, the paper makes a more general case for examining not simply law-as-text, focusing on what is written, but also for considering the process of law-making: how and why laws come to be written as they are, and take the shape that they do. This approach sees law not as something quite concrete but instead as something contingent and processual -- a product of particular politico-economic conditions as well as the actions, and interactions, of different actors.

I. A BRIEF HISTORY OF THE PROTECTION OF PLANT VARIETIES AND FARMERS’ RIGHTS LEGISLATION

The process of drafting the Protection of Plant Varieties and Farmers’ Rights Bill lasted more than 10 years and generated a considerable amount of public debate and controversy. The first initiatives taken to develop Indian legislation on PVP occurred in the late 1980s. The first draft of the Bill was produced in 1993 by the Ministry of Agriculture, the nodal Ministry throughout the Bill’s development. Three drafts have since followed, in 1997, 1999, and 2000, although only the latter two were introduced in Parliament. The penultimate draft was tabled in the Lok Sabha in December 1999, and referred to a Joint Parliamentary Committee (JPC). From January to August 2000 the JPC held public consultations on the Bill at various locations throughout India and subsequently tabled its Report, along with a revised draft, in the Lok Sabha on 25 August 2000. After almost a decade of development, the Bill was recently passed by Parliament in August 2001.

Throughout its long history the Bill has engaged a range of stakeholders in its development. Insofar as the Bill endeavours to introduce a system of Plant Breeders’ Rights and operationalise Farmers’ Rights it is of interest to various groups, including: public sector researchers, Farmers’ Rights campaigners, private industry, and inter-governmental organisations. Although the Bill has provoked considerable public debate, several would-be stakeholders are conspicuous by their absence, including farmers themselves, as well as their organisations and unions, and small Indian seed companies. While the absence of these groups is significant, in-depth analysis of why this is the case is beyond the scope of this paper. Instead, focus will be directed primarily on the processes whereby those ‘vocal’ stakeholders endeavoured to influence the Bill’s development, from the first initiatives taken in the late 1980s until it was passed by Parliament.

II. GLOBAL AGREEMENTS ON PLANT VARIETY PROTECTION AND PLANT GENETIC RESOURCES

Global discourses surrounding proprietary claims to plant varieties and plant genetic resources have emerged in different arenas (principally, through international trade and global environmental regimes). This section examines how these claims are constructed in international agreements on intellectual property rights and plant variety protection, and in those on Farmers’ Rights and biodiversity. A discursive approach is used to facilitate critical examination of the ideas, concepts and framings of ownership and control of plant varieties, and the proprietary claims they make
possible. Insofar as India’s Protection of Plant Varieties and Farmers’ Rights Bill is inspired by a variety of different international agreements, attention to these global discourses facilitates analysis of the way in which different notions of knowledge and property inform and shape the Indian legislation.

Within the trade arena, the TRIPs agreement represents the most recent regulatory expansion of IPRs in plant varieties. This expansion is occurring in the context of liberalised trade and financial flows in developing countries, increased private sector agricultural research and development, corporate mergers among agro-chemical and biotech companies, and the growth of the biotech industry (Correa, 2000: 3-4). In a sense, this represents the advance, in scope and intensity, of processes of commercialisation and commodification. Calls for a global regime of IPR protection for plant varieties through the WTO may be traced to the multinational seed, agro-chemical and biotech companies, virtually all of which are headquartered in developed countries that already have strong systems of PVP (Sell, 1999: 170). As they expand their operations globally and gain access to markets in developing countries, MNCs seek to secure minimum standards of IPR protection, and so minimise the risk and uncertainty associated with research and development (Fowler, 1994: 174)

Article 27.3(b) of the TRIPs Agreement outlines the obligations of WTO member countries vis-à-vis plant variety protection. It states that ‘Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.’ Considerable debate and ambiguity exists around the meaning of the term ‘effective *sui generis* system’, for no explanation is given of what such a system might look like. Arguably, this ambiguity gives countries considerable flexibility in developing a system that, true to the meaning of *sui generis*, is ‘of its own kind.’ Despite this apparent room for manoeuvre, it is generally accepted that the UPOV system of Plant Breeders’ Rights would constitute an effective *sui generis* system. Although India has not yet joined the Union, the Protection of Plant Varieties and Farmers’ Rights Bill is influenced by the UPOV model of PBRs. The UPOV system of PBRs is significant because it creates an alternative to patent protection. Whereas patents cover inventions and have the generic criteria of non-obviousness, novelty and industrial applicability, PBRs extend to plant varieties only, and require that varieties be novel, distinct, uniform and stable.

Regardless of whether plant variety protection takes the form of Plant Breeders’ Rights or patents, typically arguments invoked to explain and justify PVP contend that it is necessary to encourage investment and innovation. In this reasoning, investors must be assured of a reasonable return on their investment to encourage research and development. The ability of plants to reproduce themselves, however, undermines this assurance because investors cannot effectively implement or enforce their exclusive ownership of or proprietary control over plant genetic resources. In this analysis, therefore, the reproductive capacity of plants is a problem because it:

enables growers to *reproduce the variety without further recourse to the breeder* for supplies of the propagating material. Experience has shown that it is not possible for a breeder to *recover his [sic] financial investment* when he sells his initial supplies in the first years of a new variety’s life. The breeder’s
competitors can secure supplies of propagating material and in a short time compete with him profiting from his many years of breeding effort.

(UPOV, 2001; emphasis in original)

This statement constructs the process of innovation as the individual enterprise of the breeder, whose just reward can be secured only through the legal protection that PBRs offer. In advancing this argument, the use of the term breeder is particularly important in the Indian context. The distinction made between growers and breeders implicitly locates the latter as legitimate suppliers of propagating material. But the grower-breeder distinction breaks down in many developing countries, where farmers engage in the development of new varieties and are the major suppliers of seed. The conventional grower-breeder distinction is a source of tension and contestation in the Indian legislation, insofar as these different labels create different proprietary claims to own and control plant varieties under a PVP system. Specifically, proprietary rights emerge from the intellectual contribution and financial investment made by the breeder and embodied in plant varieties. These discourses differ substantially from those made in agricultural and environmental fora at the international level.

The International Undertaking on Plant Genetic Resources and the Convention on Biological Diversity offer a counterpoint to the construction of ownership and control of plant genetic resources in global debates on plant variety protection. The International Undertaking was adopted by the FAO Conference in 1983 and, though non-binding, it is the first international agreement to address issues concerning access and proprietary claims to PGRs for food and agriculture. Over the years, however, it is possible to see a shift in the basis on which these claims are established. Initially, the Undertaking endorsed the principle that PGRs are the common heritage of humankind and, therefore, should be made freely available. This idea provides the discursive basis on which countries and international gene banks were able to amass enormous amounts of plant genetic material without the consent of, or remuneration to, those countries (largely in the South) from which they were obtained. Characterisations of PGRs as the heritage of humankind mask the fact that they are also a significant strategic natural resource -- growing in importance with the development of biotechnology -- that are distributed unevenly throughout the world, but concentrated in developing countries (Hardon et al., 2000: 1). In subsequent years, the discourse of common heritage has been vigorously contested by many developing countries, including India, particularly in negotiations on the CBD.

To further address issue of proprietary claims to PGRs the IU has adopted several resolutions, or Agreed Interpretations, as annexes that qualify the principle of free exchange. In these, it recognises Plant Breeders’ Rights as they are articulated in the UPOV Convention and thus admits PVP within the framework of the IU. The Undertaking, however, also addresses the asymmetry between breeders, who may claim rewards for the development of new varieties, and farmers who helped develop the genetic material with which breeders work, but whose contribution is unrecognised and unrewarded. Thus, although the IU recognises PBRs, it also advances the concept of Farmers’ Rights, defined originally in Resolution 5/89 as,

rights arising from the past, present and future contribution of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity. These rights are vested in
the International Community, as trustees for present and future generations of farmers, for the purpose of ensuring full benefits to farmers and supporting the continuation of their contributions.  

(quoted in Swaminathan, 1994b: 81)

The significance of the Farmers’ Rights resolution is that it recognises the contribution made by farmers and provides a platform from which they may endeavour to claim benefits arising from use of PGRs. Notably, it stops short of according farmers any exclusive proprietary control over varieties similar to the protection offered by Plant Breeders’ Rights.

The Convention on Biological Diversity addresses issues similar to those taken up in the IU, with the key difference being that the CBD is binding on its signatories. For this reason, certain provisions of the CBD are believed to provide a legal counterweight to Article 27.3 of TRIPs. Article 3 of the Convention affirms the sovereign right of states to their biological resources and, like the IU, the Convention acknowledges the historic and contemporary contribution of local communities to the conservation and cultivation of biodiversity, and to the body of knowledge about biodiversity. Article 8(j) states that signatories,

subject to...national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity...and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

(quoted in Dutfield, 2000: 35)

This Article is significant because it facilitates the recognition that plant varieties -- as one component of biodiversity -- are an embodiment of the knowledge and practices of indigenous and local communities. As such, agricultural knowledge and innovation can no longer be seen to originate within formal research systems or plant breeding programmes, but is rather more spatially and temporally diffuse.

But the recognition accorded to indigenous and local communities, and their entitlements to benefit-sharing, is circumscribed because knowledge, innovations and practices must be ‘relevant for the conservation and sustainable use of biological diversity’. Furthermore, although the CBD recognises indigenous and local knowledge, it positions the knowledge holders as beneficiaries of rewards claimed by others. To the extent that it does so, it is entirely compatible with IPR regimes.

In this sense, expressions of claims to own and control PGRs are considerably different from claims made in discourses on intellectual property. In both the IU and CBD, the rights or entitlements of farmers and/or holders of traditional knowledge arise largely from their contribution to the conservation of biodiversity, and improvements they have made to PGRs. Framed as such, the rights and claims to own and control PGRs arise instrumentally and are linked to broad conservation objectives rather from any independent ‘intellectual contribution’. Although knowledge and innovation are recognised, unlike IPRs, they are not the basis on which rights and proprietary claims may be asserted.
A number of provisions and concepts in TRIPs, UPOV, the IU and CBD broadly inform, or directly constitute, key elements of India’s draft legislation. As touchstones of the Indian legislation, they connect global agreements and national law-making processes. Indeed, India uses the *sui generis* option to construct legislation that establishes Plant Breeders’ Rights based on the UPOV model, and articulates a concept of Farmers’ Rights that derives from the IU. But, the Bill does not simply import these concepts unchanged. Rather, they are translated through the drafting process, then assembled and configured uniquely in the text of the legislation itself.

III. CONSTRUCTING PROVISIONS ON PLANT BREEDERS’ RIGHTS AND FARMERS’ RIGHTS

This section discusses the development of the Protection of Plant Varieties and Farmers’ Rights Bill by examining the law-making process, and the interaction of structural forces with the agency of particular actors in the context of drafting provisions on Plant Breeders’ Rights and Farmers’ Rights. It focuses on explaining why Plant Variety Protection and Farmers’ Rights emerged as legislative issues, and why they came to be articulated as they are in the Bill.

*Plant Variety Protection and Plant Breeders’ Rights*

The emergence of calls for PVP in India may be understood by examining changes in the policy environment during the 1980s and early 1990s that facilitated the growth and political organisation of private industry. Literature on the political economy of PVP roots it in the ascendance of private industry and, relatedly, the progressive commodification of the seed (Kloppenberg, 1988; Goodman and Redclift, 1991; Fowler, 1994). In the Indian context, this approach may be used to draw attention to changes in the policy environment that occurred during the late 1980s, before the first calls for PVP legislation were voiced. Prior to the late 1980s, plant breeding in India was largely the preserve of the public sector. The seed sector was governed by a regulatory framework that prohibited the entry of large foreign and domestic firms, and inhibited private sector research and development. The dominant discourse on PVP at this time was, therefore, defined by the public sector, which construed proprietary rights over PGRs as inimical to the idea of public sector research.

A series of policy changes occurred during the late 1980s and early 1990s to facilitate the development of breeding programmes in the private sector, shift the relative magnitude of public and private sector plant breeding, and ultimately help alter the climate of opinion on PBRs. In 1986 the public sector began to provide private seed companies with breeder seed, which enabled the latter to establish their own germplasm collections (Shiva and Crompton, 1998: A-141; Rao, 1997: 47). In 1987 the Industrial Policy was modified to allow large Indian and multinational (MNC) companies to invest in the production of hybrid seeds and agricultural biotechnology (Rao, 1997: 54). Liberalisation in the industrial sector was followed in 1988 by liberalisation in the seeds sector, through the New Seed Policy. This policy allowed the import of coarse cereals, oilseeds and pulses for a period of two years by companies collaborating in seed production with foreign firms; the policy obliged the foreign collaborators to provide parental-line seeds to Indian companies within this two-year window. In this sense, the New Seed Policy further encouraged the
development of germplasm lines in the private sector for a limited range of crops. Notably, however, wheat and paddy were excluded because of the dominance of the public sector in this area. (Rao, 1997: 55). Of broader significance was the programme of economic liberalisation that India undertook in 1991.

The upshot of this policy shift was to further facilitate the development of breeding programmes in the private sector, and loosen restrictions on the activities of foreign firms and multinationals by abolishing licensing in the seeds sector, giving automatic approval to foreign technology agreements, and to Indian subsidiaries with up to 51 percent foreign equity. The introduction of these policies facilitated the growth of the private sector plant breeding. This growth was constituted by the emergence of large Indian companies; increased collaboration between Indian and foreign companies; and the entrance of subsidiaries of MNCs in the Indian market.

Concomitant with the growth of private industry in India through liberalisation, was a global trend toward consolidation of agro-chemical and seed companies among large firms. During the 1980s, for example, major international agro-chemical companies (such as Monsanto, Unilever, and ICI) established plant breeding programmes in an effort to integrate the development of agricultural technology into their operations (Dhar and Chaturvedi, 1998: 247). Industry concentration in India has been affected by mergers and acquisitions that have occurred internationally. Most notably, Monsanto’s purchase of DeKalb and Cargill in 1998 resulted in further concentration within India’s private sector, as the Indian subsidiaries of the latter two companies became part of Monsanto’s Indian operation. Monsanto has since also purchased a 26 percent share in MAHYCO, a leading Indian seed company.

The structural changes in the regulatory and economic environment, and the growth of private industry provide the context in which the organisation of industry as a political interest group must be understood. This organisation is marked, among other things, by the formation of industry associations at both the state and national level. The Seed Association of India (SAI) is one of the major seed industry associations, and represents medium to large foreign and domestic firms. An important aspect of its mandate is to cultivate links with the Ministry of Agriculture and the public sector. To this end, it has established itself as an industry representative within policy networks by, for example, securing seats on a number of government committees. Its presence on these committees offers it privileged access to policy-makers and, therefore, a base from which to influence policy.

Industry concentration through mergers also enhances the political profile of specific companies and enables them to have direct contact with lawmakers. Monsanto, for example, was invited by the Joint Parliamentary Committee to make an oral submission during its public consultations on the Bill in 2000, and it was the only individual company which did so (Government of India, 2000).

Though these broad structural changes help explain why PVP emerged, they do not necessarily indicate why the legislation takes the shape that it does. Specifically, although in some ways the Indian legislation conforms quite closely to international agreements, in other ways departs substantially from them. For example, India went in for UPOV-style Plant Breeders Rights, but it did not simply cut and paste UPOV provisions into its own legislation. In particular, whereas UPOV
accords PBRs only to varieties that are novel, or new, the Indian Bill also makes extant or existing varieties eligible for protection.

Unpacking the legislation along these lines to understand the processes going on behind the text requires attention to how knowledge is spread through policy networks, how these networks serve as an important mechanism connecting international and national levels, and how different groups use their position in the process to push the legislation in certain directions.

To address and explore the issue of why Plant Variety Protection in India takes the form of Plant Breeders’ Rights requires that attention be given to the early phases of the drafting process and, in particular, to a key event that occurred early in the Bill’s development. In March 1989, in co-operation with the Ministry of Agriculture and public sector, the SAI organised a two-day seminar entitled ‘Plant Variety Protection: Pros and Cons’. The seminar brought together in a loose policy network individuals from the private seed industry, officials in the Ministry of Agriculture, as well as representatives from UPOV, and the American multinational seed industry. In this respect, the seminar was an important event in the Bill’s development insofar as it mobilised knowledge and expertise on PVP, and established a network through which it could be diffused. In particular, the inclusion of representatives, described as ‘experts’, from UPOV and US multinationals, facilitated the exchange of information and experience with actors in the Indian process.

The way in which the seminar structure manages and frames debate is also significant. The seminar was attended by those who broadly supported PVP, and debate and discussion focused on the merits and shortcomings of different PVP systems, and specifically whether PVP should be legislated in India in the form of patents or PBRs. The question of whether PVP was desirable and should be introduced was effectively a non-issue. In the end, the seminar came up with the following recommendation:

Time is ripe for introducing Plant Breeders [sic] Rights (PBR) in India in order to further strengthen crop improvement and to provide better quality seeds to farmers...Considering various alternatives for Protection of Rights, consensus emerged in favour of PBR as adopted by UPOV convention.

(SAI, 1990: 19; emphasis mine)

Viewed discursively, the seminar also helped to shift the discourse on PVP. While the public sector’s opposition to PVP had earlier determined the dominant discourse, the seminar provided an occasion on which it was possible to cultivate a discourse more favourable to the introduction of PVP. Key aspects of this discourse include the argument that the public sector alone could no longer meet the seed requirements of Indian agriculture, that private industry had a substantial role to play in plant breeding, and that PVP may stimulate research in both the private and public sectors. Insofar as the seminar introduced novel ideas and arguments for PVP -- an alternative discourse -- it prompted the public sector (previously sceptical of its introduction) to consider its own position on, and interest in, the legislation.

But, events such as the SAI seminar do not alone explain why PBRs became the taken-as-given model for PVP, a constant pillar of the legislation in all four drafts.
throughout the 10-plus years of the Bill’s development. That efforts to develop a UPOV-type system were underway even before the TRIPs Agreement entered into force, and the term *sui generis* entered the PVP lexicon, suggests that TRIPs offered momentum to the process but did not endow it with its *raison d’être*.

Another entirely compatible explanation requires attention to the role of knowledge networks and expertise in the policy process. Developing and implementing a system of Plant Variety Protection is a task of enormous legal and technical complexity and, in grappling with the legislative design of such a system, officials in the Ministry of Agriculture found in the UPOV Secretariat a wealth of existing legal and technical expertise on which they could draw. For example, in drafting the legislation, PVP laws of 15 to 16 UPOV member countries were reviewed. The links between the Ministry and UPOV were technical as well as legal, for the legal framework of PBRs relies critically on a complex technical infrastructure to test varieties on the UPOV criteria of distinctness, uniformity and stability (DUS). In this respect too, the existence of channels through which scientific knowledge and information could be exchanged between the Ministry and UPOV helped operationalise the UPOV ‘consensus’ and establish PBRs as the framework for India’s PVP legislation.

But the Bill goes beyond the UPOV Convention (in both its 1978 and 1991 forms) by according protection to extant varieties, which need not conform to the criterion of novelty. The rationale for offering protection to extant varieties defies the arguments advanced to justify PVP, which contend that proprietary rights stimulate innovation and investment. To understand why this protection is accorded, it is important to look at the public sector, and the way it is uniquely positioned as both a stakeholder and key advisor to Ministry officials developing the legislation. The position of the public sector on PVP has changed over time, such that the private appropriation of plant varieties through PVP is no longer believed to be at odds with the mandate of public sector research. In particular, there is a growing belief that public sector institutions must develop independent means to generate revenue. With this belief, coexists an idea within the public sector that it must act as a check on what are sometimes perceived to be anti-competitive practices and monopolistic tendencies within the private sector.

An explanation for the inclusion of the provision on existing varieties, therefore, may be found in the 1999 draft, which includes in its definition of extant variety ‘a variety which is notified under section 5 of the Seeds Act, 1966’. As the private sector is not obliged to notify its varieties under the Seeds Act, extant varieties are largely those developed in the public sector. The significance of this provision is that it makes varieties already in the public domain eligible for appropriation. Moreover, it appears to further strengthen the position of the public sector in establishing PBRs over its varieties. Insofar as the public sector advises the Ministry on technical aspects of the legislation, it is able to shape decisively the form and content of legislation in which it is also a direct stakeholder. In this manner, with respect to protection of extant varieties, it is able successfully to push the legislation beyond UPOV.

Before moving on to examine Farmers’ Rights, a couple of general points that emerge from this study of the construction of PBRs in India’s legislation are worth summarising. First, calls for PVP based on Plant Breeders’ Rights emerged before
the TRIPs Agreement entered into force, and from within Indian industry associations -- in this sense, the development of the Indian legislation cannot be considered as a strict response to its obligations under the WTO. The second point concerns the interactions between structural conditions and the agency of stakeholders. Here, while the structural conditions created a context amenable to the emergence of calls for PVP, it is the actions and interactions of stakeholders, independently and through networks, that helps explain why Plant Breeders’ Rights are constructed as they are.

**Plant Variety Protection and Farmers’ Rights**

As was the case with Plant Breeders’ Rights, attention to broad structural conditions establish the backdrop against which Farmers’ Rights were asserted. At the national level, India’s liberalising reforms in the 1990s were felt in the agricultural sector through removal of fertiliser subsidies and other forms of agricultural support. Globally, the Draft Final Act of the Uruguay Round or Dunkel Draft, of which TRIPs is one part, was proposed to resolve deadlock in the Uruguay Round negotiations in late 1991. The timing of the India’s SAP reforms and the Dunkel Draft was significant: for just as India’s agricultural sector was undergoing structural adjustment, the Draft promised further liberalisation through, among other things, the removal of quantitative restrictions, the reduction of agricultural support, and phasing out of non-tariff trade barriers.

The assertion of farmers’ claims to own and control plant genetic resources emerged in the context of a broader movement opposing the liberalisation of the Indian economy, the entry of MNCs into the seed sector, and the looming presence of the Dunkel Draft. In December 1992 members of the Karnataka Rajya Ryota Sangha (KRRS), a farmers’ organisation in the state of Karnataka, raided the offices of Cargill Seeds India, a subsidiary of the US multinational. Tapping the ideals and objectives of India’s independence movement (if not its non-violent principles), the protesters destroyed office equipment and records under the old nationalist slogan of ‘Quit India’.

This raid was followed by similar protests, the most significant of which was a rally of between 18,000 to 200,000 Indian farmers in Delhi against the Dunkel Draft. Terned a *beej satyagraha* (seed protest), the focus of the rally was the assertion of Farmers’ Rights to produce, improve, exchange, and sell seeds, against the perceived threat to these practices posed by the entry of multinationals into the Indian economy and Article 27.3(b) of the proposed TRIPs Agreement. Speaking on this occasion, Professor M.D. Nanjundaswamy, the leader of the KRRS commented that ‘We are going to launch a one-point programme -- to drive out the multinationals. Our genetic resources are our national property’ (*Hindu*; quoted in Gupta, 1998: 292).

The rally was significant not only for its size, but also for its articulation of a public discourse against liberalisation, and Article 27.3(b) of the TRIPs Agreement. One key element of this discourse is its invocation of historically potent ideas from the nationalist movement, such as ‘Quit India’ and ‘satyagraha’. These ideas allude to a common past of colonisation, and serve as ‘symbolic references’ (Hajer, 1995) that represent India’s liberalisation as a form of neo-imperialism. These nationalist ideas are intertwined with contemporary discourses about the sovereign right of states to their genetic resources that are articulated, particularly by developing countries, at the global level in arenas created through the CBD and FAO Council. Thus, by
linking past with present, global trade negotiations with local control over seeds by farmers, the rally made an otherwise esoteric, technical trade agreement the subject of public debate.

These protests are key events in the sense that they asserted farmers’ rights in the context of much broader changes in the trade and regulatory environment, but they do not explain how the concept of Farmers’ Rights, based on the IU, came to be included in the Indian legislation. Here, it is important to look at specific mechanisms and processes through which Farmers’ Rights were taken up in the process of law-making.

In 1989 the Indian government commissioned the FAO to study the ‘desirability and feasibility’ of introducing PBR legislation in India. The Report recommended that any legislation accord simultaneous and parallel recognition to Plant Breeders’ Rights, as they are articulated in UPOV, and Farmers’ Rights as articulated in the IU (FAO, 1993). That this was then taken up as the basic framework for India’s legislation indicates the authority attributed to such reports, and directs focus on the way knowledge spreads through policy networks. In this instance, the network linked the FAO with the Indian government and Ministry of Agriculture, around the specific issue of PVP. The Report was a vehicle through which key provisions of the Undertaking could be invoked as a potential basis for Indian legislation.

The FAO’s recommendation for Farmers’ Rights was reinforced in 1994 by a four-day Dialogue on Farmers’ Rights, organised by the M.S. Swaminathan Research Foundation (MSSRF). While participation in consultations that took place around the FAO report was limited to representatives of private industry, government officials and the public sector, the Swaminathan Dialogue drew many participants from government, private industry, agricultural research universities, NGOs, and representatives of inter-governmental organisations such as the FAO and UNDP.

Just as the SAI seminar helped to create consensus among different stakeholders around the need for PVP, so too did the network established at the Dialogue mobilise broad support for the inclusion of Farmers’ Rights in any PVP legislation. The timing of the Dialogue is also significant, for earlier farmers’ protests that made farmers’ claims to PGRs a political issue opened up space for a constructive discussion of the ways Farmers’ Rights might be included in the legislation. The product of the Dialogue was a draft, produced by the M.S. Swaminathan Research Foundation, which drew on the comments and suggestions of Dialogue participants. The definition of Farmers’ Rights in the IU informed their conceptualisation in the MSSRF draft, which articulated them thus:

Farmers’ Rights stem from the contributions of farm women and men and rural and tribal families to the creation, conservation, exchange and knowledge of genetic and species diversity of value in plant breeding.

(Swaminathan, 1994a: 20)

Other significant elements of the draft included its concept of the ‘farmer-innovator’ and recommendation that the contributions of rural and tribal people be recognised through Community Gene Funds.
Just as the Protection of Plant Varieties and Farmers’ Rights Bill moves beyond UPOV in according protection to extant varieties, so too does its conceptualisation of Farmers’ Rights advance beyond the IU. The first official draft of the Bill was introduced the Lok Sabha in December 1999. While it contained provisions to allow for benefit sharing, its articulation of Farmers’ Rights was limited to a single article, which read:

Nothing contained in this Act shall affect the right of a farmer to save, use, exchange, share or sell his farm produce of a variety protected under this Act: Provided that a farmer shall not be entitled for such right in case where the sale is for the purpose of reproduction under a commercial marketing arrangement.

(GOI, 1999: Article 31)

The wording of this article was much criticised because the term ‘produce’ was thought to give Farmers’ rights to their crops, but not to the seeds of those crops (Cullet, 2000). The 1999 draft of the Bill was referred to the Joint Parliamentary Committee, an all-party committee comprised of members of the Lok Sabha and Rajya Sabha. The most notable change made as a result of the JPC process was the expansion of provisions on Farmers’ Rights. Provisions from the 1999 draft that pertained to Farmers’ Rights -- such as benefit-sharing, and the National Gene Fund -- were consolidated in a separate Chapter on Farmers’ Rights.

The articulation of Farmers’ Rights in the Indian legislation also goes beyond their conceptualisation in the IU. Article 39 of India’s legislation states that farmers who have bred or developed a new variety shall be entitled to PBRs in the same manner as breeders. This provision is a significant departure from the way farmers and ‘indigenous and local communities’ are recognised in the IU and CBD. To the extent that these agreements recognise farmer innovation, it is within the ambit of the contribution made through the innovation to enhance genetic diversity. Article 39 of the Bill is substantially different from either of these agreements, in that it recognises the plant breeding efforts of farmers in the same manner as those of breeders engaged in formal research. In this sense, it recognises farmer innovation independently of any programme or scheme (such as *in situ* conservation) to conserve PGRs.

Explaining this different articulation of Farmers’ Rights in the Indian legislation from similar provisions in the IU or the CBD, requires attention to the role of the Joint Parliamentary Committee. To the extent that the JPC is chaired and comprised of elected representatives of both the lower and upper houses of the Indian Parliament, its members are directly accountable to the electorate and, accordingly, subject to electoral pressure. Given that over seventy percent of India’s population is engaged in agriculture, farmers are necessarily an important electoral constituency in India. For politicians seeking election (or re-election) in rural areas, the cultivation of support among farmers is an important political strategy.

While private industry established itself in the policy networks of the Ministry, several Farmers’ Rights organisations engaged with and used the competitive structure of democratic and electoral politics to influence the drafting process. The strategies used by these organisations focused on lobbying individual MPs in private discussions, holding meetings in the constituencies of key politicians to cultivate
awareness about the Bill, and producing briefing notes for MPs and information kits on the legislation. By directing their efforts toward influencing the drafting process through elected representatives rather than Ministry officials, Farmers’ Rights campaigners were well-positioned to shape the deliberations of the JPC.

As with the discussion of Plant Breeders’ Rights above, this analysis of the emergence and articulation of Farmers’ Rights suggests the importance of considering both structural conditions (liberalising reforms in the agriculture sector, and the negotiation of the Dunkel Draft), the actions and strategies of particular stakeholders, and the diffusion of knowledge through policy networks and across national and international arenas.

IV. CONCLUSIONS

At its outset, this paper endeavoured to explore the construction of proprietary claims to PGRs through the development of India’s Protection of Plant Varieties and Farmers’ Rights legislation. Although the drafting of the legislation is, in one sense, a singular process, the construction of PBRs and Farmers’ Rights may be explained, respectively, through rather different processes. The development of both provisions is clearly informed by international agreements, albeit different ones, and the construction of provisions on PBRs and Farmers’ Rights has similarly engaged different groups of stakeholders. But, the emergence and expression of PBRs and Farmers’ Rights in the Bill is not simply a cut-and-paste transfer of provisions from international agreements to domestic legislation. Rather, analysis of both provisions indicates that it is instead importantly conditioned by the Indian policy context, and the actions and interactions of individuals and groups within India.

This study of the development of India’s Protection of Plant Varieties and Farmers’ Rights Bill takes its cue from the statement that: ‘we make the law, and the law makes us’ (Houtzager, 2001). Analysis of the processes and mechanisms whereby varietal control is cultivated indicate the multiple ways in which actors in India have endeavoured to ‘make the law’ through the articulation of Plant Breeders’ Rights and Farmers’ Rights. If the experience of an ever-growing number of countries that have adopted PVP legislation is any indication, however, ownership and control of plant varieties also re-defines relations among different groups within the agricultural sector. In developed countries, the introduction of PVP has been accompanied by a reduction in the proportion of the population engaged in farming, the gradual eclipse of public sector plant breeding by the private sector, and a complete change in the relationship of farmers to the means of agricultural production. Aware of this pattern, in crafting its own sui generis system India has endeavoured to balance the rights of breeders with those of farmers. What remains to be seen, however, is how the Indian legislation, shaped as it is by its various stakeholders will, in turn and in time, shape them.
References


Notes

1 The TRIPs Agreement is one part of the General Agreement on Tariffs and Trade (GATT), now housed within the World Trade Organisation (WTO). It entered into force on 1 January 1995.

2 The Union pour la Protection des Obtentions Végétales (UPOV) was established by 6 western European countries in 1961. The first UPOV Convention entered into force in 1968, and the Convention has thrice been revised (in 1972, 1978, and 1991).

3 According to the UPOV website, however, India has initiated the procedure for becoming a member. See: http://www.upov.org/

4 The IU has since been revised such that Farmers’ Rights fall within the jurisdiction of sovereign states, rather than the international community.

5 Breeder seeds are the first step in seed production, and are produced under direct supervision of the plant breeder (Rao, 1997: 46).

6 Conversations with officials in the Ministry of Agriculture during June and July 2001 helped me to better appreciate the complexities of developing a system of PVP.

7 Conversations with public sector scientists during June and July 2001 were useful in drawing out some of these complexities.

8 The extent to which this provision will be meaningful in practice is, however, open to debate. To obtain protection, farmers’ varieties must still conform to the UPOV criteria of distinctness, uniformity and stability. Given that breeding efforts of farmers typically occur in situ, and that farmers (unlike breeders in formal breeding programmes) cannot entirely control the agro-ecological conditions in which varieties are bred, it is questionable to what extent varieties claimed by farmers will meet the DUS criteria.