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## Farmers' Rights & Food Sovereignty: Critical Insights from India

Karine Peschard

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## Abstract

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Farmers' access to and rights over seeds are the very pillars of agriculture, and thus represent an essential component of food sovereignty. Three decades after the term *farmers' rights* was first coined, there now exists a broad consensus that this new category of rights is historically grounded and imperative in the current context of the expansion of intellectual property rights (IPRs) over plant varieties. However, the issue of their realization has proven so thorny that even researchers and activists who are sympathetic to farmers' rights now express growing skepticism regarding their usefulness. In this article, I explore this debate through a case study of India's unique Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act. Based on an analysis of advances and setbacks in implementing the PPV&FR Act and a discussion of other relevant pieces of legislation, I argue that the politics of biodiversity and IPRs in India in recent years has been characteristic of the cunning state, and that this has seriously compromised the meaningful implementation of farmers' rights.

*Draft paper – Please do not cite*

## Introduction

Farmers' rights – understood as farmers' right to freely access, use, exchange and sell crop genetic resources - are a key dimension of food sovereignty. They are also the object of an important debate among scholars and activists. It is widely acknowledged that the concept is ambiguous and its implementation fraught with difficulties. As a result of the slow progress made in realizing farmers' rights in the last twenty-five years, a number of scholars and activists, while agreeing with farmers' rights in principle, have grown increasingly critical of their usefulness in practice.

India is a key case study to explore the global politics of farmers' rights. In contrast to most developing countries, which adopted plant variety legislation modeled on UPOV<sup>1</sup> following the coming into force of the WTO/TRIPS Agreement, India developed its own *sui generis* legislation - the Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001. The inclusion of farmers' rights in the new legislation was a direct result of civil society mobilization and

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<sup>1</sup> Created in 1961 and revised in 1972, 1978 and 1991, the International Union for the Protection of New Varieties of Plants (UPOV) is an inter-governmental organization that enforces intellectual property rights on plant varieties, known as breeders' rights.

lobbying.<sup>2</sup> It is broadly regarded as one of the most progressive farmers' rights legislation worldwide.

With its unique farmers' rights legislation and *sui generis* system, India has been the object of considerable interest among scholars and policymakers. For the most part, the literature discusses the legislation from a formal point of view.<sup>3</sup> Given pervasive discrepancies between law and practice, any meaningful discussion of farmers' rights must imperatively tackle what is actually happening on the ground. Moreover, discussions of the implementation of the PPV&FR Act are scant and limited in scope: they focus on what has been achieved so far (Gautam et al 2012), on the intricacies of implementation (Kochhar 2010; Kumar & al. 2011; Ramanna and Smale 2004) on trends in applications filed for plant variety protection (Kochupillai 2011; Lushington 2012) and on whether the Act is likely to attract private investment in plant breeding (Ravi 2004). While these analyses are important, a thorough assessment of farmers' rights requires broadening the analysis beyond the technicalities of implementation to include the broader policies and politics of farmers' right in India, and this is what this article attempts to do.

Twelve years into its implementation, this paper takes stock of the progress made in realizing farmers' rights in India and attempts to explain how the high levels of mobilization that surrounded the drafting of the legislation gave way to widespread disillusionment and skepticism.<sup>4</sup> As Kochhar observes, "An insignificant number of applications filed for the registration and protection of prevailing farmers' varieties for further commercial use is surprising, particularly when huge public opinion was built up before the enactment of PPV&FR Act to provide for extensive farmers' rights under the new *sui generis* PVP law" (2010:281).

Based on interviews with key participants in the debate—researchers, NGOs and officers of public agencies responsible for implementing the Act—I argue that this is in large part due to the ambiguous role played by the Indian state, whose stance and action on the issue of farmers' rights have been characteristic of the cunning state. The concept of the cunning state was proposed by Randeria (2003a, b; c; 2007, 2010) to suggest that we should approach the role of some states in the new architecture of global governance as neither weak nor strong, but able

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<sup>2</sup> With the exception of large rallies of 18,000 to 200,000 farmers organized in Delhi in 1993 against the GATT negotiations and Dunkel Draft, farmers' organizations are conspicuous by their absence in a debate largely dominated by NGOs. The reasons behind this are beyond the scope of this essay, but would warrant further research.

<sup>3</sup> Notable exceptions are Seshia (2001) and Ramanna (2006), detailed case studies based on interviews with the different actors in the farmers' rights debate in India. However, they were published in the early stages of the Act, and thus do not address the issue of its implementation.

<sup>4</sup> This paper is part of a larger comparative research project examining the politics of farmers' rights in Brazil and India.

to “capitalize on their perceived weakness in order to render themselves unaccountable both to their citizens and to international institutions” (Randeria 2003c:3). The ambivalent politics of cunning states is evidenced in the case of farmers’ rights in India by the government’s controversial decision to join UPOV shortly after the PPV&FR Act was passed; the fact that several pieces of legislation introduced since 2001 seem to undo the farmers’ rights provisions of the PPV&FR Act; and, more recently, the government’s stance in the first national case of biopiracy involving the use of local varieties of eggplants in the development of Bt brinjal. The lack of a clear political will on the part of the Indian state to effectively enforce the legislation and protect farmers’ rights has led to a break of trust between the state on one hand and farmers and civil society on the other.

In the first part of the article, I set the stage for the discussion to follow by tracing the broad lines of the global debate over farmers’ rights and giving an overview of the Indian farmers’ rights legislation and what is unique about it. In the second, more substantive, part of the article, I discuss advances and setbacks in implementing farmers’ rights in India since the passing of the PPV&FR Act in 2001. Broadening the analysis to other important policies and pieces of legislation passed during the same period, I then develop the argument that the politics of farmers’ rights in India have been characteristic of the cunning state and that this has compromised their meaningful implementation. In the conclusion, I draw some lessons from India’s experience for the debate on farmers’ rights and food sovereignty more broadly.

### The Vexed Issue of Farmers’ Rights

Farmers’ rights are the object of an important debate among scholars and activists.<sup>5</sup> It is widely acknowledged that the concept is ambiguous and its implementation fraught with difficulties. One problematic dimension of farmers’ rights is the lack of an accepted definition. Most official documents pertaining to farmers’ rights do not actually define the term. They establish where these rights arise from: farmers’ historical and contemporary contribution to plant breeding. They do not, however, specify who the right holders are (apart from the fact that they are not individuals but communities), or what they are entitled to.

This vagueness has given rise to diverging interpretations. Some narrowly equate farmers’ rights with “plant back rights”, the right to save seeds from a harvest to sow the next crop. In international treaties and conventions, farmers’ rights usually refer to the right to conserve, improve, use and exchange plant genetic resources. Peasant movements, for their part, have a more encompassing understanding of the term. According to the global peasant coalition Via

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<sup>5</sup> For a detailed history of the concept of farmers’ rights and a review of the literature up to 2005, see Andersen (2005).

Campesina, farmers' rights include the right to conserve biodiversity; to achieve food security; the right to land, water, and air; to appropriate technology; to define the control and handling of benefits derived from the use of genetic resources; to develop models of sustainable agriculture and; to use, choose, store, and freely exchange genetic resources (Borowiak 2004:529). In other words, farmers' rights are *the rights to the means to achieve food sovereignty*, which means regaining control over what to produce and how to produce it. As Via Campesina reiterated in the recent Jakarta Call, "seeds are at the heart of food sovereignty" and farmers' rights are therefore inseparable from food sovereignty (Via Campesina 2013).

In an attempt to seek a compromise between these opposing conceptions, Andersen (2006:5) suggests the following working definition:

"Farmers' Rights consist of the customary rights that farmers have had as stewards of agro-biodiversity since the dawn of agriculture to save, grow, share, develop and maintain plant varieties, of their legitimate right to be rewarded and supported for their contribution to the global pool of genetic resources as well as to the development of commercial varieties of plants, and to participate in decision-making on issues that may affect these rights."

This definition avoids the highly controversial issue of farmers' right to not only save and exchange but *sell* seeds. It also recognizes farmers primarily as stewards, or conservers, of plant genetic resources, rather than as breeders.

The key fault line in the debate concerns the vexed relationship between farmers' rights and intellectual property rights (IPRs). Some observers believe that farmers' rights and IPRs can be reconciled. Those who defend this view tend to conceive of farmers' rights within the conventional property rights framework. According to Cullet & Kolluru, for example, "farmers' rights are based on the recognition that all economic actors should have commercial rights over their knowledge, and not only one specific category of inventors" (2003:12-13). Farmers' rights should thus grant farmers full property rights over their knowledge, including the right to commercialize it.<sup>6</sup> In contrast, in an official position statement, Via Campesina (2001) states that farmers rights "are eminently collective; they should therefore be considered as a different legal framework from those of private property and intellectual property." In the Declaration of Rights of Peasants, it asserts the right to reject intellectual property of crop genetic material (Via Campesina 2009). Article X, Rights to biological diversity, reads: "Peasants (women and men) have the right to reject intellectual property rights of goods, services, resources and

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<sup>6</sup> On reconciling farmers' rights and breeders' rights, see also Alker and Heidhues (2002), Verkey (2007) and Winter (2010).

knowledge that are owned, maintained, discovered, developed or produced by the local community. They cannot be forced to implement those intellectual property rights.”

There is also significant disagreement as to the potential for realizing farmers’ rights. Borowiak (2004), for example, argues that, contrary to breeders’ rights, farmers’ rights prove difficult to enact because they involve collective rather than individual knowledge, historical as well as current contributions, and traditional knowledge rather than new knowledge. “Because farmers’ rights do not actually contest breeders’ rights per se, proponents tend to implicitly concede the legitimacy of the [intellectual property rights] regime” (Borowiak 2004:532). The danger, he concludes, is to legitimize the inequities it claims to address (Ibid.:511).<sup>7</sup> To paraphrase Escobar (1994:220), farmers are acknowledged as having rights on seeds only to the extent that they agree to treat seeds as capital. Despite FAO’s insistence that breeders’ rights and farmers’ rights are “parallel and complementary rather than opposed”, this is far from obvious. As Borowiak shrewdly concludes, “the reality is that TRIPS [Agreement on Trade-Related Aspects of Intellectual Property Rights] and breeders’ rights have the force of capital behind them whereas the FAO and farmers’ rights do not”<sup>8</sup> (2004:534). Interestingly enough, a high-ranking government official at the Indian Council for Agricultural Research made a similar comment.<sup>9</sup>

The evolution of Kloppenburg’s thought on farmers’ rights is interesting. In the revised 2004 edition of *First the Seed*, he devotes a whole new chapter to plant biotechnology in the twentieth century, in which he recognizes being overly optimistic with regards to the Seed Treaty sixteen years ago. The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), known as the Seed Treaty, was signed in 2001 and came into force in 2004. Its objectives are similar to those of the Convention on Biological Diversity (CBD)—conservation, sustainable use and benefit sharing—but, as its name indicates, it is specifically concerned with genetic resources for food and agriculture. Both the CBD and the Seed Treaty are based on the premise that countries have sovereign rights over their genetic resources, as opposed to the former principle of genetic resources as the common heritage of humanity. At that time, and for reasons of realpolitik, Kloppenburg supported the shift towards national sovereignty over genetic resources. As he concludes, however, “Although so-called Farmers’ Rights were recognized, they remain rhetorical constructs, and peasant farmers and indigenous peoples have been subjected to a new round of appropriationist initiatives” (2004:336). In a recent article, he offers a sharp critique:

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<sup>7</sup> For a critique of farmers’ rights, see also Bennett (2002) and Montecinos (1996).

<sup>8</sup> On the role of multinational corporations in drafting the TRIPS Agreement, see Sell (1999) and Matthews (2002).

<sup>9</sup> Interview at the Indian Council for Agricultural Research (ICAR), New Delhi, 26 February 2013.

However appealing in conception, farmers' rights as they have actually been implemented in international fora have been little more than a rhetorical sleight of hand, a means of diverting activist energies into prolonged negotiations with corporate lobbyists and state bureaucrats. The final result of 12 years of talks was, in 2001, approval of an International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) that neither effectively impedes genetic dispossession nor provides any material recompense for what is being taken (2010:373).

The growing skepticism surrounding the farmers' rights approach makes all the more important and timely a critical assessment of what national farmers' rights legislations have achieved so far. In the next section, I present an overview of the Indian Protection of Plant Varieties and Farmers Rights Act, 2001, widely regarded as the most far-reaching farmers' rights legislation worldwide.

### India's Farmers Rights Legislation

Like the majority of countries in the Global South, India did not offer intellectual property in plant varieties prior to joining the WTO. The 1970 Indian Patent Act explicitly excluded agriculture and horticultural methods of production from patentability. Consequently, India had to substantially revise its legislation in order to fulfil its new obligations under the TRIPS Agreement.<sup>10</sup>

The first draft of the plant variety protection bill, introduced in 1993, made no mention of farmers' rights. This draft met with considerable opposition and prompted mass demonstrations (termed "beej satyagraha" or seed protest) by farmers (Seshia 2002:2745). Revised drafts were introduced in 1997, 1999 and 2000. From January to August 2000, a Joint Parliamentary Committee held public consultations throughout India. After a seven-year struggle and five drafts, the PPV&FR Act was finally passed into law in 2001 (Sahai n.d.[2]). The PPV&FR Act differs in substantial ways from the initial drafts. Civil society succeeded in having several of its demands incorporated into the legislation, notably the *sui generis* system and the chapter on farmers' rights. It also succeeded in including farmers' right to sell seeds of protected varieties, the most fiercely resisted demand (Sahai n.d.[1]).

India's legislation is unique worldwide for it combines plant breeders' rights with elements of the Convention on Biological Diversity (CBD) and Seed Treaty. In other words, India developed a truly *sui generis* (literally "of its own kind") legislation. Significantly, farmers' rights are

<sup>10</sup> As Seshia (2002:2745) points out, Indian industry associations were calling for plant variety protection prior to the WTO, and the Indian legislation should therefore not be seen strictly as the outcome of the TRIPS Agreement.



acknowledged in the very title of India's new law: the Plant Variety Protection and Farmers' Rights (PPV&FR) Act, 2001. Chapter VI of the Act is devoted to farmers' rights. A farmer has the right to save, use, sow, resow, exchange, share or *sell seeds, including from protected varieties*, as well as harvested materials, "in the same manner as he was entitled before the coming into force of this Act" (my emphasis). The only restriction is that a farmer cannot sell branded seeds of a protected variety if they are labelled as such. This provision is usually understood as meaning that farmers can sell seeds in a generic form without a label but cannot compete with breeders and seed companies by selling under a brand name (Cohen and Ramanna 2007).

Farmers are recognized as breeders alongside public and private breeders, and are entitled to IPR protection of their varieties. Farmers' varieties are defined as those that have been traditionally cultivated and evolved by farmers in their fields, or those that are wild relatives, or land races of a variety about which farmers possess common knowledge (Section 2I). Farmers can register their varieties and are exempt from paying fees. The criteria for registration are the same as for public and private breeders—distinct, uniform and stable—except for the novelty criterion, which does not apply to farmers' varieties.

One salient feature of the PPV&FR Act is the recognition of extant (or existing) varieties as eligible for protection alongside new ones. Extant varieties include those notified under the Seeds Act, farmers' varieties, varieties in the public domain and varieties about which there is common knowledge (Section 2j). This is a significant departure from UPOV and conventional IPR law, whose rhetoric is precisely to reward innovation and investment. According to Seshia (2002:2745), extant varieties are mostly those in the public domain, and the rationale behind their inclusion was "to strengthen the position of the public sector in establishing PBRs over its varieties."

Besides new, farmers' and extant varieties, the Act provides for a fourth category—essentially derived varieties (EDV). As its name indicates, EDV are essentially identical to the parent variety except for certain specific traits (Section 2i). EDV was added as an afterthought, and it remains a vague category whose definition is open to interpretation. According to some observers, the rationale was that it could provide some protection to publicly bred varieties that had been only slightly modified (Seshia 2001 in Cohen and Ramanna 2007). According to others, it was introduced under industry pressure and could be used to restrict farmers' rights. For example, a company could prevent farmers from developing a new variety using a protected variety by arguing that the new variety is in fact an EDV.<sup>11</sup>

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<sup>11</sup> Interview with Biswajit Dhar, Director, Research and Information Systems, New Delhi, 5 March 2013.

The Act includes a number of innovative provisions pertaining to farmers' rights. For example, farmers cannot be held responsible for infringing breeders' rights if they can demonstrate that they did so unknowingly, a provision meant to protect farmers who are not yet aware of the new breeders' rights legislation. Moreover, seed companies are obligated to inform farmers of the expected yield of their varieties, and farmers are entitled to compensations if the seeds do not perform as advertised.

The Act also includes provisions for benefit sharing. Farmers who are engaged in the conservation of genetic resources and their improvement through selection are entitled to receive benefits through the National Gene Fund. Upon registering varieties, private and public breeders are obligated to declare if they have used genetic resources maintained by indigenous or farmers' communities in the process, and the latter are entitled to receive benefits. Indigenous and farmers' communities can also make claims to the National Gene Fund when they believe that this has been the case. Any person, governmental or non-governmental agency can make a claim on behalf of a community.

India also revised its legislation on industrial property to comply with the WTO TRIPS Agreement by introducing successive amendments to the Indian Patent Act in 1999, 2002 and 2005. The Indian Patent Act (1970) allowed patents on processes but not on products, and excluded plants and agricultural methods. With the amendments, products can now be patented. Moreover, a method or process for modifying a plant can now be counted as an invention and therefore patented. Patents are allowed on micro-organisms, as well as on microbiological, biochemical and biotechnological processes, which means that methods of genetic engineering and genetically engineered organisms can be patented. It excludes from patentability plants, plant varieties, seeds, genes, cells and cell parts. However, case law in other countries shows that even if patents are not allowed on higher life forms like plants, companies have successfully claimed *de facto* rights over the plants that incorporate a patented gene.<sup>12</sup> The Act also excludes discoveries and any invention derived from traditional knowledge. Patents have direct implications for farmers' rights since they are exclusive rights that prevent farmers from saving and exchanging seeds.

More than seven years elapsed between the introduction of the first variety protection draft, in 1993, and the passing of the PPV&FR Act, in 2001. India's farmers rights legislation—arguably the most advanced worldwide—is the result of broad social mobilization. Indeed, farmers'

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<sup>12</sup> In the *Monsanto v. Schmeiser* case, for example, the Canadian Supreme Court ruled that the issue of how Roundup Ready canola had landed on Schmeiser's property—whether through genetic contamination or otherwise—was ultimately irrelevant. Monsanto's patent on a gene extended to the plant of which it is a part, thus blurring the distinction between patents on transgenic cells or genes and patents on plants (Cullet 2005:105).

rights were only included in the PPV&FR Act after strong civil society pressure and lobbying, and their implementation raised a new set of challenges.

### Twelve Years On: Advances and Setbacks in Implementing Farmers' Rights in India

The PPV&FR Act was passed by Parliament in 2001 and received presidential assent the same year, but the government delayed the Act's regulations until December 2006, effectively preventing its implementation. According to Ghose (2004), the main reason for delaying its implementation was the government's controversial decision to join UPOV and the ensuing Public Interest Litigation (this is discussed in more detail below). In any case, the PPV&FR Authority became functional with the Gazette notification and the joining of the Chairperson of the Authority in November 2005. The registration process for plant varieties came into effect in May 2007. The same year, the National Gene Fund was constituted. Finally, in February 2009, the PPV&FR Authority issued the first registration certificate.<sup>13</sup>

According to the latest statistics (February 2013), the PPV&FR Authority has received a total of 4284 applications for the registration of different categories of varieties (extant, new, farmers and EDVs). The largest number of applications comes from the private sector (1799), followed by farmers (1387) and the public sector (1098). For the period 2007-2011, applications for the registration of farmers' varieties only accounted for 0.09 percent of the total number of applications. The lower pace of filing for farmers' varieties is generally accounted for by a lack of awareness of the new legislation among farmers, and the difficulty for them to deal with complex registration procedures (Lushington 2012:126-7). Starting in 2012, there was a marked increase in the number of applications for farmers' varieties (32 percent of all applications, up from 0.09 percent).<sup>14</sup> However, applications were overwhelmingly for rice (1404 out of 1460) and the increase reflects the intensified efforts of a small number of organizations rather than the broadening of the process across India (PPV&FR Authority 2013b).

Out of these applications, 459 certificates have been issued for public varieties, 101 for private varieties and only six for farmers' varieties (another eight farmers' varieties are awaiting registration at the time of writing<sup>15</sup>) (PPV&FR 2013a). The six varieties that have been granted registration under the Act are four varieties of rice (Tilak Chandan, Hansraj, Indrasan and Dadaji HMT) and two of bread wheat (KUDRAT 9 and Wheat Ravi No. 1) (PPV&FR Authority 2013c).

<sup>13</sup> Introducing plant variety protection is not a simple task. It requires setting up a complex infrastructure for processing applications, including guidelines for each crop species and for the different categories of applications, as well as for conducting DUS (distinctiveness, uniformity, stability) testing and in field grow out tests; national and field gene banks; an appellate tribunal for resolving disputes surrounding plant variety registration, benefit sharing, compulsory licensing and the payment of compensation (Gautam et al. 2012:20).

<sup>14</sup> Compiled from data in Lushington (2012) and PPV&FR Authority (2013a).

<sup>15</sup> Interview with officials at the Registrar General Office, PPV&FR Authority, New Delhi, 4 March 2013.

Even though there is no data or even estimates of the number of farmers' varieties in existence in India, this is a dismayingly low number. This is unlikely to change now that the grace period for the registration of extant varieties—five years from the date of notification of the crop species—is coming to an end. After the grace period, only new farmers' varieties will be eligible for plant variety protection.

As for the other farmers' rights provisions of the Act, results are also mixed. As we have seen, civil society formally has a say in the implementation of the PPV&FR legislation. The PPV&FR Authority includes representatives from the government, an agricultural university, the seed industry, a farmers' organization, a women farmers' organization and an indigenous organization. However, these provisions have not so far translated into meaningful participation.<sup>16</sup> As for the National Gene Fund, its impact has been limited, with proceeds redistributed so far in the form of an award to a small number of farmers and farmers' communities (five per year) in recognition for their contribution to the preservation of agricultural biodiversity (PPV&FR 2012).

In view of the low numbers of farmers' varieties registered, efforts have been made in recent years to increase the number of applications under this category. The PPV&FR Authority implemented a number of initiatives to reach out to farmers and increase awareness of the Act, such as conducting regional workshops and opening regional offices.<sup>17</sup> Efforts have also been made to simplify the registration process. Farmers are exempted from paying fees for the registration of farmers' varieties and they submit half the quantity of seed material specified for a new variety. Regarding DUS (distinctiveness, uniformity, stability) criteria, the uniformity level for farmers' varieties cannot exceed double the number of off-types (any seed or plant that deviates in one or more characteristics from the variety as described) specified for new varieties; and the variety is deemed to meet the stability criteria if it meets the uniformity criteria (Government of India 2009a).

It is difficult to calculate the ratio of applications to registration because a variety can be found at any of the different stages of the registration process, a long process that takes between eight and twenty months. Nonetheless, farmers' varieties clearly have a lower ratio of registration to applications than public or private varieties. Although criteria have been relaxed for farmers' varieties, the fact remains that farmers' varieties do not fit well the DUS criteria

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<sup>16</sup> Among the NGO representatives interviewed, no one knew who the farmer's representative to the PPV&FR Authority was or even that there was one. When I asked officials at the PPV&FR Authority, I was told that the position was currently vacant but that someone would be nominated shortly. Interview, Registrar General, Plant Variety Protection and Farmers Rights Authority, New Delhi, 4 March 2013.

<sup>17</sup> See the PPV&FR Authority Annual Reports for a summary on these initiatives. All annual reports are available on the Authority's website at [www.plantauthority.gov.in](http://www.plantauthority.gov.in).

used to assess commercial varieties. Commercial cultivars presuppose a high level of genetic uniformity and stability not found—nor considered desirable—in farmers’ varieties. This reflects the fact that commercial and farmers’ varieties are inscribed in different paradigms (industrial vs. low-input farming) and obey distinct needs and logics.

The fact that the number of farmers’ varieties registered remains low in spite of these efforts points to a broader problem. Indeed, a more thorough understanding of the farmers’ rights issue requires more than a formal analysis of the number of applications and the practical impediments to the registration of farmers’ varieties; it requires an examination of the broader policies and politics of farmers’ rights. Indeed, an important part of the explanation for the low number of applications for farmers’ varieties is a certain ambivalence towards the Act on the part of farmers and NGOs, possibly as a result of a series of contradictory governmental decisions and policies since the passing of the PPV&FR Act.

The first hint that the government was not unequivocally intent on implementing the new legislation came less than a year after the passing of the Act. In May 2002, the Indian cabinet expressed interest in joining the International Union for the Protection of New Varieties of Plants (UPOV). This decision came as a shock to those who had campaigned for a *sui generis* legislation.<sup>18</sup> Indeed, in order for India to join UPOV, it would have to amend its plant variety protection legislation to conform to the UPOV 1978 Convention. This would have negated all that had been achieved with the PPV&FR Act, since UPOV has no concept of farmers’ rights. This decision on the part of the Indian cabinet is hard to explain, but it is clear that it was under strong external pressure. In the wake of the passing of the PPV&FR Act, UPOV was keen to get such an important country as India on-board and prevent it from becoming an alternative for other developing countries. The UPOV Secretariat at the time made an offer to open an exception and allow India to join UPOV 1978. Indeed, since April 1999, countries had to join the latest, and more restrictive, 1991 Convention. The 1991 UPOV Convention is more restrictive than its 1978 counterpart: it extends protection from 15 to 20 years, does not include a breeders’ exemption – the right to use a protected variety to develop a new variety – and extends protection to “all plant varieties and products including those that are derived (Article 1).” This means that protection is extended to harvested materials; farmers are no longer allowed to exchange or sell such material, and can only save seeds if national governments, with the consent of the breeder, allow limited exceptions. UPOV 1991 also allows “dual protection”, meaning that a product can be covered simultaneously by a patent and plant breeders’ rights. However, the offer to join UPOV 1978 was not made in writing and, according to a seasoned observer, UPOV is a member-driven organization and it is questionable whether

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<sup>18</sup> Interview with Suman Sahai, Director, Gene Campaign, New Delhi, 24 February 2013.

the Secretariat offer would have been tenable.<sup>19</sup> In any case, Gene Campaign, an Indian NGO that has played a key role in the farmers rights debate in India, filed a Public Interest Lawsuit challenging the government decision on the grounds that India was under no obligation to join UPOV, and that doing so would constitute a violation of its own legislation (the PPV&FR Act and the Constitution) as well as of the CBD and ITPGRFA, of which India is a signatory (Gene Campaign n.d.). In response to the PIL, the government backtracked and denied its intention to join UPOV, which put a temporary end to the PIL. The matter of India joining UPOV has since become dead letter, and India continues to hold observer status with UPOV.

As this example illustrates, we must look beyond the PPV&FR legislation in order to fully understand the challenges of implementing farmers' rights in India. Indeed, a number of bills and amendments passed since 2001 have direct implications for farmers' rights, and could threaten the gains made in the PPV&FR Act. To add to the complexity, different ministries, each with its own goals and institutional culture, are responsible for implementing these laws. For example, the seeds policy comes under the authority of the Ministry of Agriculture; the Ministry of Environment and Forest is responsible for implementing the Biological Diversity Act; and the Ministry of Science and Technology is in charge of the regulation of agricultural biotechnology.

A year after the passing of the PPV&FR Act, India enacted the Biological Diversity Act to fulfill its commitments as a party to the Convention on Biological Diversity. The Biological Diversity Act, 2002, creates a National Biodiversity Authority (NBA) to oversee the implementation of the Act and to advise the government on matters related to biological diversity. The NBA is responsible for regulating access to and use of genetic resources in India. In line with the CBD, the Act asserts national sovereignty over natural resources by imposing strict conditions on foreigners' access to biological resources and related knowledge. However, it has also been criticized as alienating indigenous farmers from their resources by centralizing control and creating a burdensome bureaucracy (Cullet and Kolluru 2003). The PPV&FR Act and the Biological Diversity Act have distinct objectives. The PPV&FR Act aims "to provide for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders, and to encourage the development of new varieties of plants", whereas the Biological Diversity Act aims to regulate access to biological resources and associated knowledge, and ensure equitable sharing of the benefits arising from their use. However, there is some overlap between the two pieces of legislation, as both are designed to protect biological wealth and to regulate the IPRs involved. Both, for example, have provisions related to benefit sharing and the disclosure of the origin of biological materials.

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<sup>19</sup> Interview with Biswajit Dhar, Research and Information Systems for Developing Countries, New Delhi, 5 March 2013.

A draft Seeds Bill was also introduced in 2004 to replace the Seeds Act, 1966. The stated goal of the bill is to create a regulatory environment conducive to the growth of the seed industry, and it is in many ways at odds with the PPV&FR Act. The proposed Seeds Bill makes the registration of varieties mandatory. It states that “no seed of any kind or variety shall (...) be sold unless it is registered” (Article 13.1) and that “no producer shall grow or organize the production of seed unless he is registered as such by the State government” (Article 21.1). Registration, however, is a long and costly process for farmers. In any case, farmers’ varieties would likely not meet registration standards because they respond to a logic different from that of commercial varieties. The bill does not distinguish between a seed company and a farmer who barter seeds with his neighbour, and requires that both be registered: “Every person who desires to carry on the business of selling, keeping for sale, offering to sell, *bartering*, import or export or otherwise supply any seed (...) shall obtain a registration certificate as a dealer in seeds from the State Government” (Article 22.1, my emphasis). The bill also gives seed inspectors extensive search powers and stipulates fines for the exchange and barter of unregistered seeds.

Critics of the draft seed bill argue that it undermines most of the pro-farmer provisions of the PPV&FR Act, and that it will benefit multinational and large Indian seed companies (through sales of exported seeds) but will be detrimental to farmers (Zaidi 2005). They point out that some of its provisions are an assault on the informal seed market and are in direct contradiction with the PPV&FR Act. Indeed, article 43.1 states that “nothing in this Act shall restrict the right of the farmer to save, use, exchange, trade or sell his farm seeds and planting material, except that he shall not sell such seed or planting material under a brand name or which does not conform to the minimum limit of germination, physical purity, genetic purity (...)” While the first part of the article complies with the PVP&FR Act, the second part about meeting registration standards does not. Most farmer-selected varieties do not meet criteria for physical and genetic purity; they tend to be genetically unstable, which is precisely what makes them highly adapted to specific soils and cultivation systems. Moreover, many safeguards for farmers’ rights present in the PPV&FR Act are not included in the new seed bill, which does not provide for innocent infringement, for benefit sharing in cases where farmers’ varieties have been used in the development of commercial cultivars, or for redress in case of spurious seeds (Zaidi 2002; GRAIN 2005).<sup>20</sup> The bill met with an outcry and a list of amendments was introduced in 2010. As of July 2013, it had not yet been passed.<sup>21</sup>

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<sup>20</sup> The only mechanism for redress is to turn to a local consumer court, an option already available under the 1986 Consumer Protection Act.

<sup>21</sup> Another relevant act is the Geographical Indications Act, 1999, which came into force in 2003. According to Ramanna (2006:viii), depending on the way it is implemented, it could be either beneficial to farmers, if it enables them to claim rights for agricultural goods originating in a specific region; or it could be detrimental if it restricts farmers’ access to the protected goods.

Another bill that is relevant to farmers' rights is the Biotechnology Regulation Act of India (BRAI) Bill. The BRAI Bill was introduced in Parliament despite strong opposition on 22 April 2013. It regulates the research, manufacture, importation and use of products of modern biotechnology. The bill has been denounced as favoring the interests of the biotechnology industry at the expense of biosafety. It creates a single window clearing house for GM crops—a three-member committee under the authority of the Ministry of Science and Technology. Critics point out that this puts the Ministry of Science and Technology in a position of conflict of interest, since it becomes both a promoter and regulator of GM crops. Critics also argue that the Bill takes away power from state governments (under the Constitution of India, agriculture is a state subject). The bill is also criticized for bypassing the Right to Information Act (RTI), 2005, since some information related to GM crops would be considered “confidential commercial information.” Finally, the bill does not include any provision for long-term independent impact assessment or need assessment (Coalition for a GM-Free India 2013). This pro-industry bill sends another strong signal that the government is favoring the interests of the commercial seed industry.

Finally, the National Food Security Bill (NFSB) has been the object of considerable debate since its inception in December 2011. Setting aside all opposition, the Indian cabinet promulgated an ordinance on 3 July 2013.<sup>22</sup> The food security bill sets up an ambitious program aimed at providing subsidized grains to two-thirds of India's 1.2 billion population who are food insecure. Laudable though the aim might be, the bill has been severely criticized as a missed opportunity for food security and farmers, and as expanding people's dependence on government welfare rather than tackling the structural roots of malnutrition and hunger (Kothari 2012). For example, it makes no provision for the production of food or the support of small and marginal farmers through the local procurement of coarse grains. Coarse grains refer to cereal grains other than wheat and rice, such as millets, barley and sorghum. Coarse grains are highly nutritious and better adapted to marginal environments but have been traditionally neglected by public policies bent on high yielding varieties. The food security bill also raises concern that increased demand and higher government payments for staples like wheat and rice may lead to a decrease in agricultural diversification.<sup>23</sup>

In sum, after the passing of the PPV&FR Act, 2001, a series of controversial government decisions and pieces of legislation sent contradictory signals regarding the government's will to implement farmers' rights. The first such signal was the cabinet's unexpected decision to join

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<sup>22</sup> Once the president signs the ordinance, rules can be framed and the program rolled out, although the ordinance still has to be ratified by parliament and the bill passed by both houses of parliament.

<sup>23</sup> For more information on the National Food Security Bill, see the website of the Campaign for the Right to Food, at <http://www.righttofoodindia.org>.



UPOV, in 2002, in direct contradiction with efforts to devise a *sui generis* legislation on plant breeders' rights. Both the Seeds Bill, 2013, and the Biotechnology Regulatory Authority of India (BRAI) Act, 2013, are widely perceived as promoting the interests of the commercial seed industry over those of farmers. The Seeds Bill, in particular, includes provisions that undermine the rights conferred to farmers under the PPV&FR Act. Finally, the National Food Security Bill (NFSB), 2011, has been interpreted as a missed opportunity to promote farmers' rights by linking, for example, this ambitious scheme to local food production.

### Farmers' Rights & the Cunning State

India's decision to join UPOV in the wake of the PPV&FR Act can be interpreted as a desire to please and appease civil society at home by passing a strong farmers' rights legislation, all the while ceding to international pressure to join UPOV and appease another constituency—the national seed industry. However, as we have seen, this decision was not only totally contradictory but ultimately impracticable.

Randeria's analysis of the cunning state offers interesting insights into the role of countries such as India in the global politics of intellectual property rights over genetic resources. As she suggests, "Cunning states (...) lack neither [bargaining power nor technical expertise] but prefer to make sub-optimal use of the limited space currently available for autonomous policy formulation and implementation within the WTO framework" (2007:7). As she is careful to specify, "This is not to suggest that their sovereignty is not being externally constrained and internally contested. It is my argument that, within these limits, there is considerably more space for setting national agendas than is conceded by cunning states, which lack the political will, rather than the space, for autonomous policy-making (2007:6). This argument is borne out by the fact that India was initially intent on introducing a legislation based on UPOV 1978. It is important to stress that both options—UPOV 1978 and a *sui generis* legislation—were consistent with its obligations under the TRIPS Agreement.

Most government officials are well aware that the ambiguity surrounding certain provisions of the TRIPS Agreement allows for a multitude of possibilities. As the Indian minister for trade and commerce, Thiru Murasoli Maran, put it eloquently at the time: "We are all aware that the text of the TRIPS is a masterpiece of ambiguity, couched in the language of diplomatic compromise, resulting in a verbal tight-rope walk, with a prose remarkably elastic and capable of being stretched all the way to Geneva" (Ministry of Commerce and Industry 2002). One prime example is the fact that the meaning of "an effective *sui generis* system for plant varieties" in article 27(3)b of the TRIPS Agreement was entirely open to interpretation. In fact, there is no

agreed upon understanding of that phrase to this day.<sup>24</sup> This ambiguity gave countries considerable flexibility to develop a system truly “of its own kind” (especially for countries which, like India, are not members of UPOV), but few countries took advantage of it. India is among the few countries<sup>25</sup> that exploited the flexibility allowed by the TRIPS Agreement to introduce a protection of plant varieties legislation better adapted to its reality—but it only did so under pressure from civil society.

The importance of political will (and the lack of it) is evidenced when one contrasts the Indian government’s stance on the issue of farmers’ rights with its stance on the issue of generic drugs. In April 2013, in a much-awaited decision, the Supreme Court of India ruled that, under India’s anti-evergreening provisions, the patent sought by Novartis for a new version of its cancer drug Glivec did not represent a true innovation. Evergreening refers to the myriad ways in which pharmaceutical companies use the law and related regulatory processes to extend their patents, particularly on blockbuster drugs, beyond the period of time that would normally be permissible under the law. In practice, this decision means that generic drug manufacturers can continue producing generic versions of the drug (Harris and Thomas 2013). Food is as critical as health, and the Indian state could similarly argue that seeds are a matter of public interest and intervene to regulate royalties and seed pricing.<sup>26</sup> However, it has chosen not to do so. A number of factors explain why the Indian state is more inclined to defend access to generic drugs than access to seeds. For one thing, wealthy urban patients represent a more influential constituency than poor rural farmers. More importantly perhaps, the interests of its thriving Indian generic drug industry are at stake.

India’s stance on biopiracy nationally and internationally also illustrates cunning states’ ambivalent role. India has consistently taken a strong stance against biopiracy in international negotiations at the WTO, World Intellectual Property Rights Organization (WIPO) and on the Nagoya Protocol on Access and Benefit Sharing. It has championed the most stringent option of “disclosure as a TRIPS obligation” and supported efforts at developing an international legal instrument for the disclosure of the origin of biological materials and associated traditional knowledge when they are the objects of intellectual property claims. This has pitted India against the European Union, which agrees with the disclosure requirement in principle, but

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<sup>24</sup> According to Article 27(3)b: “However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof” (WTO 1994). On the lack of an agreed upon interpretation of the meaning of “an effective *sui generis* system for new plant varieties”, see [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), accessed 19 July 2013

<sup>25</sup> With the exception of the African Union, Ethiopia and Costa Rica, the countries that recognize farmers’ rights in their legislation are mostly located in Asia (Bangladesh, Malaysia, Nepal, Pakistan, the Philippines and Thailand). See the Farmers’ Rights Project Website at [www.farmersrights.org](http://www.farmersrights.org)

<sup>26</sup> The State government of Andhra Pradesh has recently introduced a bill asserting its right to monitor the pricing of seeds and royalties (Kurmanath 2013).

wants any legal consequences to fall outside the purview of patent law; and against the United States, which argues that this should be addressed under national, not supranational, legislation (WTO 2013).

In contrast to its proactive stance in international negotiations on traditional knowledge and biological material, India has a mixed record on the protection of farmers' rights and its resources against biopiracy. The first case of biopiracy involving India's natural resources to draw public attention after the coming into force of the WTO Agreement involved turmeric. In this case, the publicly funded Indian Council for Scientific and Industrial Research (CSIR) successfully challenged, in 1997, the patent granted by the US Patent and Trademark Office (USPTO) on the grounds that it did not meet the criterion of novelty (turmeric has been used in India for thousands of years for healing wounds and rashes) (Shiva 1997). However, the Indian state failed to challenge the patent granted to a US transnational corporation by the European Patent Office on the Neem tree, an evergreen found all over India, whose seeds have pesticidal properties. Instead, the legal challenge was taken up by a civil society coalition, who challenged the patent on the grounds that the seeds of the Neem tree were traditionally used as a bio-pesticide. The European Patent Office struck down the patent after a five-year long legal battle on the grounds that it lacked novelty, since a similar process already existed in India. Ironically, as Randeria (2007:8-10) points out, although the coalition's objective – the revocation of the patent – was met, the decision dismissed the argument regarding traditional knowledge and the rights of agricultural communities, and reduced the case to a dispute between Indian and American industrialists. Finally, in the case of Basmati rice, the Indian government only challenged the US corporation RiceTec patent when forced to do so by the Indian Supreme Court following a Public Interest Lawsuit. Moreover, when it did, it only protected the interests of Indian Basmati rice exporters and not those of its farmers and breeders. When RiceTec withdrew the claims relevant to Indian rice exporters, the Indian government simply dropped the case. Following a transnational civil society campaign, the USPTO struck down 15 of the 20 patent claims (Caduff & Randeria 2010:295). The most recent case involves a patent obtained by Monsanto in Europe on Indian melons with a natural resistance to the Cucurbit yellow stunting disorder virus. The Indian government did not take legal action and a coalition led by the Indian NGO Navdanya and the European NGO No Patents on Seeds challenged the patent on the grounds that Monsanto had not applied for authorization to access germplasm as required under the Biodiversity Act; that it represented an abuse of patent law since European patent law does not allow patents on conventional breeding; and, finally that the patents would severely restrict farmers and plant breeders (No Patents on Seeds 2011). While it did not challenge the European patent, the National Biodiversity Authority announced in June 2013 its intention to oppose Monsanto's application for the same patent before the US Patent Office on the grounds that it involves the misappropriation of Indian melon germplasm (Sood 2013b).

Taken together, these cases reveal the inconsistent role of the Indian government in challenging foreign patents on Indian bio-resources.

Another characteristic of cunning states is the discrepancy that exists between national and international discourse, official positions and actions, and the law and its enforcement. In consonance with its position on the disclosure of the source of origin of biological materials, India is one of a handful of countries that have enacted domestic disclosure rules (along with Brazil, China and Peru).<sup>27</sup> However, it has not shown the same readiness to enforce these rules. The first national case of biopiracy involves the use of local varieties of brinjal (the Indian term for eggplant) in the development of Bt brinjal (Laursen 2012). Bt brinjal was developed by a public agricultural university (the University of Agricultural Science in Dharwad, Karnataka State), Mahyco-Monsanto Biotech (MMB)<sup>28</sup> and a private consulting firm (Sathguru Management Consultants Private Limited). As in the case of Basmati rice and Neem tree, it is civil society that first raised the issue, alerted authorities and pressured the government into action. In 2010, the Indian NGO Environment Support Group filed a complaint with the Karnataka Biodiversity Board (KBB), alleging that the developers of Bt Brinjal had not applied to the National Biodiversity Authority (NBA) for the authorization to use local varieties of eggplants, in violation of India's National Biodiversity Act.<sup>29</sup> The Karnataka Biodiversity Board initially supported the complaint, but later washed its hands of the matter, referring it to the National Biodiversity Authority (Sood 2012).

Foot-dragging on the part of the National Biodiversity Authority prompted the Environment Support Group to file a Public Interest Litigation against the Ministry of Environment and Forest, the National Biodiversity Authority and the Karnataka Biodiversity Board demanding that they “perform their statutory duties under the Biological Diversity Act, 2002 with regard to existing cases of biopiracy” (High Court of Karnataka 2012). The NBA and KBB finally filed a criminal complaint in November 2012 after the High Court issued notice to them. However, the same month, in a controversial move, the Karnataka government announced the transfer of the two officers who were empowered by the Karnataka Biodiversity Board to file a criminal complaint in the case, a decision that suggests that there is no will to win on the part of public

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<sup>27</sup> According to section 25(1j) of the Patents Amendment Act, 2005: “Where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on the ground—(j) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention.”

<sup>28</sup> Mahyco-Monsanto Biotech (MMB) is a 50:50 joint venture between Mahyco (the Maharashtra Hybrid Seed Corporation) and the US company Monsanto.

<sup>29</sup> According to the Biological Diversity Act, 2002, “No person shall apply for any intellectual property right by whatever name called in or outside India for any invention based on any research or information on a biological resource obtained from India without obtaining the previous approval of the National Biodiversity Authority before making such application” (Chapter 2, 6(1)).

authorities (ESG 2013; Sood 2013). The case is currently on hold: on 3 January 2013, four of the accused obtained a six-month stay of criminal proceedings. Curiously enough, one of the accused in the Bt Brinjal case was appointed in May 2013 as the new chairperson of the PPV&FR Authority—a clear indication of where the central government stands on the case.

If cunning states' strategies may help them navigate the intricacies of global politics and international environment and trade negotiations, they are not without consequences at home, where they risk alienating civil society. The ambiguous politics of the Indian state regarding IPRs and biodiversity have led to disillusionment and skepticism among civil society. This is problematic because the implementation of farmers' rights requires the active participation of civil society organizations. Registering varieties is a long and burdensome process beyond the means of most farmers. In this context, NGOs and farmers' organizations play a key role as intermediaries between farmers and the PPV&FR Authority. This is acknowledged by the PPV&FR authority, which has recently reached out to NGOs to try to increase the registration of farmers' varieties (PPV&FR Authority 2012:24). However, given the government's mixed record on farmers' rights and biopiracy, many activists<sup>30</sup> express disenchantment with the role of the government and public sector: as one long time activist and researcher put it: "you may disagree with Green Revolution policies, but at least at that time the government was working for the public good; nowadays, it works for private interests."<sup>31</sup>

Adding to the unease is the uncertainty surrounding the legal status of genetic resources held by the National Bureau of Plant Genetic Resources (NBPGR). Part of the Indian Council of Agricultural Research (ICAR), NBPGR is responsible for the exchange, quarantine, collection, conservation, evaluation and the systematic documentation of plant genetic resources. Most of these resources have been collected from farmers over the years and are held in trust by the NBPGR. In October 2012, the Indian Council of Agricultural Research (ICAR) moved a controversial proposal to make this material available to private seed companies (it is currently available only to research institutes) but was forced to backtrack following the public outcry (Sharma 2012). In this broader policy context, some farmers and NGOs are wary of registering their varieties with the PPV&FR Authority, especially since this involves giving a sample of the variety for the purpose of characterization<sup>32</sup> and storage in a national gene bank. In the absence of a clear will on the part of the government to keep genetic resources in the public sector, farmers fear that their varieties may end up in the hands of the private sector. There

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<sup>30</sup> The quotes in this section are taken from interviews with NGO representatives conducted in India in February and March 2013.

<sup>31</sup> On the changing role of the Indian state since 1991, see Gupta and Sivaramakrishnan (2010).

<sup>32</sup> Morpho-agronomic characterization consists in the analysis of germplasm, using descriptors developed by organizations such as the FAO International Plant Genetic Resources Institute (IPGRI) and UPOV. This data is then used to elaborate the "passport" of a specific variety.

exists a precedent: in late 2002, Syngenta, the Switzerland-based multinational corporation, entered into an agreement with a state university (IGKV) in the Indian State of Chhattisgarh to gain access to 20,000 paddy varieties in the custody of the university. A coalition of grassroots organizations launched a campaign that led to the demise of the agreement (Lutringer 2009). A certain wariness toward the post-liberalization state is evident in NGO representatives' insistence that the state is "not the owner of PGR but their caretaker." It is also evident in their emphasis on the role of communities in the management of plant genetic resources. As one NGO representative puts it, "if you can't rely on the government or on the private sector, that only leaves communities..."

Disillusionment with the public sector translates into mixed feelings about the Indian legislation, and a broader critique of the farmers' rights discourse. Some NGOs argue that farmers' rights should be understood in much broader terms, and not as a "vestigial right." The Indian farmers' rights legislation "might be more progressive than what is found elsewhere but the principle—exclusive rights—is actually wrong." The need "to move beyond farmers' rights" is another recurring theme: "the whole rights framework is very restrictive [for farmers], we should talk about autonomy and sovereignty, not rights." This last quote points to the emerging discussion around food sovereignty, perceived as a possible way out of the impasse. As one long time farmers' rights activist puts it, "if a community is food sovereign and seed sovereign, farmers' rights are not very important." Discussions of food sovereignty are limited for the time being to a small circle of farmers' organizations and grassroots NGOs that have close links to La Vía Campesina and the global food sovereignty movement. While food security is widely discussed (as witnessed the debate around the food security bill), discussion on the issue of food sovereignty is embryonic in India. According to one interviewee, food sovereignty, which implies community control over resources, does not go down well in India where "the State is sovereign, not its people."

Within these circles, there is an emerging discussion of Open Source Seeds, seen as an alternative to farmers' rights as intellectual property rights (as formulated in the PPV&FR Act). Open Source Seeds are still at the stage of conceptual discussions in India, but a small network of activists and researchers has launched a number of initiatives. The Centre for Sustainable Agriculture (CSA), based in Hyderabad, and Alliance for Sustainable and Holistic Agriculture, a network of organizations across the country, launched an Open Source Campaign and produced a working document.<sup>33</sup> The guiding principle is that rights should not be exclusive and should not prevent further innovation. As is the case with open source software, material transfer agreements should specify that any variety derived from such material is also OS (the so-called

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<sup>33</sup> The document is available at <http://agrariancrisis.in/wp-content/uploads/2012/08/Open-Source-Seed-Systems-1.01.pdf>.

viral effect). CSA is working with farmer-breeders and lawyers to establish an Open Source legal system, while at the same time dialoguing with the government (in particular, the NBPGR) to have public resources, including all the existing germplasm held by public agricultural universities, declared as Open Source. While individual scientists within the public breeding system may be open to discuss OS, institutions are wary of doing so. In the prevailing climate of liberalization and strengthening of IPRs, these initiatives clearly go against the general trend and promise to be an uphill battle.

### **Conclusion: Farmers' Rights & Food Sovereignty: Lessons from India**

There is no question that farmers enjoy significant rights under India's Protection of Plant Varieties and Farmers' Rights Act (2001)—at least on paper. However, important questions remain as to its implementation. Beyond technical or practical limitations such as the lack of awareness and resources, there exists a deeper barrier to the realization of farmers' rights in India. Indeed, meaningful implementation of these rights is entirely dependent on a close working relationship between the public authorities in charge for implementing the legislation on one hand, and farmers and their representatives on the other. However, in the current policy context in which the general thrust is toward the liberalization of Indian agriculture, the kind of trust required for such a relationship is lacking. Stated differently, the very political and economic climate that led to the introduction of plant variety protection—and thus created the need for farmers' rights in the first place—is not conducive to their meaningful implementation.

The example of India points to the inherent weakness of farmers' rights as they are being developed in the international legal systems, primarily the CBD and Seed Treaty: the reliance on cunning states and on the vagaries of national politics for their implementation. As Patel writes “Central to the idea of rights is that a state is ultimately responsible for guaranteeing the rights within its territory, because it is sovereign over it” (2010:191). The inconvenient truth is that the adoption of a progressive farmers' rights legislation (again, under civil society pressure) has not changed the neoliberal policy agenda of the Indian state.

Farmers' rights activists in India were largely successful in the fight over the plant variety protection legislation. However, the initial optimism surrounding the adoption of the PPV&FR Act has given way in recent years to widespread wariness and skepticism. As a consequence, after having successfully fought for the inclusion of farmers' rights provisions in the national legislation, some farmers' rights activists are now turning away from the state in search of alternatives to achieve seed (and food) sovereignty at the community level.

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# FOOD SOVEREIGNTY: A CRITICAL DIALOGUE INTERNATIONAL CONFERENCE PAPER SERIES

## Food Sovereignty: A Critical Dialogue

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A fundamentally contested concept, food sovereignty has — as a political project and campaign, an alternative, a social movement, and an analytical framework — barged into global agrarian discourse over the last two decades. Since then, it has inspired and mobilized diverse publics: workers, scholars and public intellectuals, farmers and peasant movements, NGOs and human rights activists in the North and global South. The term has become a challenging subject for social science research, and has been interpreted and reinterpreted in a variety of ways by various groups and individuals. Indeed, it is a concept that is broadly defined as the right of peoples to democratically control or determine the shape of their food system, and to produce sufficient and healthy food in culturally appropriate and ecologically sustainable ways in and near their territory. As such it spans issues such as food politics, agroecology, land reform, biofuels, genetically modified organisms (GMOs), urban gardening, the patenting of life forms, labor migration, the feeding of volatile cities, ecological sustainability, and subsistence rights.

Sponsored by the [Program in Agrarian Studies at Yale University](#) and the [Journal of Peasant Studies](#), and co-organized by [Food First](#), [Initiatives in Critical Agrarian Studies \(ICAS\)](#) and the [International Institute of Social Studies \(ISS\)](#) in The Hague, as well as the Amsterdam-based [Transnational Institute \(TNI\)](#), the conference “Food Sovereignty: A Critical Dialogue” will be held at Yale University on September 14–15, 2013. The event will bring together leading scholars and political activists who are advocates of and sympathetic to the idea of food sovereignty, as well as those who are skeptical to the concept of food sovereignty to foster a critical and productive dialogue on the issue. The purpose of the meeting is to examine what food sovereignty might mean, how it might be variously construed, and what policies (e.g. of land use, commodity policy, and food subsidies) it implies. Moreover, such a dialogue aims at exploring whether the subject of food sovereignty has an “intellectual future” in critical agrarian studies and, if so, on what terms.

## ABOUT THE AUTHOR

[Karine Peschard](#) holds a PhD in anthropology from McGill University (2010). Her doctoral thesis examines the controversy over agricultural biotechnology in Brazil, looking more specifically at resistance to transgenic seeds among small farmers in Southern Brazil. She is currently a postdoctoral fellow at the Graduate Institute of International and Development Studies, in Geneva, where she conducts comparative research on farmers’ rights in Brazil and India. Her research interests are centered on global capital, contemporary peasant movements, food sovereignty, agricultural biotechnology, intellectual property rights and biodiversity.