The Protection of Plant Varieties and Farmers' Rights Bill, which is extremely important for the future growth of agricultural sector, has been referred to the joint committee of the Parliament. The Committee may submit its report during the winter session of the Parliament. This paper deals with some critical issues associated with the Bill, particularly the issue pertaining to the timing of its enactment, and issues related the scope and coverage of the Bill. It includes the farmers' rights, national gene fund, organizational set-up of the regulatory system, and compulsory licence system. Paper also discusses the implication of the proposed IPR system.

The Government of India introduced eight IPR bills in the Parliament during the winter session of 1999. These bills were related to patents, plant varieties, copyright, designs, geographical indications, information technology, semi-conductor integrated circuits layout, and trademarks. The need for introduction of these bills in the Parliament arose from Article 65(2) of the TRIPS Agreement. Transitional arrangement provided in this Article enjoins upon the developing country members to apply the provisions of the TRIPS Agreement within five years following the date of entry into force of the WTO Agreement. The date of application of TRIPS Agreement was thus assumed from 1 January 2000. Some of the bills have already been passed by the parliament and have received the Presidential assent also. However, two major bills, viz. the Patents (Second Amendment) Bill and the Protection of Plant Varieties and Farmers' Rights Bill have been referred to two separate joint committees of Houses of the Parliament. These committees may be submitting their reports during the winter session of the Parliament. Both the Bills are extremely important for the future growth of industrial sector and the
agriculture sector respectively. This paper deals with some critical issues in the bill on protection of plant varieties and farmers’ rights.

**Issue Related to Enactment Timing**

Article 27(3)(b) of the TRIPS Agreement provides for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. It is also provided that the provisions of sub-paragraph 27(3)(b) shall be reviewed four years after the date of entry into force of the WTO Agreement (i.e during 1999). This review process has already been initiated in the WTO during 1999 and the same has yet to be concluded.

Many African countries led by Kenya have submitted a detailed memorandum to the WTO raising serious problems and objections in regard to the protection of plant varieties. Further, some developing countries have also raised problems of implementation and the need for extending the transitional period. These issues are receiving consideration of the General Council of the WTO. There is no decision as yet on these issues. The reading of Article 65(4) of the TRIPS Agreement further gives unambiguous indication that in so far as the framing of laws for the protection of plant varieties is concerned there is transitional period of 10 years available to such countries who have no product patent system for such sectors of technology. Thus, all issues relating to production of plant varieties is in a flux. The conclusion one draws from all these factors is that the Government of India is in a haste to enact the legislation for the protection of plant varieties. The government seems to be under pressure from Indian agricultural scientists to enact this legislation so that they are able to protect their research achievements. However, there is no consolidated data available about the research achievements of Indian scientists on 'new' plant varieties qualifying exclusive rights and protection. Anyhow, since the government has already introduced the Bill in the Parliament these are all academic issues which may not now receive the desired attention of the government.

**Issues Pertaining to Scope and Coverage**

Coming to the proposed provisions of the Bill, there are certain fundamental issues which needs to be discussed in depth. In the Bill the foremost issue relates to the scope and coverage of the Bill. Section 13 of the Bill on application for registration provides for registration of 'any' variety of such genera or species as shall be notified by the Government of India in the official gazette. Further, section 22(7) provides that the rights of breeder of a variety shall apply to essentially derived variety. The n Section 14(1) provides for registration of extant variety even if it did not conform to the criteria of novelty. There are two major issues need to be sorted out. The TRIPS Agreement provides for protection of plant varieties which means new plant varieties and not the derived variety or the extant variety. Judging from the novelty angle both derived and extant varieties would not qualify for any exclusive rights which are supposed to be provided to the breeder on the new plant varieties. The other aspect relates to the number of varieties which should be covered to start with. UPOV conventions 1978 and 1991 permit new members to start with protection of a limited number of varieties, viz. five or 15 respectively. We should also aim at protecting not more than 10 varieties to start with.
Our choice should be that all plant varieties related to food security, viz. food grains, vegetables and fruits would be placed in the exempt category for the time being. Our selection for protection should be limited and could be extended to flowers, ornamental plants, spices, tea, coffee, rubber, etc. In suggesting limited coverage, an important compulsion is that we are not yet ready with the codified data of all existing plant varieties and in the absence of which we can falter in admitting exclusive rights claims for the so-called new varieties. Further, as stated earlier only new plant varieties should be covered and there should be no provision for exclusive rights for derived and extant varieties.

Farmers' Rights

The Bill provides for Farmers' right under Section 31 which reads as:

"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 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 the commercial marketing arrangement".

Internationally, farmers' rights have only been acknowledged in a non-binding resolution of the FAO Conference known as the International Undertaking on Plant Genetic Resources. No binding treaty has yet recognized these rights and still there is disagreement on the nature of the rights. The question as to whether the farmers' rights should be specifically provided in the proposed legislation which as such under the TRIPS Agreement is meant for regulating the exclusive rights granted to breeders on their new plant varieties. The only relevant aspect which needs to be amplified in the Bill is that the farmers shall continue to enjoy rights and privileges enjoyed by them as hitherto, i.e. prior to the enactment of this legislation. This would mean that the exclusive rights granted to the breeder shall not extend to any normal activity of the farmer. It would be within farmers' rights to save seeds for his new harvest, exchange seeds with other farmers and sell seeds surplus to his requirement which need to be disposed off in the market. Legally, the farmer cannot use the same brand name as that of the breeder for sale of his surplus produce. However, there should not be any difficulty in labelling the surplus seeds by the denomination given to the variety harvested from the protected seeds for sale by the farmer in the market. The Bill provides for benefit sharing for the farmers if they are able to establish the linkage of the new protected variety to the variety developed and being used by him. This is a very good provision and the long pending need to remunerate the farmers for their achievements would be accomplished. The concerned Organization will have to act fast and in a judicious manner to do justice to this laudable provision.

There should also be no need to provide for any protection to the farmers' variety as the same would not qualify for grant of exclusive rights as such varieties have already fallen in public domain. In case any farmer wants to embark upon commercial activity of a new protected variety, he shall have to obtain compulsory licence right for such an activity.

National Gene Fund

Another aspect of the Bill which needs to be considered relates to the creation of a national gene fund. Since the Biodiversity Bill also provides for almost a similar fund, the
issue to be considered is whether there should be two separate funds with thin line of their application. It may be desirable not to provide for the proposed fund in this Bill. The Bill should have only the regulatory functions for protection of plant variety.

Organizational Set-up

The Bill provides for a statutory body having perpetual succession and a common seal to manage the regulatory system. It will consist of a chairman and a number of ex-official members. The issue to be considered is whether there should be a statutory body or a government functionary for regulating the system. For the industrial patents the Patents Act, 1970 provides for a controller general of patents, designs and trademarks. Since the scope of coverage of varieties for protection would be much limited one, it is considered desirable to follow a similar organizational set up as is in operation for the industrial patents. A high power registrar general of plant varieties directly appointed by the government would be the right choice.

Compulsory Licence

Another important issue relates to the compulsory licence system as provided in Chapter X of the Bill. The compulsory licence system will safeguard the public interest as stated in Section 41 of the Bill. The question of determining the duration of the compulsory licences as stated in Section 44 should not arise and the licence issue should be coterminous with the term of the right holder. Further, the grant of compulsory licence has been subjected to appeal. Since there are long delays in setting appeals in courts or tribunal, in practice such licences would remain non-operational and on papers for a long period. This provision of appeals would not thus serve the public interest of immediate available and at reasonable prices of the protected seed varieties.

In this context it would also be desirable to consider the system of granting of licensing of right which could particularly be extended to the farmers and the agricultural universities. Under the scheme legal right would be available to them for grant of licence provided they have made an attempt to obtain the licence from the right holder and their efforts have not been successful. The only issue which would require to be sorted out would be the question of quantum of royalty to be paid to the right holder. It would be desirable to provide in the Bill some parameters for compensating the right holder.

Implication of the System

The extension of intellectual property right to plant variety has obvious implications. Presently, the protected new plant varieties are being freely imported and sold in the market by the seed companies. When the IPR system becomes applicable in our country, the right holders would make available seeds at monopolistic prices. New seeds imported from abroad are already expensive and when monopolies get established they will become even more costlier. Importers are freely multiplying such seeds and there is no problem as such about their availability. Thus, under the IPR system for plant variety we shall be facing both the problems of high prices and not so easy availability. Another aspect relates to the investment in research and development. Multinational corporations in the seed business have enormous funds available to them for research purposes. They would always have an edge in introducing new seeds in our country. As against this, in India the public sector efforts
are facing financial crunch for investing in research and development. The private sector at present is hardly involved in the research efforts in the development of new seeds. In any case they would never be able to match with the multinational corporation potential. IPR system in the new plant variety would mainly lead the agriculture sector’s dependence on multinational corporations.

**Conclusion**

With the adoption of above suggestions, the Protection of Plant Varieties and Farmers’ Rights Bill 1999 would become a simplified legislation devoid of problems of application and operation. India has no experience of plant variety protection regulatory system. A simplified system would be in the interest of all concerned. Later it would also be possible to incorporate any other provision which might help in the implementation of the system after the WTO has reviewed the relevant provisions of the TRIPS Agreement and also the problems of implementation posed by other developing countries which are under consideration of the General Council of WTO have been sorted out. Lastly, in the meantime government should get the codification of other plant varieties completed soon.