



# ALLIANCE FOR SUSTAINABLE & HOLISTIC AGRICULTURE (ASHA)

**Food • Farmers • Freedom**

To:

October 6, 2019

Shri Narendra Singh Tomar,  
Minister for Agriculture & Farmers' Welfare,  
Government of India.  
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Dear Sir,

Namaste! Alliance for Sustainable & Holistic Agriculture (ASHA) is a national advocacy platform of committed individuals and organisations to secure and improve farmers' rights and sustainable farm livelihoods.

We understand from media reports that the Government of India is planning to move a few more amendments to the Seeds Bill pending in the Parliament, and get it passed in the upcoming winter session. This is with regard to amendments that need to be moved to the Seeds Bill, for the statute to protect farmers' interests.

ASHA believes that sustainable livelihoods for farmers as well as sustainable agriculture itself require a Seed regime in Indian farming which will not only keep intact farmers' rights of breeding, selecting, saving, using, exchanging/bartering, distributing and selling seeds but actively encourages farmer level self-reliance when it comes to seed, and encourages agro-diversity as a key and critical component of sustainable agriculture and resilience to climate change stresses.

It is also acknowledged that while the objective of self-reliant, agro-diverse farming is fully realized, there is a rapidly burgeoning commercial seed trade in Indian agriculture, actively encouraged by the policies of the government. Within the situation of a retreating public sector when it comes to appropriate agriculture research for locally suitable, diverse seeds and increasing profiteering through limiting and standardizing Seed which has globally been seen to occur when control of seed is taken over by the private corporations, it becomes ***imperative to bring in a legislation that will regulate commercial seed trade in India***. The non-negotiable aspect of this approach is that ***the statute should primarily be for protecting and upholding farmers' rights towards seeds, and ensure that they are not exploited as seed consumers***. Such a statute should also safeguard the nations unfettered control over something so vital for self reliance in agriculture.

In all those cases where farmers are consumers of seeds (as opposed to seed breeders and producers themselves), timely availability of appropriate, adequate, diverse varieties of seed, at affordable rates in accountable systems is the key problem from the farmers' end and this is what the Seeds Bill has to address.

***Such a statutory regulatory regime should not be confused with and should not have any overlaps with any legislation which seeks to provide exclusive marketing rights or proprietary ownership rights.*** This legislation should have a simple and straight remit – to get every person and firm which wants to make money by way of seed to first state what they are promising and then stick to their claims by way of quality parameters.

For this, it is important to build in a non-exclusivity clause around the registration procedure, which means that the same seed variety can be sold by another producer by another brand or label without a first-come, first-

registered-for-an-exclusive-market regime, while having norms around information to be shared on parentage or sourcing.

Further, the legislation should provide for affordable, adequate and timely supply of seed through this statutory framework in addition to having effective liability mechanisms that protect the interests of farmers. It should be recognized that the food self-reliance of the nation and the livelihoods of millions of farmers depends on this.

***Regulation of quality of seed will no longer be enough to protect farmers' interests unless seed prices are also regulated.*** One of the important components of any regulation should be seed price control since the sector right now attracts many players for the profit-making opportunities it presents whereas Seed is an 'Essential Commodity' and should be treated as such. The Seeds Bill acquires new importance and criticality in a context when a demand for repeal or amendments to the Essential Commodities Act (its agriculture related provisions) is gaining strength. All the empowering provisions of the Essential Commodities Act's Seeds Control Order 1983, being used by governments to protect the interests of farmers, should therefore be reflected in any proposed Seeds Bill.

Similarly, it is important that seed producing farmers' interests are also protected in the same statute.

For farmers' interests with regard to commercial seed to be protected, we demand the following components to be incorporated into any Seeds Bill, which are missing at present in the Seeds Bill 2010.

**1. SEED PRICE AND ROYALTY FIXING AUTHORITY WITH STATE GOVERNMENTS:** In the rapidly changing scenario with regard to commercial seed business, it becomes imperative that state governments have the authority through the Seeds Bill to fix the retail seed price and royalty charges applicable for any (technology) sub-licensing agreements. The ongoing battle between various state governments with Bt Cotton seed companies showcases the need for such an authority to be incorporated into this proposed legislation. Royalties should not exceed 5% of any retail price.

Such seed price regulation should also include fair returns to seed-producing farmers, in addition to regulation of other terms and conditions for seed production by farmers.

Further, given that the Seeds Control Order of 1983 will get nullified after the Seeds Bill is notified, it is important to incorporate all the powers that state governments have under the Order into the proposed Seeds Bill, including the 'Power to Distribute Seed' (compulsory licensing).

**2. OTHER POWERS INCLUDING REGISTRATION, TO BE VESTED WITH STATE GOVERNMENTS:** State governments should also be empowered to register seeds that are locally suitable and appropriate, in addition to the national registry. Authorisation of all seed production, processing, storage, distribution and sale should be with the state government through a compulsory licensing system (and not a registration system as envisaged in the current version of the Bill, which is confusing with the term registration used for seed developer, as well as seller).

**3. REGISTRATION DETAILS AND PROCESS:** Registration should have a non-exclusivity clause which allows others also to sell the same seed variety under any other brand name, provided that the other brand or label also gets registered under the Seeds Act. Registration under this Act should be termed as "Registration for Performance" in a process that is distinctly different from the existing varietal release system in the country, and from the registration after DUS testing in the Plant Varietal Registration system under Protection of Plant Varieties & Farmers' Rights Act 2001. Any overlaps with the other system need specific sub-provisions to be built into the Seeds Bill. Any other permission or clearance system for sales, processing etc., should be termed as Licensing.

The registration details, which should be put out in the public domain, should consist of geographical location, seed passport data, results of local agronomic trials in different growing conditions which should be conducted only by accredited government/semi-government/autonomous such as ICAR and state agriculture universities. Equally importantly, the parentage of the seed being marketed should be disclosed for each variety/brand registered and a declaration that these were accessed legally. Details about prior registration under PPV&FR Act must be shared too. It will also facilitate for legal access to genetic resources and benefit sharing with providers of these resources – concepts which are mentioned in Biological Diversity Act and PPV&FR Act.

Registration should also have a mechanism of random pre-registration testing against the claims of the applicant. This is something that has also been recommended by the Parliamentary Standing Committee on Agriculture in 2006-07 on the Seeds Bill 2004. Seeds registered should be sent to NBPGR for retention in the National Gene bank.

4. **EXEMPTION NEEDED FOR FARMERS' INSTITUTIONS PRODUCING AND SELLING SEED:** There should be an exemption clause included in this proposed legislation for all farmers' institutions which have expressly been created for producing and selling seed (like FPOs into seed production and trade); in all such cases, the government should take the responsibility for seed certification before waiving off the other accountability mechanisms can be built in. Accountability mechanisms can be correlated to distance of sale from the seed producing FPO.

5. **LIABILITY & ACCOUNTABILITY MECHANISMS IN THE PROPOSED LEGISLATION – PENALTY & COMPENSATION:** The “Offences & Penalties” section needs to ensure that penalties are effective as deterrents, and that farmers are paid compensations in case of failure of performance against the claims made. Both these provisions are quite inadequate at present.

Here, it is important to have penalty clauses which are in proportion to damage/losses caused to farmers and not just as fixed amounts, and the seed stocks produced or stored by the offender. This will then act as a real deterrent.

Further, the compensation mechanisms should be accessible to the farmer – district level compensation committees would be needed for this purpose. Compensation awarded should have a formula to cover the costs incurred and should also be against the value of the claims made for the performance of that variety at the time of registration (the guarantee of performance is not just about germination of the seed, but the actual crop performance). The compensation claim should be resolved within 30 days of filing of the claim and the farmer be paid within three months of the award of the compensation so that the farmer's next growing season is not affected and this should be incorporated into the legislation. Any farmer aggrieved by the decision of the Compensation Committee should be able to appeal to a prescribed authority which shall dispose off the appeal within a specified time and manner that is prescribed.

6. **IMPORT OF SEED:** Import of seed should be prevented and discouraged since this is a matter of sovereignty and autonomy of the nation as well as the farming community apart from economic impacts. This can be done for commercial purpose if at all, only after pest risk analysis and local adaptability have been studied. Multi-locational agronomic trials must be done in India and in states where such registration is sought and cannot just be on the basis of the data furnished by the importer. Further, foreign seed certification or self-testing cannot be held valid in India. Liability clause must ensure that seed importer is held responsible for any pest/disease outbreak, weed invasion, genetic contamination and for subsequent clean-up operations.

Contamination of domestic non-GM plants will destroy India's competitive advantage for non- GM and/or organic crops when GM seeds are imported, including inadvertently. Seed imports should not be allowed at all in India for those crops from countries which grow transgenic varieties of those crops when those varieties are not allowed in India under the Indian regulatory regime for gene technologies. A Schedule should be annexed to the Act, to list countries and crops whose imports must not be allowed in India, including those which are into field testing in other countries.

Testing facilities and capacity for surveillance at ports of import must be strengthened and testing procedures followed without exception to ensure that GM seeds do not come in stealthily as country of origin is often masked by trans-shipments.

7. **TRANSPARENT FUNCTIONING:** Any proposed institutional set up should have clearly laid down, pro-active mechanisms for information-sharing and transparent decision-making so that corruption and arbitrariness can be tackled. Such mechanisms are best set up at a decentralised level rather than in a highly centralised manner. This is one way by which farmers can protect themselves from unneeded seed commercialisation and unscrupulous elements.
8. **REMOVAL OF CONFUSION WITH ANY OTHER LEGISLATION:** The term "registration" and the implied understanding in various debates with regard to exclusive marketing rights (as contained in the Protection of Plant Varieties and Farmers Rights Act 2001) that accrue from such registration under the proposed legislation should be clarified (some comments of the Parliamentary Standing Committee 2006-07 also reflect this). This legislation is not meant for any exclusive or any other kind of marketing rights. It is about the requirement to register before making money on seed as a commodity and about delivering against claims. Therefore, the term "registration" in this proposed legislation should be changed to "Registration of Varietal Performance" and "Licensing for seed sales, seed stocking, seed processing, seedling nurseries etc." to remove any confusion on this front. Similarly, any overlaps with the notified seeds system (after plant varietal release processes are followed, and the released variety is notified in an Official Gazette) should be explicitly incorporated into the Seeds Bill through suitable sub-provisions.
9. **SEED TESTING LABS:** All seed testing labs related to the Act and its implementation should be equipped to take up testing for transgenic and gene-edited seeds also at an LOD of at least 0.01% (and revised to match the latest technical abilities in terms of lowering the LODs), with primers available for event-specific testing, which also test for suspected-to-be-illegal GM seed samples deposited by public interest groups.

#### **SPECIFIC AMENDMENTS PROPOSED ON THE SEEDS BILL 2010 (the 2004 Bill with the amendments moved by the Agriculture Minister in April 2010)**

1. **Amendment in the objective of the Bill:** A bill to provide for regulating the quality of seeds *and their price* for sale, import and export and to facilitate *timely availability of appropriate and adequate quantities of diverse varieties of seed to farmers in a transparent and accountable regime*, and for matters connected therewith or incidental thereto.
2. **In "Preliminary", Section 1, Clause 3, Sub-clause (b):** "provided that nothing in this Act shall restrict the rights of the farmer to grow, save, use, exchange, barter, share or sell his/her farm seed and planting material except when s/he sells such seed or planting material under a brand name *already registered under this Act*".
3. **In the "Definitions" section, sub-section 2,** insert: "*Branded seed is such seed that is expressly sold in a packed container with a label and under a trade name, and cannot be farmers' varieties*".
4. **In the Definitions section, Section 2, sub-section 19:** "Producer means any person, group of persons, firm or organization which grows or organizes the production of seed *for commercial purpose*, but does not

include a farmer or a farmers' organization consisting of more than 75% membership of farmers producing seed for other farmers with government certification support".

5. In the Definitions section, Section 2, sub-section 20: "Registered kind or variety" in relation to any seeds means any kind or variety thereof, registered under Section 13, specifically understood as authorization or licensing for commercial seed trade without any plant varietal rights accruing.
6. Section 4 on Central Seed Committee: 4 (3) (viii) – a member of the Plant Varieties Protection Authority, Government of India and 4 (3) (ix) – a representative of the National Biodiversity Authority, Government of India.
7. Section 5 on Powers & Functions of the Committee: Insert 5 (c) to the current Section 5: "*Seed Price control and Supply, including procedure for fixing seed prices and royalties*".
8. Section 7 on Registration Committee: Section 7 (2) (a): Change to "To register seeds of varieties after scrutinizing their claims as made in the application in such manner as may be prescribed *including random pre-registration testing*".
9. Section 11 on State Seed Committee: Insert in the existing (a) to (e) list – "*to register seeds suitable for the state, based on agronomic trials' data and fix prices of seeds registered; to collect data and review performance of seeds after the authorization through licensing*".
10. Section 13 (1) on Registration of seeds of any kind or variety: Use the following line, rather than the amendment moved by the government: "No seed of any kind or variety shall, for the purposes of sowing or planting by any person be sold, except by a farmer as defined in this Act, unless such kind or variety is registered under Sub-Section (2)...".
11. Section 14 on Procedure for Registration: Insert after 14 (1): "provided that every application for registration under Section 13 shall contain a complete passport data of the parental lines from which the kind or variety has been derived from and wherefrom the genetic material has been sourced and all such information relating to the contribution, if any, of any farmer, village community, institution or organization in breeding, evolving or developing the kind or variety".
12. Section 14 on Procedure for Registration: Change 14 (2) to include pre-registration testing in the following manner: "On receipt of any application for the registration of a kind or variety of seed, the Registration for Varietal Performance Sub-Committee including at the state level, shall, after such mandatory testing as required, and other such inquiry that it deems fit and after satisfying itself that the kind or variety of seed to which the application relates to, conforms to the claims made by the importer or the producer/seller, as the case may be, as regards the efficacy of the kind or variety of seed.....(REST FROM THE BILL) and issue a certificate of registration".
13. Section 20 on Compensation to Farmer: The following to be substituted as Section 20 (1): "where the seed of a registered kind or variety is sold to the farmer, the producer, distributor or vendor, as the case may be, shall disclose the expected performance of such kind or variety to the farmer under given conditions and if such registered seed fails to provide the promised performance under such given conditions, the farmer may claim such compensation from such producer, dealer, distributor or vendor as may be determined by a District Level Compensation Committee set up under this Act by the state government for the purpose, provided that such compensation is equal at least to the monetary value of the promised performance and covers the costs incurred by the farmer and provided that such compensation is paid to the farmer after the Compensation Committee's proceedings and orders within 3 months' time".

14. Section 20 on Compensation to Farmer: Substitute Section 20, clause (2) (b) as moved by the Agriculture Minister: “The procedure to be followed by such a Compensation Committee should be completed within thirty days of the filing of a claim by an aggrieved farmer”.

Substitute Section 20, clause (2) (d) as moved by the Agriculture Minister: “Such compensation is payable to the farmer within three months after the compensation so determined”.

15. DELETE Section 30 completely on recognition for foreign certification agencies.

16. Section 36, Clause 1 on Import & Export of Seed: Change 36 (1) (c) to: “All import of seed meant for commercial purposes shall be subject to registration as may be granted on the basis of information furnished by the importer as well as the results of multi-locational trials conducted in such manner and for such period as may be prescribed to establish performance in India and specifically in the agro-ecological areas where the seed is sought to be sold. Further provided that no seed included in Schedule X of the Act can be imported into India”.

17. Section 38 on Offences and Punishment: Substitute the following after ‘be punishable with’ – “a fine in proportion to the damage caused, and quantity of seed supplied or stocked or turnover value to cover real and potential loss to farmers, which shall not be less than Rs. 500000/- (five lakh rupees), which may extend to Rs. 10,00,000 (ten lakh rupees) and imprisonment for three months to one year. Further, any individual or company convicted under this Act may be banned from any seed-related activity by the state government upon subsequent convictions”.

It is reported in media articles that the *2019 version of the Seeds Bill is contemplating the introduction of two other provisions hitherto non-existing*, that of (i) traceability in the seed production and supply chain system till the retail point, and (ii) compulsory certification. We believe that compulsory certification will have the potential to improve quality regulation of commercial trade, **provided** the institutional readiness is created for such certification at a very large scale which is unprecedented in the country. Without such institutional readiness, it will cause huge problems in the current supply systems. We also believe that traceability mechanisms may not be the most critical tool for quality regulation, provided other provisions are enacted and implemented properly.

**We urge you to ensure the above-mentioned changes in the Seeds Bill before it is passed and notified.** These changes are essential especially given that profiteering in the seed trade at the expense of farmers has been already linked to the current agrarian crisis including the unconscionable toll of farmers’ suicides in this country. To uphold the rights and the best interests of farmers in this country, this legislation should be seen as the mechanism by which commercial seed traders can be regulated for quality and pricing through decentralized, constitutionally-mandated institutional mechanisms as opposed to the very centralized mechanisms that are present right now.

Sincerely,



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