



PROGRAM IN
Agrarian Studies
YALE UNIVERSITY

Food Sovereignty: A Critical Dialogue

INTERNATIONAL CONFERENCE
YALE UNIVERSITY
SEPTEMBER 14-15, 2013

Conference Paper #73

The Cunning State of Farmers' Rights in India: Aligning with Global Law or Emancipating Farmers?

Dwijen Rangnekar

T

N

I



YALE SUSTAINABLE
FOOD PROJECT

Food First

INSTITUTE FOR FOOD AND DEVELOPMENT POLICY

ISS International
Institute of Social Studies



ICAS
Initiatives in Critical Agrarian Studies

The Journal of
PEASANT
STUDIES

critical perspectives on rural politics and development



The Cunning State of Farmers' Rights in India: Aligning with Global Law or Emancipating Farmers?

Dwijen Rangnekar

Conference paper for discussion at:

Food Sovereignty: A Critical Dialogue

International Conference

September 14-15, 2013

Convened by

Program in Agrarian Studies, Yale University

204 Prospect Street, # 204, New Haven, CT 06520 USA

<http://www.yale.edu/agrarianstudies/>

The Journal of Peasant Studies

www.informaworld.com/jps

Yale Sustainable Food Project

www.yale.edu/sustainablefood/

in collaboration with

Food First/Institute for Food and Development Policy

398 60th Street, Oakland, CA 94618 USA

www.foodfirst.org

Initiatives in Critical Agrarian Studies (ICAS)

International Institute of Social Studies (ISS)

P.O. Box 29776, 2502 LT The Hague, The Netherlands

www.iss.nl/icas

Transnational Institute (TNI)

PO Box 14656, 1001 LD Amsterdam, The Netherlands

www.tni.org

with support from

The Macmillan Center, the Edward J. and Dorothy Clarke Kempf Memorial Fund and the South Asian Studies Council at Yale University

http://www.yale.edu/macmillan/kempf_fund.htm

<http://www.yale.edu/macmillan/southasia>

© July 2013 All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means without prior permission from the publisher and the author.

Introduction¹

Global rules concerning dispositional rights in plant varieties present a highly complex architecture with contrasting and, no doubt, conflicting norms and principles. And these tensions emerge from and translate into domestic laws and regulations – and, of course, return to haunt these varied forums. In this respect, the residual flexibility in TRIPS Article 27.3(b) provides WTO Member countries opportunities to imaginatively explore the international architecture and outer contours of a *sui generis* system. Marking an important watershed in translating some of the rhetoric that circulates at the different multilateral forums – and within social movements and farmer groups – into domestic law is India’s *Protection of Plant Varieties and Farmers’ Rights Act*. This delivers farmers’ rights into national law for the very first time globally (and historically). A watershed heralded by MS Swaminathan, who commented that “India’s law is unique in the sense that it is the first time anywhere in the world that the rights of both breeders and farmers have received integrated attention” (Swaminathan 1998). For Olivier de Schutter, the UN Special Rapporteur on the Right to Food, India’s legislative architecture stands alongside the Africa Model Law as singular acts of resistance to deepening proprietary claims in plant genetic resources (de Schutter 2009).

The drafting history of this piece of legislation is highly contentious – capturing the very idea of *lawfare* in all its vicissitudes and dimensions. Proposals for rights for breeders circulated in the shadows of GATT negotiations in 1980s. Yet, one draft and another came and went without being enacted. Activists and civil society interlocutors have themselves participated in (formal) legislative drafting – and, have also distanced themselves from the outcomes. The very idea of *farmers’ rights* has circulated in a number of different spaces and places, including articulations from People’s Tribunals, statements from peasant and farming collectives, and international fora as well. Constituted through these different aspirations, the rights encompass political dimensions whilst also having specific material and cultural aspects.

Interrogating the architecture of law that has been enacted – and its operation – the paper seeks to explore whether the aspirations for a farmers’ right have been fulfilled. In doing so, it finds that legal architecture and its operation are indicative of a cunning state – a state that is able to distribute its responsibilities and negotiate away its commitments to particular constituencies. The cunningness is evidenced by the illusionary elements of the rights that have been formulated. This argument will be closed through a political account of the ‘cognitive capture’ and epistemic lock-in that appears in administering intellectual property rights in plant genetic material. The paper begins with discussion of the manner in which agriculture is *transformed* by capital – or at least, the dual effects of appropriation and substitution. This

¹ Note: The paper is a working draft; neither for further circulation nor citation. Comments and observations are graciously welcomed.

forms an element towards explaining how and why seed rights are constituted and constantly diminished. The paper proceeds to critically evaluate the construction of farmers rights in the Indian legal system – noting three characteristic dimensions: authorial recognition, collective rights and seed rights. Therein, noting the complicated negotiating history, I draw out certain problems with the construction of farmers rights. Thereafter, in the final section, I present an argument that the legal architecture – and its operation – are testimony to a *cunning state*.

The ‘Seeds’ of the Problem

In seeking to explain certain forms of internationalisation of agriculture, punctuated by the domination of (industrial) capital at various ends of the food chain, commentators earlier noted widening circuits of capital and a formalisation of specific agri-industrial complexes (Friedmann 1993; Goodman and Watts 1994; McMichael 1994; Goodman 1997; Goodman and Watts 1997). Significant attention in these interventions was to the spatial relocation and specialisation of crop production that accompanied a dual fragmentation and homogenisation of production processes. In many ways, these processes are well exemplified by the ‘world steer’ (Sanderson 1986). From this literature, my interest resides in the *manner* in which agriculture is transformed by and incorporated into the circuits of capital accumulation. In particular, the complexities of the agricultural production process, such as biological time among others, raise hurdles to capital’s entry and place limits to accumulation. While neither immutable nor insurmountable, they characterise the nature of capital’s entry and forms of agrarian transformation. Rather than a simplistic linear transformation, one witnesses discrete and discontinuous processes with a subtle duality: on the one hand capital’s incremental appropriation of the production process which is accompanied by sequential substitution of farm-based inputs by industrial products (Goodman, Sorj et al. 1987; Bye and Fonte 1994). To illustrate, while mechanisation seeks to appropriate and replace animal and human labour in specific farm-based chores, it remains incomplete in appropriating all land-based labour activities. Whereas, inorganic chemicals seek to substitute on-farm resources (i.e. animal/plant-based manure); thus *relaxing* some of the constraints placed by biological time and soil-fertility on cycles of capitalist accumulation.²

Notably, industrially produced inputs (accompanied by mechanisation, too) enable circumvention of the closed circle governing plant nutrient supply (and soil-fertility cycles) and engendering a promise of greater levels of capitalist accumulation in agriculture.³ Yet, the complexity and variability of the agricultural production process hinders agriculture’s complete

² There is interplay between these processes. For instance, introduction of mechanisation displaces draught animals from the farm and by extension ending the supply of animal-based manure; thus, necessitating the purchase of industrially-produced fertilisers.

³ The energy quotient of these changes relative to other forms of agriculture is another matter – and one that I will not engage with.

simplification by capital and incorporation into circuits of accumulation. For example, mechanical harvesting does not have the flexibility and selectivity to deal with on-farm variability either of different species (or intra-species varieties) maturing at different times. In a different way, inorganic chemicals also require a prior transformation in the plant for their *promise* of accumulation to be delivered. All this hints at the primacy of transforming the plant variety for the effective integration of agriculture into circuits of capitalist accumulation. The “plasticness” of plants is the avenue through which they become “suitable” for machines (e.g. uniform maturing, hard exteriors to allow machine-handling and strong stalks). To succeed, the breeder must “go back to the plant, and indeed, even back to the seed from which the plant comes. ... Machines are not made to harvest crops; in reality, crops are designed to be harvested by machines” (Webb and Bruce, 1968: 104, quoted in Kloppenburg, 1988). Likewise, integrating inorganic chemicals into agriculture requires transformations in the plant; both, in its biology (e.g. maturing) and architecture (e.g. short/strong stalks). This form of agrarian change is epitomised by the Green Revolution and its package of integrated industrial inputs (Buttel, Kenney et al. 1985; Shiva 1991).

In this framework, the seed not only delivers technical change but also acts as the location of convergence of disparate – and at times historically separated – strategies of accumulation that aim to simplify agriculture whilst also integrating it into wider circuits of accumulation. Thus, presenting opportunities for exercising a “nexus of control” over the entire agriculture process (Kloppenburger 1988 pp201-02). While the primacy of the seed is evident (I hope), it is necessary to emphasise that neither specific input packages, nor particular types of varieties (e.g. dwarfs) can independently proliferate as the dominant mode of agriculture. Rather, they are interlinked (see Bhaduri YYYY, for a discussion on interlinked markets); though, with the seed acting as a platform technology – a point of convergence for inputs and agronomic practices. No doubt, the interlinking gets evermore acute and precise in the era of biotechnology (Buttel and Belsky 1987; for an early discussion of 'tying-in' seeds and chemicals)

Significant for this paper at least is another contingency: “the reproducibility of the seed furnishes conditions in which the reproducibility of capital is highly problematic” (Kloppenburger 1988). To explain, a packet of seeds is composed of two distinct and separable properties: (a) genetic information, i.e. software, which is the result of breeding programmes, and (b) physical properties, i.e. diskette-like features that are determined by seed production process (Lewontin and Berlan 1990).⁴ It is precisely because ‘seeds’ are not only reproducible, but, that they replicate themselves that capital faces an apparent accumulation problem. Potentially, after

⁴ This duality is reflected in a social and industrial division of labour between firms that are primarily breeders and those that are primarily seed producers. A distinction that extends into the regulatory sphere with intellectual property rights directed at the genetic software (i.e. plant breeding) and seed certification schemes concentrating on the diskette (i.e. seed production).

purchasing a bag of seeds from the market, a farmer⁵ can potentially enter the market as a supplier of 'similar' seeds⁶. Elsewhere I have explained how the software-diskette characterisation of seeds identifies ways that capital overcomes this hurdle (Rangnekar 2002). To illustrate, technological solutions of discontinuous heritability, which renders the diskette an unreliable carrier of software, like F1-hybrids and GURTS pressure farmers to either limit their seed-saving or, of course, entirely eliminates the problem.

The Indian Plant Variety Protection & Farmers' Right Act

Background

In a way, the PVP&FR Act fulfils obligations under TRIPS Article 27.3(b) for introducing intellectual property protection in plant varieties. Exhibiting a rate moment of residual flexibility in TRIPS, the obligation allows choice between instruments of intellectual property. India – like a number of Southern countries (GRAIN 2000) – opted for the *sui generis* option. However, it exercised legal imagination and shrewdly forum-shopped to introduce countervailing norms and principles. And remarkably, as noted in the Introduction, delivered the first ever implementation of FRs. For that matter, I have elsewhere argued that India's law goes beyond the construction of FRs in FAO's ITPGRFA (Rangnekar, forthcoming).

Before a critical evaluation of the legislative architecture, it is useful to be acquainted with the complex and conflicting interests that this legislation invites (Rangnekar 1998; Rangnekar 2006). While interest in PBRs circulates prior to the completion of the Uruguay Round, it arises in the shadow of these negotiations. An early indication of this interest is the Report of the Expert Group on Seeds (1989) which, examining the 'desirability' of PBRs, concluded favourably that PBRs would benefit the quality of seeds in India. The following year, a committee constituted by the Indian Council for Agricultural Research published a report on the appropriateness of gene patents and PBRs (Anon. 1990), which formed the basis of FAO's technical mission for a system of PBRs in India (Food and Agriculture Organisation 1993). This circulation of interest in PBRs can be seen as extending the regulatory developments of the late eighties. Notably, the 1987 change to the Industries Development and Regulation Act (1956) – allowing for foreign investments in seed industry – and, of course, the 1988 New Seed Policy. With these milestones in mind, it is useful to note that the *Seed Association of India* is established in 1985 – at the very cusp of these changes. These developments, as I hope to demonstrate, are emblematic of a longstanding integration of the economy of plant genetic

⁵ While the discussion centres on farmers, it is obvious that other breeders and seed merchants can use an existing variety and compete with the original breeder in subsequent periods.

⁶ In reality, the production of 'grain' and the production of 'seed' are not identical activities and require different skills and incur varying costs. 'Seed' production requires more care and monitoring to safeguard against genetic contamination of the crop – a requirement reinforced by regulation. It is for this reason that an industrial division of labour exists at the farm level separating grain farming from seed production.

resources in India into global circuits of accumulation and control (Brockway 1979). Elements of continuity and disjuncture occur as testified in what Alvares has called the “great gene robbery” when studying the Green Revolution (Alvares 1986).

The Construction of Farmers’ Rights

Rather than review the various provisions in Plant Variety Protection and Farmers’ Rights Act, 1999 (PVP&FR), I focus on FRs – and, largely certain constitutive elements, which I conceptualise as follows:

- Authorial recognition: An individual farmer who has bred or developed a new variety shall be entitled to register the variety in a manner akin to a breeder and acquire PBRs.
- Collective recognition: Farmers’ varieties will be registered; thus, offering them ‘defensive’ protection against misappropriation and opening up ABS-like rights and financial contributions from the National Gene Fund.⁷
- Seed Rights: A farmer is entitled to save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a protected variety provided that the farmer does not sell such saved seed using the brand name of the variety.⁸

Authorial Recognition

Earlier drafts of the legislation invited criticism by (legislatively) framing farmers within the limits of ‘conservers of diversity’ and ‘cultivators of grain’ (Sahai 1994; Shiva 1997). Eventually, the Act defines ‘applicants’ who may apply to register a new variety (that confers breeders’ rights) to include “any farmer, farmer group or community of farmers” (section 16(1)(d), the Act). The explicit inclusion of farmers opens up the possibility of authorial recognition as breeders. Hence, the much celebrated aspect of this legislation (Swaminathan 1998). Leaving aside possible paradoxes of intellectual property rights in such matter, there are some contingencies in the law that need noting. There is nothing in either the Act or the implementing rules that render a differential treatment between farmer-breeders and other breeders that corresponds to their different socio-economic status and/or to the type of breeding practices they each pursue. Indeed, a farmer seeking authorial recognition pays the same fees etc. – and, crucially, their plant varieties must fulfil identical DUS standards (Section 15, the Act). Recent updates on the operation of the Act indicate that farmers have not submitted any applications (Nagarajan, Yadav et al. 2008; Kochupillai 2011); thus, buttressing

⁷ Additionally, Section 41 of the Act, makes available ‘rights of communities’, which allows for filing of claims to benefit sharing and thereby seeking benefit-sharing from the National Gene Fund.

⁸ Other provisions in the Act can be seen to buffer farmers’ rights; thus, for example, Section 42 allows for ‘protection of innocent infringement’, wherein a farmer may avoid infringement on establishing that “at the time of such infringement [the farmer] was not aware of the existence of such right” (section 42(i), the Act).

an argument I hope to extend: the legislation is a rhetorical affirmation of the authorial status of farmers as breeders, but, substantively excludes them through the formal architecture of the law.

Collective Recognition and Access/Benefit Sharing

Possibilities for collective recognition emerge from an important feature of India’s legislative architecture: the disaggregation of plant varieties into a number of categories (see **Table 1**). At the heart of this classification system are ‘extant varieties’ – varieties in the public domain and already in circulation; thus, including farmers’ varieties⁹ and varieties in common knowledge. Registration of extant varieties, the Act envisions, would be a useful defensive mechanism against misappropriation whilst also generating a number of positive rights too. In the case of FVs, registration heralds a range of ABS-like rights.

Table 1: Categories of Plant Variety in the Indian Plant Variety System

	New Variety	Extant Variety	Farmers’ Variety	Variety in Common Knowledge	Essentially Derived Variety
Definition	A variety that meets the conditions for registration of commercial novelty, uniformity and stability (see below).	A variety already available in India, which is either notified under section 5 of the Seeds Act, 1966; or a farmers’ variety; or a variety about which there is common knowledge;	A variety that has been traditionally cultivated by farmers in their fields; or is a wild relative or land race or a variety about which farmers possess common knowledge.	Not explicitly defined in the Act, a notification that VCKs are those in the ‘public domain’ and should have been sold or otherwise disposed in India for at least one year prior to the date of application	With respect to an ‘initial variety’, an EDV is predominantly derived from the ‘initial variety’; thus conforms to it in the expression of essential characteristics and is clearly distinguishable from the initial variety too.

⁹ The idea of farmers’ varieties here should be considered distinct and different from the possibility of a farmer seeking authorial recognition by registering themselves as the breeder of a new variety (discussed in the preceding paragraphs).

		or any other variety which is in public domain.		and less than 13 years.	
Conditions for Registration	Commercial Novelty and the triple requirement of 'distinctness, uniformity and stability'.	Foul of novelty, the conditions for registration consist of DUS.	As a sub-category of extant varieties, there is no novelty requirement. And 'uniformity' requirements allow twice the number of off-types as indicated for the said species.		

Rights arising from registering FVs are negative rights – akin, in logic, to defensive publication to forestall misappropriation and defeat novelty. Regulators have sought to explain that as the variety has already been part of the public domain the 'rights' here must necessarily be "notional" (Nagarajan, Yadav et al. 2008). Testifying to a central motive force shaping national and global rules concerning plant genetic resources and associated knowledge, i.e. a concern about biopiracy, registering FVs trigger requirements on applications for registering new varieties (and acquiring PBRs) (see Section 18, the Act). These include, among others, declaration of prior informed consent (section 18(1)(h), the Act). Transparent of a transactional ethic – and a hope of returns economic returns to biodiversity – it is suggested that farmers could "negotiate a deal" if and when the variety is used as parental material in breeding a new variety (Nagarajan, Yadav et al. 2008 p711).

Seed Rights

A key constituent element of FRs are seed rights, that is rights to save seeds and dispose of them: “a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act”. An important proviso punctuates the right: the farmer is prohibited from using the brand/variety name when selling seed of a variety protected under this Act. Looking back at the negotiating history of the Act, the considerable achievement of this construction is apparent. In an earlier draft, FRs were restricted to the exchange and sale of “farm produce”; thus, marking “sale for reproductive purpose” beyond the limits of FRs (Sahai 1994; Shiva 1997). With low seed replacement rates in most cropped species, though with important regional and crop-wise differences, the sale and exchange of saved-seeds by farmers is crucial. For that matter, farmers themselves supply an overwhelming 50-70% of seeds in India. Noting these seed-exchange networks, Menon (1994) concludes that they are the lifeline of agriculture and the farm economy in India.

There is a historical and spatial dimension to Seed Rights in that similar, if not identical, constructions have existed elsewhere; but, have also been incrementally diminished through one mean or another. To take a single example: under the Plant Variety Protection Act in the US, farmers could sell harvested grain of a protected variety as seed, with the proviso that variety’s name was not used. Hence, the phrase ‘brown bagging’ to denominate the practice. In 1995, the US Supreme Court, in *Asgrow v. Winterboer* (513 US 179 (1995)), decided that the exemption should be understood to limit the amount of seeds for sale to be the amount of seeds that the farmer would need to replant their own farm. There may be some comfort in the view that similar legal approach to constrain seed rights may not occur in India – or at least not for some time. Shifting attention to the struggle on the Seeds Bill affirms how this sense of comfort is misplaced.

Adopting a rhetoric of ‘quality seeds’ – while also mobilising moral concerns about farmer suicides, provisions in the *Seeds Bill, 2004* sought to limit the farmers’ seed rights (GRAIN (with Devinder Sharma) 2005). For my concerns there are two provisions: (a) protection to farmers’ right to grow, save, re-sow, exchange, share or sell seeds and (b) the status of farmers’ varieties within the National Register of Seeds. With an estimated 70% or more of domestic seed requirement provided for by farmers themselves, it is crucial that the seed market regulations do not erect regulatory barriers to their circulation. Proposals in the 2004 Bill included developing a national register of seeds and making inclusion in the register a mandatory requirement for commercial seed transactions. More telling is the rhetorical affirmation of seed rights – wherein Section 43(1) of the *Seeds Bill, 2004* adopts text identical to Article 39 of PVP&FRs Act – “exemption for farmers to save, use, exchange, share or sell their seed without registration”; but, then proceeds to circumscribe this right by introducing ‘quality’

considerations for selling seeds when it “does not conform to the minimum limit of germination, physical purity, genetic purity prescribed”. Widespread opposition within and beyond parliament ensured the Bill’s withdrawal. Central in this opposition was the manner in which the Bill conflicted with how farmers’ rights have been constructed drawn out in the Act but also posed problematic to the reality and significance of seed exchange in India (Ravi 2010). A Parliamentary Standing Committee on Agriculture, chaired by Ram Gopal Yadav, tasked with assessing the Bill, which led to a revised *Seeds Bill, 2010*¹⁰ (Singh and Chand 2011). Notable changes include an exemption for farmer’s varieties from a requirement for registration under the National Register of Seeds; thus, removing a possible barrier to this system of seed exchange. Further, the constraints on farmers’ rights to exchange, share or sell seeds (including harvested seeds of a registered variety) have been brought into line with provisions in the Act. Presently, this version of the Bill still awaits enactment.

Discussion: The Cunning State of Farmers’ Rights

The Cunning State

In seeking to explain certain contemporary developments in India – and, simultaneously frame social movements and struggles in terms of their ambivalent alliances with the state – within a new architecture of global governance, Shalini Randeria (Randeria 2003; Randeria 2007; Randeria 2007) finds enduring significance in the state. Randeria channels a number of insights and analytical frames, such as overlapping / fragmented sovereignty, transnational legal plurality, glocalisation and a challenge to the state’s monopoly over the production of law, and exceedingly intrusive surveillance – to name a few. Yet, insists on the enduring – no doubt, contested – presence of the state. This is not only in terms of its role in mediating and transposing transnational flows of capital and legal knowledge into (and from) the national arena: “the state and its juridical practices are pivotal to the functioning of international law and international institutions, so that the national and the international are mutually constitutive rather than opposed to one another” (2007: 26). To explain, in critically rejecting theorisation that argue a ‘roll-back of the state’ and the rescaling of sovereignty, Randeria asks if the post-colonial state ever possessed such features. For that matter, a characteristic (and common) feature of the new global governance architecture is its highly intrusive mechanisms of surveillance. To take the WTO and TRIPS as an illustration: the Agreement mandates the Council for TRIPS to regularly review implementation and Member countries are obliged to report back on progress of implementation, while also subjecting themselves to the scrutiny of the Trade Policy Review. This rule of law, Randeria argues, not only legitimises an asymmetrical architecture that is premised on a construct of presumed consent that “shifts the responsibility for policies formulated by international institutions to subordinate states” (2007: 5). Inherent is

¹⁰ Bearing in the mind that an earlier version, the *Seeds Bill, 2008* lapsed in 2009; thus, making this the third iteration (see Bala Ravi, 2010, for a discussion).

an unfortunate game of “passing the blame” (2007: 1): a “game in which international institutions claim themselves to be utterly powerless servants of their member states, and states in turn capitalize on their perceived powerlessness in the face of prescriptions from Washington DC or Geneva” (2003: 29).

One may ponder as to the possibilities for – and limits to – agency for autonomous law-making? Or rather, its fleeting presence and substantive absence. One of Randeria’s theses is that plurality and heterogeneity in supranational and national legal regimes offers space to states if they are politically inclined to use it. For that matter, the plurality of legal norms that has increasingly proliferated the landscape is itself testimony to many possible avenues of action. Even within the strictures of TRIPS there is what scholars and activists have recognised as ‘residual flexibility’. In that a range of substantive obligations – such as the standards of patentability – can be determined nationally. And here, the difference between the responses of Brazil and India to their TRIPS obligations on patents for pharmaceutical products testify to such options (Rangnekar 2007). With respect to the subject at hand, farmers’ rights, Article 27.3(b) is a real anomaly: rather than be prescriptive in its obligation and promote the project of harmonising global law, it offers choice by obliging member countries to ‘provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof’. Not only does this present considerable latitude and space for a legally imaginative state; but is ripe for forum-shopping. At hand to feed the legal imagination of the state are a number of supranational legal regimes and transnational and national social movements too (e.g. Gene Campaign’s CoFaB and via Campesina’s GCAR).

In responding to obligations to international treaties, Randeria suggests that subordinate states could – and do – adopt strategies of either delaying implementation, or seek to exploit conflicts and contradictions between legal regimes, and so might also forum-shop. In other work, though focussing on a similar concern about intellectual property and plant genetic resources, I have shown Kenya adopting some of these strategies; though, ultimately noting a decoupling between rhetoric at the TRIPS Council and implementation of laws in the national arena (Rangnekar 2013). With reference to India, Randeria sequences a strategy of disregarding World Bank norms to then switch to other funding sources. In doing so, India has been able to get around some of the strictures on rehabilitation of project-affected peoples. It is this dialectic of the Indian state being “selectively strong in advancing the interests of the privileged, but strategically weak in fulfilling even its constitutional duties towards the poor” (2007: 8) that is cunning. Rather than suggesting this as a descriptor of state capacity, Randeria desires us to comprehend cunning as a tactic to “capitalize on their perceived weakness in order to render themselves unaccountable both to their citizens and to international institutions” (2003: 28). The crux of the matter then is not – at least in the context of the India state – its capacity to act in the interest of its vulnerable citizens; but whether it has the

political will to do so. The instruction being, not to “misrecognize cunning states as weak ones. Weak states cannot protect their citizens whereas cunning states do not care to” (2003: 34).

In the remaining paragraphs, I seek to map out elements of an unfinished argument that the Indian state has been (consistently) cunning in the way FRs has been – and is being – introduced. There are two broad elements to my argument. One, in its core, the fulcrum of India’s legal architecture concerning plant varieties is a UPOV template for granting protection – (commercial) novelty, distinctness, uniformity and stability. Further, I will also argue that this failure to imagine an alternative architecture not only reveals an epistemic capture, but indicates a larger effort at aligning with UPOV. Second, the struggle concerning seed rights is not merely an issue of whether farmers can / cannot continue with their customary practices associated with seeds; but is emblematic of capital’s dynamics of incorporating agriculture into its circuits of accumulation.

A UPOV Mind-Set

There are two interesting elements to the legal architecture:

- The different categories of plant varieties that the legalisation ‘recognises’ such as extant varieties, including FVs and varieties in common knowledge, and then new varieties.
- The conditions for registering a plant variety.

Independent of the type of variety, the conditions for registration broadly require a form of DUS – distinctness, uniformity and stability. The differences across the type of varieties seek to respond to peculiarities of the category itself. For instance, new varieties must necessarily also demonstrate novelty (cf. section 15(3)(a), the Act) which is identical to the UPOV approach. However, extant varieties are exempt as they, by definition, fall foul of any construction of ‘novelty’ and must only satisfy DUS requirements (see section 15(3)).¹¹

Even while adopting the UPOV template there is an important deviation which deserves noting. The requirements for distinctness are pre-fixed in terms of ‘essential’ characteristics. For example, distinctness requires the variety to be “clearly distinguishable by *at least one essential* characteristic from any other variety whose existence is a matter of common knowledge” (section 15(3)(b), the Act, emphasis added). The Act defines ‘essential characteristics’ as characteristics that “contribute to the principal features, performance or value of the plant variety” (Section 2). Such an agronomic assessment is a departure from UPOV’s construction of these standards. As evidenced by the amendments Kenya had to make to complete it’s

¹¹ As noted earlier, once a species is notified under the Act, a three-year moratorium is provided for the registration of extant varieties. For farmers’ varieties, an October 2009 notification extended this period to five years from the date of a species being notified.

accession to UPOV 1978 (Rangnekar 2013), this will prove to be an additional hurdle to India's membership of UPOV if and when accession arises.

While important, this is a limited departure from the UPOV-template and doesn't constitute imagining an alternative architecture. And, this epistemic capture with UPOV's template has grave consequences for the authorial recognition of farmers. As noted earlier, India's legislation did venture – though, grudgingly – to include “any farmer, farmer group or community of farmers” (section 16(1)(d), the Act) as possible applicants for breeders of new varieties. However, this inclusion doesn't come accompanied by any substantive difference in treatment between farmers and breeders. Consequently, for a farmer to secure authorial recognition, their varieties are treated in an identical manner to those of plant breeders. To explain the paradox of equitable treatment, I recall the negotiating history leading to UPOV's founding. Discussions in Europe in the 1950s, drew attention to how equitable standards for uniformity and stability between varieties developed by breeders and farmers were discriminatory to the breeding practices of farmers, which favoured levels of variability and heterogeneity in the variety. Illustratively, the 1954 Stockholm Conference, under the auspices of the Organisation for European Economic Cooperation, heard delegates arguing for differential standards of uniformity and stability so as to valorise the work of farmer-breeders (Akerman and Tedin 1955). These views failed to translate into either national practice or the emergent UPOV-system. It is disappointing that India's legal architecture failed to imagine a regulatory system that responds to the breeding practices of farmers.

This epistemic capture is also present in manner in which the regulatory system considers collective recognition – the basis for registering farmers' varieties which then generate negative rights to deal with misappropriation. Faced with limited experimental data in designing field trials and standards for registering FVs, it was hoped that the Indian legislation would sensitively pioneer a path. Ironically, regulators argued that FVs have a tendency towards levels of homogeneity and distinctness reflected in vernacular classification of ‘folk varieties’ (Nagarajan, Yadav et al. 2008).. Hence, concluding that DUS standards should only “marginally vary” from those of other categories of varieties (ibid., 710). When nineteen species¹² were notified under the Act, regulators decided that the number of off-types acceptable for registering a FV would be set at twice that for a new variety (Nagarajan, Trivedi et al. 2010). This decision was formalised in a June 2009 Gazette notification (G.S.R. 452(E) of 29th June 2009). What remains problematic in this approach is the manner in which it is entirely anchored in the DUS-template.

¹² The nineteen species are bread wheat, rice, maize, sorghum, pearl millet, pigeon pea, chickpea, lentil, black gram, green gram, field pea, kidney bean, diploid cotton (two species), tetraploid cotton (two species), jute (two species) and sugarcane.

In seeking to explain this cognitive capture with the UPOV system I draw on the legislation's negotiating history. A number of commentators note the incredible struggle involved, the series of drafts that were prepared and rejected, the *Beej satyagraha* and more. Some of these accounts also note the controversy following news of a May 2002 decision by the Cabinet of the government in power to seek UPOV membership. A closer reading of events in India allows me to suggest a more enduring aspiration to align with UPOV. I have already noted some of the regulatory developments in the 1980s leading to liberalising the seed industry. These, as I noted earlier, occurred with the circulation of ideas about PBRs – notably a series of commissioned reports that evaluated the feasibility of PBRs in India. A way of appreciating this development is to note how the very first draft of plant variety protection legislation, in 1994, was in close conformity with UPOV (Shiva and Holla-Bhar 1993; Sahai 1994). The publication of the Bill was accompanied by announcement of India's intention to seek accession to UPOV (Anon. 1995). As a virtue of coalition politics that characterised the governments, the plant variety legislation – with all its controversies – was pushed into the long-grass by one of another coalition government.

Here consider the moment (in 1997) when the then Agriculture Minister, Chaturanan Mishra, established an expert group, consisting of public breeders and scientists, NGO-individuals, and academics, to propose amendments to the draft legislation. This deliberative moment was entirely jettisoned with the Minister deciding to by-pass their recommendations and amendments to proceed with an “in-tact” original draft to the Cabinet (Shiva 1997), which the Cabinet approved (Sharma 1997). It is to this legacy of cunningness that the May 2002 decision, now with a legislation that (problematically) affirms FRs, speaks. In October 2002, a nongovernmental organization, Gene Campaign, filed a Public Interest Litigation arguing that the Cabinet decision was in violation of the PVP&FRs Act, unwarranted by any international obligation, whilst also being in contravention of certain obligations to treaties like the CBD and ITPGRFA. In response, the government denied the reports that it was seeking UPOV membership; thus, ending the PIL.

Every effort has been made by UPOV to accommodate India. To begin, following the 1994 decision to seek membership, UPOV decided in 1997 to allow accession to the 1978 Act, despite it being closed, to those countries who had sought its advice on conformity prior to the entry into force of the 1991 Act. This special provision was open till 24 April 1999. However, at its 33rd Ordinary Session in October 1999, it decided to make further special provisions for allowing accession to the 1978 Act for India, Nicaragua and Zimbabwe. In October 2002, UPOV's Consultative Committee reviewed the Act and sought various clarifications from India (UPOV, 2003, paragraphs 11-2) which were received and reviewed in October 2004 (UPOV, 2005, paragraph 22). In November 2005, a two day meeting between UPOV officials and Indian government officials that included the Chair of the Plant Variety and Farmers' Rights Authority

(UPOV, 2006, paragraph 96). This activity, while demanding further scrutiny, asserts to the long-standing – and possibly enduring – interest in aligning India’s regulatory architecture with UPOV. This has been achieved, if not formally, at least in its core elements.

Seeds, Capital and Deskilling

I now return to some of the ideas about the capital-agriculture relationship elaborated earlier. And do so while drawing on contributions that have concerned themselves with a particular transformation mediated through the seed: deskilling of the farmer (Berlan and Lewontin 1986; Lewontin and Berlan 1990; Fitzgerald 1993; Stone 2007). It is argued that farmers have tended to have an ambivalent relationship with the introduction of machines – in that, they do offer a release from drudgery and are labour-saving, but they also engender degrees of deskilling (and require re-tooling). These dynamics are to an extent what is witnessed in the labour-technology arena where mechanisation and the sub-division of work renders labour deskilled. The loci from where these changes emanate are themselves, to an extent, privileged by power, authority and control. The question that scholars working on agriculture have puzzled about are the similarities and distinctions in how deskilling unfolds. Fitzgerald (1993) interrogates the early 20th century introduction of hybrid corn in the US – which, in very few years, entirely replaced open-pollinated corn to find that it was “perhaps more profoundly deskilling than any mechanical implement” (p327). With open-pollinated corn, farmers tended to use their breeding skills and judgement to select useful varieties. Heterosis, the F1-hybrid ‘invention’, was a simple breeding technique, but was also had “several other requirements of breeding programs that effectively locked farmers out of the process” (Fitzgerald 1993: p335). More significant were the dynamic consequences of farmer adoption of F1-hybrids with the deskilling attributes opaquely embedded in the very technology. With open-pollinated varieties, farmers had to rely on their breeding and observational knowledge to select better ears. Not only was this knowledge being rendered obsolete, but the economic sterility of F1-hybrids (for a discussion, see Rangnekar 2002), meant that seed-saving was no more possible. Consequently, farmer’s interests were moulded away from concerns about the “long-term quality of his seed was replaced by a short, annual interest”. And, in time, farmers were “locked out” from an understanding of their own operation whereby “their authority and knowledge [is] delegated to geneticists and seed dealers” (Fitzgerald 1993: pp324-43).

Alongside this deskilling – and, importantly, loss of authority – there are deeper edges to the process that only become transparent when we attend to the social and environmental dimensions to farmers’ knowledge (Stone 2007):

farming does not consist of mechanical application of knowledge or the making of binary decisions (e.g., adopt versus don’t adopt); if it is a performance, then the role of each technology in the performance must constantly be in play. Therefore agricultural deskilling is

not the displacement of a static set of skills but rather *the disruption of an ongoing process of skilling*. (Stone 2007: p73, emphasis in original)

Stone notes several different elements that may individually or collectively, sequentially or conterminously. For instance, the opaqueness of seed-mediated technological change in agriculture does make farmers' knowledge vulnerable. With reference to his ethnographic work on bt-cotton in Warrangal, Stone narrates the effects of the rapid sequence of varietal change. Hastening to clarify that this isn't aimed at romanticizing traditional agriculture but noting that "change occurs too rapidly to accommodate the social-environmental process of skilling" (Stone 2007: p73).

At the heart of the processes noted here is that change is mediated through the seed – the very point of convergence of accumulation strategies – that allows a 'nexus of control' across agriculture. The (legislative) struggle over seed rights must also be framed through the lens of farmer deskilling. Even while the social movements were successful in scripting seed rights as a constitutive element of FRs in the PVP&FR Act – the response has been to shift to other sites as ways to dilute, diminish and make deficient these rights. Hence, the incomplete struggle over the *Seeds Bill*.

References

- Akerman, A. and O. Tedin (1955). Testing of new varieties from the point of view of the plant breeder. Development of Seed Production and the Seed Trade in Europe: Proceedings of an International Conference held at Stockholm, July 1954 [Project No. 214]. Anon. Paris, France, OEEC and European Productivity Agency: 47-53.
- Alvares, C. (1986). "The great gene robbery." The Illustrated Weekly of India **23**: 6-17.
- Anon. (1990). Report of the Sub Group V of the Standing Policy Planning Committee of the Governing Body of ICAR on Gene Patenting and Breeders' Rights. New Delhi, Indian Council of Agricultural Research: 117-135 [as reprinted in Swaminathan, ed. 1994].
- Anon. (1995). "Editorial: Join UPOV, now." The Economic Times.
- Berlan, J.-P. and R. C. Lewontin (1986). "The political economy of hybrid corn." Monthly Review **38**(3): 35-47.
- Brockway, L. H. (1979). Science and Colonial Expansion: The Role of the British Botanic Gardens. New York, Academic Press.
- Buttel, F. H. and J. Belsky (1987). "Biotechnology, Plant Breeding, and Intellectual Property: Social and Ethical Dimensions." Science, Technology, & Human Values **12**(1): 31-49.
- Buttel, F. H., M. Kenney, et al. (1985). "From green revolution to biorevolution: some observations on the changing technological bases of economic transformation in the third world." Economic Development and Cultural Change **34**(1): 31-55.
- Bye, P. and M. Fonte (1994). Is the technical model of agriculture changing radically? The Global Restructuring of Agro-food Systems. P. McMichael. Ithaca, USA, Cornell University Press: 241-257.
- de Schutter, O. (2009). Seed policies and the right to food: enhancing agrobiodiversity and encouraging innovation. Background document to the report (A/64/170) presented by Prof. Olivier de Schutter, Special Rapporteur on the right to food, at the 64th session of the UN General Assembly.
- Fitzgerald, D. (1993). "Farmers deskilled: Hybrid corn and farmers' work." Technology and Culture **34**: 324-343.
- Food and Agriculture Organisation (1993). Plant breeders' rights: India (Terminal report prepared for the Government of India). Rome, FAO.

- Friedmann, H. (1993). "The political economy of food: A global crisis." New Left Review **197**: 29-57.
- Goodman, D. (1997). "World-scale processes and agro-food systems: critique and research needs." Review of International Political Economy **4**(4): 663-687.
- Goodman, D., B. Sorj, et al. (1987). From Farming to Biotechnology. Oxford, UK, Blackwell Publishers.
- Goodman, D. and M. Watts (1994). "Reconfiguring the Rural of Fording the Divide - Capitalist Restructuring and the Global Agrofood System." Journal of Peasant Studies **22**(1): 1-49.
- Goodman, D. and M. J. Watts, Eds. (1997). Globalising food: agrarian questions and global restructuring. London, Routledge.
- GRAIN (2000). For a full review of TRIPs 27.3(b). An update on where developing countries stand with the push to patent life at WTO. Barcelona, GRAIN.
- GRAIN (with Devinder Sharma) (2005). "India's new seed bill." Seedling July: 22-28.
- Kloppenburg, J., Jr. (1988). First the Seed: The Political Economy of Plant Biotechnology. Cambridge, Cambridge University Press.
- Kochupillai, M. (2011). "The Indian PPV&FR Act, 2001: Historical and Implementation Perspectives." Journal of Intellectual Property Rights **16**(2): 88-101.
- Lewontin, R. C. and J.-P. Berlan (1990). The political economy of agricultural research: The case of hybrid corn. Agroecology. C. R. Carroll, J. H. Vandermeer and P. M. Rosset. New York, USA, McGraw Hill Publishing Co.: 613-628.
- McMichael, P. (1994). The Global Re-structuring of Agro-Food Systems. Ithaca, USA, Cornell University Press.
- Menon, U. (1994). "Seed exchange: Sowing discord." The Economic Times.
- Nagarajan, S., R. Trivedi, et al. (2010). "India registers plant varieties under PPV&FR Act, 2001." Current Science **99**(6): 723-725.
- Nagarajan, S., S. Yadav, et al. (2008). "Farmers' variety in the context of Protection of Plant Varieties and Farmers' Rights Act, 2001." Current Science **94**(6): 709-713.
- Randeria, S. (2003). "Cunning States and Unaccountable International Institutions: Legal Plurality, Social Movements and Rights of Local Communities to Common Property

- Resources." European Journal of Sociology / Archives Européennes de Sociologie **44**(01): 27-60.
- Randeria, S. (2007). "De-politicization of democracy and judicialization of politics." Theory Culture & Society **24**(4): 38-44.
- Randeria, S. (2007). "The State of Globalization: Legal Plurality, Overlapping Sovereignties and Ambiguous Alliances between Civil Society and the Cunning State in India." Theory, Culture & Society **24**(1): 1-33.
- Rangnekar, D. (1998). "Trip'ping in front of UPOV: Plant variety protection in India." Social Action **48**(4): 432-451.
- Rangnekar, D. (2002). "R&D appropriability and planned obsolescence: empirical evidence from wheat breeding in the UK (1960-1995)." Industrial and Corporate Change **11**(5): 1011-1029.
- Rangnekar, D. (2006). Assessing the economic implications of different models for implementing the requirement to protect plant varieties: A case study of India. Coventry, Warwick University.
- Rangnekar, D. (2007). "Context and Ambiguity in the Making of Law: A Comment on Amending India's Patent Act." The Journal of World Intellectual Property **10**(5): 365-387.
- Rangnekar, D. (2013). "Geneva Rhetoric, National Reality: The Political Economy of Introducing Plant Breeders' Rights in Kenya." New Political Economy: 1-25.
- Ravi, S. B. (2010). "Fault Lines in the 2010 Seeds Bill." Economic & Political Weekly **45**(32): 12-16.
- Sahai, S. (1994). "Government legislation on plant breeders' rights." Economic and Political Weekly(25 June): 1573-1574.
- Sanderson, S. (1986). "The emergence of the 'world steer': internationalization and foreign domination in Latin American cattle production." Food, the State and International Political Economy: Dilemmas of Development Countries, Lincoln: University of Nebraska: 123-148.
- Sharma, A. C. (1997). "Patent law to remain unchanged." Financial Express.
- Shiva, V. (1991). The Violence of the Green Revolution: Third World Agriculture, Ecology and Politics. Penang, Malaysia and London, UK, Third World Network and Zed Book Ltd.

Shiva, V. (1997). "Corporate rights vs. farmers' rights: The plant variety legislation draft."

Shiva, V. (1997). "Creating seed monopolies: Proposed Indian plant variety legislation."

Shiva, V. and R. Holla-Bhar (1993). Protection of Plants, People and Intellectual Rights. New Delhi, India, The Research Foundation for Science, Technology and Natural Resource Policy.

Singh, H. and R. Chand (2011). "The Seeds Bill, 2011: Some Reflections." Economic & Political Weekly **46**(51): 22-25.

Stone, G. D. (2007). "Agricultural deskilling and the spread of genetically modified cotton in warangal." Current Anthropology **48**(1): 67-103.

Swaminathan, M. S. (1998). "Farmers' rights and plant genetic resources." Biotechnology and Development Monitor **36**: 6-9.

FOOD SOVEREIGNTY: A CRITICAL DIALOGUE INTERNATIONAL CONFERENCE PAPER SERIES

Food Sovereignty: A Critical Dialogue

INTERNATIONAL CONFERENCE
YALE UNIVERSITY
SEPTEMBER 14-15, 2013



PROGRAM IN
Agrarian Studies
YALE UNIVERSITY

<http://www.yale.edu/agrarianstudies/foodsovereignty/index.html>

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

[Dwijen Rangnekar](#) is an Associate Professor of Law at the School of Law (University of Warwick). His research focuses on the intellectual property rights; thus, probing the construction of standards and their contested globalisation. His recent publications include *Geneva Rhetoric, National Reality: The Political Economy of Introducing Plant Breeders’ Rights in Kenya* (New Political Economy), *Re-making place: the social construction of a geographical indication for Feni* (Environment and Planning A), and *The Glivec Precedent – The Supreme Court Judgement: Lawmaking in the South* (Economic and Political Weekly). He is currently working on a monograph, titled *Re-Making Place: The Social Construction of Geographical Indications* (Palgrave Macmillan). Further details at www.warwick.ac.uk/go/drangnekar