

# A new policy needed for GM seeds

It is time seeds are removed from the list of essential commodities



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The ministry of agriculture has done well to roll back the implementation of its Notification of 18 May to allow time for comments. The notification sought to regulate (a) the price of Bt cotton seeds, (b) the “trait value”, which is the fee or royalty per packet of seeds sold which goes to the technology owner, and (c) the terms of licensing of the technology to anyone interested in producing the seed. Each of these actions poses serious problems which deserve careful consideration. In this article, I comment on some of the critical issues.

## Should seed prices be controlled?

The first issue is whether the price of seeds should be controlled at all. It is easy to justify price control if we can be sure that it will reduce the price to the consumer, without reducing supply now or in future. However, we know that controlling prices will also affect the incentive to develop and supply good seeds in future, especially in the private sector which is now an important source of supply.

The finance ministry’s Economic Survey for 2015-16 (page 106) specifically criticized the decision to control the price of Bt cotton seeds, arguing that the objective of achieving adequate availability of good quality seeds is best left to the market. Ashok Gulati, one of our best known agricultural economists, has also spoken eloquently against the proposed price control. He has pointed out that the ministry’s actions lowered the price of Bt cotton seeds by about 4%, but lowered the trait value payment by 74%. In effect, all the reduction in the seed price was at the expense of a reduction in the trait value.

Gulati has also pointed out that the current Bt cotton variety Bollgard II is expected to run out of vitality in a few years, when it would need to be replaced by a new variety, Bollgard III. The new price control regime could discourage the technology holder from introducing the new variety. Seed producers may welcome the proposed change today because it reduces the fee they pay but if it risks losing introduction of the new strain they and the farmers may be losers. The issue is relevant not just for Monsanto, but for all possible technology suppliers, including potential Indian suppliers of genetically modified, or GM, technology.

The development of new seeds is expensive, and especially so with GM technology, where prolonged safety testing is involved. Profitability may not be the key consideration for public sector seed producers but we cannot rely exclusively on the public sector to provide seeds. Experience thus far shows that the private sector has done a good job in seed production and it could do more. Monsanto alone has a research and development budget which is twice that of the total budget of the Indian Council of Agricultural Research. This justifies encouraging private sector companies, including multinationals, to get actively involved and even partner with public sector institutions such as the agricultural universities. However, this will only happen if private players are assured that the returns on their investment will not be eroded by sudden imposition of price control.

We have never imposed price control on seeds before, but the recent action of the ministry of agriculture changes the situation. The action has been taken under the Essential Commodities Act which empowers government to impose price control on any commodity listed as essential. Since seeds of all kinds (not just GM seeds) are listed as Essential Commodities under the Act, this precedent could be invoked in future to extend price control on any seeds. The precedent is particularly unfortunate because no credible case was made for imposing price control on Bt cotton seeds. There were 50 Indian companies producing these seeds under licence agreements with Mahyco Monsanto Biotech (India) Pvt. Ltd and Bt cotton had spread to cover 95% of the cotton area! There was clearly no constraint on seed availability or even affordability since farmers were free to use traditional varieties if they wanted. They preferred the new variety and found it profitable.

One of the justifications given by the ministry is that prices varied across seed producers and it was desirable to have a uniform price. There is nothing wrong with prices varying because some producers may want to price their product higher because they feel they can persuade farmers to buy their seeds if it is of superior quality or has some special traits which might be of value in particular situations. Such product

differentiation amply justifies differential prices. The objective of a uniform price simply does not make any sense.

### **Is the action consistent with the National IPR Policy?**

Coping with climate change will require the development of new seed varieties that can tolerate higher temperatures and also possible water stress. GM technology will be very important in this context.

It does raise health and safety concerns and these are indeed very important. However, this problem needs to be handled by strengthening the procedures that the Genetic Engineering Approval Committee follows for GM seeds. Once new varieties have received approval there should be assurance that the technology holder will get a reasonable return for their investment.

We need to create an environment that encourages research in developing new seeds and innovation. The National Intellectual Property Rights (IPR) Policy, approved by cabinet two weeks ago, outlines what is needed to encourage innovation. It is useful to consider whether the Ministry of Agriculture's actions are consistent with the National IPR Policy. The policy emphasizes "commercialization of inventions" and also emphasizes the need for "a stable system of laws" which provide assurance to innovators that their rights will be protected. It is difficult to defend the reduction of 74% in the trait value, without any process of consultation or objective reasoning, as consistent with the National IPR Policy.

The fact that the action has been taken under the Essential Commodities Act also presents problems. The relevant Act which protects IPR for seeds is the Protection of Plant Varieties and Farmers Rights (PPVFR) Act. This Act is also explicitly mentioned in the National IPR policy as the relevant Act in this area. Assuming that it is desirable to introduce price control on trait value—and I argue later that this needs to be governed by clear guidelines—the only transparent way of doing so would have been through the PPVFR Act, which contains provisions for compulsory licensing similar to those under the Patents Act.

The PPVFR Act provides that if any person believes that the "reasonable requirements of the public" for seed or other propagating material of a variety registered with the Protection of Plant Varieties and Farmers' Rights Authority, have not been satisfied, or that the seed or propagating material is not available "at a reasonable price", that person can approach the authority for the grant of a compulsory licence to undertake production, distribution and sale of the seed or propagating material. If, after hearing the technology holder, the authority is satisfied that the claims are valid, it can grant to the applicant a compulsory licence and prescribe a compensation that has to be paid to the technology holder. The Act provides that the compensation must take into account the cost of developing the technology.

The procedure under the PPVFR Act is a statutory procedure with the possibility of appeal to an appeals tribunal established under the Act.

By choosing to act under the Essential Commodities Act and not the PPVFR Act, the ministry of agriculture has effectively denied the technology holder the right to be heard or the right to appeal. This contradicts Objective 5 of the National IPR Policy which deals with enforcement. Objective 5 states that since IPR is private property, the primary obligation to protect IPR rests with the technology holder. However, the technology holder is assured of recourse to a stable system of laws, in which the PPVFR Act is specifically mentioned. By acting under the Essential Commodities Act this assurance is nullified.

The PPVFR Act also differs from the ministry of agriculture proposal which forces the technology holder to grant a compulsory licence to any one who wants it, provided they meet some minimum requirement. The PPVFR Act does not establish a right for any one to get a compulsory licence at any time. If the technology holder has licensed a sufficient number of seed companies, and seed is available in adequate supply and is also demonstrably affordable, there is no need for a new entrant to get a compulsory licence. This allows the technology holder to choose the parties being licensed, whereas the ministry's proposal allows any one to demand a licence.

### **The need for consultation**

Now that the ministry of agriculture has invited comments, one can hope that all these issues will be looked at with an open mind. However, in addition to comments from outside stakeholders, it is essential for the concerned departments of the government to be fully involved. The National IPR Policy states that the department of industrial policy and promotion (DIPP) will be the nodal department for all IPR issues. Given the importance currently attached to IPR issues internationally, and the importance of establishing credibility of our new policy, DIPP should be actively involved. The NITI Aayog has a specific mandate to advise on policy matters especially where the country's international economic interests are involved. Hopefully they will also be consulted.

Two specific suggestions are offered for inter-ministerial consideration. First, seeds should be removed from the list of essential commodities. The original list of commodities covered by the Essential Commodities Act was much longer, and it has been pruned from time to time. It is time to remove seeds.

Second, it would be desirable to outline a government policy on compulsory licensing for seeds and plant varieties under the PPVFR Act to

guide the authority which may have to pronounce on this issue in case a compulsory licence has to be issued. It is important to clarify that considerations of affordability in the case of seeds cannot be the same as for pharmaceuticals. In the latter case, the affordability issue relates to the ability of a patient to pay for an essential drug.

In the absence of health insurance and uncertain availability of treatment from public hospitals, the price of a drug can become a matter of life or death and some price control can be justified. Seeds, however, are inputs into production, and affordability must relate to the relative cost of the input compared to the additional productivity it assures. The income of the farmer is not really relevant though availability of credit to purchase inputs is. Defined in this way, affordability was clearly not a problem in the case of Bollgard II, since it spread very rapidly.

How the government resolves these problems will give a clear signal whether we really believe in the principle “minimum government maximum governance”. What the ministry of agriculture has proposed is the exact opposite!

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