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| |  | | --- | | http://www.scidev.net/scidev_images/Pumpkin.jpg | | *Traditional pumpkin variety in India, a major centre of crop diversity |   28 September 2006 Source: SciDev.Net  **Holes in Indian laws promote biopiracy**  ***S. Bala Ravi* argues that deficiencies in India's seed and biodiversity policies promote biopiracy.**  In India, centuries of intimate human dependence on biodiversity have generated a rich traditional knowledge of the use and conservation of wild species, and have increased the genetic diversity of agriculturally important plants and animals. The country is one of the world's eight major centres of crop diversity with an estimated 163 fruit tree and crop species having originated there.  National laws and policies relating to biodiversity therefore have immense implications for the livelihoods, food security and health of the majority of India's 1.1 billion people. But inconsistencies in two Indian laws enacted in the past five years encourage the unfair misappropriation of Indian genetic resources.  The Protection of Plant Varieties and Farmers' Rights Act of 2001 (PPVFR Act) complies with the World Trade Organization's agreement on trade-related aspects of intellectual property rights. The act protects the rights of plant breeders, farmers and researchers over plant varieties.  The Biological Diversity Act of 2002 (BD Act), meanwhile, seeks to establish India's sovereignty over its biological resources and associated traditional knowledge. In line with the UN Convention on Biological Diversity, the act aims to establish a system for managing access to biodiversity and how benefits from its use are shared.  **Granting access**  Under the BD Act access to biological resources by non-Indian people or companies and by non-resident Indians requires prior approval of the National Biodiversity Authority. This applies to research and "bio-survey and bio-utilisation", which the act defines as research activities that explore the commercial potential of biological resources or associated knowledge.  For resident Indian citizens and companies, the State Biodiversity Board must grant permission for access, while for local communities none of these restrictions applies.  Intellectual property rights over innovations based on Indian biological resources or traditional knowledge can be established only with the prior approval of the National Biodiversity Authority, which will notify the public of approvals. During such granting of permission, a mutually agreed decision on benefit sharing is made.  A major problem arises from a provision in the BD Act that allows the government to exempt certain items "including biological resources normally traded as commodities" from the remit of the act. In the case of seeds, which are tradable commodity, such an exemption in the absence of other laws to regulate seed exports opens a legitimised door for biopiracy.  The BD Act has other deficiencies that undermine it provisions on access and benefit sharing. The terms 'commercial utilisation', 'use' and 'utilisation' are critical to the way the act restricts access to biological resources. But the act defines neither use nor utilisation. And although it defines 'commercial utilisation' as any activity that generates economic gain, this definition excludes "conventional breeding or traditional practices in use in any agriculture".  Therefore access to Indian genetic resources for use in conventional breeding or other traditional practices followed in agriculture, even by the non-Indian entities does not require prior approval under BD Act.  **Legitimising piracy**  If seeds were exempted, this would mean that the only law controlling access to them would be the PPVFR Act, which allows anyone conducting research free access without prior informed consent to any genetic resource, including varieties protected by plant breeders' rights.  The PPVFR Act does not differentiate the nationalities of people or organisations accessing Indian genetic resources, including varieties protected by plant breeders' rights, for breeding new varieties. The only exception is the need for prior informed consent for repeated use of such a protected variety as a parental line for the commercial production of a new variety.  These mean that non-Indian entities can freely access plant genetic resources and associated knowledge for use in breeding or for bio-surveys within India.  Secondly, having freely accessed the genetic resources of choice to develop breeding lines or new varieties or nothing, seeds of this material can be taken out in different pretexts as 'exports'.  The lack of a legal system regulating seed exports and of an informed customs system with the capacity to verify what is exported leaves a wide open door for the unchecked outflow of the planting material of virtually any genetic resource — including farmers' varieties, land races and pre-bred material.  Once these resources are taken out through the trade route and used in conventional or non-conventional breeding, there is virtually no way to ensure that benefits are shared equitably to the communities that generated and conserved these resources.  The irony is that laws established to protect these resources and promote their conservation are in fact legitimising their piracy and misappropriation from the holder community.  *S. Bala Ravi is a scientist at the M. S. Swaminathan Research Foundation in Chennai, India.* |  |