

## Indian Law Relating To Protection Of Plant Varieties And Farmers' rights

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### Abstract

The Protection of Plant Varieties and Farmers' Rights Act was passed by the Indian Parliament in 2001. After India became signatory to the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs) in 1994, a legislation was required to be formulated. Article 27.3 (b) of this agreement requires the member countries to provide for protection of plant varieties either by a patent or by an effective *sui generis* system or by any combination thereof. Thus, the member countries had the choice to frame legislations that suit their own system and India exercised this option. The existing Indian Patent Act, 1970 excluded agriculture and horticultural methods of production from patentability. The *sui generis system* (the Latin term *sui generis* means 'of its own kind') for protection of plant varieties was developed integrating the rights of breeders, farmers and village communities, and taking care of the concerns for equitable sharing of benefits.

**KEYWORDS:** Plant Varieties, TRIPs, *sui generis*, Patent, farmers, and equitable sharing

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### INTRODUCTION

Agriculture is the backbone of the Indian economy. Despite our major emphasis on the industrial development, agriculture continues to occupy a place of pride in our economy. India agriculture has an extensive background which goes back to 10 thousand years. At present, in terms of agricultural production, the country holds the second position all over the world. In 2007, agriculture and other associated industries such as lumbering and forestry represented around 16.6% of the Gross Domestic Product of the country. In addition, the sector recruited about 52% of the entire manpower.

Regardless of the fact that there has been a gradual slump in its contribution to the gross domestic product of the country, India agriculture is currently the biggest industry in India. On the whole, it has a key role in the socioeconomic growth of the country. The total arable territory in India is 1,269,219 km<sup>2</sup>, which represents about 56.78% of the overall land zone of the country. Arable land in India is diminishing because of continuous strain from an ever-increasing number of inhabitants and growing urbanization.

### Objective:

The present research article highlights on an overview of Indian law relating to protection of plant varieties and farmers' rights.

## **Research Methodology:**

The paper is based on the Doctrinal method of primary research.

## **IPR and AGRICULTURE**

Even though one could trace the history of protection intellectual property in plant varieties and seed in the eighteenth century, series attempts started only in the early period of the twentieth century. It was the legislation in USA, Germany, Hungary, Italy, Netherland Austria, etc. in the 1930's which really led to private monopolization of plants and business.

India has been participating in the major United Nations led inter-governmental collaborations concerning agriculture, biodiversity and trade right from their beginning.

The Agreement on Trade –Related Aspect of Intellectual Property Rights (TRIPS) of the world Trade Organization (WTO) is Annexure 1C of the Marrakesh Agreement, which came into force on January 1, 1995. This agreement binding upon all the members of the WTO and sets certain minimum stands for the implementation of intellectual property rights at national level.

Under TRIPS Agreement members of the WTO are required to provide patent protection for inventions in all fields of technology, whether products or processes, provided that they are new, involve on inventive step and are capable of industrial Application.

But the Agreement itself provides that, parties may also exclude from patentability –plant and animals other than micro-organisms, and essentially biological process for the production of plants or animals other than non- biological and micro-biological processes. However, members shall provide for the protection of plant varieties either by patents or by effective sui generis system or by a combination thereof.

India fulfilling its obligation for the protection of plants and plants varieties i.e. 'The Protection of Plant Varieties and Farmer's Rights (PPVFR) Act, 2001.

### **A Brief History of the PPVR Legislation**

The process of drafting the protection of Plants Varieties and Farmer's Rights Bill lasted more than 10 years and generated a considerable amount of public debate and controversy. The first initiatives taken to develop Indian legislation on NP occurred in the late 1980's. The first draft of the Bill was produced in 1993 by the Ministry of Agriculture, the modal Ministry throughout the Bill's development. Three drafts have since followed, in 1997, 1999, and 2000, although only the latter two were introduced in parliament. The penultimate draft was tabled in the Lok Sabha in December 1999, and referred to a Joint Parliamentary Committee (JPC). From January to august 2000 the JPC held public consultations on the Bill at various locations throughout India and subsequently tabled its report, along with a revised

draft, in the Lok Sabha on 25 August 2000. After almost a decade of development, the Bill was passed by parliament in August 2001.

Throughout its long history the bill has engaged a range of stake holders in its development. Insofar as the Bill endeavors to introduce a system of Plant Breeders Rights and Operationalize Farmers Rights it is of interest to various groups, including: Public sector researchers, Farmer's Rights campaigners, private industry, and inter-governmental organizations. Although the Bill has provoked considerable public debate, several would-be stakeholders are conspicuous by their absence; including farmer's themselves, as well as their organizations and unions, and small Indian seed companies.

### **Objectives of PPVFR ACT**

The objectives of the Protection of Plant Varieties and Farmers act are:

- i) To stimulate investments for research and development both in public and the private sectors for the developments of new plant varieties by ensuring appropriate returns on such investments.
- ii) To facilitate the growth of the seed industry in the country through domestic and foreign investment which will ensure the availability of high quality seeds and planting material to Indian farmers; and
- iii) To recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro- biodiversity by rewarding them for their contribution through benefit sharing and protecting the traditional right of the farmers.

### **Plant Variety**

A variety is a plant grouping within a single botanical taxon of the lowest known rank, defined by the expression of the characters resulting from a given genotype or combination of genotypes. The variety should be distinguished from the other plants grouping by expression and should be considered as a unit with regard to its suitability for being propagated unchanged.

### **Registrable Plant Varieties in India**

Four types of varieties can be registered under PPVFR Act, 2001

1. New variety : A variety which is not in public domain in India earlier than one year before the date of filing; or outside India, in the case other case, earlier than four years.
2. Extant variety : A variety which is available in India, which is
  - i) Notified by the central Govt, where it deems necessary or expedients to regulate the quality of seed to be sold for the purpose of agriculture under the provisions of the seeds Act, 1966 (54 of 1966); or
  - ii) A farmers variety; or
  - iii) A variety about which there is common knowledge; or
  - iv) Any other variety which is in public domain.
3. Farmer's variety: a farmer's variety means a variety which

- i) has been traditionally cultivated and evolved by the farmers in their fields, or
  - ii) Is a wild relative or land race of a variety about which the farmers possess the common knowledge.
4. Essentially Derived Variety (EDV): An “essentially derived variety” shall be said to be essentially derived from such initial variety when it is predominantly derived from such initial variety, from variety that itself is predominantly derived from such initial variety, while such retaining the expression of the essential characteristics that result from genotype or combination of genotype of such initial variety. An EDV conforms to such initial variety that results from the genotype or combination of genotype of such initial variety.

#### **Criteria for Protection:**

A new plant variety shall be protected by registration of it is novel, distinct, uniform and stable.

**Novel:** A new variety shall be deemed to be novel if at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed off by with consent of the breeder for the purpose of exploitation such variety (a) in India, for more than one year or (b) outside India in the case of trees or vines, earlier than 6 years or in any other case earlier than four years.

**Distinct:** A new variety shall be deemed to be distinct if it is clearly distinguishable by at least one essential characteristic from any commonly known variety.

**Uniform:** The new variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its essential characteristics.

**Stable:** A new variety shall be deemed to be stable if its essential characteristics remain unchanged after repeated propagation or in the case of a particular cycle of propagation, at the end of each cycle. The requirement of stability means that a variety must remain true to its description/ character even after repeated propagation.

#### **Non-Registrable Varieties**

A new variety shall not be registered if the denomination given to such variety

- Is not capable of identifying such variety; or
- Consists solely of figures; or
- Is liable to mislead or to cause confusion concerning the characteristics, value, identity of such variety, or the identity of breeder of such variety; or
- Is not different from every denomination which designated a variety of the same botanical species or of a closely related species registered under the PPVFR act; or
- If it likely to hurt religious feelings of any of the citizen of India; or

- Is prohibited for use as a name or emblem for any of the purpose mentioned in the emblem and names (Protection of Improper Use) act, 1950; or
- Is comprised solely or partly of geographic name.

However, in the case of geographical name the registrar may register a variety, if satisfied that such denomination is an honest use under the circumstances of the case.

### **Who Can Apply For The Registration Of A Plant Variety?**

Application for registration of a variety can be made by:

1. Any person claiming to be the breeder of the variety;
2. Any successor of the breeder of variety ;
3. Any person being the assignee or he breeder of the variety in respect of the right to make such application;
4. Any farmers or group of farmers or community of farmers claiming to be breeder of the variety;
5. Any person authorized to make application on behalf of farmers and
6. Any university or publicly founded agricultural institution claiming to be breeder of the variety.

### **Office for the Registration of Plant Varieties**

Registration of plant varieties can be made in the office of registrar, PPV & FRA, New Delhi. The address of the office is Registrar, Protection of Plant varieties and Farmer's Rights Authority, Govt. of India, Ministry of Agriculture, NASC Complex, DIS Marg, Opposite Todapur, New Delhi- 110012. A breeder or a farmer can apply for registration either in person or through his agent.

### **Requisites for Filing an Application**

For registration of a plant variety the following requirements has to be completed.

1. Denomination assigned to such variety.
2. Accompanied by an affidavit that variety does not contain any gene or gene sequence involving terminator technology.
3. Complete passport data of parental lines with its geographical location in India and all such information relating to the contribution if any of any farmer's, village, community, institution or organization etc. in breeding, evolving or developing the variety.
4. Characteristics of variety with description for novelty, distinctiveness uniformity and stability.
5. A declaration that genetic material used for breeding of such variety has been lawfully acquired.
6. A breeder or other person making application for registration shall disclose the use of genetic material conserved by one tribal or rural families for improvement of such variety.

### **Duration of Protection**

- Trees and vines - 18 years
- Other crops - 15 years
- Extant varieties – 15 years from the date of notification  
Of that variety by the Central  
Government under Seed Act, 1966.

### **Effect of Registration:**

**Breeders Rights:** The certificate of registration issued by the registrar in respect of a variety confers on the breeder or his successor, agent or licensee, an exclusive right to sell, market, distribute, import or export the variety subject to the provisions of the PPVPR Act. However in case of any extant variety, unless a breeder or his successor establishes his right, the central Govt., or the State Govt. shall be the owner of such right.

A breeder of a registered variety can authorize any person to produce, sell, market or otherwise deal with the variety registered under the Act. The person so authorized will apply to the registrar, for registering his title and the registrar on proof of the title to his satisfaction, registrar him as an agent or a licensee in the register and issue a certificate of registration to the applicant. The registered agent or registered licensee shall not have to transfer such right further.

**Researcher's Rights:** The Act permits the use of any registered variety for purpose of conducting experiment or research and for using the said variety for using the said variety as an initial source of variety for creating other variety. But where the repeated use of such variety as a parental line is necessary for commercial production of such other namely developed variety, the authorization of the breeder of the registered variety is required.

**Rights of Communities:** if the people of any village or local community have contributed in the evolution of any variety then any person, group of persons or any governmental or non- governmental organization may on behalf of that village or local community file any claim attributable to the contribution of the people of the village or local community. The authority, after making necessary enquiry, if satisfied, will grant compensation to the applicant, which shall be deposited by the breeder of the variety in the National Gene Fund.

**Benefit Sharing:** Benefit sharing in the context of registered variety means the proportion of the benefit accruing to the breeder of such variety for which a claimant shall be entitled. Where a breeder makes use of the genetic material registered in the name of various persons in the development or creation of a new variety, such persons can claim a share in the benefits accruing to the breeder as a result of commercial exploitation of the new variety.

In determining the benefit sharing of the claimant, the Authority will take into consideration the extent and nature of the use of genetic material of the claimant in the development of the new plant variety and the commercial utility and demand in the market of the variety in respect of which benefit sharing has been claimed. The breeder of such variety shall deposit the amount of benefit sharing so determined by the Authority in the prescribed manner in the National Gene Fund

## How to Get Information about Guidelines for DUS Test

The General and specific Guideline for DUS Testing of 12 notified crop species are available in Plant Varieties Journal of India, Volume-1, No. 1 dated 20<sup>th</sup> February, 2001. The cost of each issue of the Journal is Rs. 100/- or Rs. 1200/- per year payable on DD to the registrar, PPV & FR Authority. This information is also available on the official website of PPV & FR Authority.

## Protected Crops under PPVFR Act

The central Govt. has notified the following crops with their genera eligible for registration of varieties.

Sl. No.	Botanical Name	Hindu Name	Common Name
1.	<i>Oryza Sativa L.</i>	Chawal	Rice
2.	<i>Triticum aestivum L.</i>	Gehun	Bread Wheat
3.	<i>Zea Mays L.</i>	Makka	Maize
4.	<i>Sorghum bicolour L.</i>	Jowar	Sorghum
5.	<i>Pennisetum glaucum L.</i>	Bajra	Pearl Millet
6.	<i>Cicer arietinum L.</i>	Chana	Chick pea
7.	<i>Cajanus cajan L.</i>	Arhar	Pigeon pea
8.	<i>Vigna radiate L.</i>	Mung	Green gram
9.	<i>Vigna mungo L.</i>	Urd	Black gram
10.	<i>Lens culinaris Medik</i>	Masur	Lantil
11.	<i>Pisum sativum L.</i>	Matar	Field pea
12.	<i>Phaseolus vulgaris</i>	Rajmah	Kidney bean

## Farmer's Rights

PPVFR Act confers a list of rights to farmers and those include:

1. Right to register farmer's varieties.
2. Entitlement for benefits sharing for the use of bio-diversity conserved by the farming community.
3. Right to save, use, sow, re-sow, exchange or sell farm produce including seed of registered variety but not the branded seed.
4. Right to claim compensation for under performance of a right protected variety from promised level under defined production conditions.
5. Mandatory need to secure consent of farmers when a farmer variety is used to develop on essentially derived variety (EDV)
6. Protection from legal proceedings related to alleged infringement.
7. Exclusion from paying fee in any legal proceedings in the Tribunal and Higher Courts.

## Conclusion

Implementation of PPVFR is going to give monetary returns to the institutions and individuals for their investment in the research. By recognizing the efforts of plant breeders by granting Plant Breeder's Rights would definitely encourage plant breeding activity. A provision of PPVFR encourages the conserver farmers and

farmer breeders. The farmers are custodians of local germplasm. The explicit provisions of farmer's rights would safeguard the interest of farmers. But due to illiteracy, socio economic backwardness of farmers the PPVFR is not beneficial to farmers but it is beneficial to commercial plant breeders. So, there is a need for effective implementation of PPVFR law.

### **Suggestions**

- Adequate funding facilities must be provided to the farmers and breeders to develop new varieties.
- Need to educate the farmers so that they can make best use of rights.
- Non-Governmental organisation must be given support to safeguard the interest of farmers.
- Farmers who are engaged in the conservation of genetic resources of plant must be given reward.
- Need to establish at each district level Plant Variety Authority Office.
- Need to establish Farmer's Legal Cell at every District Level.

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