

## PROTECTING BREEDER AND FARMER'S PROPERTY RIGHT

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### ABSTRACT

The contribution of agriculture in India is significant in terms of economic development, livelihood and as a source of employment. Various innovations in the breeding techniques resulting in development of new varieties are rewarded through Intellectual Property Rights (IPR). The aim of this paper is to provide an overview of Indian regime for protection of breeders' and farmers' rights. The paper analyses the significant features of the Protection of Plant Varieties and Farmers' Rights Act, 2001. India is among the first countries in the world to pass legislation on farmers' rights in form of the Protection of Plant Varieties and Farmers' Rights Act, 2001. The act provides safeguards to farmers by providing an effective system of protection of plant breeders' rights and farmers' rights.

**KEYWORDS:** Intellectual Property Rights, Plant Varieties, Plant breeders

### INTRODUCTION

Agriculture in India plays an important role in its economy in terms of employment generation and contributing to the Gross Domestic Product (GDP). Earlier agriculture was excluded from the Intellectual Property Right in India. No legal system was there of Plant breeders' rights and farmers' rights. The seed association of India which was formed in 1985 actively advocated the need for the plant breeders' rights in the country. In September 1986, during Uruguay round of talks, the issue of granting Intellectual Property Rights, specifically the plant breeders' rights was included and India became the signatory to the Trade related aspects of the Intellectual Property Rights (TRIPS) agreements of the World Trade Organization (WTO) on 1<sup>st</sup> January 1995. With this bilateral and multilateral pressure was exerted on India to introduce the Intellectual Property Rights in Agriculture.

So, to protect the rights of the farmers and to safeguard their interests, to promote investments in plant breeding research and to facilitate growth, India enacted "The Protection of Plant Varieties and Farmers Rights Act" in 2001. On 11<sup>th</sup> November 2001, an apex body called Protection of Plant Varieties and Farmers Rights Authority was formed to implement the Act. The Act provides effective system for the protection of plant varieties, breeders' rights, farmers' rights and also encourage development of new varieties of plants. The act enables farmers and breeders to claim special forms of Intellectual Property Rights over their varieties. It grants plant variety protection on new varieties, extant varieties and essentially derived varieties. Dual right is granted under the act- one is for variety and the other is for denomination assigned to the variety by the breeder.

### **Indian Initiative for the Protection of Breeders' and Farmers' Rights:**

The fundamental aim of the PPVFA is to protect the breeders' and farmers' rights while at the same time to promote research and innovation in this sphere by giving adequate IPR protection. It is evident from the objective of this Act that it is enacted to “provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants”. Intellectual Property Rights are granted to plant breeders, farmers, and researchers who have developed any new or extant plant varieties. Exclusive rights are granted to produce, sell, market, distribute the variety. Farmers varieties are eligible for the registration. If the registered variety fails to provide expected performance, farmers can claim for compensation.

### **Objectives of The Protection of Plant Varieties and Farmers Rights Act, 2001:**

1. To establish an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.
2. To recognize and protect the rights of farmers in respect of their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties.
3. To accelerate agricultural development in the country, protect plant breeders' rights; stimulate investment for research and development both in public & private sector for the development new of plant varieties.
4. Facilitate the growth of seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers.

A unique aspect of PPVFR Act, 2001 is that it confers three concurrent rights to breeders, researchers, farmers and community, the details of which is presented in this section.

### **BREEDERS' RIGHTS**

Breeders have an exclusive right to produce, sell, market, distribute, import or export the protected variety. Breeder can appoint agent/ licensee and may exercise for civil remedy in case of infringement of rights.

### **RESEARCHERS' RIGHTS**

Under the Act, Researchers can use any of the registered variety for conducting experiment or research. However prior permission is needed from the breeder of the registered variety for the repeated use of variety as an initial source for the purpose of developing another variety.

### **FARMERS' RIGHTS**

- Ø Farmer who developed a new variety is entitled for registration and protection in like manner as a breeder of a variety;
- Ø Farmers variety can also be registered as an extant variety;

- Ø A farmer can save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a variety protected under the PPVFR Act, 2001 in the same manner as he was entitled before the coming into force of this Act provided farmer shall not be entitled to sell branded seed of a variety protected under the PPVFR Act, 2001;
- Ø Farmers are eligible for recognition and rewards for the conservation of Plant Genetic Resources of land races and wild relatives of economic plants;
- Ø There is also a provision for compensation to the farmers for non-performance of variety under the Act;
- Ø Farmer shall not be liable to pay any fee in any proceeding before the Authority or Registrar or the Tribunal or the High Court under the Act.

PPVFR Act includes the different roles played by the farmers in cultivating, conserving, developing and selecting varieties. Different protections given to farmers are explained:

#### **Access to seeds**

Under PPVFA, farmers are permitted to “save, use, sow, re-sow, exchange, share or even sell his produce” including non-branded seed, even if it is a protected variety. However, farmers shall not be permitted to sell branded seed of a variety protected under the act. No specification has been made with regard to how much quantity of seed that farmer can save from a crop cultivated in their own farm from a protected variety.

#### **Protecting biodiversity and farmers rewards**

Farmers are encouraged to conserve and improve resources and for they are recognized and rewarded from the Gene Fund. Gene fund has been established under the PPVFR Act to reward the farmers for their substantial contribution in providing resources for crop improvement and conservation. It promotes innovation among the farmers and breeders and at the same time recognizing and rewarding the contributions made by the farmers and also protecting the biodiversity.

#### **Benefit sharing**

Benefit sharing include sharing of benefits i.e. commercial gains from the registered varieties among all qualifying entities who provide plant genetic resources to breeders for developing new varieties. Citizens of India, firms or non-governmental organizations (NGO) formed or established in India can claim benefit sharing.

#### **Compensation**

Registered varieties must be sold with full disclosure about their expected performance. If such variety, when sold failed to perform as per the expected performance under the given conditions, farmers can claim compensation from the breeder. The benefit of this is that it forces breeders to obey minimum quality specifications.

#### **Protection from accidental infringement**

Protection is given to the farmers against innocent infringement of the protected varieties. This is very much important in countries like India where most of the farmers are illiterate having very little or no knowledge about the Intellectual Property mechanisms, However, evidence of lack of knowledge or awareness of the protected status of the variety at the time when infringement happened is required to be protected against the innocent infringement.

#### **Research exemption**

The Act promotes research by permitting the use of protected varieties for research purposes. It could be used for piloting experiment or research or as an initial source of variety for the purpose of creating other varieties. However, in some cases authorization is required from the owner of the original variety to derive second generation variety.

#### **Reasonable seed price**

Rights have been given to the farmers to access the seeds of the registered variety at very reasonable prices. The breeders exclusive right over the variety is suspended when this condition is not met under the provision concerning compulsory licensing, and the breeder is obligated to license the seed production, distribution and sales of the variety to a competent legal entity.

#### **Exemption to farmers from registrations fees**

To promote the filing of application of farmers variety and for other process the act exempts farmer or group of farmers or village community to pay any fees. Under the PPVFR Act, farmers have the privilege of getting completely exempt from paying any kind of fees or other payments that are normally payable for variety registration; tests for distinctness, uniformity and stability (DUS), and other services rendered by the PPVFR Authority and for legal proceedings related to infringement or other causes. While the PPVFRA is not free from flaws, the Act showcases that farmers' and breeders' rights can be adequately and concurrently protected under a single piece of legislation so as to take care of the interests of both the stakeholders. In a country like India, ensuring food security by providing farmers' rights is important for economic steadiness. The PPVFRA's effectiveness lies in catering to the requirements of the nations that desires to promote innovations and technological advancements without intimidating farmers' livelihoods.

#### **Prior authorization for the commercialization of essentially derived varieties**

When farmers' varieties be it extant or new are used by a third party as source material for the development of an essentially derived variety, the farmers need to provide prior authorization for its commercialization. Such a process allow farmers to negotiate the terms of authorization with the breeder, which may include royalties, one-off payments, benefit-sharing, etc.

#### **INFRINGEMENT OF THE RIGHTS**

Following acts may be a case of infringement:

1. If a person who is not a breeder of a variety registered under this Act, or a registered agent or a registered licensee of that variety, sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered license or registered agency without their permission of the registered license or registered agent.
2. If a person uses, sells, exports, imports or produces any other variety giving such variety, the denomination identical with or deceptively similar to the denomination of a variety already registered under this Act, in such a way that it causes confusion in the mind of general people in identifying the registered variety.

### CONCLUSION

The Government of India enacted “The Protection of Plant Varieties and Farmers' Rights Act, 2001” to protect the rights of the farmers and breeders. The paper analyzed the provisions of the act that provide for the protection of the plant breeders so to encourage the development of new varieties of plants and also to stimulate investment in research and development activities in this field. The act grants Intellectual Property Rights to plant breeders, researchers and farmers who have developed any new or extant plant varieties. It also recognizes and protect the rights of the farmers in respect of their contribution made in conserving, improving and making available plant genetic resources (PGR) for the development of new varieties of plants.

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