

Plant Variety Protection and Farmer's Right Act

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Introduction

Order to provide for the establishment of an successful system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants it has been considered essential to recognize and to protect the rights of the farmers in respect their assistance made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties.

One of the most controversial agreements of the Uruguay Round is that relating to the granting of Intellectual Property Right on biological materials embodied in the Trade related intellectual property rights (TRIPS). TRIPS specifically require member nations to grant patents on micro-organisms, non/biological and microbiological processes as well as effective TPR protection for plant varieties.

TRIPS provide a choice for protecting plant varieties. Member may choose from patents, a sui-generis system or a combination of two. Article 27.3 (b) of TRIPS insists that members are required to provide for protection of plant varieties either by patents or an effective sui-generis system or a combination of both. Most developing countries including India have decided not to have patents for plant varieties and have chosen the sui-generis option instead. Thus PPV and FR Act is an outcome of National commitment under the TRIPS.

A draft on plant breeders and farmer's right bill was first developed a the M.S. Swaminathan Research Foundation at a National Dialogue on Farmer's Right and Plant Genetic Resources held in 1994. This legislation was presented in the bill on 9th August, 2001. The president of India gave accent to the bill during the same year. The protection of Plant Varieties and Farmer's Right Act, 2001 has 11 chapters and 97 sections.

Plant variety protection confers an exclusive right to a plant breeder market a variety that he has developed.

Objectives

1. To fulfill National Commitment under TRIPS of the WTO to provide intellectual property rights protection to plant varieties.
2. To recognize and protect the right of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new varieties.
3. To protect plant breeders right to stimulate investment for research and development both in the public and private sector for the development of new plant varieties.
4. To promote growth of seed industry to facilitate availability of high quality seeds and planting material to farmers.

Breeder's rights

Breeder's rights over the varieties they have developed are more than adequately protected by the draft legislation. On registration, the breeders have rights of commercialization for the registered variety either in his/ her own person or through anyone he designates. These rights include the right to produce, sell market, distribute, import or export a variety, in short, full control over formal marketing.

The strong protection granted to a plant breeder over his/her variety is seen in the section dealing with infringement of breeder's rights where punishment in the form of substantial fines and Jail terms has been prescribed for those who infringe the right of the registered breeder.

Duration and Effect of Breeder's Right

The certificate for Registration shall be valid for nine years in case of trees and vines and six years in the case of other crops and may be reviewed or renewed for the remaining period on payment of fees subject to the condition that the total period of validity shall not exceed (a) in the case of trees and vines, eighteen years from the date of registration of the variety (b) in the case of plant varieties, fifteen years from the date of notification of that variety.

Technical criteria for plant-variety protection

Protection is granted after ascertaining on the basis of UPOV guidelines that the variety (Proposed variety) is new, distinct, uniform and stable and further that it has been appropriately denominated.

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1. **Novelty:** The variety is deemed to be new if at the date of fillings application for breeder's right propagated or harvested material of the variety has not been sold /disposed commercially for more than one year, in India and 4 years outside India. For "Foreign varieties" to be registered in India it is 6 years.
2. **Distinctness:** The variety under test should clearly distinguishable by at least one essential heritable character from any other existing variety.
3. **Uniformity:** In essential characteristics subject to variation expected from the particular feature of its propagation.
4. **Stability:** The essential characteristics remain unchanged after repeated cycles of propagation.

Farmer's Right

The Act recognizes the farmer not just as a cultivator but also a conserve of the agricultural gene pool and a breeder who has bred several successful varieties.

Any farmer who has bred or developed a new variety shall be entitled for registration and other protection in the manner as a breeder of a variety.

Any farmer who is engaged in the conservation of genetic resources of land recess and wild relatives of economic plants and their improvement through selection and preservation shall be entitled of recognition and reward from the Gene Fund. He shall be entitled to save, use, sow, re-sow exchange, share or sell his farm produce including seed of a variety (Section 39) protected under this act in the same manner as he was entitled before coming into force of this act. This formulation allows the farmers to sell seed in the way he has always done, with the restriction that this seed cannot be branded with the breeder's registered seed.

In this way both farmers and breeders rights are protected. The breeders in rewarded for his innovation by having control of the commercial market place but without being able to threaten the farmers ability to independently engage in his livelihood.

Reference

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