

Protection of Plant Varieties and Farmers' Rights Act. in India

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INTRODUCTION

Intellectual Property (IP) involves all such assets which have been created through human intellect. Hence IP is the product of mind like inventions, publications and other artistic works. On the basis of their form these IP can be protected through rights provided by the government. Various forms of these rights include copyrights, trademarks, patents, geographical indicators, designs, trade secrets *etc.*

The **Protection of Plant Variety and Farmers Right Act, 2001 (PPVFR Act)** is an Act of the Parliament of India that was 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 and cultivation of new varieties of plants. This act received the assent of the President of India on the 30 October 2001.

India being the member of the World Trade Organization (WTO) is obliged to comply with the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), which requires that member countries provide rights for intellectual property protection in one or other form of technology including agriculture. In pursuance of these obligations, India adopted *sui generis* system and enacted an act known as Protection of Plant Varieties and Farmers' Rights Act 2001 AND Rules 2003. This act is unique in the sense that it includes the rights of both plant breeders and farmers.

Objectives of the PPV & FR Act

- To encourage scientists, farmers, communities for the development of new plant varieties
- Registration of varieties for legal protection
- Characterization and documentation of varieties
- Ensuring the availability of quality seeds of registered varieties under this act
- Establishing gene funds for rewards and compensation

Criteria for protection of variety:

A variety that fulfils the criteria of novelty, distinctiveness, uniformity and stability may be registered under this act.

All extant varieties notified under the seed act 1966 and also the varieties in public domain may also be registered in addition to new variety. In case of notified varieties it should be notified during the last 15 years and the term of the protection shall be applied only for the remaining period. Likewise, the farmer's variety which are traditionally cultivated and evolved by the farmers may also be registered under this act.

The various plant varieties that can be protected through registration under the Act.:

1. **New variety:** As is evident from the name, these are the varieties that have been developed anew i.e. they do not exist naturally. The distinguishable characteristics are generally easily discernible in cases of new varieties.
2. **Essentially Derived Variety (EDV):** These are the varieties that have predominantly been derived from an initial variety. They are different from new varieties as they are fundamentally similar to the initial variety to such an extent that the

characteristic that distinguishes them is considerable hard to discern. It is for this reason that the identification of EDVs is a fundamentally tedious process.

Generally developed through (non-exhaustive list):

- a. Genetic Engineering
- b. Mutation
- c. Tissue Culture Derived
- d. Back Cross Derivative
- e. Any other (Ploidy change etc.)

3. **Extant Variety:** The Indian Legislation also provides for the Registration for existing varieties. These are the varieties that are already in existence but still warrant protection for one reason or another. These include:

- a. Varieties notified under Section 5 of the Seeds Act, 1966.
- b. Farmer's variety
- c. Varieties in Common Knowledge (VCK)
- d. Varieties in Public Domain

4. **Farmers' Variety:** These are the varieties that have been traditionally cultivated or evolved by farmers in their field and their existence is a matter of common knowledge within the community.

Rights under the Act.

Framer's Rights

1. Farmer who has bred or developed a new variety shall be entitled for registration and other protection under PPV&FR Act, 2001 in the same manner as a breeder of a variety.
2. Farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund provided that material so selected and preserved has been used as donors

of genes in varieties registered under this act.

3. Farmer shall be entitled to save, use, sow, re-sow, exchange and share or sell his farm produce including seed of a variety protected under this act in the same manner as he was entitled before the coming into force of this act provided that the farmer shall not be entitled to sell branded seed of a variety protected under this act.

Researcher's Exemption:

- (i) The use of registered variety for conducting experiment.
- (ii) The use of variety as an initial source of variety for the purpose of creating other varieties.

Breeder Rights: Breeders will have exclusive rights 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.

Duration of protection of a registered plant variety

The duration of protection of registered varieties is different for different crops as given below:

1. Trees and vines - 18 years.
2. Other crops - 15 years.
3. Extant varieties - 15 years from the date of notification of that variety by the Central

Government under section 5 of the Seeds Act, 1966.

Prerequisites for filing an application form for registration of plant variety:

For registration of a plant variety the following prerequisites have to be completed:

- Denomination assigned to such variety.
- Accompanied by an affidavit that variety does not contain any gene or gene sequences involving terminator technology.
- 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.

- Characteristics of variety with description for Novelty, Distinctiveness, Uniformity and Stability.
- A declaration that the genetic material used for breeding of such variety has been lawfully acquired.
- A breeder or other person making application for registration shall disclose the use of genetic material conserved by any tribal or rural families for improvement of such variety.

Application for registration

Application for registration of a variety can be made by:

- a. Any person claiming to be the breeder of the variety
- b. Any successor of the breeder of the variety
- c. Any person being the assignee or the breeder of the variety in respect of the right to make such Application
- d. Any farmer or group of farmers or community of farmers claiming to be breeder of the variety
- e. Any person authorized to make application on behalf of farmers and
- f. Any University or publicly funded agricultural institution claiming to be breeder of the variety.

The breeder shall be required to deposit the seed or propagating material including parental line seeds of registered variety to the Authority. An applicant has to submit a fixed amount of seed sample (breeder seed) with prescribed germination percentage, physical purity and phyto-sanitary standards. The applicant shall also submit along with the seed / propagating the seed quality test report.

The Application for registration of varieties of notified crop species has to be submitted to

The Registrar, PPV&FR Authority NASC Complex, DPS Marg, New Delhi - 110012.

Fee for registration:

Fee for registration for different types of variety is as under:

S.No	Types of Variety	Fees for Registration
1	Extant Variety notified under section 5 of the Seeds Act, 1966	Rs 2000/-
2	New Variety/Essentially Derived Variety (EDV)/ Extant Variety about	Individual Rs. 7000/-
	which there is common knowledge (VCK)	Educational Rs.10000/-
		Commercial Rs.50000/-
3	Farmers Varieties	No Fee

Procedure of Application for the varieties specified under Section 14, 15

1. The application for registration shall be made to the Registrar and for a variety clearly stating the denomination of the same in the manner prescribed under Form 1 of the Regulations.
2. It shall contain the entire passport data of the parental lines from which the variety has been derived along with all the information related to contribution of various parties in its development (Duty to disclose the source).
3. Once the application has been made, the same can either be:
 - a. Accepted, Rejected Sent back for amendment.
4. **Documents Required while making the application (Section 18 of the Act):**
 - a. Statement of distinctiveness, uniformity and stability.
 - b. Declaration that the genetic material or parent material has been lawfully acquired.
 - c. If application is being made by exercising right to succession or assignment, a proof of the same shall be attached.

- d. Seeds shall also be made available for tests, the manner of which has been prescribed in the regulations
- e. The duty of Disclosure under Section 40 must be adhered to i.e. if there has been any contribution in the development of the variety by any tribal group or community, the breeder is required to disclose the same in his application. Willful failure to do so would lead to rejection of the application.
- f. If application is being made by a person authorized under **Sec 16(1)(e)**, Letter of authorization required (**Form PV 1**)
- g. If application is being made by a person by virtue of succession or assignment, the succession certificate or any other certificate that proves such succession or assignment must be attached in the manner prescribed in **Form PV 2** as laid down under **Section 18(3)**.

5. Objections:

Once the application has been accepted (with or without conditions or limitations), it shall be advertised calling for objections. This has to be done

within 3 months from the date of filing of the application.

The objections can be made on the following grounds

- ✚ Person making objection is entitled to breeders right
- ✚ Variety not registrable.
- ✚ Against public interest
- ✚ Adverse effect on environment

The objections under Sec 21(2) are to be made in the manner prescribed in Form PV-3 and a copy of objections is to be provided to the applicant.

6. Counter Statement

- a. Counter-statement to be sent within 2 months of receipt in the manner prescribed in **Form PV 4**.
- b. Counter-statements shall be made available to the opposing party.

7. Evidence

- a. Evidence can be submitted and recorded under **Sec 21(6)**.
- b. Extension for time limit for filing the evidence can be extended by making an application.
- c. The authority is also entitled to provide an opportunity of hearing to the parties if a desire in that regard is expressed.

8. Certificate

- a. Once the application has been accepted, the certificate is to be issued to the applicant.

- b. Under Section 24(3) of the act, in the event that the certificate not granted to the applicant within **12 months** from application, on account of default by applicant the application shall be considered as abandoned provided that notice is accorded.
- c. Certificate once issued, shall be valid for 9 years in case of trees and vines and 6 years in case of other crops.

National Gene Bank

Authority has established National Gene Bank to store the seed material including parental lines submitted by the breeders of the registered varieties. The seed lot is stored under low temperature conditions at 5° C for the entire registration period, and if necessary after few years of storage in the National Gene Bank, the seed lot will be rejuvenated and replenished at the cost of the applicant. The seed stored in the National Gene Bank will be used for dispute settlement or when an exigency arises for invoking compulsory licensing provision. Such a seed deposition in the National Gene Bank would dissuade market malpractices or violations as the sample in custody can be drawn to verify the facts. When the period of registration granted lapses, the material automatically moves to public domain.