

The Protection of Plant Varieties and Farmer's Rights Act of India: An Analysis

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Abstract--- *In 2001 the Indian Government passed the Protection of Plant Varieties and Farmers' Rights Act. After India became a signatory to the Intellectual Property Rights Agreement (TRIPS) on Trade Related Aspects in 1994, a law 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. The member states therefore had the choice to frame laws that fit their own structure, and India exercised this right. The current Indian Patent Act of 1970 excluded from patentability the production methods of agriculture and horticulture. The sui generis scheme for the defense of plant varieties has been established to incorporate the rights of breeders, farmers and village populations, and to take care of the questions regarding equal profit sharing. Here we are seeking to critically analyze the policy frameworks for their successful implementation.*

Index Terms--- *Sui generis, TRIPS, Plant Varieties, Agriculture.*

I. INTRODUCTION

PLANT GENETIC RESOURCES (PGRs) are the basis for a food and nutritionally stable society to grow, plants also have many uses, including applications in feed, fibre, medicine, and industry. CBD has recognized conservation and sustainable use, and access to biological diversity, as national sovereignty. As a result, several concerns have arisen about the interests of the conservers, consumers, breeders, farmers and intellectual property. Significant developments about the awareness of the rights of breeders, farmers and local communities took place during 2001. In India, agricultural research has been largely the concern of government and public sector institutions, including the development of new plant varieties. Earlier, India had no legislation to protect the varieties of plants and, in fact, there was no urgent need. However, after India became signatory to the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS) in 1994, such a legislation was necessitated.¹ 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 combination thereof. The member countries therefore had the choice to frame laws that fit their own framework and India exercised that right. The sui generis scheme for the conservation of plant varieties has been established that incorporates the interests of breeders, farmers and village communities and takes care of the questions regarding equal benefit sharing. This provides versatility

¹ Ravi Shanker, A. S., Kochhar, Archak, S. and Gautam, P. L., Plant Variety Protection: Lessons from cross-country perspective.

with respect to protected genera/ species, degree and security duration as compared to other specific laws that exist or are being implemented in different countries. The act includes all types except microorganisms. A gazette shall notify the genera and species of the protective varieties after the appropriate rules and by-laws are framed for enforcement of the Act.

II. IMPORTANT DEFINITION

Some of the important definitions in the context of the Act include the following:

VARIETY: A plant grouping except microorganisms within a single botanical taxon of the lowest known rank, which can be

- defined by the expression of the characteristics resulting from a given genotype of a plant of that plant grouping;
- distinguished from any other plant grouping by expression of at least one of the said characteristics; and
- Considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation, which remains unchanged after such propagation and includes propagating material of such variety, extant variety, transgenic variety, farmers' variety and essentially derived variety.²

EXTANT VARIETY: A variety available in India which is

- Notified under section 5 of seeds Act, 1966, or
- Farmers' variety, or
- A variety about which there is common knowledge, or
- Any other variety which is in public domain.

ESSENTIALLY DERIVED VARIETY: A variety shall be said to be essentially derived when it:

- Is predominantly derived from such initial variety, or from a variety that itself is predominantly derived from such initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of such initial variety;
- Is clearly distinguish from such initial variety, and
- Conforms (excepting for the differences which result from the act of derivation) to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of such initial variety

FARMERS' VARIETY: A variety which

- Has been traditionally cultivated and evolved by the farmers in their fields, or
- Is a wild relative or land race of a variety about which the farmers possess common knowledge.

² The Protection of Plant Varieties and Farmers Rights Bill, 2001. Seed Association of India, Newsl., 2001, vol. 15, pp. 1–35.

III. SALIENT FEATURES OF THE ACT

III.I. AUTHORITY

The central government shall create an authority to be known as the authority for the Protection of Plant Varieties and the Rights of Farmers. It shall consist of one chairperson and fifteen members as representatives of the various ministers and departments concerned, the seed industry, farmers' organizations, tribal communities and women's organization at the state level, etc.

III.II. ELIGIBILITY

To qualify for registration, a variety must meet the criteria of uniqueness, distinctiveness, uniformity and stability (NDUS), as defined below [Section 15(1)-(3)] For the purpose of the Act, 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 a variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety.
 - In India, in the case of trees or vines earlier than six years, or, in any other case, earlier than four years, before the date of filing such application.³

IV. APPLICATION FORM

Every application for registration will have to be accompanied with the following information [Section 18 (a-h)]:

- denomination assigned to such variety by the applicant
- an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology.
- the application should be in such form as may be specified by regulations;
- a complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organization in breeding, evolving or developing the variety;

V. PERIOD OF PROTECTION

The registration certificate issued pursuant to section 24 or sub-section 98 of section 23 shall be valid for nine years in the case of trees and vines and for six years in the case of other crops, and may be reviewed and renewed for the remaining period on payment of such fees as may be fixed by the rules made on that behalf subject to the conditions that the total validity period may not exceed.

- In the case of trees and vines, eighteen years from the date of registration of the variety;

³ Proceedings of MSSRF-FAO Expert Consultation: Implementing farmer's rights for conservation and utilisation of plant genetic re-sources in the Asia-Pacific region: from legislation to action. M.S. Swaminathan Research Foundation, Chennai, 2002, pp. 176

- In the case of extant varieties, fifteen years from the date of the notification of that variety by the central government under Section 5 of the Seed Act, 1996, and
- In other case, from the date of registration of the variety.

VI. PAYMENT OF ANNUAL FEE

The Authority may, with the prior approval of the Central Government, by notification in the Official Gazette, impose a fee to be paid annually, by every breeder of a variety, agent and licensee thereof registered under this Act determined on the basis of benefit or royalty gained by such breeder, agent or licensee, as the case may be, in respect of the variety, for the retention of their registration under this Act.

VII. COMPULSORY LICENSE

The authority can grant compulsory license, in case of any complaints about the availability of the seeds of any registered variety to public at a reasonable price. The license can be granted to any person interested to take up such activities after the expiry of a period of three years from the date of issue of certificate of registration to undertake production, distribution and sale of the seed or other propagating material of the variety.⁴

VIII. CONSIDERATION FOR EFFECTIVE IMPLEMENTATION OF THE ACT

Indian opted for a sui generis plant variety protection system and provided for the rights of farmers, the rights of breeders, the rights of researchers and equity issues in the same legislation. Compared to similar laws in other countries, all these clauses of one legislation make it a special rule. Though some countries provided for the rights of farmers, all kinds of rights for farmers, viz. It is this uniqueness of the act which poses many challenges for its effective implementation. The balance between breeder's rights and farmers could be tough to strike. A critical analysis of the provisions in the Act is therefore essential for its effective implementation.

IX. NOTIFICATION OF CROPS SPECIES

As a first step towards enforcing the Act, the government will have to notify the crops to establish system for listing plant varieties for registration purposes. The criterion for selecting the crops could be the crops on which we rely for food and nutritional protection, including major cereals, pulses, oilseeds, vegetables and fruit crops. The other priorities for consideration could be crop species which are essential to India in world trade, species where India could benefit of Indian origin, crop where India could benefit from the introduction of new germplasm and foreign investment.

⁴ Framing rules for operationalizing The Protection of Plant Varieties and Farmers' Rights Act: Recommendations of a scientists group. National Academy of Agricultural Sciences, New Delhi, 2002, p. 10.

X. AWARENESS GENERATION

The other priorities for consideration could be crop species which are essential to India in world trade, species of Indian origin, crops where India could benefit from the introduction of new germplasm and foreign investment. A standing committee under the Plant Varieties and Farmers' Rights Protection Authority on awareness generation and information empowerment may be set up to ensure the effective dissemination of credible information about the rights of plant breeders and farmers as cultivators, breeders and conservers. There is a need to create resources centers for the rights and entitlements of farmers to ensure that the farmer as breeder and preserver secures the recognition and compensation received under the Act.⁵

XI. INSTITUTIONAL STRUCTURES FOR EFFECTIVE IMPLEMENTATION

The PPVFR authority proposed to be set up under the Act has a crucial role to play in making the Act successful. The authority's responsibility is to encourage opportunities for the development of new varieties of plants and to protect the rights of farmers and breeders by such steps as it may think fit. In particular, the authority is to provide measures for:⁶

- The registration of extant and new plant varieties subject to such terms and conditions and in the manner as may be prescribed.
- Developing characterization and documentation of varieties subject to such terms and conditions and in the manner as may be prescribed
- Compulsory cataloguing facilities for all varieties of plants.
- Ensuring that seeds of the varieties registered under this Act are available to the farmers and providing for compulsory licensing of such varieties, if the breeder of such varieties or any other person entitled to produce such variety under this Act does not arrange for production and sale of seed in the manner as may be prescribed.

XII. CONCLUSION

In the context of the objectives of i) encouraging the diversification of research interest of the private sector and ii) increasing the quality of seeds available to farmers so as to maintain the necessary high agricultural productivity, it is also relevant to note that there appears to be clear contradiction in the government's policy to promote seed replacement on the one hand, and the PPV &FR Act's policy of permitting saving and resowing of all types of seeds, including hybrid seeds each season. Following large scale initiatives to educate farmers about the importance of replacing hybrid seeds, it may also be beneficial to make appropriate changes in the law and ban the re-sowing of hybrid seeds. The practice of permitting farmers to save, exchange and resow seeds from the harvest of cross pollinated and self-pollinated plant varieties may be continued. For this purpose, it is also necessary to promote honest labeling practices. Despite the presence of farmers and breeders privilege, if the government can ensure an improvement in the average seed

⁵ National Seed Policy 2002, Department of Agriculture and Co-operation, Ministry of Agriculture, Govt. of India, 2002.

⁶ Saxena, S. and Dhillon, B. S., A critical appraisal of the Protection of Plant Varieties and Farmers' Rights Act 2001, India.

replacement rates of important self-open pollinating cereal crops, it is likely that the private sector will be willing to undertake R&D in such crops.

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