

# Farmers' Rights to Seeds

## Issues in the Indian Law

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While the Protection of Plant Varieties and Farmers' Rights Act 2001 is a progressive piece of legislation that recognises farmers' rights to seed, it demands payment of an annual maintenance fee by the farmers to protect the varieties which they have been cultivating and conserving for years, only because these varieties have been brought under legal protection through national legislation.

**S**eed Care is a farmer-led association of traditional crop conservators established in Wayanad District of Kerala with the support of M S Swaminathan Research Foundation. It represents the rural farmers of Wayanad, including the Kurichya and Kuruma Adivasi communities. The association is actively involved in advocating farmers' rights and protection of plant varieties and also leads various agrobiodiversity conservation programmes.

Until now Seed Care has forwarded 27 applications for farmers' varieties of rice to the Government of India (GoI) of which six were registered in 2013, namely, Veliyan, Thondi, Chennellu, Chomala, Gandhakasala and Jeerakasala (Registered numbers: 56 to 61 of 2013). As per the registration, given under the provisions of Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act of India 2001, Wayanad farmers have the exclusive right to produce, sell, market, distribute, import or export the registered farmers' varieties for a specified period. After one year of the registration, in April 2014, Seed Care has been asked to pay an annual fee of Rs 2,000 for each six varieties to maintain the registration.<sup>1</sup>

### Some Background

The first use of farmers' rights as a political concept dates back to the early 1980s, when Pat Roy Mooney and Cary Fowler of the then Rural Advancement Foundation International coined the term to highlight the valuable, but unrewarded contributions of farmers to plant genetic resources for food and agriculture. The idea came up as a countermove to the increased demand for plant breeders' rights, as voiced in the international negotiations.<sup>2</sup>

The concept of farmers' rights was first brought up in international negotiations in the council of Food and Agricultural Organization (FAO) chaired by M S Swaminathan in 1983. The FAO (1989) defines

farmers' rights as "the rights arising from the past, present and future contribution of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity." The purpose of these rights is stated to be "ensuring full benefits to farmers and supporting the continuation of their contributions" (FAO 1989). The international instruments like the Convention on Biological Diversity, 1992 and the International Treaty on Plant Genetic Resources for Food and Agriculture, 2001 also recognise the contributions of rural and tribal communities in the conservation and enhancement of biodiversity. The farmers' rights database (Note 2) has listed the countries which have the provisions of either farmers' rights or community rights related to plant genetic resources in their national/regional legislations. The Indian legislation is the most progressive and the only one which provides extensive rights to the farmers including the right to register farmers' varieties.

In the International Union for the Protection of New Varieties of Plants (UPOV) system, followed by 71 member-states and one intergovernmental organisation, there is only one optional exception to farmers, safeguarding the legitimate interests of the breeder. Farmers are permitted to use the breeders' varieties for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings. It could be noted that the breeders' interests have been given priority. The picture is clearer while reading through the recommendation given by UPOV Act on this matter. It states that this provision "should not be read so as to be intended to open the possibility of extending the practice commonly called 'farmer's privilege' to sectors of agricultural or horticultural production in which such a privilege is not a common practice on the territory of the Contracting Party concerned" (UPOV 1991).

### PPV&FR Act, 2001 in India

The PPV&FR Act of India (GoI 2001) received the assent of the President of India on 30 October 2001 after having many deliberations among the public

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and civil society organisations. The very idea behind the act was to stress that farmers and breeders are allies in the struggle for sustainable food security, and that their rights must be mutually reinforcing and must not be antagonistic (Swaminathan 1996; Balaravi 2004). The act is meant to establish 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. It is administered by the PPV&FR authority under the Ministry of Agriculture. The PPV&FR Act has many provisions in it—to protect the rights of the farmers and to recognise their efforts for the conservation of agro-biodiversity. The Plant Genome Saviour Community recognitions and awards given away by the PPV&FR authority are for the rural and tribal farming communities or individuals engaged in conservation, improvement and preservation of genetic resources of plants and their wild relatives.

The rights given to the title holders (breeders) of registered material include the rights to produce or reproduce, offer for sale, distribute, import, export, stock and transfer the rights to any other persons.

The 2001 act defines farmers in three roles, as cultivators, conservators and breeders. Specifically, nine rights have been given to the farmers, including the right to seeds, rights to register farmers' varieties, receive reward and recognition, get the benefits shared out of the use of farmers' varieties, get compensation for losses caused by the cultivation of registered commercial varieties, check undisclosed use of traditional varieties, get access to seed and get free services and protection against accusations of innocent infringements.

The provision of registration of farmers' varieties allow the farmers to register a variety which has been traditionally cultivated and evolved by the farmers in their fields; or it is a wild relative or land race of a variety about which the farmers possess the common knowledge. Now the registration is offered to 88 crops as notified by the authority. One thousand eighty one varieties have been registered so far in which 84 are farmers' varieties.<sup>3</sup>

## The Arguments

The law has given farmer concerns compared to any other seed directives in India and the world including the right to register farmers' varieties free of cost. In this context, it is strange that the farming community has been asked to pay an annual fee just to maintain the legal protection given through the registration process. Section 44 states that "a farmer or group of farmers or village community shall not be liable to pay any fees in *any proceeding* before the Authority or Registrar or The Tribunal or the High Court under this Act or the rules made there under" (GoI 2001). But interestingly, the law does not give explanation to the "any proceeding" mentioned in it and here comes the conflict of annual fee for farmers' varieties. Section 35 (1) of the act states

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.

If the annual fee is pending for consecutive two years, the registration may be declared forfeited and the provision is also there to recover the fee arrears as the arrears of land revenue.

According to PPV&FR Rules, 2003 (GoI 2003), the registered breeder, agent and licensee shall pay an annual fee for retention of registration at such rate as specified for the purpose in column (3) of the second schedule (Rule 54). The second schedule only describes the fees payable to conduct tests, file notice of oppositions, extend time for filing notices, register Essentially-Derived Varieties, renew the registration and for various applications, but not about annual fee to maintain the registration of varieties.

The subsequent gazettes which describe fee structures also did not mention the registration or annual fees for farmers' varieties. Gazette Number 275 of May 2009 (GoI 2009a) gives two insertions to the second schedule and describes the following payable fee:

(1) Fees for registration of any variety of the genera and species other than extant

varieties and farmers' varieties—Individual (Rs 5,000), Educational (Rs 7,000) and Commercial (Rs 10,000).

(2) Fees for registration of a variety about which there is common knowledge (extant variety)—Individual (Rs 2,000), Educational (Rs 3,000) and Commercial (Rs 5,000).

Gazette Number 1336 of August 2009 (GoI 2009b) states that:

The annual fee for any variety of the genera and species *other than* extant varieties (un-notified under the Seeds Act, 1966) and *farmers' varieties* shall be Rs 2000 plus 0.2 per cent of the sales value of the seeds of the registered varieties during the previous year plus 1% of the royalty, if any, received during the previous year from the sales proceeds of the seeds of the registered variety. For extant variety notified under the Seeds Act (1966), the annual fee shall be Rs 2000 only.

The *Manual on Farmers' Rights*, Balaravi (2004) says that the only available implementation guide for the act explains that:

Considering the poor economic capability of farmers and with a view that this economic weakness shall not be a hurdle for accessing farmers' rights, the PPVFR Act totally *exempts farmers from paying any fees* (see Annexure 2, Sections 18, 44). This exemption is applicable to individual, group or community of farmers. The *exemption includes* the fees required to be paid to the Registrar of Plant Varieties for registration of farmers' varieties, for conducting tests on them, *for the renewal of registrations* and the fees prescribed for opposition, benefit claim, etc. This exemption also covers fees on all legal proceedings at the PVPA (Plant Varieties Protection Appellate)-Tribunal or the Intellectual Property Appellate Board (IPAB) or any Court of law. This exemption, however, does not include fee on lawyers privately hired by farmers to represent them at the Tribunal or Appellate Board or Courts.

While the act does not give an explanation to "any proceeding" mentioned in it, the Balaravi (2004) gives an explanation as: "for the purposes of this section, fee for any proceeding includes any fee payable for inspection of any document or for obtaining a copy of any decision or order or document under this act or the rules made there under" (Balaravi 2004).

In brief, while it recognises farmers' right to register varieties, the act imposes a payment of heavy fee by the farmers to protect "their own" varieties and it has stuck the very objective of the act. The foremost reason for registering farmers' varieties as given by the *Manual on*

*Farmers' Rights* is the cost-free accomplishment of the process followed by the reasons: (1) to establish intellectual property rights of farmers on their varieties; (2) to exploit commercial potential of farmers' varieties; (3) to establish ownership on farmers' varieties; and (4) to safeguard farmers' varieties from piracy.

The said conflict remains with the provisions of renewal of registration also. For these farmers' rice varieties, the registration has been given initially for six years and need to be renewed with a fee. Rule 54 of the PPV&FR Rules (2003) describes the fee need to be paid by different categories as Individual (Rs 5,000), Educational (Rs 7,000) and Commercial (Rs 10,000) and there is no clarity on the renewal fee for farmers' varieties.

### Conclusions

The PPV&FR Act is meant to protect the concerns of both farmers and breeders over the varieties. Being a progressive

law which recognises farmers' rights extensively, the Indian legislation has to encourage farmers to continue their efforts in conserving, cultivating and breeding the varieties. It should be the concern of the government to ensure farmers' rights and the farmers should not be put in an obligation to go after the legislation which has administrative or procedural complexities. It is hoped that the government will initiate needful steps to ensure farmer-favourable action by exempting them from paying the annual fee for maintaining the registration of "their own" varieties.

### NOTES

- 1 Personal communications with secretary of Seed Care.
- 2 Farmers' Rights Project (2005): Farmers' Rights — Resource pages for decision-makers and practitioners, viewed on 31 October 2014 (<http://www.farmersrights.org>).
- 3 PPV&FR Authority (2014): Protection of Plant Varieties and Farmers' Rights Authority, viewed on 12 November 2014 in <http://plantauthority.gov.in>.

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