

Manual on Farmers' Rights

S. Bala Ravi



M. S. SWAMINATHAN RESEARCH FOUNDATION

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Front cover



- 1. Traditional practice of seed selection and saving by tribal farmer
- 2. Farmers have good knowledge on processing and storage of saved seed.
- 3. Replanting with saved seed.
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FOREWORD

The domestication of plants of value to human needs about 12,000 years ago marked the beginning of settled cultivation or agriculture. Since then, a wide range of plants have been collected from the wild and grown for varied purposes such as food, feed, fodder, fuel, fibre, fertilizer (i.e. crops which fix nitrogen) and medicine. If we now refer to a plant as a "medicinal plant", it is because of the identification of its medicinal properties by the farm women and men who domesticated it. Early farming communities not only domesticated a wide range of species of plants, but also selected and cultivated numerous varieties within species. This is why we find today that over 120,000 distinct varieties of rice occur in different parts of the world. The same is the case in other crop plants. Thus, rural and tribal families have played a key role not only in the domestication of economically useful plants, but also in their improvement through selection and knowledge addition.

With the rediscovery of Mendel's laws of inheritance in 1900, organised plant breeding started under the auspices of agricultural research institutions and commercial companies. In order to provide incentives to commercial breeders, several nations in Europe and North America enacted legislation to confer proprietary rights to breeders over the varieties developed by them. In the 1960s an International Union for the Protection of New Varieties of Plants (UPOV) was formed by countries, which had started conferring rights on breeders of new crop varieties in order to develop uniform guidelines with reference to such rights. In the 80s, when I was the Independent Chairman of the Council of the Food and Agricultural Organisation of the United Nations (FAO) a Commission on Plant Genetic Resources was set up and the concept of Farmers' Rights was developed. An International Treaty on Plant Genetic Resources for Food and Agriculture was adopted by the FAO Conference in November 2001 and it has now come into force. The Treaty recognises the catalytic contributions that farmers and their communities have made and continue to make to the conservation and development of plant genetic resources. This is the basis for Farmers' Rights, which includes the protection of traditional knowledge, and the right to participate equitably in benefit sharing and in national decisionmaking on issues relating to plant genetic resources. The Treaty gives governments the responsibility for implementing these rights. The Convention on Biological Diversity adopted at Rio de Janeiro in 1992 also accords recognition to the contributions of rural and tribal communities in the area of biodiversity conservation and enhancement.

In 1994, the M S Swaminathan Research Foundation (MSSRF) submitted to the Government of India a draft Act for plant variety protection, incorporating provisions for recognising the role of farm women and men in conservation, cultivation and breeding. Later in 1996, MSSRF recommended that the proposed

legislation may be titled, "Plant Variety Protection and Farmers' Rights Act", in order to stress that farmers and breeders are allies in the struggle for sustainable food security, and that their rights must be mutually reinforcing and not antagonistic (see Agrobiodiversity and Farmers' Rights, Konark Publishers Pvt Ltd, New Delhi 1996). Such an Act titled, "Protection of Plant Varieties and Farmers' Rights Act" was passed by both Houses of Parliament in 2001. MSSRF submitted to the Government of India in 2002, draft implementation rules incorporating provisions for recognising and strengthening the role of women and elected local bodies (Panchayati Raj institutions) in the implementation of the Farmers' Rights component of the Act. Both the Protection of Plant Varieties and Farmers' Rights Act (2001) and the Biological Diversity Act (2002) provide for the setting up of National Gene and Biodiversity Funds for recognising and rewarding the invaluable contributions of tribal and rural families to the conservation and enhancement of biodiversity in general, and agrobiodiversity in particular. The PPVFR Act is expected to come into force on 1 January 2005 and in the case of Biological Diversity Act, the National Biodiversity Authority is constituted on 15th April 2004 and enforcement of this Act is also expected very soon.

The present Manual on Farmers' Rights prepared by Dr S Bala Ravi, Advisor (Biodiversity), MSSRF, is designed to assist all concerned in the effective implementation of the provisions of the Act relating to Farmers' Rights. I hope it will be found useful by local bodies, schools, colleges, extension workers, media, scientists and administrators. Our gratitude goes to Dr S Bala Ravi for his labour of love for the primary conservers of our country. I am also indebted to Dr V Arivudai Nambi, Coordinator of the "Biodiversity Conservation, Integrated Natural Resources Management and Poverty Reduction" project supported by the Swiss Agency for Development and Cooperation (SDC) for his efforts to get this Manual ready. The Manual is dedicated to the tribal and rural women and men who have been conserving and improving agro-biodiversity for public good at personal cost. We should end as soon as possible the irony of the co-existence of poverty among those who have conserved genetic resources and prosperity among those who have used their material and knowledge. Our sincere gratitude goes to SDC for their generous financial and technical support without which this work would not have been possible.

M. P. Romathen

M S Swaminathan

INTRODUCTION

For thousands of years, farmers around the world have been selecting and conserving varieties of different crop plants that they cultivated. This process has generated a rich wealth of varieties in each crop plant, seen to be most abundant in countries near the equator. Farmers in India grow a large number of crops. Generations of Indian farmers, with their continued selection and conservation, have created a rich wealth of varieties in many crops.

Agriculture began when early humans realized that some of the plants growing in the wild could be used for food, clothing and health care. Humans all over the world identified, selected and cultivated only those plants that were useful to them and were best suited for cultivation in their regions. Each crop plant is considered to have originated in a specific region of the world. Crop plants from these regions spread to other parts of the world during different periods of our agricultural history. This spread happened as a result of farmer-to-farmer sharing and exchange and sale of planting material. Human migration, travel, trade and war also helped in the spread of crops to new regions far away from the place of origin. These new crop plants, introduced from a faraway land, were again selected by local farmers and adapted to local conditions and local needs.

Nature is dynamic. It causes inheritable changes in all living forms. These changes occur as a result of an unpredictable and sudden natural process called mutation or by a predictable process of intercrossing. In the case of plants, intercrossing also happens with wild relatives. [Wild relatives are those plants that are related to cultivated varieties but are themselves not used in agriculture]. All these changes happen in the varieties under cultivation. It requires intense power of observation and intelligence to detect useful changes in varieties and selectively propagate them. Such selection of changed plants and their propagation bring forth new varieties. Thus, all new varieties arise from old varieties. Farmers understand that the emergence of a new variety does not reduce the importance of the old one. Hence, they conserved the new varieties and old and, in this manner, created a wealth of varieties. This wealth is the foundation and feedstock that scientists use to breed new superior varieties. In other words, without the wealth of varieties created and conserved by farmers, scientists cannot breed new varieties.

India is the original home of many crops such as rice, little and kodo millets, red gram, moth bean, jute, pepper, cardamom, many vegetables and fruit species. These plants were identified from the wild, selected and cultivated by Indian farmers over hundreds of years. The present wealth of varieties in India includes both crops that originated in the country and those that were introduced from other countries during the distant and the recent past. The crops introduced in

the distant past include wheat, sorghum, maize, pearl millet, ragi, groundnut, gram, sugarcane, cotton, tea, rubber, etc. Crops introduced in the recent past are soybean, sunflower, oilpalm and kiwi fruit. In both these groups of crops, Indian farmers have evolved a rich diversity.

During the long process of selection, conservation and cultivation, farmers have gained extensive knowledge of each variety. This knowledge includes the suitability of the variety for specific growing seasons and conditions, its maturity duration during different seasons, its resistance to different diseases, pests and other natural vagaries, its suitability to different soils, quality of its produce, its suitability for different uses and so on. This knowledge base of each variety available with farmers is as highly valuable to modern scientific improvement as the genetic diversity of crop plants. It makes the contribution of farmers to plant genetic diversity as important as the contribution scientists make by developing modern plant varieties. Therefore, when scientists are given the right to own new varieties created by them, this right has to concurrently recognize the right farmers have on their varieties. A new legislation called *The Protection* of Plant Varieties and Farmers' Rights Act, 2001 enacted by the Government of India, therefore, seeks to protect the rights of farmers and breeders on plant varieties. This Act recognizes the individual and community roles played by farmers in the improvement and conservation of varieties. As farming is a family activity, individual and community rights of farmers mean equitable rights for men and women engaged in farming.

Chapter 1 OWNERSHIP ON PLANT VARIETIES

Why Own Plant Varieties?

Farmers have been developing new plant varieties for almost the entire part of our agricultural history. World over, the development of new crop varieties on a scientific basis began only in the last 100 years, following the establishment of the science of Genetics. The entry of genetics into plant breeding resulted in major advances culminating in the development of high yielding hybrids and varieties. Indian agriculture witnessed the arrival of hybrids and high yielding crop varieties in the 1960s, during the Green Revolution. These new varieties offered farmers a far higher yield and profit than traditional varieties. Naturally, the seeds of these varieties were in high demand. Seed saving and sharing by farmers met most of the demand, while the public and private seed supply systems met the rest. There was no demand for ownership on plant varieties during the days of the Green Revolution, when the seeds of many high yielding varieties created by breeders were in high demand.

Why Protect Plant Varieties?

Protection of plant varieties is legally introduced in the country by a recent legislation called Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR Act). The Government of India, which enacted this legislation, states four reasons for introducing the PPVFR Act.

1) To protect the intellectual property associated with the development of plant varieties in fulfilment of an agreement signed by India under the World Trade Organization (WTO).

2)To recognize the rights of farmers arising from their contribution in conserving, improving and making available plant genetic resources to develop new plant varieties.

3) To stimulate public and private investment in plant breeding to accelerate agricultural development.

4) To ensure high quality seed and planting material to farmers by promoting the seed industry.

All these reasons are important. But the most important and compelling reason behind this Act is India's commitment, made in 1994 with the WTO, to an agreement called Trade Related aspects of Intellectual Property Rights (TRIPS). TRIPS agreement requires India to provide intellectual property rights on plant varieties.

What is Intellectual Property Right?

Legally valid ownership rights assigned to the creator of intellectual works are called Intellectual Property Rights (IPR). Intellectual creations are of different kinds: writing poetry or a novel, composing music, creating a work of art, inventing a new technology, discovering a new medicine, producing a new chemical, creating a market brand, etc. One or more individuals who create a new idea, process or product become eligible to establish IPR on their creations. It is an exclusive right given to the owners to commercialize their creation for economic gains. This right is transferable by sale, licensing or succession. This ownership, however, is not permanent, like the ownership on real estate, but is assigned only for a prescribed period. On completion of this period, the IPR becomes a public property with exclusive right to none. Most of the IPRs are valid only in the country where they are established according to the IPR law of that country.

IPR on plant variety means that the person who establishes the ownership right on the plant variety alone has the legal right to produce, store, process and market the

BOX 1:

GENETIC AND BIOLO-DIVERSITY-GICAL Genetic diversity or resource of a crop plant means the totality of differences available among all its varieties and wild relatives. The grand totality of all such genetic diversity among all cultivated crop plants is called plant genetic resources (PGR). Much or all of the PGR is created and conserved by farmers. Farmers in different regions of the world, depending on the abundance of native variety wealth have played varying roles to the generation of extant PGR.

seed of that variety for as many years as the ownership is valid. Ownership right is established on the basis of evidence that the person has contributed to the development and conservation of a variety. This right is called the Plant Breeder's Right (PBR). The PBR can be licensed, sold or inherited. It is applicable only in the country where it is established as per the national law.

What will be the Impact of PBR on Farmers?

Under the PPVFR Act, PBR on a plant variety is established by registration of the variety. By registering a variety, a person becomes its PBR holder. The PBR holder can be one person, a group or community or an institution. The PBR holder alone has the exclusive right to produce, sell, market or distribute the seeds or planting material of that variety. The important questions then are whether farmers are eligible to register the traditional varieties developed and conserved by them. Should the farmers buy the seed of a registered variety from the PBR holder every time they want to

sow? Or, are they allowed to save the seeds of a registered variety and use the saved seeds for the next sowing or to exchange, share or sell to other farmers? These

questions bring to focus the rights of farmers arising from their contribution in improving, conserving and making available plant genetic resources for developing new plant varieties.

We know that scientist breeders always develop new varieties by using available genetic diversity. The origin of this genetic diversity is from on-farm conservation and selection of many traditional or farmers' varieties. Fundamental to these processes is the unrestricted freedom farmers have had on seed selection, saving, exchanging and sharing. Conservation of genetic diversity of such magnitude as is found in India could not have been achieved without the continuous participation of communities of farmers and tribal people. Such community participation essen-tially demands a traditional seed sharing and exchange system. Conservation and enrichment of existing genetic diversity in India are more vital to the future of agriculture than to the present. Hence, the protection of the traditional rights of farmers, to save seed from their own crops and to use it for sowing, exchanging, sharing or selling, is one of the important recognitions accorded to farmers for their past, present and future contribution in conserving and making available plant genetic

BOX 2:

ON-FARM CONSERVATION - Plant genetic resources are conserved by two important methods. They are on-farm and off-farm conservations. Off-farm conservation is what is also called the *ex-situ* gene bank (see Box 3). On-farm conservation is the traditional and most effective method of conserving varieties and wild species. This method involves continuous repropagation and selection of varieties under cultivation. Its effectiveness comes from continuous interaction of varieties with varied natural and farmer-selected forces. All important economic characters were generated and enhanced by this process.On-farm conservation alone is dynamic in enhancing genetic variability. It is more dynamic and effective in regions recognized as the primary or secondary centres of diversity of a crop. Here high variety diversity and their proximity with wild relatives allow natural intermixing, leading to new genetic diversity.

On-farm conservation is of two kinds. When a variety or wild species is conserved in its habitat region, it is called *in-situ* on-farm conservation. When the conservation is done away from this region it is *ex-situ* on-farm conservation.

Notwithstanding the merits of on-farm conservation, it faces the risks from natural calamity. Similarly, farmers stop cultivating and conserving varieties, when they cease to be commercially or culturally relevant. Hence, a combination of on-farm and *ex-situ* gene bank conservation is the best safeguard against genetic erosion. The conservation efforts being undertaken and advocated by MSSRF combine these two approaches.

resources to develop new plant varieties. Therefore, the PBR allowed to plant breeders on new varieties has to be inclusive of these traditional rights of farmers. And like the professional plant breeders, farmers are also eligible to receive PBR on their varieties.

New Varieties Add to the Conservation Concerns

Historically, agriculture has been expanding its capability to produce more. Two methods used to increase production are increase in planted area and increase in

yield. Modern varieties that give a higher yield are important to meet the rising needs of an exploding population. While the new varieties are superior in yield, traditional varieties are superior in many other important economic characters. These include

BOX 3:

COMMUNITY GENE BANK- *Ex-situ* gene bank conservation stores seeds at very low temperature and moisture levels to preserve seed viability for many years. *Ex-situ* means outside the site of habitation. In contrast to dynamic on-farm conservation, gene bank conservation is static. The biggest advantage of this conservation is safety from genetic erosion and natural calamities. With the increasing spread of high yielding varieties, gene bank conservation of farmers' varieties has become increasingly important. Each seed sample in the gene bank is backed up with passport data on its origin and descriptor data on its important characters.

The M.S. Swaminathan Research Foundation (MSSRF) maintains a gene bank at Chennai. It was established in 1993 with the munificent donation from the eminent Italian scientist conservator, Prof.G.T. Scarascia Mugnozza. This gene bank is distinct from other national and international gene banks in its mission to empower farming and tribal communities for realizing the farmers' rights provided in the PPVFR Act. It holds their varieties in trusteeship and free of cost. Hence, this gene bank is called the Community Gene Bank (CGB). Apart from conservation, the CGB establishes the legal basis to the community ownership of these varieties. This is created with an expansive digitalized database on varieties (See Box 6). The sense of ownership promoted by the CGB encourages conservation among farming and tribal communities. The CGB is thus uniquely different from the national gene bank, the National Bureau of Plant Genetic Resources, New Delhi and the international gene banks at International Agriculture Research Centres. The CGB also maintains a herbarium of most of the specimen varieties.

The CGB conservation and database building on varieties are costly. MSSRF incurs a high annual cost to maintain the CGB. stability in performance in marginal agri-culture, resistance to pests and diseases, tolerance to aberrant soil and climatic conditions, superior food and nutritional quality, and so on. Hence, their conservation and further enrichment are as important as cultivation of high yielding varieties.

New varieties are also part of the genetic diversity. But one of the negative impacts of modern high yielding varieties is the rapid replacement of traditional varieties causing their eventual loss. This process of loss of genetic diversity is called genetic erosion. The loss, as a result of genetic erosion, of important traits, which were evolved over hundreds of years of selection and conservation, is indeed a heavy loss to humanity. Farmers alone can arrest this genetic erosion. Hence. conservation of genetic diversity is a service of high public importance. The public good gains from conservation are far larger than the small gains farmers make for themselves. A grateful nation should be highly indebted to farmers for this onerous public service they have been rendering. What the country can do for them by granting rights on seeds is only a small recognition. Equity, ethics and justice demand that farmers shall enjoy these rights when PBR is allowed on

new varieties, which were bred from the farmers' varieties.

India and WTO

According to the Government of India, one of the reasons to legislate the PPVFR Act and to allow PBR on plant varieties is the TRIPS agreement India signed under WTO. Considering the consequences of this to Indian agriculture and the farming community, one may like to ask why India did join the WTO and undertook such agreements. WTO is a world organization for trade. International trade is important to all countries and more so to India because of its big population and growing economy. India is a founder member and key player of the United Nations system and the General Agreement on Tariffs and Trade (GATT). The GATT, which was established under UN, has now been changed to the WTO. International relations are important for every country, particularly in times of globalization. International relations, however, have both advantages and disadvantages. Every country tries to achieve a net advantage over the long term. In the WTO, India is one among 147 countries. Most of the countries who are not currently members of the WTO are trying to get membership. For example, China was not a member till 2001 and had a tough time for getting admitted to the WTO. The Russian Federation is now waiting for its admission. Hence, the choice of India getting out of the WTO may not be in our long-term national interest. Trade, national or international, usually does not follow rules. A rule-less trade may favour the mighty and hurt the weak. The WTO has been created to establish rule-based trade. India is expected to gain long term advantages by being in the WTO rather than being out of it. From inside India can mobilise global opinion to renegotiate WTO agreements to provide a better level playing field.

Chapter 2 PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

Institutional Framework

The PPVFR Act has a mandate all over India. The implementation of this Act is vested with two national apex bodies, one administrative and the other juriprudential. The administrative apex body is the Protection of Plant Varieties and Farmers' Rights Authority (PPVFR Authority). The judicial apex body is the Plant Varieties Protection Appellate Tribunal (PVPA Tribunal). The Government of India will appoint the PPVFR Authority comprising a Chairperson and 15 ex-officio and nominated members. Members include representative of farmers, tribal people, women's organization and private seed industry. There will be a Registrar General at national level and Registrars at the regional levels. The PPVFR Authority is responsible for implementation of this Act, including the grant of registration to plant varieties. The PVPA Tribunal will have a Chairperson and judicial and technical members. This Tribunal has status equivalent to the district Court and will initially decide on all jurisprudential issues related to the administration and interpretation of the Act. Regional High Courts will hear appeals on decisions handed out by the Tribunal. However, the Rules on this Act recently brought out by the Government of India do not anticipate establishment of PVPA Tribunal. Until the establishment of the PVPA Tribunal, the Intellectual Property Appellate Board established under Trademarks Act, 1999 shall exercise the jurisdiction, powers and authority of the PVPA Tribunal.

Definition of Farmer

The legal definition of key words in legislative documents is important in order to keep the legislative goal in focus. Like the plant variety, the farmer has a central place in the PPVFR Act. Therefore, how a farmer is defined in this Act assumes importance. While a farmer is widely understood to be the person husbanding crops and animals, the definition given in this Act is very unique. The Act defines the farmer as a person cultivating crops or conserving and preserving traditional crop varieties or wild species of crops and selecting them for their useful properties. In other words, the Act recognizes the farmer as a cultivator, conserver and breeder. This definition embraces in all farmers, landed or landless, male and female.

Indian farmers usually cultivate many different crops and more than one variety of each crop. By such choices, the farmers not only conserve many varieties, but also exercise selection among them to test their suitability to specific conditions of farming. Hence, at any point of time, each community of farmers conserves many varieties of crops included in the different cropping systems it follows. This *in-situ* on-farm conservation also recognizes the importance of wild relatives of the crops endemic to that area. Farmers consciously preserve these wild species in lands not suitable for cultivation. Thus, cultivation in many parts of India goes hand in hand with conservation and selection.

Plant selection requires an intimate understanding of the behaviour of varieties and deep knowledge about its characters and properties. Such knowledge can only be gathered over the years. In the selection of every variety, there is an intellectual contribution from farmers. This intellectual process has been responsible for the evolution of every traditional or farmers' variety. There are several examples of farmers' varieties accepted as equal or better than the varieties bred by scientists. Thus, farmers' varieties are also eligible for protection under the PPVFR Act.

Farmers are Eligible to Register Varieties

The PPVFR Act allows the registration of three types of plant varieties. These are farmers' varieties, extant varieties and new varieties. However, the Rules on this Act are not explicit in stating eligibility of farmers' varieties. The Rule states all extant varieties are to be registered within three years from the date of enforcement of this Act. According to this Act, extant variety also includes farmers' varieties as defined below:

New varieties are those varieties newly developed by either scientist breeders or others including farmers.

Extant varieties are those Indian varieties bred by the public and private research system and officially released for cultivation by the State or Central Government and have not completed 15 years from the date of release. Extant varieties also include farmers' varieties and other varieties of common knowledge and in public domain.

Farmers' varieties are those traditional varieties developed and conserved by farmers. This includes the landraces, folk varieties and wild species of crop plants, about which farmers possess useful knowledge. Most of these varieties are usually developed and conserved collectively by community of farmers rather than by individual farmers. Hence, the Act recognizes that varieties conserved by communities of farmers are also eligible for registration.

Other Features of the PPVFR Act

Other important features of the Act are the provisions with regard to (1) researchers' rights, (2) benefit sharing between breeders and farming or tribal communities who have contributed to the genetic diversity used by the breeder, and (3) the establishment of a national gene fund to promote conservation.

As mentioned earlier, one of the objectives of this Act is to promote research in plant breeding so that seeds of better plant varieties are made available to farmers. Hence, the researchers' rights (RR) provided in the PPVFR Act allow all researchers in India legal access to any plant genetic resource available in the country and its free use for the purpose of research. However, this right for free access, according to another Act of the Government of India, named the Biological Diversity Act, 2002 is regulated on the basis of nationality of the researcher and whether the research is conducted in India or outside. Free access is allowed for all Indian researchers working in India. Non-Indian researchers and seed companies with foreign participation, undertaking research in India are allowed access to Indian plant varieties only with prior approval of the National Biodiversity Authority established under the said Act. All new varieties bred from Indian varieties are eligible for Registration under the PPVFR Act, on satisfaction of other conditions. While applying for registration of a new variety, the applicant breeder has to declare the source and geographical origin of the initial varieties used for breeding of the new variety, along with an affirmation on how these initial varieties were legally accessed.

Chapter 3 FARMERS' RIGHTS

What are Farmers' Rights?

Farmer's rights are the traditional rights farmers have on the seeds or the propagating material of plant varieties. This right arises from the important role farmers have been playing to conserve and enrich varieties and the knowledge they hold on the total genetic variability of the country. Hence, the farmers' rights on seed is concerned with both the traditional varieties conserved by them and modern varieties bred by using traditional varieties. The importance of these rights from the conservation point of view becomes more compelling with the grant of PBR to breeders. Therefore, the PPVFR Act safeguards farmers' rights on plant varieties, while simultaneously allowing PBR. This Act gives the traditional rights on the seed and other collateral rights arising from seed. All these rights are explained later in detail.

Why Farmers' Rights?

The PBR gives exclusive legal right to the owner of a variety to produce and market the seed of that variety. Exclusive right means that none other than the PBR holder (owner) has the right to produce the seed of the protected variety. Hence, farmers, who purchase and cultivate seed of a protected variety, are prohibited from saving the seed and using the saved seed for re-sowing or exchanging or sharing or selling. That means all farmers have to buy the seed of a protected variety every time they cultivate it. Cultivation of that variety with seed obtained from sources other than the PBR holder or exchanging or selling the seed will be a violation of the PBR. Such violations are liable for legal action and punishment. Such a situation would be possible, if PBR on plant varieties is given without concurrent farmers' rights on seeds.

Indian lawmakers were concerned about such hardship the PBR may cause to farmers and the immorality of such PBR, which forbides the traditional rights of farmers on seeds. The PPVFR Act, however, protects Indian farmers from such possible legal action and punishment. The Act allows their traditional rights on the seeds of all varieties, *including the protected varieties*, while PBR is allowed to breeders. Legal protection to this traditional right to save, re-sow, exchange, share or sell seeds is important to majority of Indian farmers and to Indian agriculture. Seeds of PBR protected varieties are expected to be costly. Majority of Indian farmers have only small and marginal land holding. They lack financial capability to make high investments in agriculture. Many of them cannot reach seed sold at high cost. That means farmers are excluded from the very technology which is created from the very traditional varieties generated and conserved by them. Hence, principles of natural justice, ethics and equity demand entitlement of the right to save, re-sow, exchange, share or sell seed to Indian farmers.

In addition, an improved variety bred by a breeder and protected under PBR is not an end by itself. Future agriculture needs more and more superior varieties. To breed such superior varieties, more and more genetic variability is essential. Generation of such genetic variability cannot be achieved without conservation and creation of new genetic variability. Here farmers' rights on seed are important for conservation of the existing genetic variability and the generation of new ones. The role that these rights play is far greater in countries like India, which have high wealth of varieties.

Origin of Farmers' Rights

During the 1960s and 1970s, developed countries started granting PBR and patent right on plant varieties. Plant breeding by private seed industry was gaining force in these countries. The grant of patent on varieties totally privatizes the seed supply with no right to farmers to save seed from their farm. The PBR is more just, because it can concurrently accommodate farmers' right to save, sow, exchange, share or sell seeds. The impact of farmers' rights on seed or its denial is very different on the farmers of rich developed and poor developing countries. Farming sector of rich countries is different from that in India in many ways. Only less than 4% of their population is involved in farming, while it is more than 65% in India. The average farm size in rich countries is few hundred acres, while this is less than one acre in India. The resource and technological capabilities of farmers in rich countries are far superior to those of Indian farmers. The diversity of crops and wealth of varieties associated with agriculture is far richer in India than in the agriculture of rich countries. Hence, the farmers of rich countries suffer far less disadvantage than their poor counterparts in India by the denial of farmers' traditional right on seeds.

Farmers' rights on seeds in variety rich countries like India promotes the global public good cause of enrichment and conservation of crop diversity. Without this right farmers cannot continue the important process of variety selection and conservation, which are responsible for evolution of novel genetic diversity in crop plants. Hence, enrichment of genetic diversity by on-farm conservation is of high importance to global agriculture. In recognition of this critical factor, an independent Commission on plant genetic resources constituted in 1983 by the Food and Agriculture Organization, Rome, under the Chairmanship of Prof. M.S. Swaminathan. The International Undertaking on Plant Genetic Resources (IUPGR) appointed by this Commission affirmed the need for global protection of farmers' rights on seeds, particularly in countries, which are rich in plant genetic diversity. Farmers' rights defined by the IUPGR were recently made into a legally binding international treaty. This treaty is called International Treaty on Plant

Genetic Resources for Food and Agriculture (ITPGRFA). India is a party to this treaty and hence committed to protect farmers' rights on seeds.

The farmers' rights defined is an international recognition to the contribution made by farmers for the creation and conservation of genetic diversity in all crop plants and that this diversity provides the basis for global agriculture, in the past, present and future. This recognition includes a need to provide reward and monetary incentives to promote conservation by farmers, particularly from regions of high genetic diversity. The IUPGR also affirmed the need to make the benefits of crop improvements by breeding and other scientific methods accessible to farmers. All these elements of farmers' rights are incorporated in the PPVFR Act.

What is a Farmers' Variety

All plant varieties, except modern improved varieties, have been selected, improved and conserved by farmers. Depending on the level of improvement and use in cultivation, they are called traditional varieties, folk varieties and land races. All of them are essentially farmers' varieties. Apart from the biological entities constituting these varieties, the rich knowledge farmers have, on each of them is equally important. This knowledge is the decisive factor for assessing the importance of these varieties to agriculture, in the present and in the future. This knowledge has been generated and conveyed over long years of intelligent observations and improvements effected on these varieties by farmers accross different growing conditions.

During the process of selection, cultivation and conservation of these varieties across hundreds of years, farmers have acquired knowledge on the unique properties of each variety and how these properties could be used in agriculture. The uniqueness and usefulness of this knowledge is far more valuable than the innovation and utility assigned on a new variety for granting a patent or PBR. The knowledge of farmers goes beyond all cultivated varieties to the wild relatives of crop plants, which naturally grow around. The PPVFR Act recognizes these wild species as farmers' varieties, if the farmers possess useful knowledge on them.

Protection of Interests of Farmers

It was mentioned earlier in this manual that the primary compulsion for enacting the PPVFR Act is India's commitment with WTO to provide intellectual property protection on plant varieties. While complying with this commitment, Indian lawmakers have shown equal concern to respect the intellectual contribution of Indian farmers, who developed all traditional varieties. They were also concerned that the protection of intellectual property rights on varieties should not erode the traditional rights of farmers on seeds. PBR was designed to promote development of superior varieties beneficial to farmers. Farmers are also protected from unethical business practices of selling seeds with exaggerated claim on their performance or levying unreasonable prices. The PPVFR Act seeks to institutionalize the public interest on conservation by provisioning reward and recognition to individual and community conservers. All together, this Act provides nine important farmers' rights.

Chapter 4 THE NINE RIGHTS OF FARMERS

The Act provides a separate chapter on farmers' rights. The farmers' rights contained in this chapter and elsewhere in the Act constitute nine important rights. These rights acknowledge the role of farmers in conserving varietal diversity, honour their traditional rights on seeds to promote conservation, their poor economic capability to buy seed for every sowing, their low legal literacy and their entitlement for equitable share of benefit arising from new varieties.

Farmers' Right on Seeds

The farmers' right on seeds is a traditional right enjoyed by farmers all along the history of agriculture. This right includes the right to save the seed from one's crop and use the saved seed for sowing, exchanging, sharing or selling to other farmers. It is fundamental to the conservation role performed by farmers. The process of conservation encompasses the total genetic variability in time and space, including traditional and new varieties; the farmers' right on seeds encompasses the total genetic variability, including protected varieties. The PPVFR Act, therefore, allows this right on seed to all varieties, including varieties registered under this Act [see Annexure 2, Section 39 (1) (iv)]. The Act restricts farmers from selling seeds of a protected variety in packages and containers with labels bearing its registered name. To further safeguard this right on the seeds of registered varieties, the Act prohibits use of technologies like the terminator gene technology, which destroys the germination capability of saved seeds [see Annexure 2, Section 18 (1) (c)].

Farmers' Right to Register Traditional Varieties

The PPVFR Act allows the registration of traditional varieties or farmers' varieties [see Annexure 2, Section 14]. Registration of the variety grants PBR on the variety, which allows exclusive legal right to the PBR-holding farmers to produce and market its seed [see Annexure 2, Section 28]. Farmers are awarded PBR by the Act on their recognition as breeders. Traditional varieties developed or conserved by a community of farmers and new varieties developed by one or more farmers are eligible for registration. In the case of registration of a traditional variety, it is important to involve all communities associated with its conservation, if there is no clear evidence to establish an exclusive role for the origin of the said variety. Similarly, when a

variety developed by a farmer is registered, it is important to recognize spousal contribution under joint ownership (see Box 4). Farmers need not have to pay any fee either to register their varieties or to renew these registrations [see Annexure 2, Sections 18, 44]. This is a major incentive to the innovative breeders among farmers. On the contrary, professional breeders and public research institutions are required to pay separately Rs.5,000 to 10,000 as registration and renewal fees. The PPVFR Act is unique in respect of this right, because the plant variety protection laws of many other countries do allow only protection of new varieties bred by professional breeders. The requirements of a farmers' variety to qualify for registration are explained under Eligibility criteria for registration (see Page 26).

Farmers' Right for Reward and Recognition

In recognition of the important role farmers have been playing for the conservation of varietal wealth of crop plants, the PPVFR Act has a provision to reward and recognize individual farmers or farming and tribal communities for such contribution [see Annexure 2, Sections 39 (1) (iii)]. According to the Act, a National Gene Fund is to be created to facilitate reward and recognition to eligible individual farmers and communities (see Box 5). This is provided as an incentive to encourage conservation undertaken

BOX 4:

GENDER EQUITY ON FARMERS' RIGHTS - Agriculture in India is essentially a family enterprise, whether land owned or landless. Women and men are equally involved in various agricultural operations, from seed selection, planting, husbanding the crop, harvesting, marketing, processing and to cooking and consumption with gender-based skills and roles. The farming traditions and social norms have leveraged women to evolve and conserve a large body of traditional knowledge on crop varieties and in exercising their choice to meet household food and nutritional security. This critical role of women is, often not recognized by law and policy makers and development planners. Hence, despite their important role in agriculture, women are denied fair deal in resources such as land, credit, agriculture inputs, technology and training services. Hence, mainstreaming gender equity on farmers' rights is advocated by MSSRF. One of these advocacies is inclusion of name of wife in the application, whenever male farmer is registering a variety developed at their farm.

by farming and tribal communities. Farmers conserving traditional varieties and wild species of crop plants are deemed eligible to receive reward and recognition.

Farmers' Right for Benefit Sharing

Earlier sections have highlighted the important role of farmers' varieties for breeding new plant varieties. Usually one or more farmers' varieties or their derivatives are used as parents to breed new varieties. These farmers' varieties could be traced to have been contributed by one or more farming or tribal communities. It is also possible that the new variety that is registered under the Act has become popular among farmers. But because it is registered, its PBR-holder alone is entitled to commercially produce and market its seed. The popularity and exclusive marketing right may lead to huge seed sale and profits to the PBR-holder. The Act provides for equitable sharing of the benefit earned from the new variety with farming or tribal communities that had contributed varieties used as parents [see Annexure 2, Section 26 (5)]. Normally, all applicants who seek to register new varieties are required to declare the source of the varieties used as parents for breeding new varieties [see Annexure 2,

BOX 5:

NATIONAL GENE FUND - A National Gene Fund is to be established under the PPVFR Act [see Appendix 2, Section 45]. The fund shall be constituted by all receipts by the PPVFR Authority including, benefit shares, registration and annual maintenance fees, compensation payments and other grants from national and international organizations. The main objective of the fund is to promote on-farm and *ex-situ* conservation by individuals, communities, panchayats and institutions. The fund also may be used for rewarding and recognizing conservation undertaken by individuals and communities and to disburse the pronounced benefit shares and compensations

Section 18 (e), (h)]. Farmers are given opportunity to submit claims for benefit share, when their variety is used as parents [see Annexure 2, Section 26 (2)]. Claims for benefit share is made when breeder discloses the use of specific varieties conserved by farmers of a region or on the basis of strong grounds which may substantiate undisclosed use of specific farmers' variety by the breeder. Claims for benefit share has to be made in Form PV-7 (see Annexure 2, page 73) prescribed by the Authority within six months from the date of advertisement inviting such claims by the Authority. On examination of such claims by the Authority applicant eligible for benefit sharing and the quantum of benefit to be shared are decided. The PBRholder of the variety is required to remit the awarded benefit share in the National

Gene Fund [see Annexure 2, Section 26 (6)]. The benefit share may be disbursed from the National Gene Fund to the eligible individual, community or institution [see Annexure 2, Section 45 (2) (a)].

Therefore for claiming eligible benefit share, the farming communities should have (i) timely information on the varieties being registered under the Act. (ii) timely understanding on the notification on such varieties inviting claims for benefit share, and (iii) capability to understand the disclosed characteristics of the new variety *vis-a-vis* those of parental varieties. The capability of farmers in accessing this right can be strengthened by vigilant farmers' associations and *panchayats* by regularly following the notifications of the PPVFR Authority. Assistance from governmental or non-governmental organizations may also help farmers in this regard.

Farmers' Right to get Compensation for the Loss suffered from the Registered Variety

The primary purpose of registration of a plant variety under this Act is to establish exclusive commercial right on the variety. Commercial demand arises from the capability of the variety for better agronomic performance. Some of the seed companies, however, promote their seed by making exaggerated claims on the agronomic performance of their varieties. Farmers purchasing and cultivating such seeds may eventually realize the deceit. The PPVFR Act has a provision to check such unfair marketing practices by breeders and their seed sellers. The Act requires that the seed be sold with a declaration on its agronomic performance and the cultivation conditions ensuring this performance. The performance could be higher yield, better

pest or disease resistance, better quality, and so on. In the event farmers are not able to achieve the claimed performance on having cultivated under the specified conditions, the PBR-holder will be made liable to pay compensation to affected farmers [see Annexure 2, Section 39 (2)].

Such claims for compensation are made to the PPVFR Authority in Form PV-25 (see Annexure 2, page 76). The Authority on confirmation of the compensation claim decides the amount of compensation to be paid by the PBR-holder. For establishing the compensation claim farmers may be required to prove that they had cultivated a specific variety with seed marketed by a specific PBR-holder, that they cultivated variety in accordance with the recommended practices in recommended region and that they suffered an estimated loss due to poor performance of the crop. Compensation claims made by a group of farmers belonging to one region or an association of farmers are likely to be more forceful than claims made by few scattered individual farmers. The PPVFR Rules are not very explicit to be helpful to farmers in this respect. Intensive capacity building to farmers is important for accessing legitimate compensation and minimising the frivolous claims.

Farmers' Right to receive Compensation for Undisclosed use of Traditional Varieties

It was earlier stated that the cause of benefit sharing arises from a declaration made by the breeder that the pedigree of a new variety has certain traditional varieties or traditional knowledge sourced from certain regions/communities. However, there can be situations where the breeder of a new variety may not disclose the correct identity of parental varieties or knowledge. This lapse may arise either from a honest ignorance on the identity and origin of the parental varieties or a dishonest suppression of parental variety identity. Under such circumstances if such parental varieties belonged to one or more rural communities, they may be denied the opportunity for benefit share due from the new variety. The communities concerned also may not have the capability to detect such use of their varieties or traditional knowledge in the breeding of a new variety. Under such situations, any third party who has a reasonable knowledge on the possible identity of the traditional varieties or knowledge used in the breeding of the new variety, is eligible to prefer a claim for compensation on behalf of the concerned local or tribal community [see Annexure 2, Section 41 (1)]. The third party could be an NGO, an individual, a government or private institution. Such compensation claims are to be submitted to the PPVFR-Authority by such third party. The Authority on verification of the veracity of the claim shall admit the same and decide on the compensation to be awarded. The awarded compensation will be remitted in the National Gene Fund by the PBRholder. The National Gene Fund shall disburse the compensation to the party who made the claim. A good understanding of plant varieties and professional skill in plant breeding science will help in detecting many of such eligible cases for compensation.

Farmers' Right for the Seeds of Registered Varieties

It was mentioned earlier that one of the objectives of the Act is to promote the availability of high quality seed and planting material to farmers for accelerated

agricultural development. The Act tries to achieve this objective by ensuring adequate availability of seeds of registered varieties to farmers at reasonable cost. Access to seed by farmers is important for availing the benefits of scientific crop improvement. While allowing exclusive right to the PBR-holder on commercial production and marketing of seeds, the Act directs the PBR-holder to meet farmers' demand for seeds of the variety at reasonable prices. According to the Act, when the PBR-holder does not satisfy this requirement three years after registration of the variety, farmers have the right to take the matter of non-availability of seed, its poor supply, or its high price to the PPVFR-Authority [see Annexure 2, Section 47].

On receiving such complaints and on its verification, the PVP Authority may take remedial actions. One of these actions may be enforcement of compulsory licensing. Compulsory licensing revokes the exclusive right on commercial production and marketing of seed granted to the PBR-holder and transfer this right to third parties determined by the Authority. This revoke of exclusive right is done for a period decided by the Authority. The third parties, who are given right to produce and market the seed, are required to meet the demands and supply seed at reasonable prices.

Farmers' Right for Receiving Free Services

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-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.

Farmers' Right for Protection Against Innocent Infringement

All laws have penal provisions stating what constitutes an infringement and what punishment is to be awarded to different proven infringements. These aspects of the PPVFR Act are dealt under Chapter X of the Act [see Annexure 2]. Under legal jurisprudence, violation of a law committed out of ignorance is not held as an admissible innocence. A safeguard to farmers against innocent infringement is provided in the Act [see Annexure 2, Section 42]. According to this, a Court is prevented from prosecution of a farmer on charges of infringement of the Act, if the respondent farmer makes an affirmation that s/he was not aware of the legal provision deemed to have been violated by him or her at the time of such commission. This exceptional provision is provided in the Act in view of the low legal literacy of tradition-bound Indian farmers and to discourage petty legal harassment to farmers on this Act, not only to prevent infringement proceedings against them, but also to create capability to access the rights provided to them.

Chapter 5 REGISTRATION OF VARIETIES

What is Registration

The registration of a plant variety under the PPVFR Act is a legal process. This process establishes the PBR on the plant variety in favour of the applicant(s). PBR is the legal ownership right granted on a plant variety similar to the legal ownership right on a property. PBR is inheritable according to succession laws, transferable and also salable. The ownership right of PBR is not permanent, but only for a specified period. On completion of this period the ownership automatically lapses. Even during the specified period, the PBR could lapse, if the prescribed annual registration renewal fee is not paid to the Authority.

Persons who have bred or conserved a variety or their assignees are eligible to register their variety. In the case of farmers, either the individual farmer or a group or community of farmers is eligible to register varieties. It is important that the applicant farmers should have reasonable ground to claim ownership on the variety either by its breeding or longer conservation. A community conserving a farmers' variety gains eligibility for its registration only when the farmer or community of farmers who had originally evolved that variety remains unknown. In the Indian farming context, seed selection, cultivation and conservation are household activities. Men and women members of the family have specific roles in these activities. Hence they are eligible to share equal entitlements on the variety improved or conserved (see Box 4).

When two or more persons register a variety they enjoy equal ownership rights on it. When a community registers a variety, each legitimate member of that community will enjoy equal ownership. A farmers' community may be a group of farming families practicing cultivation or conservation of a crop within a geographic area defined by politico-administrative (panchayat or revenue) demarcation. Equal ownership right within a community means equal right of all to commercially produce, market seed and license or sell the PBR to other parties. Similarly, the members of the community are equally responsible for safeguarding the PBR. Wherever community laws on common property exist, such laws may prevail over the rights of the community on its variety. In the absence of such community laws, the community has to establish its legal entity for the proper exercise of the PBR on its variety. All registrations under the PPVFR Act are granted only on specific application. In the case of a variety developed and conserved by a community of farmers, only that community, not its individual members, is eligible to make an application on that variety. The registration of a community variety helps in establishing the legal basis to claim a benefit share whenever that variety is used as a parent to breed a new variety. It gives exclusive right to the community for commercial production and marketing of seed. If the variety is widely cultivated outside the community area, the seed marketing may bring good revenue to the community. The community can also license the PBR to third parties. This exclusive community right on the variety in no way prevents farmers within or outside the community from its cultivation, including seed saving, exchanging or selling among other farmers.

Duration of Legal Ownership

The period of ownership or duration of PBR of a registered plant variety under the PPVFR Act is short. This period is 18 years for varieties of vines like grapes, pepper, betel vine and trees like mango, orange, palm, apple, etc. For other annual crop plants like rice, wheat, sugarcane, potato, banana, ragi, brinjal, etc. the period is 15 years. However, the initial grant of registration is only for a period of 9 years in the case of trees and vines and 6 years for rest of the plants allowed under this Act. In the case of farmers' varieties, before the expiry of the said period, the PBR holders have to apply to the Authority for extention of initial grant period to 18 or 15 years, as the case may be, in Form PV-6 [see Annexure 2, page 72]. The PBR automatically lapses on completion of the duration starting from the day of registration. In the case of the PBR granted to professional breeders and institutions, it may lapse at any time during its legal tenure, on failure of payment of the prescribed annual registration renewal fee, which varies from Rs.5,000 to 10,000.

Which Crop Variety can be Registered?

The PPVFR Act does not define the names of crops whose varieties are eligible for registration. According to the Act, the Government of India is empowered to decide and notify in the Government Gazette as to which crops are to be brought under the purview of this Act. For example, if rice, wheat, maize, mustard, sunflower, chick pea, sugar cane, etc. are brought under the purview of the Act, all their new varieties, extant and farmers' varieties become eligible for registration. Varieties of crops not brought under the purview of this Act are not eligible for registration.

Eligibility Criteria for Registration

Among the farmers' varieties, extant varieties and new varieties only those varieties which satisfy the following requirements will be eligible for registration:

- 1. The variety should belong to the crops notified by the Government of India.
- 2. The variety must be distinct from all other existing varieties of that crop. This means that any person who is familiar with the crop should be able to distinguish it easily from all other known varieties of the crop. This may be possible only

when the variety has at least one character, which distinguishes it from the rest.

- 3. The variety should be uniform. This means that plants grown from different seed lots of that variety should have very high similarity with respect to its characters.
- 4. The variety should be stable. This means that the characteristics of the variety should not change generation after generation.(A generation covers one seed cycle from sowing to harvest of the seed).

Farmers of each region are familiar with varieties of all crops they grow. This familiarity enables them to distinguish each of these varieties from others on the basis of different characters. These differences among varieties of a crop are used to distinguish all varieties of a crop cultivated in different parts of a country and in different countries. This character identity helps in distinguishing the same variety grown under different names in different regions or in differences in the expression of some of their adaptive characters, such as the growing habit, maturity duration etc. All these are considered for determination of identity of a variety.

Traditional cultivation practices often keep varieties in a state of mixture. Mixtures of more than one variety are also consciously practiced under high-risk marginal farming. The presence of such mixtures in farmers' varieties may cause difficulties in their identity, uniformity and stability. Such varieties may require removal of mixtures to bring uniformity to make them eligible for registration. The grant of registration by the PPVFR Authority is always made only after determining their distinctness, uniformity and stability under a test called DUS test. Farmers' varieties lacking these requirements may not be eligible for registration.

Uniformity refers to the extent to which all plants grown from different seed lots of the same variety look and perform identically. This similarity in appearance and performance may vary among crops depending on their reproductive propagation system. The three important propagation systems are propagation by vegetative parts by self-pollinated seeds and cross-pollinated seeds. The scientific standards of uniformity are different for varieties belonging to each of these propagation systems. The PPVFR Authority will decide these standards for determining the uniformity in different crop varieties. The common standard followed for crop varieties belonging to the three propagation systems are as follows:

- (i) Vegetative propagation: Examples of vegetative propagated crops are sugarcane, potato, pineapple, sweet potato, tapioca, tea,rubber, many orchard crops, etc. which are grown not from seed but from the vegetative parts of the plant, including grafts. High uniformity is required for varieties of these crops.
- (ii)Propagation by self-pollinated seed: Examples of self-pollinated crops are rice, wheat, groundnut, cotton, chickpea, green and black grams, etc. Near high uniformity is required for varieties of these crops.
- (iii) **Propagation by cross-pollinated seed:** Examples of cross- pollinated crops are maize, pearl millet, sunflower, mustard, cucumbers, etc. A slightly lower level of uniformity is prescribed for varieties of these crops.

All hybrid varieties have to be as uniform as the self-pollinated seed. Crops raised from saved seed of hybrid varieties will not produce a uniform and stable crop. Such crop may also be poor in yield. Hence, hybrid varieties have always to be planted with seed purchased from an authorized source.

Apart from distinctiveness, uniformity and stability, new varieties also require novelty. Novelty means that the variety is not under commercial cultivation in the country for more than one year. Novelty is not applicable to farmers' and extant varieties, which are under cultivation for a few to many years.

The Process of Registration

The process described here concerns farmers. There are two important steps for registration. In the first step, the applicant farmers have to fill up the variety registration application form. The Government of India has not yet published the variety registration application form. However, when this Act is enforced the form will be available from the office of the Registrar of Plant Varieties. Application has to be filled up in English or Hindi. While filling the application, care has to be taken in providing the name and other details of the applicant farmers. The applicant(s) can be one farmer, a group of farmers or a community of farmers, depending on their contribution to the candidate variety. When the applicant is a male farmer, he is advised to include the name(s) of his wife or/and other members of the family, who helped him in the development of the variety. When the applicant is a community of farmers, the community has to authorize in writing a few of its members as its representatives to file the application on its behalf. All the information on the variety, known to the applicants and as required under the form, has to be accurately provided. In case certain information required in the form is not available with farmers, it should be so stated. This may not cause disqualification of the application for farmers' varieties. The application has to be submitted without application fee to the authorised office of the Registrar of Plant Varieties.

In the second step, the applicant farmer(s) should produce adequate quantity of good quality seed of the variety which the Authority may require for conducting the DUS test. About 250 grams of seed of the candidate variety must be deposited in the National Gene Bank (NGB) in Delhi or in the concerned office of the Registrar of Plant Varieties, as directed by the PPVFR Authority. If such deposition of seed may require another form provided by the NGB or office of the Registrar of Plant Varieties, it may also be filled up. The acknowledgement receipt issued by the NGB may have to be submitted to the PPVFR Authority, if so demanded.

It is expected that for the convenience of farmers in different parts of the country, the Government of India may set up offices of the Registrar of Plant Varieties in different regions of the country. However, each state may not have one such office and a group of states may have one office. Farmers may require assistance from service-minded individuals and NGOs for registering their varieties, particularly when the Office of the Registrar of Plant Varieties is located far away from their villages.

Engaging a Third Party to Assist Farmers in Registration

The PPVFR Act allows farmers desiring to register their plant variety to engage the assistance of a person or a non-governmental organization knowledgeable about the process. This is done by assigning the task of registration to the person or NGO. This is similar to a power of attorney, allowing the third party to represent the applicant and get the registration process completed. Here the farmer will remain as the applicant and due legal title-holder of the applied PBR. The role of the assignee will be preparing the application, its presentation at the Office of the Registrar of Plant Varieties and attending to all official requirements, on behalf of the applicant, to facilitate completion of the registration process. For this an authorisation in favour of the third party under the signature of the applicant is to be submitted in Form PV-1 [see Annexure 2, page 70] along with registration application.

Box 6: Farmers' Rights Information System (FRIS)

FRIS is user-friendly digitized database on each variety incorporating ethno-botanical details, conservation history, cultural linkages, detailed farmer descriptors, passport data and scientifically determined morphological descriptors. Third party access to these accessions is facilitated by prior informed consent (PIC). Exchange of these material with interested third parties is facilitated under material transfer agreement between the party and the farming/tribal concerned community.

After receiving registration to their plant variety,

farmers, if desire so, can transfer the right to exercise the PBR to any chosen party. In this case, the farmers who registered the variety can transfer the PBR title to an agent under license or on sale. This transfer is done with the approval of Authority by applying in Form PV-9 [see Annexure 2, page 74]. The farmers and the agent or licensee may decide the terms and nature of such transfer through a legal agreement.

Importance of Factual Information on the Variety

A variety registration application is required to provide all the characteristics of the variety, highlighting the characters that make the variety distinct from others. Information on the origin of the variety and its geographical location is also important. Many farmers may not be in a position to provide all these information. According to the PPVFR Act, this inadequacy will not cause any difficulty in accepting farmers' applications. However, the absence of important information on the variety is likely to delay the decision on the application. Hence, farmers are advised to provide as much right information as they can about the variety and its distinct characters. The variety registration application is a legal document and, therefore, it is important that all information provided in it are true and factual to the best of one's knowledge.

This is one of the reasons that the conservation interventions made by MSSRF has established Farmers' Rights Information System (FRIS) on each farmers' variety deposited by the communities in the CGB (see Boxes 3 and 6). FRIS is designed

to provide holistic data on the variety to facilitate its registration in favour of the applicant communities. Even without registration, FRIS offers a strong backup for establishing ownership of the communities on their varieties stored in the CGB.

Responsibility for making available Good Quality Seed of Registered Variety

As mentioned earlier, the PBR-holder of a variety has a public responsibility to meet the demand for its seed. Hence, the maintenance of good quality seed of the variety during registration and its careful and regular multiplication to satisfy the demand from other farmers are important.

Possible Ownership Conflicts on Traditional Varieties

All traditional varieties are freely cultivated by farmers in one or more regions. Their spread and coverage may depend largely on their adaptive and agronomic superiority. With a past history of unrestricted seed saving, exchange, sale of seed and cultivation, farmers in most of the regions may not clearly know the origin of these varieties. Under this background, the introduction of the PPVFR Act granting entitlement to farmers to register the varieties, which were created in the past and being conserved until now may cause ownership conflicts. Farmers from different regions cultivating the same variety can make simultaneous claims for their right to register that variety. This conflict could become complex in the case of varieties with a long cultivation history and larger spread. Some of the possible issues, which may arise during registration of farmers' varieties, are:

- 1. The long history of many farmers' varieties may obscure their origin with no clarity regarding the farming community initially responsible for its origin. In these cases, the farming communities currently conserving these varieties alone shall be the indisputable claimants for their ownership.
- 2. In another situation, an old and popular traditional variety is spread across many villages, districts or even States with historical evidences on its origin and spread. The variety may have single or multiple identity with one or different names, but with no distinctive differences. Depending on the strength and acceptability of the historic evidences, the farming community eligible to establish right on this variety could be resolved.
- 3. In yet another situation, one traditional variety initially developed by a farmer community had moved to other regions, where the differences in growing situations or practices had resulted in selection and cultivation of different variants of the initial variety. But each of these variants had retained the generic name of initial variety leading to apparent duplication. Here, independent registrations of the initial variety by the original farming community and the different stable and distinct variants by the concerned farming communities are admissible.

Maintenance of Seed Purity of the Registered Variety

A grant of registration to a variety also means official approval for its distinctness, uniformity, and stability. It is, therefore, important to maintain these properties of the variety through careful seed reproduction. Retention of variety registration also depends on maintenance of these qualities. Poor maintenance leading to seed impurity and loss of distinctiveness of the variety may end in cancellation of registration. Maintenance of the seed and genetic purity of the variety is the responsibility of the PBR holder.

Commercializing Farmers' Varieties

The PBR confers an important right and a responsibility to the PBR-holder of a variety: These are:

- 1. The exclusive right to produce and market the seed or propagating material of that plant variety, and
- 2. The responsibility to satisfy the public demand for the propagating material of that variety at reasonable prices.

This right and responsibility go together. The farmer or the community of farmers are required to meet the demand for the seed or the propagating material of their variety. They may meet this either by organizing quality production of seed and propagating materials by themselves or by licensing the variety to any commercial seed producer. Whenever they fail to meet this demand and cause such a complaint from other farmers, the variety may attract compulsory licensing. Licensing of farmers' variety may be done on the commercial strength of the variety for negotiated considerations and other mutually agreed terms. As long as the farmers are holding the PBR, they alone are responsible to detect and stop unauthorized production and marketing of the propagating material of their variety by other parties. Such infringement of PBR could be checked by moving the PVPA Tribunal or Intellectual Property Appellate Board, as the case may be.

Important Considerations for Licensing Farmers' Varieties

Licensing is legal transfer of the exclusive right associated with the PBR to one or more parties on mutually agreed terms. The terms may include the quantum and payment of consideration, the duration of license period, whether the license is exclusive or non-exclusive, the nature of other rights transferred to the licensee and retained with the licensor, etc. It is desirable to involve a suitable legal expert to finalize and conclude the signing of a license. A community of farmers has to be cautious on the following aspects when they license their variety:

- 1. Create a legal entity for the community and a representative group for undertaking negotiation on the terms of licensing and to establish the license instrument.
- 2. Carefully decide the terms of licensing with due consideration to
 - (a) the quantum of payable license fee, (b) the schedule and mode of payment of

license fee, (c) demarcation of territory allowed for exercising the PBR by the licensee, (d) whether the license is exclusive or non-exclusive in respect of territories and licensees, (e) the standards of seed and propagating material to be maintained by the licensee, (f) the marketing requirements to be maintained to avoid action on compulsory licensing, (g) rights of licensee on sub-licensing the right, (h) policing unauthorized infringement of PBR in assigned territory, (i) responsibility to take legal actions against infringements committed in the assigned territory, so on and so forth.

Why Should Farmers Register Their Varieties?

Farmers in India are not familiar with ownership on plant varieties. Although they have richly contributed to the development of hundreds of traditional varieties, they have not held these varieties as their property. What they own is the crop they raise within their farm and not the variety. These varieties were left in the public domain for free use by other farmers within and outside the country. With this freedom on varieties, farmers are more familiar with sharing seed on free or exchange basis or with occasional sale. Therefore, the paradigm of ownership on plant variety is totally new to them. As this ownership under PPVFR Act is established by registration of plant variety, it is natural that the farmers should know why they should register varieties. With the implementation of PPVFR Act, the historic value system of plant variety as the common property will change. Some of the important reasons for registration of farmers' varieties are:

(i) Registration of farmers' varieties is FREE

It costs nothing to register farmers' varieties. The process of registration is also simple, as farmers need to provide only the information they know about the variety. Moreover, renewal of registration of farmers' variety is also free.

(ii) For establishing intellectual property rights of farmers on their varieties

The primary purpose of registration of plant varieties is to establish the IPR of the breeder on the plant variety bred by him/her. This IPR is the basis of the PBR on the variety. The PPVFR Act recognizes farmers as breeders for their profound and extensive contribution in developing and conserving so many varieties. Thus farmers are eligible for the PBR on their varieties. If they fail to establish this right, they will be foregoing an entitlement allowed under the law.

(iii) For exploiting commercial potential of farmers' varieties

The PBR granted on farmers' varieties offers exclusive right to produce and market the seed of registered varieties. There are many farmers' varieties in several crops, which are popular and offer commercial opportunities for large-scale sale of seed and propagating material. Farmers themselves can exploit this market with the help of exclusive marketing right on the seed or license the PBR of the variety for a competitive licensing fee.

(iv) For establishing ownership on farmers' varieties

Many farmers' varieties are notable for one or more special traits, which may have greater value in contemporary and future crop improvement. The PPVFR Act provides for equitable share of benefit from new plant varieties, which were bred by using one or more farmers' varieties. Whenever a registered farmers' variety is used for such breeding, the determination of eligibility for a share of the benefit to the legal owner of the variety becomes easier for the PPVFR Authority.

(v) For safeguarding farmers' varieties from piracy

There are instances where the traditional variety of one country was pirated to another country, and IPR on that variety was established by the pirate. Registration of farmers' variety establishes all information about a variety in the National Plant Variety Register. When such record is available on a variety, it is difficult for a plant pirate to establish elsewhere another IPR on that variety. Even when such IPR is established by deceit, it can be revoked with the help of the prior information on the variety available in the National Plant Variety Register. However, the revoking process may not be easy, if farmers' varieties are not registered.

Chapter 6 MAINSTREAMING PANCHAYATS WITH PPVFR ACT

The domain of exercise of farmers' rights is in rural or tribal settings. This is where all the variety variability contributed and conserved by farmers is showcased. Therefore, the village-level grass root democratic institutions like the Panchayat can make an effective contribution towards enabling farmers to access the rights provided in the PPVFR Act. The role that institutions like the Panchayat can play in assessing and documenting the variety variability established by farmers, particularly at the community level, is invaluable. The country hitherto did not have a legal framework to allow ownership on traditional varieties created and cultivated by farmers. The ownership concept of these traditional varieties is being introduced all of a sudden by the PPVFR Act. Here, every Panchayat can help its farmers by doing three important things.

- 1. When the legal basis for property rights is newly introduced on a subject matter, which enjoyed no prior property right, evidence of possession also becomes an important criterion applicable to determine the ownership. In the case of many plant varieties created and conserved by rural communities, the Panchayat can help in establishing possession of these varieties by these communities. The proof of ownership supported with public records on the historic and cultural linkages of these varieties with local communities and their way of life provided by the Panchayat will be useful legal evidence. The Panchayat while establishing the People's Biodiversity Register must take care to provide all information on all varieties cultivated within its political boundaries. Such a register can incorporate the history of cultivation of these varieties and the traditional knowledge associated with them. Under the Biological Diversity Act established by the Government of India, every Panchayat is required to establish and maintain a People's Biodiversity Register. According to this Act, this Register is a legally valid document. Locally cultivated crops and their varieties are an important part of the biodiversity. The register can provide a separate section to record information about each crop and its varieties.
- 2. The Panchayat can take an active role in promotion of conservation of local plant varieties and in generating awareness among its farming and tribal communities on variety protection and farmers' rights provided in the PPVFR Act.
- 3. The Panchayat can establish an institutional mechanism like Panchayat Genome Club to promote registration of all eligible farmers' varieties within its jurisdiction. Such a Club can also regularly study the periodic publications from the PPVFR Authority and assist farmers in opposing registrations and claiming benefit share, wherever these are applicable.

ANNEXURE 1

Biodiversity, Agriculture, and Environment

All life forms, with all their diverse types present on Earth, in land, water and air, are collectively called biological diversity or biodiversity. Among these, organisms known to humans are described and classified on the basis of their similarity and natural breeding habits. For example, the total diversity is classified under different kingdoms such as bacteria, protozoan, fungi, plants and animals on the basis of key similarities. Within each kingdom, organisms are further taxonomically classified under entities such as phyla, class, order, family, genus, species, race and variety on the basis of increasing similarities. For example, India has thousands of rice varieties and hundreds of wheat varieties. At varietal level, the similarity among rice varieties and among wheat varieties is higher than the similarity at species level, between rice and wheat. These increasing differences among organisms are used to classify them into different taxonomic entities.

On the basis of this classification, the global diversity has 1.75 million identified species under five kingdoms mentioned above. These species are distributed in different combinations in different ecosystems. Of these 1.75 million species, only 2.7 lakh species belong to plant kingdom. Plants are important for supporting all other species, on land and water. Plants have pre-eminent role in defining environment, ecosystem and landscape.

Humans largely depend on less than 9000 plant species for food, clothing, shelter, medicines, forage and industry. Of these, about 900 species have been domesticated for agriculture. Of these 900, only about 168 species are most commonly cultivated for food and agriculture. Agriculture and industry also use several species of bacteria, fungi, algae and animals. With increasing industrialisation of agriculture, human dependence on the number of plant species and plant varieties is decreasing at an alarming rate.

Plant wealth is the foundation of animal biodiversity. Only green plants have the unique capability to produce food from water and carbon-di-oxide (CO_2) with the help of sunlight by the process called *photosynthesis*. Animals depend on plants for their primary food and habitat. This wealth and bounty of plants is the basis of human life: our agriculture and the life-supporting environment.

Distribution of Biodiversity

Plant species are not distributed uniformly on earth. Ninety percent of these species wealth is confined to 10% land area around the equator. Moreover, this distribution of biodiversity within this narrow equatorial region is not uniform. Some countries located within this region abound with biodiversity while the others have only

moderate or little biodiversity. Regions which are very rich in biodiversity are called **megabiodiversity** regions. There are 12 such megabiodiversity regions around the equatorial region.

Biodiversity in India

Two of the twelve megabiodiversity regions are situated in India. These are the Himalayan region extending up to North-Eastern India and the Western Ghats region along with the Andaman & Nicobar Islands.

India, with 2.4% of the world's land area, accounts for about 8% of the global biodiversity. Indian plant biodiversity includes 47,000 species. Indian farmers have domesticated, improved and conserved about 46 crop species. During the domestication and cultivation processes, which date back to 5000 years, farmers have evolved several traditional varieties and land races in all crop plants. In crops like rice, which has originated in India, farmers have evolved several thousands of varieties to suit different use and diverse growing conditions. All plant varieties evolved by farmers are closely linked to the local culture, ethnic practice, living styles and health care. Apart from their profound contribution to the agro-biodiversity, Indian farmers have identified medicinal uses of about 7500 plant species.

Importance of traditional knowledge

Intellectual property right (IPR) is a recognition granted to an innovation or creation of new knowledge useful to the community. The community benefits from these innovations that improve the quality of life. In return the innovator is allowed to exercise exclusive right to commercialize the innovation and to make financial gains therefrom. In this age of science and technology, development and economic growth is knowledge-intensive. Human advancement from pre-historic time has always been knowledge-driven. But we now have more intensive knowledge than ever before. The intellectual property right system being promoted globally does not recognize intellectual content of traditional knowledge. For example, plant variety protection laws in many countries do not recognize the intellectual inputs and knowledge contributed by farmers for the development of thousands of traditional plant varieties. The irony is that without these very varieties developed by farmers, none can create a new variety and claim intellectual property on such a variety. So also is the intellectual insight behind the rich traditional knowledge governing crop varieties, their wild relatives and the intricate use of medicinal plants for protecting human and animal health. The social, economic and scientific public good derived from these traditional knowledge systems is immense and immeasurable.

There is a double standard in the contemporary recognition of knowledge systems, which is prejudicial to traditional knowledge. This is helping to plagiarise or pirate traditional wisdom and shift it from the public domain to private knowledge systems. The Convention on Biological Diversity(CBD) urges the need to secure the prior informed consent and involvement of custodians of traditional knowledge and varieties prior to their access and use by others either for commercial purposes or establishing
new IPRs based on the traditional varieties or knowledge.

Convention on Biological Diversity

In 1992, the United Nations organized a global conference called 'Earth Summit' at Rio-de-Janeiro, Brazil. About 175 countries including India participated at this conference. This conference concluded an international agreement called the Convention of Biological Diversity (CBD). Including India, 189 countries have ratified this legally binding convention. Very few countries, which did not ratify this conventions includes USA. The salient features of the CBD are:

- 1. Countries have sovereign rights over their biological resources existing within their legal boundaries.
- 2. The respective government and its people are responsible to protect this biodiversity, allow access and sustainable use. Access to the biological resources of a country by another shall be with prior informed consent (PIC) and under mutually agreed terms. This should provide scope for equitable sharing of benefits that arise from the commercialization of any innovation derived from biological resources or traditional knowledge with local communities, who are the custodians of the used biological resources or traditional knowledge.
- 3. Each country has the right to enact laws to establish the sovereignty over its biodiversity and associated traditional knowledge and to promote the rights of indigenous peoples and rural communities, in respect of their customary or traditional use of biological and genetic resources and the knowledge associated thereof.
- 4. Each country should use their biological resources in a manner that does not endanger the environment or the biodiversity.
- 5. If the access to biological diversity or traditional knowledge of a country has led to establishment of an IPR, the concerned country shall have access to the IP protected technologies and products on mutually agreed terms, including transfer of the protected technology.
- 6. The CBD makes piracy of biological resource and traditional knowledge of another country an immoral and illegal act.

All these principles of the CBD are incorporated in the two laws: The Biological Diversity Act, 2002 and the PPVFR Act. Grass root democratic institutions such as the Panchayat, farmers and rural people are the actual custodians conserving, using and enriching the biodiversity and traditional knowledge. The rich biodiversity of India is a national wealth, much of it lying in the public domain. Panchayat institutions, farmers and rural communities have a bounden responsibility to protect this national wealth from piracy. Capability for such protection requires capacity building and enablement of communities for participatory conservation and surveillance.

The Biological Diversity Act, 2002

The Biological Diversity Act, 2002 was enacted by the Government of India to promote conservation and the sustainable use of Indian biodiversity and associated traditional knowledge to ensure equitable sharing of the benefits arising from the commercial use of biological and associated knowledge resources.

This Act shall establish administrative machinery at national, State and Panchayat levels to monitor, regulate and approve access and sustainable use of biodiversity and to promote its conservation. The administrative framework provided in the Act proposes:

- 1. A National Biodiversity Authority (NBA) at the national level with overall regulatory and administrative control over national biodiversity,
- 2. State Biodiversity Boards (SBB) in each State to promote, administer and regulate biodiversity under the policy framework set by the NBA, and
- 3. Biodiversity Management Committees (BMC) at the Panchayat level to inventorise, conserve and monitor the biodiversity and regulate its use.

According to this Act:

- ✓ All Indian citizens have the right to use biodiversity for conducting research within the country. None other than local people, *vaids* and *hakims* can use biodiversity for any commercial purpose without approval from the SBB. The concerned Panchayat can levy a collection fee for accessing biodiversity for commercial use within its jurisdiction.
- All persons who are not citizens of India, or institutions not wholly incorporated in India or incorporated in India with any non-Indian participation in share capital or management, do not have the right to access or use Indian biodiversity or associated knowledge without prior approval from the NBA.
- Approval of the NBA is essential for any research on any Indian biodiversity conducted by Indian citizens or institutions, in collaboration with any non-Indian person or institution.
- ✓ The Central government will plan and execute *in situ* and *ex-situ* conservation and sustainable use of biodiversity. The government will provide incentives for research, training and awareness education on biodiversity.
- The SBB is required to consult the concerned local bodies before declaring an area as a *biodiversity heritage site*. There is a provision to compensate and rehabilitate persons affected by such decision.
- Each local body under its BMC should promote conservation and sustainable use of biodiversity. They will prepare and maintain a biodiversity register showing preservation habitats, list and details of landraces, traditional varieties, folk varieties and other varieties of crops, breeds of animals and other living forms. The State government will assist the local bodies in biodiversity conservation by giving grants from the Local Biodiversity Fund. The BMC can also levy a collection fee as mentioned earlier.

Trade Related Aspects of Intellectual Property Rights

The World Trade Organization (WTO) was established in 1995. As on April 2004, WTO has 147 countries, including India as its members. WTO was established with a set of agreements negotiated and finalised by the member countries. One of these agreements is the Trade Related aspects of Intellectual Property Rights (TRIPS).

TRIPS deal with various forms of IPR and the minimal standards of legal protection required to be provided on each of these IPRs by all countries. The different types of intellectual properties covered under this Agreement include patents, copy rights, industrial designs, trademarks, geographical indications, trade secrets, protection of layout designs of integrated circuits, and so on.

TRIPS require patents to be granted to all processes and products developed in all fields of science and technology. A patent right gives the inventor an exclusive right to commercialise the invention for 20 years. Patent right granted by a country is applicable only within that country and not in another country where the same patent is not established. This exclusive commercial right allowed under patent, facilitates the patent holder to establish a monopoly on the process and product of his/her invention for 20 years. Violation of a patent is a serious offense, which can lead to severe punishment, when proved.

TRIPS agree to deny patents to those inventions or technologies that are against the public order, morality, health of people, animals and plants and prejudicial to the environment of a country. TRIPS insist on patents for microorganisms, microbiological processes and non-biological processes. While TRIPS exempt plants and animals and essential biological processes from patentable subjects, TRIPS require protection of plant varieties either by a patent or an effective *sui generis* system, or a combination of both. It was in compliance with this that the Government of India established the PPVFR Act as an effective *sui generis* system of plant variety protection.

ANNEXURE 2

Legal Text of Protection of Plant Varieties and Farmers' Rights Act, 2001 (Bill No.123-C of 1999 as passed in the Indian Parliament)

Clause

CHAPTER I

- PRELIMINARY
- 1. Short title, extent and commencement.

Title

Definitions.

CHAPTER II PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS AUTHORITY AND REGISTRY PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHT AUTHORITY

- 3. Establishment of Authority.
- 4. Meetings of Authority.
- 5. Committees of Authority.
- 6. Officers & other employees of Authority.
- 7. Chairperson to be Chief Executive.
- 8. General functions of Authority.
- 9. Authentication of orders of Authority.
- 10. Delegation.
- 11. Power of Authority. *Registry*
- 12. Registry and offices thereof.
- 13. National Register of Plant Varieties.

CHAPTER III REGISTRATION OF PLANT VARIETIES AND ESSENTIALLY DERIVED VARIETIES Application for Registration

- 14. Application for Registration.
- 15. Registrable varieties.
- 16. Persons who may make application.
- 17. Compulsory Plant Variety denomination.
- 18. Form of application.
- 19. Test to be conducted.
- 20. Acceptance of application or amendment thereof.
- 21. Advertisement of application.
- 22. Registrar to consider grounds of opposition.

Registration of Essentially Derived Variety

23. Registration of Essentially derived variety.

CHAPTER IV DURATION AND EFFECT OF REGISTRATION AND BENEFIT SHARING

- 24. Issue of certificate of registration.
- 25. Publication of list of varieties.
- 26. Determination of benefit sharing by Authority.
- 27. Breeder to deposit seeds or propagating material.
- 28. Registration to confer right.

Clause

Title

- 29. Exclusion of certain varieties.
- 30. Researcher's Rights.
- Special provisions relating to application for registration from citizens of convention countries.
- 32. Provisions as to reciprocity

CHAPTER V

SURRENDER AND REVOCATION OF CERTIFICATE AND RECTIFICATION AND CORRECTION OF REGISTER

- 33. Surrender of certificate of registration.
- 34. Revocation of protection on certain grounds
- 35. Payment of annual fee and forfeiture of registration in default thereof.
- 36. Power to cancel or change registration and to rectify the Register.
- 37. Correction of Register.
- 38. Alteration of denomination of a registered variety.

CHAPTER VI FARMERS' RIGHTS

39. Farmers' right.

- 40. Certain information to be given in application for registration.
- 41. Rights of communities.
- 42. Protection of innocent infringement.
- 43. Authorisation of farmers' variety.
- 44. Exemption from fee.
- 45. Gene Fund.
- 46. Framing of schemes, etc.

CHAPTER VII COMPULSORY LICENCE

- 47. Power of Authority to make order for compulsory licence in certain circumstances.
- 48. When requirement of public deemed to have not been satisfied.
- 49. Adjournment of application for grant of compulsory licence.
- 50. Duration of compulsory licence.
- 51. Authority to settle terms and conditions of licence.
- 52. Revocation of compulsory licence.
- 53. Modification of compulsory licence.

Clause	Title	Claus
CHAPTER	VIII	83.
PLANT VA	RIETIES PROTECTION	84.

APPELLATE TRIBUNAL

54. Tribunal.

- 55. Composition of Tribunal.
- 56. Appeals to Tribunal.
- 57. Orders of Tribunal.
 58. Procedure of Tribunal.
- 59. Transitional provision.

CHAPTER IX FINANCE, ACCOUNTS AND AUDIT

- 60. Grants by Central Government.
- 61. Authority Fund.
- 62. Budget, accounts and audit.
- 63. Financial and administrative powers of Chairperson.

CHAPTER X

INFRINGEMENT, OFFENCES, PENALTIES AND PROCEDURE Infringement

- 64. Infringement.
- 65. Suit for infringement, etc.
- 66. Relief in suits for infringement.
- 67. Opinion of scientific adviser. Offences, Penalties and Procedure
- 68. Prohibition to apply the denomination of a registered variety.
- 69. Meaning of falsely applying the denomination or a registered variety
- 70. Penalty for applying false denomination, etc.
- Penalty for selling varieties to which not authorised or to which false denomination is applied, etc.
- 72. Penalty for falsely representing a variety as registered.
- 73. Penalty for subsequent offence.
- 74. No offence in certain cases.
- 75. Exemption of certain persons employed in ordinary course of business.
- 76. Procedure where invalidity of registration is pleaded by the accused.
- 77. Offences by companies.

CHAPTER XI MISCELLANEOUS

- 78. Protection of security of India.
- 79. Implied warranty on sale of registered variety, etc.
- 80. Death of party to a proceeding.
- 81. Right of registered agent and the registered licensee to institute suit.
- 82. Evidence of entry in register, etc., and things done by the Authority and the Registrar.

Clause	Title
83.	Authority, registrar and other officers not
	compellable to production of Register, etc.
84.	Document open to public inspection.
85.	Report of the Authority to be placed
	before Parliament.
86.	Government to be bound.
87.	Proceedings before Authority or Registrar

- 87. Proceedings before Authority or Registrar.
- 88. Protection of action taken in good faith.
- 89. Bar of jurisdiction.
- 90. Member and staff of Authority, etc., to be public servants.
- 91. Exemption from tax on wealth and income.
- 92. Act to have overriding effect.
- 93. Power of Central Government to give directions.
- 94. Power to remove difficulties.
- 95. Power to make regulations.
- 96. Power of Central Government to makerule.
- 97. Rules, Regulations and Schemes to be laid before Parliament.

The Protection of Plant Varieties and Farmers' Rights Act is 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;

WHEREAS it is considered necessary to recognise and protect the rights 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 plant varieties;

AND WHEREAS for accelerated agricultural development in the country, it is necessary to protect plant breeders' rights to stimulate investment for research and development, both in the public and private sector, for the development of new plant varieties;

AND WHEREAS, such protection will facilitate the growth of the seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers;

AND WHEREAS, to give effect to the aforesaid objectives, it is necessary to undertake measures for the protection of the rights of farmers and plant breeders;

AND WHEREAS India, having ratified the Agreement on Trade Related Aspects of Intellectual Property Rights should, *inter alia*, make provision for giving effect to subparagraph (b) of paragraph 3 of article 27 in Part II of the said Agreement relating toprotection of plant varieties.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:

CHAPTER I PRELIMINARY

Shorttitle, extent and commencement

- 1. (1) This Act may be called the Protection of Plant Varieties and Farmers' Rights Act, 2001.
 - (2) It extends to the whole of India.
 - (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions

- 2. In this Act, unless the context otherwise requires,-
 - (a) "Authority" means the Protection of Plant Varieties and Farmers' Rights Authority established under sub-section (1) of section 3;
 - (b) "benefit sharing", in relation to a variety, means such proportion of the benefit accruing to a breeder of such variety or such proportion of the benefit accruing to the breeder from an agent or a licensee of such variety, as the case may be, for which a claimant shall be entitled as determined by the Authority under section 26;
 - (c) "**breeder**" means a person or group of persons or a farmer or group of farmers or any institution which has bred, evolved or developed any variety;
 - (d) "Chairperson" means the Chairperson of the Tribunal;
 - (e) "Chairperson" means the Chairperson of the Authority appointed under clause (a) of sub-section
 (5) of section 3;
 - (f) "convention country" means a country which has acceded to an international convention for the protection of plant varieties to which India has also acceded, or a country which has a law on protection of plant varieties on the basis of which India has entered into an agreement for granting plant breeders' right to the citizens of both the countries;
 - (g) "denomination", in relation to a variety or its propagating material or essentially derived variety or its propagating material, means the denomination of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, expressed by means of letters or a combination of letters and figures written in any language;
 - (h) "essential characteristics" means such heritable traits of a plant variety which are determined by the expression of one or more genes or other heritable determinants that contribute to the principal features, performance or value of the plant variety;
 - (*i*) **"essentially derived variety**", in respect of a variety (the initial variety) shall be said to be essentially derived from such initial variety when it ³/₄
 - (i) 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 combi-nation of genotypes of such initial variety;
 - (ii) is clearly distinguishable from such initial variety; and
 - (iii) conforms (except 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;
 - (j) "extant variety" means a variety available in India which is 3/4
 - (*i*) notified under section 5 of the Seeds Act, 1996 (**54 of 1966**); or
 - (ii) farmers' variety; or
 - (iii) a variety about which there is common knowledge; or
 - (iv) any other variety which is in public domain;
 - (k) "farmer" means any person who:
 - (i) cultivates crops by cultivating the land himself; or
 - (ii) cultivates crops by directly supervising the cultivation of land through any other person; or
 - (iii) conserves and preserves, severally or jointly, with any person any wild species or traditional varieties, or adds value to such wild species ortraditional varieties through selection and identification of their useful properties;
 - (*I*) "farmers' variety" means a variety which:
 - (i) has been traditionally cultivated and evolved by the farmers in their fields; or

- (*ii*) is a wild relative or land race of a variety about which the farmers possess the common knowledge; (*m*)*Gene Fund" means the National Gene Fund constituted under sub-section (1) of section 45;
- (q) "prescribed" means prescribed by rules made under this Act;
- (*r*) "**propagating material**" means any plant or its component or part thereof including an intended seed or seed which is capable of, or suitable for, regeneration into a plant;
- (s) "Register" means the National Register of Plant Varieties referred to in section 13;
- (*t*) "**Registrar**" means a Registrar of Plant Varieties appointed under sub-section (4) of section 12 and includes the Registrar-General;
- (*u*) "**Registrar-General**" means the Registrar-General of Plant Varieties appointed under sub-section (3) of section 12;
- (v) "Registry" means the Plant Varieties Registry referred to in sub-section (1) of section 12;
- (w) "regulations" means the regulations made by the Authority under this Act;
- (x) "**seed**" means a type of living embryo or propagule capable of regeneration and giving rise to a plant which is true to such type;
- (y) "variety" means a plant grouping except micro organism within a single botanical taxon of the lowest known rank, which can be:

(i) defined by the expression of the characteristics resulting from a given genotype of that plant grouping;

(ii) distinguished from any other plant grouping by expression of at least one of the said characteristics; and

(iii) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation and includes propagating material of such variety, extant variety, transgenic variety, farmars' variety and essentially derived variety;

- (z) "Tribunal" means the Plant Varieties Protection Appellate Tribunal established under section 54;
- (za) "Technical Member" meant a Member of the Tribunal who is not a Judicial Member.

CHAPTER II

PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS AUTHORITY AND REGISTRY

Protection of Plant Varieties and Farmers' Right Authority Establishment of Authority

- **3.** (1) The Central Government shall, by notification in the official Gazette, establish an Authority to be known as the Protection of Plant Varieties and Farmers' Rights Authority for the purpose of this Act.
 - (2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of properties, both movable and immovable, and to contract, and shall by the said name sue and be sued.
 - (3) The head office of the Authority shall be at such place as the Central Government may, by notification in the Official Gazette, specify and the Authority may, with the previous approval of the Central Government, establish branch offices at other places in India.
 - (4) The Authority shall consist of a Chairperson and fifteen members.
 - (5)(a) The Chairperson, to be appointed by the Central Government, shall be a person of outstanding calibre and eminence with long practical experience to the satisfaction of that Government especially in the field of plant varietal research or agricultural development.
 - (b) The members of the Authority, to be appointed by the Central Government, shall be as follows, namely: (i) the Agriculture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, *ex-officio*; (ii) the Deputy Director General in charge of Crop Sciences, Indian Council of Agricultural Research, New Delhi, *ex-officio*; (iii) the Joint Secretary incharge of Seeds, Government of India, Department of Agriculture and Cooperation, New Delhi, *ex-officio*; (iv) the Horticulture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, *ex-officio*; (v) the Director, National Bureau of Plant Genetic Resources, New Delhi, *ex-officio* (vi) one member not below the rank of Joint Secretary to the Government of India, to represent the Department ofBio-technology Government, Member, *ex-officio*; (vii)one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Environment and Forests, Government of India, *ex-officio*; (viii) one member not below the rank of Joint Secretary to the Government

of India to represent the Ministry of Law, Justice and Company Affairs, Government of India, Member, *ex-officio; (ix)* one representative from a National or State level farmers' organisation to be nominated by the Central Government; *(x)* one representative from a tribal organisation to be nominated by the Central Government; *(xi)* one representative from the seed industry to be nominated by the Central Government; *(xii)* one representative from an agricultural University to be nominated by the central Government; *(xiii)* one representative from a National or State level women's organization associated with agricultural activities to be nominated by the Central Government; *(xiii)* one representative from a National or State level women's organization associated with agricultural activities to be nominated by the Central Government; and *(xiv)* two representatives of State Governments on rotation basis to be nominated by the Central Government.

- (c) The Registrar-General shall be the *ex-officio* Member-Secretary of the Authority.
- (6) The term of office of the Chairperson and the manner of filling the post shall be such as may be prescribed.
- (7) The Chairperson shall appoint a Standing Committee consisting of five members, one of whom shall be a member who is a representative from a farmers organisation, to advise the Authority on all issues including farmers' rights.
- (8) The Chairperson shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed. The allowances for non-official members for attending the meetings of the Authority shall be such as may be prescribed.
- (9) The Chairperson may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, he shall be deemed to have vacated his office.
- (10) On the resignation of the Chairperson or on the vacation of the office of the Chairperson for any reason, the Central Government may appoint one of the members to officiate as Chairperson till a regular Chairperson is appointed in accordance with clause (*a*) of sub-section (5).

Meetings of Authority

- **4.** (1) The Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings [including the quorum at its meetings and the transaction of business of its Standing Committee appointed under sub-section (7) of section 3] as may be prescribed.
 - (2) The Chairperson of the Authority shall preside at the meetings of the Authority.
 - (3) If for any reason the Chairperson is unable to attend any meeting of the Authority, any member of the Authority chosen by the members present shall preside at the meeting.
 - (4) All questions which come before any meeting of the Authority shall be decided by a majority of the votes of the members of the Authority present and voting and in the event of equality of votes, the Chairperson of the Authority or in his absence, the person presiding shall have and exercise a second or casting vote.
 - (5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member concerned or interested shall not attend that meeting.
 - (6) No act or proceeding of the Authority shall be invalid merely by reason of:
 (a) any vacancy in, or any defect in the constitution of, the Authority; or
 (b) any defect in the appointment of a person acting on the Chairperson or a member of the Authority
 - (b) any defect in the appointment of a person acting as the Chairperson or a member of the Authority; or (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Committees of Authority

- **5.** (1) The Authority may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.
 - (2) The persons appointed as members of the committee under sub-section (1) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.

Officers and other employees of authority

6. Subject to such control and restriction as may be prescribed, the Authority may appoint such officers and other employees as may be necessary for the efficient performance of its functions and the method of appointment, the salary and allowances and other conditions of service of such other officers and

employees of the Authority shall be such as may be prescribed.

Chairperson to be Chief Executive

7. The Chairperson shall be the Chief Executive of the Authority and shall exercise such powers and perform such duties as may be prescribed.

General functions of Authority

- **8.** (1) It shall be the duty of the Authority to promote, by such measures as it thinks fit, the encouragement for the development of new varieties of plants and to protect the rights of the farmers and breeders.
 - (2) In particular, and without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1) may provide for:

(a) the registration of extant new plant varieties subject to such terms and conditions and in the manner as may be prescribed; (b) developing characterisation and documentation of varieties registered under this Act; (c) documentation, indexing and cataloguing of farmers' varieties; (d)compulsory cataloguing facilities for all varieties of plants; (e) 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 the seed in the manner as may be prescribed. (f) collecting statistics with regard to plant varieties, including the contribution of any person at any time in the evolution or development of any plant variety, in India or in any other country, for compilation and publication; (g) ensuring the maintenance of the Register.

Authentication of orders of Authority

9. All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other member authorised by the Authority in this behalf.

Delegation

10. The Authority may, by general or special order in writing, delegate to the Chairperson, any member or officer of the Authority subject to such conditions or limitations, if any, as may be specified in the order, such of its powers and functions (except the power to make regulations under section 94) under this Act as it may deem necessary.

Power of Authority

11. In all proceedings under this Act before the Authority or the Registrar:

(a) the Authority or the Registrar, as the case may be, shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses; (b) the Authority or the Registrar may, subject to any rules made in this behalf under this Act, make such orders as to cost as it considers reasonable and any such order shall be executable as a decree of a civil court.

REGISTRY

Registry and offices thereof

- **12.** (1) The Central Government shall establish for the purposes of this Act, a Registry which shall be known as the Plant Varieties Registry.
 - (2) The head office of the Plant Varieties Registry shall be located in the head office of the Authority, and for the purpose of facilitating the registration of plant varieties, there may be established, at such places, as the Authority may think fit, branch offices of the Registry.
 - (3) The Authority shall appoint a Registrar-General of Plant Varieties who shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and such other matters as may be prescribed.
 - (4) The Authority may appoint such number of Registrars as it thinks necessary for registration of plant varieties under the superintendence and direction of the Registrar-General under this Act and may make regulations with respect to their duties and jurisdiction.
 - (5) The term of office and the conditions of service of the Registrars shall be such as may be provided by regulations.

- (6) The Authority may, by notification in the Official Gazette, define the territorial limits within which a branch office of the Registry may exercise its functions.
- (7) There shall be a seal of the Plant Varieties Registry.

National Register of Plant Varieties

- **13.** (1) For the purposes of this Act, a Register called the National Register of Plant Varieties shall be kept at the head office of the Registry, wherein shall be entered the names of all the registered plant varieties with the names and addresses of their respective breeders, the right of such breeders in respect of the registered variety, the particulars of the denomination of each registered variety, its seed or other propagating material along with specification of salient features thereof and such other matters as may be prescribed.
 - (2) Subject to the superintendence and direction of the Central Government, the Register shall be kept under the control and management of the Authority.
 - (3) There shall be kept at each branch office of the Registry a copy of the Register and such other documents as the Central Government may, by notification in the Official Gazette, direct.

CHAPTER III

REGISTRATION OF PLANT VARIETIES AND ESSENTIALLY DERIVED VARIETY

Application for Registration

- **14.** Any person specified in section 16 may make an application to the Registrar for registration of any variety:
 - (a) of such genera and species as specified under sub-section (2) of section 29; or
 - (b) which is an extant variety; or
 - (c) which is a farmers' variety.

Registrable varieties

- **15.** (1) A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.
 - (2) Notwithstanding anything contained in sub-section (1), an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under the regulations.
 - (3) For the purposes of sub-sections (1) and (2) as the case may be, a new variety shall be deemed to be:
 - (a) novel, if, at the date of filing of the application for registration for protection, the propagating or harvested material of such 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:
 - (i) in India, earlier than one year; or

(ii) outside 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:

Provided that a trial of a new variety which has not been sold or otherwise disposed of shall not affect the right to protection.

Provided further that the fact that on the date of filing the application for registration, the propagating or harvested material of such variety has become a matter of common knowledge other than through the aforesaid manner shall not affect the criteria of novelty for such variety;

(b) distinct, if it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge in any country at the time of filing of the application.

Explanation: For the removal of doubts, it is hereby declared that the filing of an application for the granting of a breeder's right to a new variety or for entering such variety in the official register of varieties in any convention country shall be deemed to render that variety a matter of common knowledge from the date of the application in case the application leads to the granting of the breeder's right or to the entry of such variety in such official register, as the case may be;

(c) uniform, if subject to the variation that may be expected from the particular features of its propagation it is sufficiently uniform in its essential characteristics;

- (d) stable, if its essential characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.
- (4) A new variety shall not be registered under this Act if the denomination given to such variety³/₄
 (*i*) is not capable of identifying such variety; or
 - (ii) consists solely of figures; or

(iii) is liable to mislead or to cause confusion concerning the characteristics, value, identity of such variety, or the identity of breeder of such variety; or

(iv) is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under this Act; or

(v) is likely to deceive the public or cause confusion in the public regarding the identity of such variety; or

(vi) is comprised of any matter likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or

(vii) is prohibited for use as a name or emblem for any of the purposes mentioned in section 3 of the Emblems and Names (Protection of Improper Use) Act, 1950 (**52 of 1950**); or

(viii) is comprised of solely or partly of geographical name:

Provided that the Registrar may register a variety, the denomination of which comprises solely or partly of a geographical name, if he considers that the use of such denomination in respect of such variety is an honest use under the circumstances of the case.

Persons who may make application

16. (1) An application for registration under section 14 shall be made by $\frac{3}{4}$

- (a) any person claiming to be the breeder of the variety; or
- (b) any successor of the breeder of the variety; or
- (c) any person being the assignee of the breeder of the variety in respect of the right to make such application; or
- (d) any farmer or group of farmers or community of farmers claiming to be the breeder of the variety; or
- (e) any person authorised in the prescribed manner by a person specified under clauses (a) to (d) to make application on his behalf; or
- (f) any university or publicly funded agricultural institution claiming to be the breeder of the variety.
- (2) An application under sub-section (1) may be made by any of the persons referred to therein individually or jointly with any other person.

Compulsory Plant Variety denomination

- **17.** (1) Every application shall assign a single and distinct denomination to a variety with respect to which he is seeking registration under this Act in accordance with the regulations.
 - (2) The Authority shall, having regard to the provisions of any international convention or treaty to which India has become a party, make regulations governing the assignment of denomination to a plant variety.
 - (3) Where the denomination assigned to the variety does not satisfy the requirements specified in the regulations, the Registrar may require the applicant to propose another denomination within such time as may be specified by such regulations.

47 of 1999.

(4) Notwithstanding anything contained in the Trade Marks Act, 1999, a denomination assigned to a variety shall not be registered as a trade mark under that Act.

Form of application

- **18.** (1) Every application for registration under section 14 shall:
 - (a) be with respect to a variety;
 - (b) state the denomination assigned to such variety by the applicant;
 - (c) be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology;
 - (d) be in such form as may be specified by regulations;

- (e) contain 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 organisation in breeding, evolving or developing the variety;
- (f) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration;
- (g) be accompanied by such fees as may be prescribed;
- (*h*) contain a declaration that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired; and
- (*i*) be accompanied by such other particulars as may be prescribed: Provided that in case where the application is for the registration of farmers' variety, nothing contained in clauses (*b*) to (*i*) shall apply in respect of the application and the application shall be in such form as may be prescribed;
- (2) Every application referred to in sub-section (1) shall be filed in the office of the Registrar.
- (3) Where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application.

Tests to be conducted

19. (1) Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantity of seeds of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether seed of such variety along with parental material conform to the standards as may be specified by regulations:

Provided that the Registrar or any person or test centre to whom such seed has been sent for conducting test shall keep such seed during his or its possession in such manner and in such condition that its viability and quality shall remain unaltered.

- (2) The applicant shall deposit such fees as may be prescribed for conducting tests referred to in subsection (1).
- (3) The tests referred to in sub-section (1) shall be conducted in such manner and by such method as may be prescribed.

Acceptance of application or amendment thereof

- **20.** (1) On receipt of an application under section 14, the Registrar may, after making such inquiry as he thinks fit with respect to the particulars contained in such application, accept the application absolutely or subject to such conditions or limitations as he deems fit.
 - (2) Where the Registrar is satisfied that the application does not comply with the requirements of this Act or any rules of regulations made thereunder, he may, either³/₄
 - (a) require the applicant to amend the application to his satisfaction; or
 - (b) reject the application:

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of presenting his case.

Advertisement of application

- 21. (1) Where an application for registration of a variety has been accepted absolutely or subject to conditions or limitations under sub-section (1) of section 20, the Registrar shall, as soon as after its acceptance, cause such application together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for registration of which such application is made including its photographs or drawings, to be advertised in the prescribed manner calling objections from the persons interested in the matter.
 - (2) Any person may, within three months from the date of the advertisement of an application for registration on payment of the prescribed fee, give notice in writing in the prescribed manner, to the Registrar of his opposition to the registration.
 - (3) Opposition to the registration under sub-section (2) may be made on any of the following grounds, namely:
 - (a) that the person opposing the application is entitled to the breeder's right as against the applicant; or

- (b) that the variety is not registrable under this Act; or
 - (c) that the grant of certificate of registration may not be in public interest; or
 - (d) that the variety may have adverse effect on the environment.
 - (4) The Registrar shall serve a copy of the notice of opposition on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.
 - (5) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.
 - (6) Any evidence upon which the opponent and the applicant may rely shall be submitted, in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give an opportunity to them to be heard, if so desired.
 - (7) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not.
 - (8) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the cost of proceedings before him and in default of such security being duly given may treat the opposition or application, as the case may be, as abandoned.
 - (9) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he may think fit.

Registrar to consider grounds of opposition

22. The Registrar shall consider all the grounds on which the application has been opposed and after giving reasons for his decision, by order, uphold or reject the opposition.

Registration of essentially derived variety

- **23.** (1) An application for the registration of an essentially derived variety of the genera or species specified under sub-section (2) of section 29 by the Central Government shall be made to the Registrar by or on behalf of any person referred to in section 14 and in the manner specified in, section 18 as if for the word "variety" the words "essentially derived variety" have been substituted therein and shall be accompanied by such documents and fee as may be prescribed.
 - (2) When the Registrar is satisfied that the requirements of sub-section (1) have been complied with to his satisfaction, he shall forward the application with his report and all the relevant documents to the Authority.
 - (3) On receipt of an application under sub-section (2), the Authority shall get examined such essentially derived variety to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.
 - (4) When the Authority is satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety, it may direct the Registrar to register such essentially derived variety and the Registrar shall comply with the direction of the Authority.
 - (5) Where the Authority is not satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety it shall refuse the application.
 - (6) The rights of breeder of a variety contained in section 28 shall apply to the breeder of essentially derived variety:

Provided that the authorisation by the breeder of the initial variety to the breeder of essentially derived variety under sub-section (2) of section 28 may be subject to such terms and conditions as both the parties may mutually agree upon.

- (7) An essentially derived variety shall not be registered under this section unless it satisfies the requirements of section 15 as if for the word "variety", the words "essentially derived variety" have been substituted therein.
- (8) When an essentially derived variety has been registered by the Registrar in compliance with the direction of the Authority under sub-section (4), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy thereof to the Authority and to such other authority, as may be prescribed, for information.

CHAPTER IV

DURATION AND EFFECT OF REGISTRATION AND BENEFIT SHARING

Issue of certificate of registration

- **24.** (1) When an application for registration of a variety (other than an essentially derived variety), has been accepted and either:
 - (a) the application has not been opposed and the time of notice of opposition has expired; or
 - (b) the application has been opposed and the opposition has been rejected, the Registrar shall register the variety.
 - (2) On the registration of the variety (other than an essentially derived variety), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy to the Authority for determination of benefit sharing and to such other authority, as may be prescribed, for information. The maximum time required by the Registrar for issuing the certificate of registration from the date of filing of the application for registration of a variety shall be such as may be prescribed.
 - (3) Where registration of a variety (other than an essentially derived variety), is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.
 - (4) The Registrar may amend the Register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.
 - (5) The Registrar shall have power to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of application for registration and decision taken by the Authority on such application.
 - (6) The certificate of registration issued under this section or sub-section (8) of section 23 shall be valid for nine years in the case of trees and vines and 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 in this behalf subject to the condition that the total period of validity shall not exceed:

(*i*) in the case of trees and vines, eighteen years from the date of registration of the variety;
(*ii*) 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 Seeds Act, 1966 (**54 of 1966.**); and
(*iii*) in the other cases, fifteen years from the date of registration of the variety.

Publication of list of varieties

25. The Authority shall, within such intervals as it thinks appropriate, publish the list of varieties which have been registered during that interval.

Determination of benefit sharing by Authority

- **26.** (1) On receipt of copy of the certificate of registration under sub-section (8) of section 23 or sub-section (2) of section 24, the Authority shall publish such contents of the certificate and invite claims of benefit sharing to the variety registered under such certificate in the manner as may be prescribed.
 - (2) On invitation of the claims under sub-section (1), any person or group of persons or firm or governmental on non-governmental organisation shall submit its claim of benefit sharing to such variety in the prescribed form within such period, and accompanied with such fee, as may be prescribed:

Provided that such claim shall only be submitted by any³/₄

(i) person or group of persons, if such person or every person constituting such group is a citizen of India; or

(ii) firm or governmental or non governmental organisation, if such firm or organisation is formed or established in India.

- (3) On receiving a claim under sub-section (2), the Authority shall send a copy of such claims to the breeder of the variety registered under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim within such period and in such manner as may be prescribed.
- (4) The Authority shall, after giving an opportunity of being heard to the parties, dispose of the claim received under sub-section (2).

- (5) While disposing of the claim under sub-section (4), the Authority shall explicitly indicate in its order the amount of the benefit sharing, if any, for which the claimant shall be entitled and shall take into consideration the following matters, namely:
- (a) the extant and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed;
 - (b) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.
 - (6) The amount of benefit sharing to a variety determined under this section shall be deposited by the breeder of such variety in the manner referred to in clause (a) of sub-section (1) of section 45 in the National Gene Fund.
 - (7) The amount of benefit sharing determined under this section shall, on a reference made by the Authority in the prescribed manner, be recoverable as an arrear of land revenue by the District Magistrate within whose local limits of jurisdiction the breeder liable for such benefit sharing resides.

Breeder to deposit seeds or propagating material

- **27.** (1) The breeder shall be required to deposit such quantity of seeds or propagating material including parental line seeds of registered variety in the National Gene Bank as may be specified in the regulations for reproduction purpose at the breeder's expense within such time as may be specified in that order.
 - (2) The seeds or propagating material or parental line seeds to be deposited under sub-section (1) shall be deposited to the National Gene Bank specified by the Authority.

Registration to confer right

28. (1) Subject to the other provisions of this Act, a certificate of registration for a variety issued under this Act shall confer an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety:

Provided that in the case of an extant variety, unless a breeder or his successor establishes his right, the Central Government, and in cases where such extant variety is notified for a State or for any area thereof under section 5 of the Seeds Act, 1966 (**54 of 1966**) the State Government, shall be deemed to be the owner of such right.

- (2) A breeder may authorise any person to produce, sell, market or otherwise deal with the variety registered under
 - this Act subject to such limitations and conditions as may be specified in the regulations.
 - (3) Every authorisation under this section shall be in such form as may be specified by regulations.
 - (4) Where an agent or a licensee referred to in sub-section (1) becomes entitled to produce, sell, market, distribute, import or export a variety, he shall apply in the prescribed manner and with the prescribed fee to the Registrar to register his title and the Registrar shall, on receipt of application and on proof of title to his satisfaction, register him as an agent or a licensee, as the case may be, in respect of the variety for which he is entitled for such right, and shall cause particulars of such entitlement and conditions or restrictions, if any, subject to which such entitlement is made, to be entered in the register. Provided that when the validity of such entitlement is in dispute between the parties, the Registrar may

refuse to register the entitlement and refer the matter in the prescribed manner to the Authority and withhold the registration of such entitlement until the right of the parties in dispute so referred to has been determined by the Authority.

- (5) The Registrar shall issue a certificate of registration under sub-section (4) to the applicant after such registration and shall enter in the certificate the brief conditions of entitlement, if any, in the prescribed manner, and such certificate shall be the conclusive proof of such entitlement and the conditions or restrictions thereof, if any.
- (6) Subject to any agreement subsisting between the parties, an agent or licensee of a right to a variety registered under sub-section (4) shall be entitled to call upon the breeder or his successor thereof to take proceedings to prevent infringement thereof, and if the breeder or his successor refuses or neglects to do so within three months after being so called upon, such registered agent or licensee may institute proceedings for infringement in his own name as if he were the breeder making the breeder or his successor a defendant.
- (7) Notwithstanding anything contained in any other law, a breeder or his successor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

- (8) Nothing in this section shall confer on a registered agent or registered licensee of a variety any right to transfer such right further thereof.
 - (9) Without prejudice to the registration under sub-section (4), the terms of registration:
 - (a) may be varied by the Registrar as regards the variety in respect of which, or any condition or restriction subject to which, it has effect on receipt of an application in the prescribed manner of the registered breeder of such variety, or his successors;
 - (b) may be cancelled by the Registrar on the application in the prescribed manner of the registered breeder of such variety or his successor or of the registered agent or registered licensee of such variety;
 - (c) may be cancelled by the Registrar on the application in the prescribed manner of any person other than the breeder, his successor, the registered agent or the registered licensee on any of the following grounds, namely:
 - (i) that the breeder of a variety of his successor or the registered agent or registered licensee of such variety, misrepresented, or failed to disclose, some fact material to the application for registration under sub-section (4) which if accurately represented or disclosed would have justified the refusal of the application for registration of the registered agent or registered licensee;

(*ii*) that the registration ought not to have been effected having regard to the right vested in the applicant by virtue of a contract in the performance of which he is interested;

- (d) may be cancelled by the Registrar on the application in the prescribed manner of the breeder of a registered variety, or his successor on the ground that any stipulation in the agreement between the registered agent or the registered licensee, as the case may be, and such breeder or his successor regarding the variety for which such agent or licensee is registered is not being enforced or is not being enforced or is not being complied with;
- (e) may be cancelled by the Registrar on the application of any person in the prescribed manner on the ground that the variety relating to the registration is no longer existing.
- (10) The Registrar shall issue notice in the prescribed manner of every application under this section to the registered breeder of a variety or his successor and to each registered agent or registered licensee (not being the applicant) of such variety.

The Registrar shall, before making any order under sub-section (9), forward the application made in that behalf along with any objection received by any party after notice under sub-section (10) for the consideration of the Authority, and the Authority may, after making such inquiry as it thinks fit, issue such directions to the Registrar as it thinks fit and the Registrar shall dispose of the application in accordance with such directions.

Exclusion of certain varieties

- **29.** (1) Notwithstanding anything contained in this Act, no registration of a variety shall be made under this Act in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment.
 - (2) The Central Government shall, by notification in the Official Gazette, specify the genera or species for the purposes of registration of varieties other than extant varieties and farmers' varieties under this Act.
 - (3) Notwithstanding anything contained in sub-section (2) and sub-sections (1) and (2) of section 15, no variety of any genera or species which involves any technology which is injurious to the life or health of human beings, animals or plants shall be registered under this Act.

*Explanation.*³/₄ For the purposes of this sub-section, the expression "any technology" includes genetic use restriction technology and terminator technology.

- (4) The Central Government shall not delete any genera or species from the list of genera or species specified in a notification issued under sub-section (2) except in the public interest.
- (5) Any variety belonging to the genera or species excluded under sub-section (4) shall not be eligible for any protection under this Act.

Researcher's Rights

Nothing contained in this Act shall prevent³/₄

(a) the use of any variety registered under this Act by any person using such variety for conducting experiment or research; and

(b) the use of a variety by any person as an initial source of variety for the purpose of creating other varieties:

Provided that the authorisation of the breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.

Special provisions relating to application for registration from citizens of convention countries

- **31.** (1) With a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purposes of this Act.
 - (2) Where a person has made an application for the granting of a breeder's right to a variety or for entering such variety in the official register of varieties in a convention country and that person, or any person entitled to make application on his behalf under section 14 or section 23, makes an application for the registration of such variety in India within twelve months after the date on which the application was made in the convention country, such variety shall, if registered under this Act, be registered as of the date on which the application was made in the convention country and that date shall be deemed for the purposes of this Act to be the date of registration.
 - (3) Where applications have been made for granting of a breeder's right to a variety, or for entering such variety in the official register of varieties in two or more convention countries, the period of twelve months referred to in sub-sections shall be reckoned from the date on which the earlier or earliest of those applications were made.
 - (4) Nothing in this Act shall entitle the breeder of a registered variety for infringement of rights other than protected under this Act which took place prior to the date of application of registration under this Act.

Provisions as to reciprocity

32. Where any country specified by the Central Government in this behalf by notification in the Official Gazette under sub-section (1) of section 32 does not accord to citizens of India the same rights in respect of the registration and protection of a variety as it accords to its own nationals, no national of such country shall be entitled, either solely or jointly with any other person, to apply for the registration of a variety or be entitled to get a variety registered under this Act.

CHAPTER V SURRENDER AND REVOCATION OF CERTIFICATE AND RECTIFICATION AND CORRECTION OF REGISTER

Surrender of certificate of registration

- **33.** (1) A breeder of a variety registered under this Act may, at any time by giving notice in the prescribed manner to the Registrar, offer to surrender his certificate of registration.
 - (2) Where such an offer is made, the Registrar shall notify in the prescribed manner every registered agent or registered licensee relating to such certificate.
 - (3) Any of such agent or licensee may, within the prescribed period after such notification, give notice to the Registrar of his opposition to the surrender and where any such notice is given, the Registrar shall intimate the contents of such notice to the breeder of such variety.
 - (4) If the Registrar is satisfied after hearing the applicant and all the opponents, if desirous of being heard, that the certificate of registration may properly be surrendered, he may accept the offer and by order revoke the certificate of registration.

Revocation of protection on certain grounds

- **34.** Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the Authority on any of the following grounds, namely:
 - (a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;

- (b) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;
- (c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;
- (d) that the breeder has failed to provide an alternative denomination of the variety which is the subject matter of the registration to the Registrar in case where the earlier denomination of such variety provided to the Registrar is not permissible for registration under this Act;
- (e) that the breeder did not provide the necessary seeds or propagating material to the person to whom compulsory licence has been issued under section 47 regarding the variety in respect of which registration certificate has been issued to such breeder;
- (f) that the breeder has not complied with the provisions of this Act or rules or regulations made thereunder;
- (g) that the breeder has failed to comply with the directions of the Authority issued under this Act;
- (h) that the grant of the certificate of registration is not in the public interest:
 - Provided that no such protection shall be revoked unless the breeder is given a reasonable opportunity to file objection and of being heard in the matter.

Payment of annual fee and forfeiture of registration in default thereof

- **35.** (1) 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.
 - (2) If any breeder, agent or licensee fails to deposit the fee referred to in sub-section (1) imposed upon him under that sub-section in the prescribed manner up to two consecutive years, the Authority shall issue notice to such breeder, agent or licensee and on service of such notice if he fails to comply with the direction in the notice, the Authority shall declare all the protection admissible under the registration certificate issued to such breeder or agent or licensee forfeited.
 - (3) The arrears of fee imposed under sub-section (1) shall be deemed to be the arrears of land revenue and shall be recoverable accordingly.

Power to cancel or change registration and to rectify the Register

- **36.** (1) On an application made in the prescribed manner to the Registrar by any person aggrieved, the Registrar may make such order as he may think fit for cancelling or changing any certificate of registration issued under this Act on the ground of any contravention of the provisions of this Act or failure to observe a condition subject to which such registration certificate is issued.
 - (2) Any person aggrieved by the absence or omission from the Register of any entry, or by any entry made in the Register without sufficient cause, or by any entry wrongly remaining on the Register, may apply in the prescribed manner to the Registrar and the Registrar may make such order for making, expunging or varying the entry as he may think fit.
 - (3) The Registrar may, in any proceeding under this section, decide any question that may be necessary or expedient to decide in connection with the rectification of the Register.
 - (4) The Registrar on his own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

Correction of Register

- **37.** (1) The Registrar may, on an application in the prescribed manner by the breeder of a variety registered under this Act.:
 - (a) correct any error in the Register in the name, address or description of such breeder or any other entry relating to such variety;
 - (b) enter in the Register any change in the name, address or description of such breeder;
 - (c) cancel the entry in the Register of the variety in respect of which such application is made; and may make any consequential amendment or alteration in the certificate of registration and for that purpose require the certificate of registration to be produced to him.

(2) The Registrar may, on application made in the prescribed manner by a registered agent or a registered licensee of a variety and after notice to the registered breeder of such variety, correct any error or enter any change, in the name, address or description of such registered agent or registered licensee, as the case may be, in the Register or certificate of registration issued under this Act.

Alteration of denomination of a registered variety

- **38.** (1) The breeder of a variety registered under this Act may apply in the prescribed manner to the Registrar to delete any part or to add to or alter the denomination of such variety in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit to avoid any conflict with the rights of other breeders of the varieties registered under this Act.
 - (2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.
 - (3) Where leave is granted under this section, the denomination of the variety as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

CHAPTER VI FARMERS RIGHTS

Farmers' right

39. (1) Notwithstanding anything contained in this Act,

(i) a farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act;

(*ii*) the farmers' variety shall be entitled for registration if the application contains declaration as specified in clause (h) of sub-section (1) of section 18;

(iii) a 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 registrable under this Act;

(iv) a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, 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.

Explanation - For the purposes of clause *(iv)*, "branded seed" means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.

(2) Where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organisation of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organisation of farmers, as the case may be, the expected performance under given conditions, and if such propagating material fails to provide such performance under such given conditions, the farmer or the group of farmers or the organisation of farmers, as the case may be, may claim compensation in the prescribed manner before the Authority and the Authority shall after giving notice to the breeder of the variety and after providing him an opportunity to file opposition in the prescribed manner and after hearing the parties, it may direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or the organisation of farmers or the organisation of farmers, as the case may be.

Certain information to be given in application for registration

- **40.** (1) A breeder or other person making application for registration of any variety under Chapter III shall disclose in the application the information regarding the use of genetic material conserved by any tribal or rural families in the breeding or development of such variety.
 - (2) If the breeder or such other person fails to disclose any information under sub-section (1), the Registrar may, after being satisfied that the breeder or such person has wilfully and knowingly concealed such information, reject the application for registration.

Rights to communities

- **41.** (1) Any person, group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation may on behalf of any village or local community in India, file in any centre notified, with the previous approval of the Central Government by the Authority in the Official Gazette, any claim attributable to the contribution of the people of that village or local community, as the case may be, in the evolution of any variety for the purpose of staking a claim on behalf of such village or local community.
 - (2) Where any claim is made under sub-section (1), the centre notified under that sub-section may verify the claim made by such person or group of persons of such village or such governmental or non-governmental organisation in such manner as it deems fit and if it is satisfied that such village or local community has contributed significantly to the evolution of the variety which has been registered under this Act, it shall report its findings to the Authority. (3) When the Authority, on a report under sub-section (2) is satisfied, after such enquiry as it may deem fit, that the variety with which the report is related has been registered under the provisions of this Act, it may issue notice in the prescribed manner to the breeder of that variety and after providing opportunity to such breeder to file objection in the prescribed manner and of being heard, it may subject to any limit notified by the Central Government, by order, grant such sum of compensation to be paid to a person or group of persons government or non-governmental organisation which has made claim under sub-section (1) to the Authority, as it may deem fit.
 - (4) Any compensation granted under sub-section (3) shall be deposited by the breeder of the variety in the Gene Fund.
 - (5) The compensation granted under sub-section (3) shall be deemed to be an arrear of land revenue and shall be recoverable by the Authority accordingly.

Protection of innocent infringement

42. Notwithstanding anything contained in this Act³/₄

(*i*) a right established under this Act shall not be deemed to be infringed by a farmer who at the time of such infringement was not aware of the existence of such right; and

(*ii*) a relief which a court may grant in any suit for infringement referred to in section 65 shall not be granted by such court, nor any cognizance of any offence under this Act shall be taken, for such infringement by any court against a farmer who proves, before such court, that at the time of the infringement he was not aware of the existence of the right so infringed.

Authorisation of farmers' variety

43. Notwithstanding anything contained in sub-section *(6)* of section 23 and section 28, where an essentially derived variety is derived from a farmers' variety, the authorisation under sub-section *(2)* of section 28 shall not be given by the breeder of such farmers variety except with the consent of the farmers or group of farmers or community of farmers who have made contribution in the preservation or development of such variety.

Exemption from fee

44.

A farmer or group of farmers or village community shall not be liable to pay any fee in any proceeding before the Authority or Registrar or the Tribunal or the High Court under this Act or therules made thereunder.

Explanation.: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 thereunder.

Gene Fund

- **45.** (1) The Central Government shall constitute a Fund to be called the National Gene Fund and there shall be credited thereto:
 - (a) the benefit sharing received in the prescribed manner from the breeder of a variety or an essentially derived variety registered under this Act, or propagating material of such variety or essentially derived variety, as the case may be;
 - (b) the annual fee payable to the Authority by way of royalty under sub-section (1) of section 35;
 - (c) the compensation deposited in the Gene Fund under sub-section (4) of section 41;
 - (d) the contribution from any national and international organisation and other sources;
 - (2) The Gene Fund shall, in the prescribed manner, be applied for meeting³/₄
 - (a) any amount to be paid by way of benefit sharing under sub-section (5) of section 26;
 - (b) the compensation payable under sub-section (3) of section 41;
 - (c) the expenditure for supporting the conservation and sustainable use of genetic resources including *insitu* and *ex-situ* collections and for strengthening the capability of the Panchayat in carrying out such conservation and sustainable use;
 - (d) the expenditure of the schemes relating to benefit sharing framed under section 46.

Framing schemes, etc.

- **46.** (1) The Central Government shall, for the purposes of section 41and clause(*d*) of sub-section (2) of section 45, frame, by notification in the Official Gazette, one or more schemes.
 - (2) In particular and without prejudice to the generality of the provisions of sub-section (1), the scheme may provide for all or any of the following matters, namely:³/₄
 - (a) the registration of the claims for the purposes of section 41 under the scheme and all matters connected with such registration;
 - (b) the processing of such claims for securing their enforcement and matters connected therewith;
 - (c) the maintenance of records and registers in respect of such claims;
 - (d) the utilisation, by way of disbursal (including apportionment) or otherwise, of any amounts received in satisfaction of such claims;
 - (e) the procedure for disbursal or appointment by the Authority in the event of dispute regarding such claims;
 - (f) the utilisation of benefit sharing for the purposes relating to breeding, discovery or development of varieties;
 - (g) the maintenance and audit of accounts with respect to the amounts referred to in clause (d).

CHAPTER VII

COMPULSORY LICENCE

Power of Authority to make order for compulsory licence in certain circumstances

- **47.** (1) At any time, after the expiry of three years for the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seeds or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seed or other propagating material of that variety.
 - (2) Every application under sub-section (1) shall contain a statement of the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.
 - (3) The Authority, after consultation with the Central Government, and if satisfied after giving an opportunity to the breeder of such variety, to file opposition and after hearing the parties, on the issue that the reasonable requirements of the public with respect to the variety have not been satisfied or that the variety is not available to the public at a reasonable price, may order such breeder to grant a licence to the applicant upon such terms and conditions as it may deem fit and send a copy of such order to the Registrar to register the title of such applicant as licensee under sub-section (4) of section 28 on payment of such fee by the applicant as is referred to in that sub-section.

When requirement of public deemed to have not been satisfied

48. In determining the question as to whether the reasonable requirements of the public for seeds of a variety or its propagating material as referred to in sub-section (1) or sub-section (3) of section 47, the Authority shall take into account

(i) the nature of the variety, the time which has elapsed since the grant of the certificate of registration of the variety and the measures taken by the breeder or any registered licensee of the variety to meet the requirement of the public; and

(*ii*) the capacity, ability and technical competence of the applicant to produce and market the variety to meet the requirement of the public.

Adjournment of application for grant of compulsory licence

- 49. (1) If the breeder of the variety registered under this Act in respect of which any application has been pending before the Authority under section 41 makes a written request to the Authority on the ground that due to any reasonable factor, such breeder has been unable to produce seed or other propagating material of the variety on a commercial scale to an adequate extent till the date of making such request, the Authority may, on being satisfied that the said ground is reasonable, adjourn the hearing of such application for such period not exceeding twelve months in aggregate as it may consider sufficient for optimum production of the seed or propagating material of such variety or essentially derived variety, as the case may be, by such breeder.
 - (2) No adjournment of the application under sub-section (1) shall be granted unless the Authority is satisfied that the breeder of the variety registered under this Act in respect of which such application is made, has taken immediate measures to meet the reasonable requirements of the public for the seeds or other propagating material of such variety.

Duration of compulsory licence

50.

The Authority shall determine the duration of the compulsory licences granted under this Chapter and such duration may vary from case to case keeping in view the gestation periods and other relevant factors but in any case shall not exceed the total remaining period of the protection of that variety and when a compulsory licence is granted the prescribed authority shall, in the prescribed manner make available to the licensee of such compulsory licence, the reproductive material of the variety relating to such compulsory licence stored in the National Gene Bank or any other centre.

Authority to settle terms and conditions of licence

51. (1) The Authority shall, while determining the terms and conditions of a compulsory licence under the provisions of this Chapter, endeavour to secure³/₄

(*i*) reasonable compensation to the breeder of the variety relating to the compulsory licence having regard to the nature of the variety, the expenditure incurred by such breeder in breeding the variety or for developing it, and other relevant factors;

(*i*) that the compulsory licensee of such variety possesses the adequate means to provide to the farmers, the seeds or its other propagating material of such variety, timely and at reasonable market price.

(2) No compulsory licence granted by the Authority shall authorise the licensee to import the variety relating to such licence or any seed or other propagating material of such variety from abroad where such import would constitute an infringement of the rights of the breeder of such variety.

Revocation of compulsory licence

- **52.** (1) The Authority may on its own motion or on application from an aggrieved person made to it in the prescribed form, if it is satisfied that a compulsory licensee registered under this Chapter has violated any terms or conditions of his licence or it is not appropriate to continue further such licence in public interest, it may, after giving such licensee an opportunity to file opposition and of being heard, make order to revoke such licence.
 - (2) When a licence is revoked under sub-section (1) by an order of the Authority, the Authority shall send a copy of such order to the Registrar to rectify the entry or correct the Register relating to such revocation and the Registrar shall rectify the entry or correct the Register accordingly.

Modification of compulsory licence

53. The Authority may, on its own motion or on application from the licensee of a compulsory licence, after providing the opportunity of being heard to the breeder of the variety registered under this Act relating to such compulsory licence, if it considers, in public interest, so to do, modify, by order, such terms and conditions as it thinks fit and send a copy of such order to the Registrar to correct the entries and Register according to such modifications and the Registrar shall ensure such corrections to be made accordingly.

CHAPTER VIII

PLANT VARIETIES PROTECTION APPELLATE TRIBUNAL

Tribunal

54. The Central Government may, by notification in the Official Gazette, establish a Tribunal to be known as the Plant Varieties Protection Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Composition of Tribunal

- **55.** (1) The Tribunal shall consist of a Chairman and such number of Judicial Members and Technical Members as the Central Government may deem fit to appoint.
 - (2) A Judicial Member shall be a person who has far at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade-II of that Service or any equivalent or higher post far at least three years or who has been an advocate for at least twelve years.

Explanation.3/4 For the purposes of this sub-section:3/4

(i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became and advocate.

- (3) A Technical Member shall be a person who is an eminent agricultural scientist in the field of plant breeding and genetics and possesses an experience of at least twenty years to deal with plant variety or seed development activity, or who has held the post in the Central Government or a State Government dealing with plant variety or seed development equivalent to the Joint Secretary to the Government of India for at least three years and possesses special knowledge in the field of plant breeding and genetics.
- (4) The Central Government shall appoint a Judicial Member of the Tribunal to be the Chairman thereof.
- (5) The Central Government may appoint one of the Member of the Tribunal to be the senior Member thereof.
- (6) The senior member or a Member shall exercise such of the powers and perform such of the functions of the Chairman as may be delegated to him by the Chairman by a general or special order in writing.

Appeals to the Tribunal

56. (1) An appeal shall be preferred to the Tribunal within the prescribed period from any:

- (a) order or decision of the Authority or Registrar, relating to registration of a variety; or
- (b) order or decision of the Registrar relating to registration as an agent or a licensee of a variety; or
- (c) order or decision of the Authority relating to claim for benefit sharing; or
- (d) order or decision of the Authority regarding revocation of compulsory licence or modification of compulsory licence; or
- *(e)* order or decision of the Authority regarding payment of compensation, made under this Act or a rules made thereunder.
- (2) Every such appeal shall be preferred by the petition in writing and shall be in such form and shall contain such particulars as may be prescribed.
- (3) The Tribunal in disposing of an appeal under this section shall have the power to make any order which the Authority or the Registrar could make under this Act.

Orders of Tribunal

- **57.** (1) The Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
 - (2) The Tribunal may, at any time within thirty days from the date of the order, with a view to rectifying the mistake apparent from the record, amend any order passed by it under sub-section (1), and make such amendment if the mistake is brought to its notice by the appellant or the opposite party.
 - (3) In every appeal, the Tribunal may where it is possible, shall hear and decide such appeal within a period of one year from the date of filling of the appeal.
 - (4) The Tribunal shall send a copy of any order passed under this section to the Registrar.
 - (5) The orders of the Tribunal under this Act shall executable as a decree of a civil court.

Procedure of Tribunal

- **58.** (1) The powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the Chairman of the Tribunal from among the Members thereof.
 - (2) A Bench shall consist of one Judicial Member and one Technical Member.
 - (3) If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and the case shall be referred to the Chairman for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.
 - (4) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure and the procedure of Benches, thereof in all matters arising out of the exercise of its powers or the discharge of its functions, including the places at which the Benches shall hold their sittings.
 - (5) The Tribunal shall, for the purpose of discharging its functions, have all the power which are vested in the Registrar under section 11, and any proceeded before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Charter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).
 - 6) Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or any other manner) shall be made on or in, any proceedings relating to an appeal unless³/₄
 - (a) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is made or proposed to be made; and
 - (b) opportunity is given to such party to be heard in the matter.

Transitional provision

59. Notwithstanding anything contained in this Act, till the establishment of the Tribunal under section 54, the Intellectual Property Appellate Board established under section 83 of the Trade Marks Act, 1999 shall exercise the jurisdiction, powers and authority conferred on the Tribunal under this Act subject to the modification that in any Bench of such Intellectual Property Appellate Board constituted for the purpose of this section, for the Technical Member referred to in sub-section (2) of section 84 of the said Trade Marks Act (47 of 1999) the Technical Member shall be appointed under this Act and he shall be deemed to be the Technical Member for constituting the Bench under the said sub-section (2) of section 84 for the purposes of this Act.

CHAPTER IX FINANCE, ACCOUNTS AND AUDIT

Grants by Central Government

60. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants and loans of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Authority Fund

- **61.** (1) There shall be constituted a fund to be called the Protection of Plant Varieties Authority Account and there shall be credited thereto³/₄
 - (a) all grants and loans made to the Authority by the Central Government under section 53;

- (b) all fees received by the Authority and the Registrars except the annual fee by way of royalty under sub-section (1) of section 35;
- (c) all sums received by the Authority from such other sources as may be decided upon by the Central Government.
- (2) The Protection of Plant Varieties Authority Account shall be applied for meeting
- (a) the salaries, allowances and other remuneration of the Chairperson, officers and other employees of the Authority and allowances, if any, payable to the members;
- (b) the other expenses of the Authority in connection with the discharge of its functions and for purposes of this Act.

Budget, accounts and audit

- **62.** (1) The Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the Gene Fund) and prepare an annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
 - (2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.
 - (3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same right and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.
 - (4) The accounts of the Authority as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Financial and administrative powers of Chairperson

63. The Chairperson shall exercise such financial and administrative powers over the functions of the Authority as may be prescribed: Provided that the Chairperson shall have the authority to delegate such of his financial and administrative powers as he may think fit to a member or any other officer of the Authority subject to the condition that the member or such officer shall, while exercising such delegated powers, continue to be under the direction, control and supervision of the Chairperson.

CHAPTER X

INFRINGEMENT, OFFENCES, PENALTIES AND PROCEDURE

Infringement

- 64. Subject to the provisions of this Act, a right established under this Act is infringed by a person³/₄
 - (a) who, not being the 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 licence or registered agency without permission of the registered licensee or registered agent, as the case may be;
 - (b) who 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 registered under this Act in such manner as to cause confusion in the mind of general people in identifying such variety so registered.

Suit for infringement, etc.

65. (1) No suit:

- (a) for the infringement of a variety registered under this Act; or
- (b) relating to any right in a variety registered under this Act, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.
- (2) For the purposes of clauses (a) and (b) of sub-section (1), "District Court having jurisdiction" shall, means the District Court within the local limits of whose jurisdiction the cause of action arises.

Relief in suit for infringement

- **66.** (1) The relief which a court may grant in any suit for infringement referred to in section 65 includes an injunction and at the option of the plaintiff, either damages or a share of the profits.
 - (2) The order of injunction under sub-section (1) may includee an ex parte injunction or any interlocutory order for any of the following matters, namely:
 - (a) discovery of documents;
 - (b) preserving of infringing variety or documents or other evidence which are related to the subject-matter of the suit;
 - (c) attachment of such property of the defendant which the court deems necessary to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

Opinion of scientific adviser

- **67.** (1) When the court has to form an opinion upon any question of fact or a scientific issue, such court may appoint an independent scientific adviser to suggest it or to inquire into and report upon the matter to enable it to form the desired opinion.
 - (2) The scientific adviser may be paid such remuneration of expenses as the court may fix.

Offences, penalties and procedure

Prohibition to apply the denomination of a registered variety

- **68.** (1) No person other than the breeder of a variety registered under this Act or a registered licensee or a registered agent thereof shall use the denomination of that variety in the manner as may be prescribed.
 - (2) A person shall be deemed to apply the denomination of a variety registered under this Act who:
 - (a) applies it to the variety itself; or
 - (b) applies it to any package in or with which the variety is sold, or exposed for sale, or had in possession such package for sale or for any purpose of trade or production; or
 - (c) places, encloses or annexes the variety which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or production, in or with any package or other thing to which the denomination of such variety registered under this Act has been applied; or
 - (d) uses the denomination of such variety registered under this Act in any manner reasonably likely to lead to the belief that the variety or its propagating material in connection with which it is used in designated or described by that denomination; or
 - (e) in relation to the variety uses such denomination in any advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and such variety is delivered to a person in pursuance of a request or order made by reference to the denomination as so used.
 - (3) A denomination shall be deemed to be applied to a variety whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, such variety or to any package or other thing.

Meaning of falsely applying the denomination or a registered variety

- **69.** (1) A person shall be deemed to falsely apply the denomination of a variety registered under this Act who, without the assent of the breeder of such variety:
 - (a) applies such denomination or a deceptively similar denomination to any variety or any package containing such variety;
 - (b) uses any package bearing a denomination which is identical with or deceptively similar to the denomination of such variety registered under this Act, for the purpose of packing, filling or wrapping therein any variety other than such variety registered under this Act.
 - (2) Any denomination of a variety registered under this Act falsely applied as mentioned in sub-section (1), is in this Act referred to as false denomination.
 - (3) In any prosecution for falsely applying a denomination of a variety registered under this Act the burden of proving the assent of the breeder of such variety shall lie on the accused.

Penalty for applying false denomination etc.

- **70.** (1) Any person who:
 - (a) applies any false denomination to a variety; or

- (b) indicates the false name of a country or place or false name and address of the breeder of a variety registered under this Act in the course of trading such variety, shall unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both. Penalty for selling varieties to which not authorised or to which false denomination is applied, etc.
- 71. Any person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or production of any variety to which any false denomination is applied or to which an indication of the country or place in which such variety was madeor produced or the name and address of the breeder of such variety registered under this Act has been falsely made, shall, unless he proves -
 - (a) that having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the denomination of such variety or that any offence had been committed in respect of indication of the country or place in which such variety registered under this Act, was made or produced or the name and address of the breeder of such variety;
 - (b) that, on demand by or on behalf of the prosecutor, he gave all the information in his possession with respect to the person from whom he obtained such variety; or
- (c) that otherwise he had acted innocently, be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both.

Penalty falsely representing a variety as registered

72. Whoever makes any representation with respect to the denomination of a variety or its propagating material or essentially derived variety or its propagating material not being variety or its propagating material or essentially derived variety or its propagating material registered under this Act, to the effect that it is a variety or its propagating material or essentially derived variety, or its propagating material, registered under this Act or otherwise represents any variety, or its propagating material, or essentially derived variety or its propagating material not registered under this Act to the effect that it is registered under this Act or otherwise represents any variety, or its propagating material, or essentially derived variety or its propagating material not registered under this Act to the effect that it is registered under this Act shall be punishable with imprisonment for a term, which shall not be less than six months but which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both.

Penalty for subsequent offence

73. Whoever, having already been convicted of an offence under this Act is again convicted of such offence shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to twenty lakh rupees, or both.

Offence in certain cases

74. The provisions of this Act relating to offences shall be subject to the right created as recognised by this Act and no act or omission shall be deemed to be an offence under the provisions of this Act if such act or omission is permissible under this Act.

Exemption of certain persons employed in ordinary course of business

75. Where a person accused of an offence under this Act proves that in the ordinary course of his employment, he has acted without any intention to commit the offence and having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the act so charged as an offence and on demand made by or on behalf of the prosecutor, he gave all the information in his possession with respect to the persons on whose behalf the offence was committed, he shall be acquitted.

Procedure where invalidity of registration is pleaded by the accused

76. (1) Where the offence charged under this Act is in relation to variety or its propagating material or essentially derived variety or its propagating material registered under this Act and the accused pleads that the registration of such variety or its propagating material or essentially derived variety or its

propagating material, as the case may be, is invalid and the court is satisfied that such offence is *prima facie* not tenable, it shall not proceed with the charge but shall adjourn the proceedings for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Registrar under this Act for the rectification of the Register on the ground that the registration is invalid.

- (2) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.
- (3) If within a period of three months or within such extended time as may be allowed by the court, the accused fails to apply to the Registrar for rectification of the Register, the court shall proceed with the case as if the registration were invalid.
- (4) Where before institution of a complaint of an offence referred to in sub-section (1) any application for the rectification of the Register concerning the registration of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, in question on the ground of invalidity of such registration has already been properly made to and is pending before the Registrar, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification.

Offences by companies

77. (1) If the person committing an offence under this Act is a company, the company as well as every person incharge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.34 For the purposes of this section,:

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

CHAPTER XI MISCELLANEOUS

Protection of security of India

78. Notwithstanding anything contained in this Act, the Authority or the Registrar shall³/₄

- (a) not disclose any information relating to the registration of a variety or any application relating to the registration of a variety under this Act, which it considers prejudicial to the interest of the security of India; and
- (b) take any action regarding the cancellation of registration of such varieties registered under this Act which the Central Government may by notification in the Official Gazette specify in the interest of the security of India.

*Explanation.*³/₄ For the purposes of this section, the expression "security of India" means any action necessary for the security of India which relates to the use of any produce of any variety registered under this Act directly or indirectly for the purposes of war or military establishment or for the purposes of war or other emergency in international relations.

Implied warranty on sale of registered variety, etc.

79. Where a denomination of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act has been applied to the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on sale or in the contract for sale of such variety or its propagating material or essentially derived variety or its propagating material or essentially derived variety or its propagating material, as the case may be, seller shall be deemed to warrant that the denomination is a genuine denomination and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on contract to and accepted by the buyer.

Death of party to a proceeding

80. If a person who is a party to a proceeding under this Act (not being a proceeding, in a court) dies pending the proceding, the Authority or the Registrar, as the case may be, may, on request, and on proof to the satisfaction of such Authority or Registrar, of the transmission of the interest of the deceased person, substitute in the proceedings his successor in interest in his place, or, if the Authority or the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving party, permit the proceedings to continue without the substitution of his successor in interest.

Right of registered agent and the registered licensee to institute suit

81. The registered agent or the registered licensee of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act may institute appropriate proceedings in the court under this Act on behalf of the breeder of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, if such agent or licensee has been authorised in the prescribed manner by such breeder for doing so.

Evidence of entry in register, etc., and things done by the Authority and the Registrar

- **82.** (1) A copy of any entry in the register, or of any document issued under this Act purporting to be certified by the Authority or the Registrar and sealed with the seal of such Authority or Registrar, as the case may be, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.
 - (2) A certificate purporting to be under the hand of the Authority or the Registrar, as the case may be, as to any entry, matter or things that such Authority or Registrar is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the content thereof, or of the matter or things having been done or not done.

Authority, Registrar and other officers not compellable to production of Register, etc.

83. The Authority or the Registrar or any officer working under the Authority or the Registrar, as the case may be, shall not, in any legal proceedings, be compelled to produce the Register or any other document in its or his custody, the content of which can be proved by the production of a certified copy issued under this Act in the prescribed manner or to or to appear as a witness to prove the matters therein recorded unless by order of the court, as the case may be, made for special case.

Document open to public inspection

84. Any person may, on an application to the Authority or the Registrar, as the case may be, and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the Register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document.

Report of the Authority to be placed before Parliament Government to be bound

- **85.** The Central Government shall cause to be placed before both Houses of Parliament once a year a report regarding the performance of the Authority under this Act.
- 86. The provisions of this Act shall be binding on the Government.

Proceedings before Authority or Registrar

87. All proceedings before the Authority or the Registrar, as the case may be, relating to registration of variety or essentially derived variety, registration of agent, registration of licence or registration of compulsory licensing under this Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860) and the Authority or the Registrar, as the case may be, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Protection of action taken in good faith

88. No suit, prosecution or other legal proceeding shall lie against the Central Government, or against the Chairperson, or members, or the Registrar or any person acting under such Government, Authority or Registrar under the provisions of this Act, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation, scheme or order made thereunder.

Bar of jurisdiction

89. No civil court shall have jurisdiction in respect of any matter which the Authority or the Registrar or the Tribunal is empowered by or under this Act to determine.

Member and Staff of Authority, etc. to be public servants

90. The Chairperson, members, officers and other employees of the Authority and the Registrar-General and the officers and other employees working under him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (**45 of 1860**).

Exemption from tax on wealth and income

91. Notwithstanding anything contained in the Wealth-tax Act, 1957 (27 of 1957), the Income-tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived

Act to have overriding effect

92. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Power of Central Government to give directions

93. The Central Government may give directions to the Authority as it may think necessary in the public interest for the execution of all or any of the functions of the Authority under any provisions of this Act or rules and regulations made thereunder.

Power to remove difficulties

- 94. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:
 Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.
 - (2) Every order made under sub-section (1) shall be laid before each House of Parliament.

Power to make regulations

- **95.** (1) The Authority may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.
 - (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matter namely:³/₄
 - (a) duties and jurisdiction of the Registrars under sub-section (4) of section 12;
 - (b) the term of office and the conditions of service of the Registrars under sub-section (5) of section 12

- (c) the criteria of distinctiveness, uniformity and stability for registration of extant variety under sub-section (2) of section 15;
- (d) the manner in which a single and distinct denomination to a variety shall be assigned by the applicant under sub-section (1) of section 17;
- (e) the matters governing the assignment of denomination to a plant variety under sub-section (2) of section 17;
- (f) the time within which the Registrar may require the applicant to propose another denomination under subsection (3) of section 17;
- (g) the 'form of application under clause (d) of sub-section (1) of section 18;
- (h) the standards for evaluating seeds during tests under sub-section (1) of section 19;
- (*i*) the quantity of seeds or other propagating material including parental line seeds to be deposited by a breeder to be specified under sub-section (1) of section 27;
- (*j*) the limitations and conditions subject to which a breeder may authorize a person to sell, market or otherwise deal with varieties under sub-section (2) of section 28;
- (k) the form for authorisation under sub-section (3) of section 28;

Power of Central Government to make rules

- **96.** (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
 - (2) In particulars, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:³/₄

(*i*) the term of office of the Chairperson and the manner of filling the post under sub-section (6) of section 3;

(*ii*) the salary and allowances of the Chairperson and his conditions of service in respect of leave, pension, provident fund and other matters under and the allowances for non-official members for attending the meeting under sub-section (8) of section 3;

(*iii*) the time and place of meetings of the Authority and the rules of procedure in regard to the transaction of business at its meetings [including the quorum at its meetings and the transaction of business of its Standing Committee appointed under sub-section 3] under sub-section (1) of section 4; (*iv*) the control and restriction regarding appointment of the officers and other employees of the Authority and the method of such appointment, salary and allowances and other conditions of service under section 6;

(v) the powers and duties of the Chairperson under section 7;

(vi) the terms and conditions subject to which and the manner in which the measures referred to in subsection (1) of section 8 may provide for the registration of extant or new varieties under clause (a) of sub-section (2) of that section;

(vii) the manner for arranging production and sale of the seeds under clause (e) of sub-section (2) of section 8;

(viii) the orders by the Authority of the Registrar as to costs under clause (b) of section 11;

(*ix*) the salary and allowances of Registrar-General of Plant Varieties and the conditions of service in respect of his leave, pension, provident fund and other matters under sub-section (3) of section 12;

(x) the matters to be included in the National Register of Plant Varieties under sub-section (1) of section 13;

(xi) the manner of authorising a person under clause (e) of sub-section (1) of section 16;

(*xii*) the fee under clause (g) and the other particulars under clause (*i*) which shall accompany the application under sub-section (1) of section 18;

(*xiii*) the period within which after making application a proof of the right to make the application is to be furnished under sub-section (*3*) of section 18;

(xiv) the form of application under the proviso to clause (1) of sub-section (i) of section 18;

(xv) the fee to be deposited by the applicant under sub-section (2) of section 19;

(xvi) the manner and method of conducting the tests under sub-section (3) of section 19;

(*xvii*) the manner of advertising specifications of variety for registration including its photograph or drawing under sub-section (1) of section 21;

(*xviii*) the manner of giving notice and the fee payable therefor under sub-section (2) of section 21; (*xix*) the manner of sending counter-statement under sub-section (4) of section 21;

(*xx*) the manner of submitting evidence and the time within which such evidence may be submitted under sub-section (6) of section 21;

(*xxi*) the tests to be conducted and the procedure to be followed under sub-section (*3*) of section 23; (*xxii*) the form of a certificate of registration and the other authority to which a copy thereto shall be sent under sub-section (*8*) of section 23;

(*xxiii*) the form of a certificate of registration and the other authority to which a copy thereto and the maximum time for issuing the certificate of registration shall be sent under sub-section (2) of section 24; (*xxiv*) the manner of giving notice to the applicant under sub-section (3) of section 24;

(*xxv*) the fee for review and renewal under sub-section (6) of section 24;

(xxvi) the contents of the certificate and the manner of publishing such contents and inviting claim of benefits sharing under sub-section (1) of section 26;

(xxvii) the form for submitting claims of benefit sharing and the fee to be accompanied therewith under sub-section (2) of section 26;

(xxviii) the manner in which and the time within which opposition to claims shall be submitted under sub-section (3) of section 26;

(xxix) the manner of making reference under sub-section (7) of section 26;

(*xxx*) the manner of making an application for registration for title and the fee to be accompanied therewith under sub-section (4) of section 28;

(xxxi) the manner of referring the disputes regarding registration of entitlement under the proviso to sub-section (4) of section 28;

(*xxxii*) the manner to enter into a certificate the brief conditions of entitlement under sub-section (5) of section 28;

(*xxxiii*)the manner of making an application for varying the terms of registration under clause (a) of sub-section (9) of section 28;

(*xxxiv*) the manner of making an application by the registered breeder and certain other for cancellation of terms of registration under clause (b) of subsection (9) of section 28.

(xxxv) the manner of application by any person other than the breeder, his succession, the registered agent or the registered licensee for cancellation of terms of registration under clause (c) of section (9) of section 28;

(*xxxvi*) the manner of application for cancellation of the terms of registration under clause (*d*) of subsection (*9*) of section 28;

(xxxvii) the manner of application for cancellation of the terms of registration under clause (e) of subsection (9) of section 28.

(xxxviii) the manner of issuing notice to the registered breeder of a variety or his successor or to each registered agent or registered licensee (not being the applicant) under sub-section (10) of section 28; (xxxix) the manner of giving notice to the Registrar under sub-section (1) of section 33;

(*xl*) the manner of notifying to the registered agent or registered licensee under sub-section (2) of section 33;

(*xli*) the period within which the notice of opposition under sub-section (*3*) of section 33 may be given; (*xlii*) the manner of making application under section 34;

(xliii) the manner of depositing fee payable under sub-section (2) of section 35;

(xliv) the manner of making application under sub-section (1) of section 36;

(xlv) the manner of applying to the Registrar under sub-section (2) of section 36;

(xlvi) the manner of giving notice under sub-section (4) of section 36;

(xlvii) the manner of application under sub-section (1) of section 37;

(xlviii) the manner of making application under sub-section (2) of section 37;

(xlix) the manner to apply to the Registrar under sub-section (1) of section 38;

(*I*) the manner of advertising application and to give notice to the Registrar, and the time from the date of the advertisement within which a person maygive such notice under sub-section (*2*) of section 38;

(*li*) the manner of advertising the denomination of the variety under subsection (3) of section 38;

(*lii*) the manner of recognition and reward from Gene Fund under clause (iii) of sub-section (1) of section 39;

(*liii*) the manner of claiming compensation and filing of opposition under sub-section (2) of section 39; (*liv*) the manner of issuing notice and filing objection under sub-section (3) of section 41;

(*lv*) the manner of receiving benefit sharing under clause (*a*) of subsection (1) of section 45;

(Ivi) the manner of applying Gene Fund sub-section (2) of section 45;

(Ivii) the particulars to be contained in the application under sub-section (2) of section 47;

(*lviii*) the authority and the manner in which such authority shall make available to the compulsory licensee the reproduction material of the variety under section 50;

(lvix) the form for making application under sub-section (1) of section 52;

(*lx*) the period within which an appeal shall be preferred under sub-section (1) of section 56; (*lxi*) the form of petition and the particulars which such petition shall contain under sub-section (2) of section 56;

(*lxii*) the form for preparing annual statement of accounts under subsection (1) of section 62; (*lxiii*) the financial and administrative powers which the Chairperson shall exercise under section 63; (*lxiv*) the manner of using the denomination of a variety under sub-section (1) of section 68;

(lxv) the manner of authorising registered agent or registered licensee under section 81;

(lxvi) the manner of issuing certified copy of Register or any other document, under section 83; *(lxvii)* the fee payable for obtaining a certified copy of any entry in the Register or any other document under section 84;

(lxviii) any other matter which is to be, or may be, prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of this Act

(liv) the manner of issuing notice and filing objection under sub-section (3) of section 41;

(Iv) the manner of receiving benefit sharing under clause (a) of subsection (1) of section 45;

(Ivi) the manner of applying Gene Fund sub-section (2) of section 45;

(Ivii) the particulars to be contained in the application under sub-section (2) of section 47;

(lviii) the authority and the manner in which such authority shall make available to the compulsory licensee the reproduction material of the variety under section 50;

(lix) the form for making application under sub-section (1) of section 52;

(*lx*) the period within which an appeal shall be preferred under sub-section (1) of section 56; (*lxi*) the form of petition and the particulars which such petition shall contain under sub-section (2) of section 56;

(lxii) the form for preparing annual statement of accounts under subsection (1) of section 62;

(Ixiii) the financial and administrative powers which the Chairperson shall exercise under section 63;

(lxiv) the manner of using the denomination of a variety under sub-section (1) of section 68;

(lxv) the manner of authorising registered agent or registered licensee under section 81;

(Ixvi) the manner of issuing certified copy of Register or any other document, under section 83;

(*lxvii*) the fee payable for obtaining a certified copy of any entry in the Register or any other document under section 84;

(lxviii) any other matter which is to be, or may be, prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of this Act.

Rules, regulations and schemes to be laid before Parliament

97.

Every rule and every regulation and every scheme made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive session, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or scheme or both Houses agree that the rule or regulation or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or scheme.

FORM - PV-1

{See rule 25}

THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

AUTHORIZATION FORM

I/We ¹
authorise ²
to act on my/our behalf in connection with filing of new variety/ essential derived variety/extant
variety in respect of
and request that all notices, requisitions and communication relating thereto may be sent to such
person(s) at the above address(es) unless otherwise specified
I/We hereby revoke all previous authorization, if any made, in respect of same matter or proceeding

Dated thisday of 200...

Signature(s) & name of person(s)

making this authorisation along with the designation and/or official seal, if any.

To, The Registrar The Plant Varieties Registry At..... Note :-No Fee

1.Insert the Name(s) (in full), address(es) and nationality of the person (s) making this authorization.
2.Insert Name(s) (in full), address(es) and nationality of the person(s) authorized.
3. Name (common/botanical) of the plant variety, and crop.

FORM - PV3

[See rule 31(1)]

THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

NOTICE OF OPPOSITION

I/We ¹ , hereby give notice of opposition, to the application for	r
registration of plant variety registration No. ² , published on for the following	ıg
reason(s) : -	
1	
2	
3	
Dated thisday of 200	

(Signature)³.....

To, The Registrar Plant Varieties Registry

At.....

- 1. Name, address and nationality of the person(s) filing notice of opposition
- 2. Registration number as advertised
- 3. Signature of the person(s) filing notice of opposition

I/We hereby declare that the facts and matter stated herein are true to the best of my/our knowledge, information and belief.

Dated thisday of 200...

(Signature)².....

To The Registrar The Plant Varieties Registry At

Strike out whichever is imapplicable

- 1. State the name(in full), address and nationality.
- 2. To be signed by the Applicant(s)

Author's note: For details please see Plant Variety Protection and Farmers' Rights Rule, 2003.

FORM – PV 6

[See rule -39(1)(b)]

THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001 APPLICATION FOR RENEWAL OF REGISTRATION OF PLANT VARIETIES

I/we¹...... apply for the renewal of the plant variety registration No. dated in respect of the plant variety², having denomination

The notice of renewal of the registration may be sent to the following address in India :-

.....

Dated thisday of 200...

Signature³

То

The Registrar The Plant Varieties Registry

At

- 1. Insert the full name with surname and address of the applicant(s).
- 2. Name of the registered plant variety
- 3. Signature of the applicant(s)

FORM - PV 7

[See rule 41(1)]

THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

APPLICATION FOR BENEFIT SHARING

I/we¹, hereby apply that my/our name(s) may be registered as person(s) entitled to benefit sharing in respect of the plant variety, registration No.

The grounds for my/our being entitled to benefit sharing are given below :- 1.

2.

The details of the plant variety in respect of which I/we am/are claiming benefit sharing are as follows²:-

Plant Variety, of which the registration Number is

And in proof of my/our entitlement to benefit sharing whereof I/we transmit the accompanying documents ³..... with a certified copy thereof.

My/our address for service in India is⁴

.....

Dated thisday of 200...

(Signature)⁵

To

The Registrar The Plant Varieties Registry

At

- 1. State full Name and address as stated in the application for registration.
- 2. Name (common/botanical) of the plant variety and crop.
- 3. Specify the particulars of such documents, giving its date, and parties to the same and showing how the claim made is substantiated.
- 4. State the name of the place of the appropriate office of the Plant Variety Registry. Signature of the Applicant or of his agent or assignee.

FORM - PV 9

(See rule 45(1))

THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

APPLICATION FOR REGISTRATION AS AN AGENT OR LICENSEE

I/We¹ hereby apply for registration as an agent or licensee under sub-section (4) of section 28 of the Protection of Plant Varieties & Farmers' Rights Act, 2001.

I/We hereby declare that I/we am/are an authorized agent or licensee in respect of the plant variety²....., registration No...... and that I/we am/are fully eligible to be a registered agent or licensee under section 28 of the Protection of Plant Varieties and Farmers Rights Act, 2001 (53 0f 2001) and the rules made therein. Given below is my/our particulars:-

- 1. Name in full beginning with surname (in capital letters).....
- 2. Address of the place of residence
- 3. Father's Name
- 4. Nationality
- 5. Date and place of birth
- 6. Occupation in full
- 7. Principal place of business
- 8. Address of the branch office, if any
- 9. Documents enclosed³
 - 1.

2.

I/we also hereby declare that the information given above are true to the best of my /our knowledge and belief.

Dated this day of 200..... Address⁴

SIGNATUTRE⁵.....

To The Registrar The Plant Varieties Registry

At

- 1. Insert Name(in full), address and nationality of the persons entitled to benefit sharing.
- 2. Denomination, variety, registration number and other details of the plant variety(ies) in respect of which benefit sharing is claimed.
- 3. Specify the particulars of such documents, giving its date and parties to the same and showing how the claim made is substantiated.
- 4. Full address of the persons) who has/have the claim for benefit sharing.
- 5. To be signed by the Applicant(s) or authorised licensee(s) or agent(s) or legal successor(s) or assignee(s).

FORM PV-15

[See rule 52]

THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

APPLICATION FOR REVOCATION OF THE CERTIFICATE OF REGISTRATION OF THE PLANT VARIETY REGISTERED UNDER THIS ACT BY ANY PERSON.

In the matter of plant variety, of crop....., having registration No..... registered in the name of application is hereby made by¹ being the² of the above mentioned registered plant variety for revocation of the certificate on one of the following grounds and in circumstances that are stated fully in the accompanying statement.

- 1. that the grant of certificate of registration has been based on incorrect information furnished by the applicant.
- 2. that the certificate of registration has been granted to a person who is not eligible for protection under this Act.
- 3. that the breeder did not provide the Registrar with such information, documents or materials as required for registration under this Act
- 4. that the breeder has failed to provide an alternative denomination of the variety which is the subject matter of the registration to the Registrar in case where the earlier denomination of such variety provided to the Registrar is not permissible for registration under this Act
- 5. that the breeder did not provide the necessary seeds or propagating material to the person to whom compulsory licence has been issued under section 47 regarding the variety in respect of which registration certificate has been issued to such breeder.
- 6. That the breeder has not complied with the provisions of this Act or rules or regulation made thereunder.
- 7. That the breeder has failed to comply with the direction of the Authority issued under this Act.
- 8. That the grant of certificate of registration is not in the public interest.

All communications relating to this application may be sent at the following address³.....

Dated this date of 200... SIGNATUTRE ⁴.....

То

The Plant Varieties Authority/Registry

At⁵

- 1. Insert the name of the applicant.
- 2. Nature of relationship of the applicant with the registered plant variety.
- 3. Address of the applicant
- 4. Signature of the applicant or his agent.

State the name of the place of the appropriate office of the Plant Varieties Registry

Author's note: For details please see Plant Variety Protection and Farmers' Rights Rule, 2003.

FORM – PV-25

[See rule 66(2)]

THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001 APPLICATION FOR COMPENSATION

I/we ¹		
here by request that I/we may	be compensated in respect of the plant variety	/
of the crop	, having registration No	and
denomination	, for failure of propagating materia	l to perform as per
stipulated expectation under g	given conditions.	

In support of my/our entitlement to compensation, I/we are enclosing the following

evidence(s)²

1	 	
2	 	

My/our Address for service is

Dated thisday of 200...

Signature³.....

To

The Authority, The Protection of Plant Varieties and Farmers' Rights

- 1. Insert name (in full), address and nationality of persons making request for compensation
- 2. Specify the particulars of evidences showing how the claim made is substantiated.
- 3. To be signed by the Applicant(s) along with the name(s), and official seal, if any.

Author's note: For details please see Plant Variety Protection and Farmers' Rights Rule, 2003.

FORM - PV-28

[See rule71(1)] THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001 GRANT OF COMPULSORY LICENSE

	I/We ¹ ,
crop	, having registration No, published on on the following grounds, namely:

- 1. the reasonable requirements of the public for seeds or other propagating material of the variety have not been satisfied,
- 2. the seeds or propagating material of the variety not available to the public at reasonable price.

The documentary evidence in support of my/our interest and the facts stated above and copies thereof are herewith enclosed: -

1 2 3

I/We declare that the facts and matters stated herein are true to the best of my/our knowledge, information and belief.

My/Our address for service in India is

Dated thisday of200...

Signature².....

То

The Authority

Protection of Plant Varieties and Farmers' Rights

Strike off whichever is inapplicable.

- 1. State the name (in full), address and nationality of the Applicant(s).
- 2. To be signed by applicant(s) or if the applicant(s) is/are absent from India by authorised patent agent.

ANNEXURE 3

Glossary of Technical Terms

- **Agronomy:** The science of husbanding crop production in different ways to improve yield, quality and income with concurrent care to soil and environment.
- **Benefit Sharing:** This is applicable to the biological resource and traditional knowledge conserved by communities. Whenever a party outside the community accesses these resources and commercializes them with or without value addition or innovation, an equitable part of the benefit gained by the party is to be shared with the community. Like communities, it is applicable to individuals too.
- **Biodiversity:** The variety of diverse life forms, from microorganism to man, at species, genes and ecosystem levels existing in a given place at a given time.
- **Branded Seeds**: Seeds of registered plant varieties, which are marketed in packets or any containers with appropriate label indicating the registration particulars.
- **Breeder**: A person or a group or a community who either develops an improved plant variety or conserves a traditional variety.
- **Centre of Origin**: Geographical region where a given species of crop plant is believed to have evolved, identified and domesticated for cultivation and also notable for its rich genetic variability.
- **Character**: Any specific detectable and discretely describable or measurable (qualitative or quantitative) feature of a plant or animal (see also distinct).
- **Commercialize**: The process of using a plant or its products in trade with a view to make economic gain
- **Community Gene Bank**: A specially devised seed storage facility created to assist farming community, where the seeds of different farmers' varieties are deposited by concerned farming and tribal communities for conservation for long years without losing its viability.
- **Conservation**: The process of safe preservation of a plant variety by continuous cycles of sowing, saving and re-sowing its seed or by its storage in viable state in gene bank.
- **Distinctiveness**: One or few unique characters by which each plant variety is distinguished from another.
- **Domestication**: The process by which man changed plants and animals from their wild state to the state by which he can use them in agriculture.
- **Endemic**: Those plant or animal species restricted in their occurrence to a specific geographic region.
- *Ex-situ*: Outside the native place. Used in the context of conservation of species or variety at a location outside its native habitat.
- **Extant variety**: A plant variety, which is currently under cultivation, and includes improved variety released by the public or private research institutions, farmers' varieties and any other varieties in public domain.
- **Farmer**: a person, who grows a crop by cultivating the land himself or by supervising the cultivation of land through other persons or who conserves and preserves traditional varieties or wild species of crop plants.

- **Farmers' variety**: A plant variety, which is either developed by a farmer or community of farmers or conserved by them for long period
- **Folk variety**: A traditional variety, which is known to the farmers but essentially not as much agronomically evolved as the farmers' variety.
- **Genetic diversity**: The over all differences among all varieties and wild relatives of a crop species, which are transmitted from seed to seed
- **Genetic purity**: The inherent property of a plant variety to manifest consistency for all of its characters over generations.
- **Genome**: Each character of any living organism is determined by one or few genes inherited from its parents. All of its characters are similarly determined by many such genes. The sum total of all these genes or the genetic material present in an organism is called genome. These genes are arranged in specific number of microscopic bodies called chromosomes.
- Homeland: Homeland of a crop plant means its center of origin.
- **Hybrid**: Refers to immediate offspring of cross between two parental varieties. In some cases hybrids perform superior than the best parental variety.
- **Improved variety**: A plant variety, which is developed in the recent past and possessing attributed superiority in one or more economic characters in relation to other extant varieties.
- **Improvement**: The process of developing improved or high yielding varieties from existing varieties.
- **In-situ conservation**: Conservation of species or variety by cultivation or protection at its native habitat.
- **Indigenous**: Species or varieties native to a region for long time either by cultivation or by natural existence.
- **Intellectual Property Right**: Intellectual Property Right (*IPR*) is a legal right offering exclusive right to commercialize an intellectual work such as an invention, development of a plant variety, composition of a new music, authoring a new novel, etc to person or persons responsible for such work. This legal ownership is applicable only in the country where it was granted and shall cease on completion of 15-20 years, in the case of plant variety and patent.
- **Land races**: The varieties of a crop, which have undergone minimal selection from farmers, but are highly adapted to different regions and growing conditions.
- **Mutation**: Spontaneous inheritable change to the gene or genes governing one or more characters of a living organism. Mutation can occur due to natural or man-made causes.
- **National Gene Fund**: A special fund created under the Protection of Plant Varieties and Farmers' Rights Act to promote conservation of agricultural crop genetic diversity at farmer, community and Panchayat levels
- **Natural Outcrossing**: The natural process by which seed is produced by a plant on getting pollinated by another plant belonging to the same or different variety with the help of wind, insect or other agent.
- **Peoples' Biodiversity Register:** A register stipulated under Biological Diversity Act, 2002 to be maintained by every *panchayat*, listing all forms and kinds of biodiversity present within its jurisdictional area, describing their use and associated traditional knowledge.

- **Plant Breeder's Right**: An exclusive right legally assigned to the person or persons who had developed a plant variety to commercially produce, process, market, trade, import or export the seed or the propagating materials of that plant variety
- **Propagation**: The act of repeated cultivation of a plant variety with seeds or propagating material saved from previous crop.
- **Propagating material**: Any plant part, including seed, which is used for the repeated cultivation or propagation.
- **PVP Authority** [**Plant Variety and Farmers' Rights Protection Authority**]: An official authority established under the Protection of Plant Varieties and Farmers' Rights Act to undertake administration related to the implementation of this Act at all India level.
- **Registrar of Plant Varieties**: An official designated as 'Registrar' under the Protection of Plant Varieties and Farmers' Rights Act, who may register the plant varieties.
- **Registration**: The legal process of granting of exclusive right called Plant Breeder's Rights on a plant variety under the Protection of Plant Varieties and Farmers' Rights Act.
- **Reward and recognition**: A system of monetary or non-monetary incentives provided under the Protection of Plant Varieties and Farmers' Rights Act to promote conservation and improvement of genetic diversity of crop plants by individual or community of farmers.
- **Saving**: The process of carefully selecting, harvesting, processing and storing a part of the crop for its subsequent propagation.
- **Scientific crop improvement methods**: The methods of crop improvement based on the science of Genetics.
- **Stability**: The consistent expression of different characters of a plant variety during repeated propagation.
- **Terminator Gene**: A gene system that could be introduced into a plant varieties by biotechnological method to prevent germination of seed saved by farmers with a view to promote seed sale of the variety. This gene system terminates the life of seed after its first production.
- **Traditional variety**: A plant variety selected and traditionally grown by farmers for long period.
- **Uniformity**: The similarity required among all plants constituting a variety in respect of all characters during and across generations.
- **Variety differences**: Detectable differences among varieties of a crop plant for one or more characters, which are used to distinguish each variety
- Viability: The capability of planting material such as seed to germinate
- **Wild races/relatives**: Those species related to a cultivated crop species, but not used in agriculture.
- **World Trade Organisation**: Established in 1995 the World Trade Organisation (WTO) is the only global international organization, dealing with the rules of trade between nations and is governed by the WTO agreements negotiated and signed by member countries. At present 147 countries, including India, are its members. The stated goal of WTO is to help producers of goods and services, exporters, and importers conduct their business.

About the author

S. Bala Ravi is a specialist in agriculture with a doctorate degree in Genetics earned from the Indian Agricultural Research Institute, New Delhi. An agricultural scientist with long years of experience in the genetic improvement of crops like rice, tubers, pulse and millets, he had contributed varieties and hybrids in some of these crops and several professional publications. He is also specialized in the intellectual property rights, biodiversity and implications of globalisation on Indian agriculture. He served as the Assistant Director General (Intellectual Property Rights) in the Indian Council of Agricultural Research before his superannuation. Dr. Bala Ravi is currently serving the M.S. Swaminathan Research Foundation as Advisor (Biodiversity). E-mail: sbala@mssrf.res.in; sbala2001in@yahoo.com;



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