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Topic: **Farmer's rights and Breeders  
Right's**

## **Farmer's Right**

Farmer rights in the Indian (Protection of Plant Varieties and Farmers' Rights Act) PPVFR Act, 2001 Recognition of farmers as users, custodians and breeders As is evident from the title, the Protection of Plant Varieties and Farmers' Rights Act (PPVFR Act) seeks to address the rights of plant breeders and farmers on an equal footing. It affirms the necessity of recognizing and protecting the rights of farmers with respect to the contribution they make in conserving, improving and making PGR available for the development of new plant varieties. The PPVFR Act also deems it equally necessary to protect PBRs to stimulate investment for research and development, both in the public and private sector, for the development of new plant varieties. Under the Act, PBRs allow breeders to hold exclusive rights to produce, sell, market, distribute, import or export the propagating material of a registered variety. The PPVFR Act recognizes the multiple roles played by farmers in cultivating, conserving, developing and selecting varieties. With regard to developing or selecting varieties, the Act refers to the value added by farmers to wild species or traditional varieties through selection and identification of their useful traits. Accordingly, farmers' rights encompass the roles of farmers as users, conservers and breeders. Farmers are granted nine specific rights, which are briefly described below.

**Right 1: Access to seed** Farmers shall be entitled to save, use, sow, re-sow, exchange, share or sell their farm produce, including seed of protected varieties, in the same manner as they were entitled to before the coming into force of the PPVFR Act. However, farmers shall not be entitled to sell branded seed of a variety protected under this Act. The Act does not specify the quantity of seed that farmers can save from a crop cultivated in their own farms from a protected variety.

**Right 2: Benefit-sharing** All Indian legal entities who provide PGR to breeders for developing new varieties, including farmers, shall receive a fair share of the benefits from the commercial gains of the registered varieties. Out of all the national plant variety protection laws enacted since 2001, the PPVFR Act is the first that integrates a provision for access and benefit-sharing (ABS) along with PBRs. Legal accession of the genetic resource used in breeding is not addressed in the Act; this falls instead under the Biological Diversity Act, 2002. However, the PPVFR Act requires a breeder to make a sworn declaration on the

geographical origin of the genetic resources used in the pedigree of the new variety, and how they were accessed.

Right 3: Compensation Registered seed must be sold with full disclosure of their agronomic performance under recommended management conditions. When such seed is sold to farmers but fails to provide the expected performance under recommended management conditions, the farmer is eligible to claim compensation from the breeder through the office of the PPVFR Authority.

Right 4: Reasonable seed price Farmers have the right to access seed of registered varieties at a reasonable price. When this condition is not met, the breeder's exclusive right over the variety is suspended under the provision concerning compulsory licensing, and the breeder is obligated to license the seed production, distribution and sales of the variety to a competent legal entity. Most of the laws for plant variety protection have provisions on compulsory licensing of protected varieties to ensure adequate seed supply to farmers, and several of them also use unfair pricing as grounds for compulsory licensing.

Right 5: Farmers' recognition and reward for contributing to conservation Farmers who have been engaged in PGR conservation and crop improvement, and who have made substantial contributions in providing genetic resources for crop improvement, receive recognition and rewards from the national gene fund. The gene fund receives resources from the implementation of the Act, which in turn are complemented by contributions from national and international organizations. The expenditures of the fund are earmarked to support the conservation and sustainable use of PGR, and in this way it can be considered to be a national equivalent to the global benefit-sharing fund operating within the ITPGRFA, as described by Andersen (Chapter 6.2). Since 2007, the plant genome savior award, associated with the national gene fund, has been rewarding farming communities and individual farmers for their contribution to in situ conservation on-farm and to the selection of PGR (Bala Ravi and Parida, 2007). 318 S.P. Bala Ravi

Right 6: Registration of farmers' varieties The Indian PPVFR Act allows for the registration of existing farmers' varieties that fulfill requirements for distinctness, uniformity, stability and denomination, but does not include that of novelty. This right provides farmers with a one-off opportunity for a limited period of time, from the moment when a crop species is included in the crop portfolio under the PPVFR Act for registration. Once registered, these varieties are entitled to all PBRs.

**Right 7: Prior authorization for the commercialization of essentially derived varieties** When farmers' varieties, whether extant or new, are used by a third party as source material for the development of an essentially derived variety, the farmers need to provide prior authorization for its commercialization. Such a process can allow farmers to negotiate the terms of authorization with the breeder, which may include royalties, one-off payments, benefit-sharing, etc.

**Right 8: Exemption from registration fees for farmers** Under the PPVFR Act, farmers have the privilege of being completely exempt from paying any kind of fees or other payments that are normally payable for variety registration; tests for distinctness, uniformity and stability (DUS), and other services rendered by the PPVFR Authority; as well as for legal proceedings related to infringement or other causes.

**Right 9: Farmer protection from accidental infringement.** If a farmer can somehow prove before court that he or she was not aware of the existence of any rights at the time of an infringement on any such rights, as detailed in the PPVFR Act, he or she will not be charged. This provision is made in consideration of the centuries-old unrestrained rights that the farmers had over the seed of all varieties, the novel nature of the PPVFR Act and the low legal literacy of farmers.

## **Breeders Right**

Indian agriculture is at a crossroads as the government prepares to bring forth legislation for the introduction of intellectual property rights in this sector. Hitherto, India, like most developing countries, had kept the agricultural sector outside the domain of intellectual property protection, but this situation has changed following the commitment, undertaken by the government under the TRIPS Agreement, to extend IPRS to encompass plants. The proposed legislation, the second that the government has produced in less than four years, seeks to provide PBRs in addition to the commercial plant breeders' rights, which they can use to protect all varieties of plants. It is proposed that the rights of the breeders would extend to the "essentially derived varieties" as well. These two features of the proposed legislation have made it similar to the framework of PBRs currently provided by the UPOV Convention through UPOV '91. Although the government has tried to address the larger public interest by introducing instruments that can limit the exercise of monopoly by the plant breeders, it is the interests of the farmers in the proposed IPP regime in agriculture that have been given short shrift. This has arisen primarily because the issue of farmers' rights arising out of their contribution to the development of agricultural systems, which has been an integral part of the on-going debate on PBRs in the country, has not been considered in the proposed legislation. In so doing, India has, in fact, given up the initial moves it had made to provide a legal basis for the recognition of the farmers' contribution to agriculture that the global community has accorded through the FAO'S International Undertaking on Farmers' Rights. Restoring the balance of rights by providing due recognition to both farmers and the modern plant breeders in a regime of intellectual property protection needs to be attempted in the larger interests of the development of agriculture in a farmer dominated system.

This provision, while indicating that the authorization of the breeder was required if production was undertaken for commercial marketing, implied that the breeder's authorization was not necessary for using seeds produced on the farm. It is this above interpretation that gave rise to what became commonly known as the "farmers' privileges"

UPOV '91, on the other hand, provides for the breeders' rights to be far more pervasive. This has been attempted by severely restricting the freedom of the farmers to use propagating material hitherto permitted under UPOV '78. Accordingly, under Article 14(9) of UPOV '91, breeders rights are to include the following acts:

- (i) production or reproduction (multiplication);
- (ii) conditioning for the purpose of propagation;
- (iii) offering for sale;
- (iv) selling or other marketing;
- (v) exporting;
- (vi) importing;
- (vii) stocking for any of the purposes.

The rights of the breeder have thus been extended to cover all acts pertaining to production and reproduction of the propagating material on which his rights have been established. The scope of protection therefore leaves virtually no possibility of farmers re-using seeds without authorization from the breeder.

The new provisions thus allow farmers to re-use the protected material only if the "legitimate interests of the breeder" are taken care of-the legitimate interests being the royalty that the breeder should be paid for re-using the seeds. The recent amendment of the PBR system brought about by the U.S. Congress after the United States ratified UPOV '91, pointedly indicates the restrictions that farmers could face in the new PBR system. Through this new legislation, the U.S. Congress has put limits on the scope of "farmers' exemption" under the U.S. Plant Variety Protection Act (the U.S. equivalent of PBRs). According to this legislation, farmers would be allowed to re-plant the seeds on their own farm but would be restricted from selling them for reproductive purposes to their farm neighbours without having to pay royalties or asking permission for the same.