

Protection of Plant Varieties and Farmer's Rights Act, 2001: An Appraisal

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Abstract: *The Protection of plant variety and Farmers Rights Act 2001 provides for the establishment of an effective system for protection of Plant varieties, the rights of farmers and Plant breeders and to encourage the development and cultivation of new varieties of plants. The Act establishes two National bodies, one administrative and the other judicial. The Government of India is authorized to appoint the PPVFR Authority comprising a Chairperson and 15 ex-officio and nominated members. The PPVFR Authority is responsible for implementation of this Act, including the grant of registration to plant varieties. On the judicial side, there is a Tribunal, called the Plant Varieties Protection Appellate Tribunal (PVPA Tribunal), The PVPA Tribunal has a Chairperson and judicial and technical members. This Tribunal is authorized to decide on all jurisprudential issues related to the administration and interpretation of the Act. High Courts hear appeals against the decisions of the Tribunal. The jurisdiction over the offences so created vests in ordinary civil and criminal courts and the District Courts have been designated as the courts where an action can be initiated.*

Keywords: Farmers rights, plant varieties, breeders rights, plant patents, ITPGRFA, compensation

1. Introduction

The Protection of plant variety and Farmers Rights Act 2001 (PPVFR Act) is an Act of the parliament of India that was enacted to provide for the establishment of an effective system for protection of Plant varieties, the rights of farmers and Plant breeders and to encourage the development and cultivation of new varieties of plants. [1] The Act was enacted to grant intellectual property rights to plant breeder's [2] researchers and farmers [3] who have developed any new or extant plant varieties. The intellectual property granted under this said Act 2001 is a dual right. One is for the variety and the other is for the denomination [4] assigned to it by the breeders.

It is considered necessary to recognize 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. For accelerated agricultural development in the country, it is necessary to protect plant breeders rights to stimulate investment for research and development both in public and private sector, and for the development of new plant varieties, such protection will facilitate the growth of seed industry in the country which will in turn, ensure the availability of high quality seeds and planting materials to the farmers and plant breeders [5].

2. Protection of Plant Varieties and Farmer's Rights Authority

The Act makes provision for the establishment of Protection of Plant Varieties and Farmer's Rights Authority (PPVFR Authority) for the purpose of carrying out the objectives of the Act [6]. The Authority is a body corporate, a separate juristic person having perpetual succession and power to own, acquire and dispose-off property. [7]

2.1. Composition and Jurisdiction

The Authority is an administrative body with quasi judicial functions. It shall have jurisdiction throughout the country and is situated (head office) at New Delhi. It is composed of a total of 16 members consisting of a Chairperson and 15 other members [8] both *ex-officio* members representing the Government and members nominated from different interest groups.

The chairperson of the Authority is to be a person of outstanding caliber and eminence with experience in the field of plant varietal control or agricultural development. [9] He is appointed by Central Government from the panel of names recommended by a three member Selection Committee appointed for the purpose. [10]

Other members of the Authority include eight *ex officio* members of the government and seven members nominated by the Central Government [11]. The nominated members include: one member each from National or State level Farmer's Organization, Tribal Organization, Seed Industry, Women's organisation associated with agricultural activities and two representatives of State Governments on rotational basis. [12] The Registrar General, appointed by the Authority under Section 12(3) is the *ex-officio* Member Secretary of the Authority. [13]

Given this composition of the Authority, it can be said that the *ex-officio* members will be inclined towards the protection of their own interests and the enhancement of the performance of their respective departments. They may be inclined towards the introduction of modern technology for such improvement in disregard of farmer's interests. Since every decision of the Authority is to be taken by a majority of votes, [14] such a situation will corner the interests of farmers who are represented by a single member [15].

It is, therefore, suggested that in the true spirit of the objectives of the International Undertaking and International

Treaty on Plant Genetic Resources for Food and Agriculture, 2001 [16], the farmers be allowed to participate in decision making concerning their interests at local and National levels, the membership of people representing them be enhanced [17].

The Plant Treaty at international level does envisage the representation of NGOs representing farmer's interests to present petitions before the Authority while deciding an issue concerning farmers [18].

2.2. Powers and Duties of the Authority

Section 8 of the Act lists the duties of the Authority. It states that, '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. [19] Clauses 2(c), (e) and (f) of the Section deal specifically with the protection of farmers interests [20].

But it may be noted here that all the three duties of the Authority are to be performed by it on its own without requiring farmers to file claims or complaints. For example, the Authority is authorized to issue compulsory licenses to any person if it is of the view that the seeds of the varieties registered under the Act are not available to the farmers. The farmers need not to approach the Authority for such a measure. This is in addition to the compulsory licensing provision in the Act that allows any person to file a claim in case the requisite conditions are fulfilled. [21]

It is the duty of the Authority to identify the contribution of any farming community in the evolution and development of any plant genetic resource and make a compilation of the same. It is suggested that this provision, if implemented effectively, will go a long way in helping farmers protecting their interests by strengthening the benefit sharing mechanism [22]. The farmers may not be able to put forth their claims over the use of a genetic material that they have evolved and conserved by a commercial breeder because of their ignorance and illiteracy. In such cases, the *suo moto* identification and registration of their efforts in such evolution and conservation will enable the Authority to settle the benefit sharing claims fairly and effectively without compromising with the interests of the farmers [23].

The powers exercisable by the Authority are contained in various provisions of the Act. The Authority serves as the primary forum where the farmers can put forward their claims. For the purpose of wider accessibility to the farmers and in order to better implementation of the law, the Act authorizes the PPVFR Authority to appoint such number of Registrars at regional level and determine their areas of jurisdiction as it deems necessary. [24]

2.3. Remedies available to farmers before the Authority

In case of violation of rights by an offender, these will be enforced by an order of imprisonment or levy of fine to the offender. It may be a civil right for which the remedy available will be compensation or damages or an injunction

to restrain others from continuing an act of infringement [25].

The present legislation concerning Farmer's rights contains both civil and criminal remedies. In addition, it grants some rights that are unique and have been termed as 'negative rights. [26] These rights are actually restrictions upon the monopoly rights of commercial plant breeders. These include rights like, right to save, sell, share, sow, re-sow, and exchange farm saved seeds by the farmers [27]. Any breeder desiring to register his variety registers it subject to the grant of these rights to farmers. If a breeder later wishes to proceed against a farmer for sowing, saving or selling etc of the seeds of a registered variety, his petition will not be entertained by any court or the tribunal established under the Act. Conversely, the farmers are not required to approach any forum in this connection [28].

Similarly, the provisions granting protection against innocent infringement and exemption from fee are in the nature of privileges granted to the farmers for which they can't be held liable either under this Act or under any other law for the time being in force, given the overriding effect of this law. [29]

3. Claim for Compensation in Case of Loss

Section 39(2) of the Act requires that a breeder desiring to sell his seeds (or any other propagating material) to any farmer or group of farmers must disclose the expected performance of such seeds under given set of conditions. In case the seeds so sold fail to give the results promised, the breeder shall be liable to compensate such farmers for the loss so suffered. [30]

For this purpose the farmers can approach the Authority which shall determine the entitlement to and the amount of compensation payable. On application made by any farmer or a group of farmers or an organisation of farmers, the Authority is required to issue a notice of application to the breeder. The breeder is required to present his opposition, if any, before the Authority within three months from the date of receipt of such notice; failing which, it shall be presumed that he has no opposition to such claim and accordingly such claim shall be decided. If the breeder chooses to present opposition, the Authority, after giving both the parties an opportunity of being heard, shall decide the matter accordingly. It may order the breeder to pay such compensation as it deems just necessary. [31]

4. Claim for compensation in case of non-disclosure

Generally it is a condition precedent for an applicant that in order to register a plant variety under this Act, he must disclose the information regarding the use of any genetic material conserved by any tribal or rural families in the breeding or development of such variety [32]

Where a breeder or any other person registering his variety fails to make such disclosure, the Act requires that, any person or group of persons (whether actively engaged in farming or not) or any governmental or non-governmental

organization may, on behalf of any village or local community in India, file in any notified centre, 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. [33]

The claim so made shall be verified by the centre notified 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. When the authority, on such a report is satisfied, and after such inquiry 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 provide an opportunity to such breeder to file objection in the prescribed manner and of being heard. After hearing both the parties, the Authority may grant such sum of compensation to be paid to a person or group of persons or governmental or non-governmental organization which has made claim, as it may deem fit. [34]

A notified centre has been designated as the first forum for such an application. But the Act does not give any description of the 'notified centre'. Its composition and jurisdiction is not provided. It is suggested that the Registrars appointed by the Authority should be designated as the notified centres and invested with the power to make this type of inquiry. This will make the procedure and the means of availing rights under the Act simple.

5. Claim for Compulsory Licenses

It is one of the objectives of the Act to ensure the availability of high quality seed and planting material to the Indian farmers, for accelerated agricultural development.^{3*} The Act tries to achieve this objective by ensuring adequate availability of seeds of registered varieties to farmers at reasonable cost. For this purpose it makes provision for an application for grant of compulsory licence for production of seeds or other propagating material of a variety registered under the Act.

Section 47 provides that, at any time, after the expiry of three years from the date of issue of a certificate of registration of a variety, any person interested (including farmers) 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 seeds 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. [35]

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, that the reasonable requirements of the public with respect to 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, may order

such breeder to grant a licence to the applicant upon such terms and conditions as it may deem fit. [36]. This will ensure the availability of better quality of seeds to the farmers at affordable prices so that they can enhance their crop production.

6. Plant Varieties Protection Appellate Tribunal

By virtue of Section 54 of the Act, Central Government is empowered to establish' an appellate body to be called the Plant Varieties Protection Appellate Tribunal. It has the authority to hear appeals on any matter arising out of the administrative procedure and the rights provided under the Act.

6.1. Composition and Jurisdiction

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. [37] A Judicial Member shall be a person who has for 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 for at least three years or who has been an advocate for at least twelve years [38], One of the judicial members shall be the chairman of the Tribunal. [39]

The Technical Member of the Tribunal 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. [40]

The central government is authorised to appoint one of the members of the Tribunal as its senior member who shall have such powers as may be delegated to him by the Chairman of the Tribunal. [41]

The Tribunal is an appellate body to which appeal lies from the decisions of the Registrars and PPVFR Authority. More specifically, according to Section 56 an appeal in writing in the prescribed form 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; and
- 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 the rules made there under, [42]

Thus every order made by the Authority under the Act is appealable to the Tribunal.

6.2. Powers of the Tribunal

Sections 56(3) and 58 (5) lay down the powers of the Tribunal. Section 56(3) states that:

"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." [43]

Section 58(5) reads as:

"The Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Registrar under section 11, and any proceeding 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, and the Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of 'the Code of Criminal Procedure, 1973'" [44]

Both these provisions vest in the Tribunal all the powers that are exercisable by the Authority or the Registrar so as to enable it to rectify any wrong done to a petitioner in any proceedings before the Authority or Registrar. Therefore, following powers can be listed that the Tribunal is authorised to exercise, viz:

- i) The Tribunal can order registration of a variety and order the PPVFR Authority to issue a Certificate of Registration in favour of the applicant or it may order cancellation of a Certificate of Registration as the case may be.
- ii) It can issue a Certificate of Benefit-sharing in favour of any person, including a farmer in the same manner as the registrar can issue under the Act. [45]
- iii) It can order recognition and reward of farmers or farming communities for their efforts in conserving and evolving a plant variety if such a claim was earlier rejected by the registrar or the Authority.
- iv) It can order payment of compensation to farmers or farming upon proof of loss under section 39(2) or upon proof of non disclosure of the use of genetic material conserved by farmers or farming communities by a commercial breeder. [46]
- v) It can order issue of compulsory licence under the provisions of the Act where the requisite conditions are fulfilled. [47]
- vi) By virtue of Section 58 (5) all proceedings of the Tribunal shall be in the nature of judicial proceedings and the Tribunal shall act as a civil court. Therefore, the Tribunal shall have the powers to summon witnesses, receive evidence, and appoint receivers, commissions for the examination of witnesses, power to order discovery and production of documents etc. [48]
- vii) The Chairperson of the Tribunal is authorised to establish Benches for effective exercise of its powers. A Bench shall consist of one judicial member and one technical member. [49]
- viii) The Tribunal has power to regulate its own procedure in all matters arising out of the exercise of its powers or the discharge of its functions. [50] The Tribunal may,

where it is possible, hear and decide such appeal within a period of one year from the date of filing of the appeal. [51]

- ix) By virtue of Section 57 of the act, the Tribunal has power to issue any order as it deems fit or necessary to pass. The copy of all such orders is required to be sent to the registrar for further action and shall be executable as a decree of a civil court. [52]

However till now, the Central Government has not established the Tribunal envisaged by the Act. The Protection of Plant Varieties and Farmers Rights Rules, 2003 are silent about the establishment of such a Tribunal. But, the Act itself makes a transitional provision for the exercise of powers of the Tribunal till such a Tribunal is established. Section 59 of the Act requires that 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 modifications as are necessary with respect to the appointment of the technical member envisaged by this Act. [53]

7. Civil and Criminal Courts

Besides the Tribunal and the remedies available there under for the solution of disputes between different stakeholders, the Act declares certain acts as infringing the rights granted under the Act and leaves its administration with the regular courts. The District Court of the place of cause of action has been designated as the court where a suit can be filed. [54]

7.1. Remedies available

Civil Remedies

Section 64 of the Act mentions the circumstances resulting in the infringement of the rights granted by the Act. It states that a right established under this Act is infringed by a person 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 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. [55] The reliefs that a civil court can grant in case of the infringement of rights protected under the Act are provided in Section 66 of the Act. It reads as:

- 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 include 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. [56]

Therefore, in case of infringement of any of the rights, the court can grant following civil remedies to the applicant:

- (a) An injunction;
- (b) Ex-parte interlocutory injunctions;
- (c) Damages or Share of profits.

(a) Injunctions

An injunction is an order of the court that requires a person to desist from continuing an act that constitutes an act of infringement of the rights of the applicant. It is a judicial process by which one who is threatening to invade or has invaded the legal or equitable right of another is restrained from commencing or continuing such act, or is commanded to restore matters to the position in which they stood prior to the action.

The court is empowered by Section 66 of the Act to issue an injunction requiring an infringer to desist from doing the act complained of by the plaintiff. It may be either interim or permanent injunction. However, an interim injunction shall be granted only after the proof of prima facie case, balance of convenience and apprehension of irreparable loss to the plaintiffs if the injunction is not granted. The determination of these three elements is a precondition for the determining as to whether or not the applicant be granted the interim injunction.

In *Dalpat Kumar v. Prahlad Singh*, [57] the Supreme Court explained the meaning of the phrases 'Prima facie, Balance of convenience' and 'irreparable injury'. The Court held that, prima facie case should not be confused with prima facie title which has to be established on evidence at the trial. Prima facie case needs investigation and decision on merits. The Court stated that, in order to determine balance of convenience, the trial court must find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to other side if the injunction is granted. The court has then to satisfy itself that the non interference by court would result in irreparable injury to the plaintiff seeking relief and that there is no other remedy available to him, except one to grant injunction.

Irreparable injury does not mean that there must be no physical possibility of repairing the injury, but it means only that the injury must be a material one that one cannot be adequately compensated by way of damages.

The trial court has the complete independence to grant the interim injunction and the order of the trial court cannot be interfered with by any appellate court subsequently. In *Skyline Edu Ins(Pvt) Ltd v. S L Vasvani and Anr* [58], the Supreme held that, once the court of first instance exercises its discretion to grant or refuse to grant the relief of temporary injunction and the said exercise is based on objective consideration of the materials placed before the court and is supported by cogent reasons, the appellate court will not be loath to interfere simply because on *de novo* consideration of the matter it is possible for the appellate

court to form a different opinion on the issue of prima facie case, balance of convenience, irreparable injury and equity.

(b) Ex-parte Interlocutory Injunction or Anton Pillar Order

In order to effectively protect the interests of the plaintiffs and in order to compel the defendants to appear before the court and restrain him from disposing of any property acquired by the unauthorised use of plaintiff's name and reputation, the civil courts have also been empowered under the Act to pass *ex-parte* temporary injunctions for certain specific purposes mentioned in the Act. These include an *ex-parte* order for the discovery of documents relevant to the suit; an order for preserving of infringing variety or documents or other evidence which are related to the subject matter of the suit (such an order has been named as '*Anton Pillar*' Order in United Kingdom); and an order for the 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 (called '*Mareva Injunction*' in United Kingdom). [59]

(c) Damages or share of profits

Damages are one of the prime remedies available to a successful plaintiff the purpose of which is to restore the plaintiff to his position- which he had before the infringement. Such damages are therefore compensatory in nature. Generally, the damages would be equivalent to the fair fee or royalty which the defendant would have paid had he got the licence from the owner.

The civil court, if it deems fit in appropriate cases, can order the defendant to pay .on proof of the infringement either the damages or an appropriate share of the profits made by the defendant by such act of infringement [60]. The basis on which the share or account of profits is ordered is that there should not be any enrichment on the part of the defendant which is unjust. However, the remedy is alternative and it is for the plaintiff to choose one among the two reliefs. He cannot claim both damages and share in profits but only one among them. The Act does not specifically mention as to whether the courts can order punitive damages to be paid to the plaintiff on proof of the infringement. But, the judicial trend in case of other forms of intellectual property rights has now turned in favour of awarding punitive damages as well. Though there is also no clear provision in Copyright Act 1957 and Trademark Act 1999, the courts in India have granted punitive damages to the parties in case of infringement under the said Acts.

The trend of awarding punitive damages in India in case of Intellectual property infringement started with the decision in *Time Incorporated v. Lokesh Srivastava*. [61] In this case, the court awarded both compensatory and punitive damages for infringement of the trademark 'TIME'. The Court stated that the time had come when the courts dealing with actions for the infringement of trademarks, copyrights etc should not only grant compensatory damages but award punitive damages as also with a view to discourage and dishearten law breakers. The court also observed that the punitive damages should be penal in nature with the quantum being dependant on the flagrancy of infringement.

In *Microsoft Corporation v. Rajendra Pawar* [62], the Delhi High Court observed that, the award of punitive damages serves the additional purpose of the defendant's ability to profit from his fraud by escaping detection and prosecution. In *Microsoft Corporation v. Deepak Rawal* [63], the Delhi High court held that the justification for award of compensatory damages was to make up for the loss suffered by the plaintiff and the rationale behind granting punitive damages is to deter a wrongdoer and the like minded from indulging in such unlawful activities: This is -more so when the action has criminal propensity.

In *Hero Honda motors Ltd v. Shree Assuramji Scooters* [64], the court stated that 'the time has come when the courts dealing with actions for infringement of trademarks, copyrights, patents etc should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them.

Thus judiciary has become more receptive of the idea of granting punitive damages and same may be followed in case of infringement of the rights registered under the PPVFR Act. This trend will encourage parties to bring a civil action against the infringers and prevent such infringers from enjoying the unjust benefits accrued to them by the use of the reputation of the plaintiffs.

7.2. Criminal Remedies

The criminal remedies are always in the form of punishment to an infringer of rights. It may either be in the nature of some, fine or imprisonment of the person who is found guilty. The PPVFR Act makes many acts penal and provides punishment and fine for such acts. These can be grouped under following headings:

(a) Penalty for applying false denomination of a variety

Section 68 declares that, 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. [65] Denomination' means the description or name of the variety registered and can be expressed by means of letters or a combination of letters and figures written in any language. [66]

Section 69 provides that a person shall be deemed to falsely apply denomination of a variety who, without the assent of the breeder of such variety, applies such denomination or a deceptively similar denomination to any variety or any package containing such variety; or when he 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, filing or wrapping therein any variety other than such variety registered under this Act. [67]

Section 70 provides penalty for such application of false or deceptive denomination. Such an act is 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 with both. [68] The same punishment is applicable to a person who 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. [69]

(b) Penalty for selling of varieties to which false denomination is applied

The Act in order to prevent any attempt of a person to take credit of the reputation of a registered breeder and in order to-protect farmers from being supplied with bad seeds prohibits the sale of any seeds or other propagating material to which a false or deceptive denomination has been applied. Section 71 of the Act makes the act of selling such seeds penal. It provides that, any person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or production any variety to which any false denomination is applied or to which an indication of the country or place of its origin or the name and address of the breeder of such variety has been falsely made, shall, unless he proves 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 with both. [70]

(c) Penalty for representing a variety as registered variety

Section 72 of the Act provides that whoever in any manner falsely represents that a variety not registered under the Act is a variety registered under the provisions of the 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 the fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both. [71]

(d) Offence by Companies

Section 77 of the Act provides that where the person committing an offence is a company, the company as well as every person in charge 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. Except where 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. But if 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 of any officer of the company, such officer shall also be deemed to be guilty of that offence. [72]

Besides these, Section 73 provides for an enhanced penalty in case of the repetition of the offence. All the above offences are subject to the condition that the accused must not have acted innocently. If he 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, 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. [73]

On an analysis of the provisions of Chapter X of the Act, dealing with infringement, offences, penalties and procedure thereof, it can safely be concluded that these provisions are made from the breeder's point of view to safeguard his rights. However, the farmers also benefit from these provisions both directly and indirectly. Farmers get directly benefited when they register their new variety as breeders and when they register Farmer's variety. At that time a farmer or the farming community shall have all the rights available to them as are available to a scientific breeder. Farmers are indirectly benefited by these provisions when they are protected from deceit by any person projecting his seeds as the seeds of a reputed breeder because such an act is prohibited by the Act. These acts prohibited by the Act may attract civil or criminal consequences.

References

- [1] See preamble of PvAct 2001 (Act No. 53 of 2001) w.e.f. 30-10-2001[hereinafter called the Act 2001]
- [2] Sec 2 Clause(c) defines a breeder' as "a person or group of persons or a farmer or group of farmers or any institution which has breed, evolved or developed any variety".
- [3] The term 'Farmer' is defined in Sec 2 Clause(K) in Act 2001 as:
 - (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 or traditional varieties through selection or identification their useful properties.
- [4] Denomination defined in Sec 2 Clause (g) of the PVPFR Act 2001.
- [5] The preamble of the PPVFRA reads:
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 sub-paragraph (b) of paragraph 3 of article 27 in Part II of the said Agreement relating to protection of plant varieties.
- [6] Section 3 of the Act states that "*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 purposes of this Act '.*
- [7] Section 3 of the Act
- [8] Section 3(4) of the Act
- [9] Section 3 (5) of the Act
- [10] Rule 11 of The Protection of Plant Varieties of Farmers Rights Rules, 2003 , it provides that-*'The chairperson of the Authority shall be of the rank of Secretary to Government of India and shall hold office for a period of 5 years or up to 65 years of age'.*
- [11] The *ex-officio* members include; a representative from Department of Agriculture, GOI, Department of Crop Science, Indian Council of Agricultural Research, a member representing Seeds section of Department of Agriculture and Co-operation, Horticulture Commissioner, National Bureau of Plant Genetic Resources, Department of Biotechnology GOI, Ministry of Environmental Science and ministry of Law, Justice and Company Affairs.
- [12] See Section 3(5)(b).
- [13] Section 3 (5) (c); The composition of the Authority is, bureaucratic with ten members, including the chairman, representing various departments of the Government, two members representing State Governments and rest of the members representing diverse interests.
- [14] Section 4 (4) of the Act.
- [15] It can be argued that the interests of the people like industry and biotechnology though represented by single members, but the interests of these members generally converge with those of other members of the Authority; in the introduction of new varieties and stronger protection to scientific breeders.
- [16] See Baranski, Marci, "International Treaty on Plant Genetic Resources for Food and Agriculture (2001)". *Embryo Project Encyclopedia* (2013-10-07).
- [17] The Plant Treaty aimed to promote the conservation and sustainable use of plant genetic resources for global food security. Conservation includes both on-farm conservation and seed banks. A result of prolonged discussion within the FAO, the Plant Treaty established a principle of Farmers' Rights, which recognized farmers as holders of traditional knowledge and stewards of agricultural biodiversity. Next, the Plant Treaty established a multilateral system for open access to plant genetic materials. The open access policy is meant to encourage countries to establish laws on plant genetic materials that would assure the rights of both farmers and plant breeders. Ibid at 2.
- [18] But it is lacking under the Act which enervates the interests of farmers as against the industry and corporate.
- [19] See Section 8(1) of the Act.
- [20] These clauses of section 8 of the Act 2001 require the Authority:

- a) do documentation, indexing and cataloguing of farmer's varieties; [45] See section 26 of the Act
- b) Ensure that seeds of the varieties registered under this Act are available to the farmers and providing for compulsory licensing of such varieties, if necessary. [46] See Sections 39(2) and 41 of the Act.
- c) Collect 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; [47] See section 47 of the Act
- [21] See Section 47 of the Act provides for the power of authority to make order for compulsory licence in certain circumstances, like licensees' failure to make available seeds/propagating material to the public. [48] See Section 11 of the Act.
- [22] Ronnie Vernoooy and Manuel Ruiz, Access to and Benefit Sharing of Plant Genetic Resources: Novel Field Experiences to Inform Policy, Resources 2013, 2, 96-113; doi:10.3390/resources2020096. [49] Section 58 of the Act
- [23] Ríos Labrada, H. Participatory Seed Diffusion: Experiences from the Field. In Plant Breeding and Farmer Participation; Ceccarrelli, S., Guimaraes, E., Weltzien, E., Eds.; Food and Agriculture Organization of the United Nations: Rome, Italy, 2009; pp. 589–612. [50] Section 58(4) of the Act
- [24] Section 12 of the Act, 2001, for benefit sharing refers to section 26 and 39 of the Act 2001. [51] Section 57(3) of the Act
- [25] See chapter X of the Act, 2001 for infringement of rights amounting to criminal liability. [52] Section 57 of the Act
- [26] See V D Mahajan, 'Jurisprudence and Legal Theory' Eastern Book Company, 2009, p. 311. [53] Section 59 of the Act
- [27] Section 39 of the Act, 2001 [54] Section 65 of the Act
- [28] See Vikram Grover and Sukanya Sarkar, Plant varieties and farmers' rights: a balancing act, world Trademark Review, 12 Sep 2016. [55] Section 64 of the Act
- [29] See section 94 of the Act. There are certain rights for which the Authority established under this Act is the first forum for seeking redress. These include: [56] Section 66 of the Act
- (i) Claim for compensation in case of loss, [57] AIR 1992 SC
- (ii) Claim for compensation in case of non disclosure, and [58] AIR2010SC271
- (iii) Claim for compulsory licenses. [59] Section 66(2) of the Act
- [30] Section 39 (2) of the Act [60] Section 66(1) of the Act
- [31] See Rule 67 of The Protection of Plant Varieties of Farmers Rights Rules, 2003. [61] 2005 [30] PTC 3 (Del)
- [32] The Registrar is empowered to reject an application if he is satisfied that the breeder has willfully concealed such information. See sections 18 -22 of the Act. [62] 2008 [36] PTC 697 (Del)
- [33] Pratibha Brahmi, Sanjeev Saxena and B. S. Dhillon, The Protection of Plant Varieties and Farmers' Rights Act of India, *Current Science*, Vol. 86, No. 3 (10 February 2004), pp. 392-398 [63] 2006 (33) PTC 122(Del)
- [34] See Section 41 of the Act and Rule 68 of the Rules 2003 [64] Section 68(1) of the Act.
- [35] Section 47 of the Act [65] See section 2(g) of the Act.
- [36] Section 47 of the Act and Rule 71 [66] Section 69 (1) of the Act
- [37] Section 55 (1) of the Act [67] Section 70 of the Act
- [38] Section 55 (2) of the Act [68] Section 70(1)(b) of the Act
- [39] Section 55(4) of the Act [69] Section 71 of the Act
- [40] Section 55 (3) of the Act [70] See section 72 of the Act.
- [41] Section 55(5),(6) of the Act [71] See section 77 of the Act
- [42] Section 56 of the Act [72] Section 75 of the Act.
- [43] Section 56(3) of the Act [73] See section 39(ii) of the Act.
- [44] Section 58(5) of the Act