

Protection of New Plant Varieties

110. Is there any Act for protecting a new plant variety in India?

The Protection of Plant Varieties and Farmers' Rights Act 2001 was enacted in India to protect the new plant varieties. Rules for the same were notified in 2003. The Act has now come into force. The Protection of Plant Varieties and Farmers' Rights Authority has been set up and is responsible to administer the Act. The office of the Registrar has started receiving applications for registration of twelve notified crops viz. rice, lentil, maize, green gram, kidney bean, black gram, chickpea, pearl millet, pigeon pea, sorghum, field pea, bread wheat.

Under the TRIPS agreement it is obligatory on part of a Member to provide protection to new plant variety either through patent or an effective sui generis system or a combination of these two systems. India was therefore under an obligation to introduce a system for protecting new plant variety. India opted for sui generis system and enacted The Protection of Plant Varieties and Farmers' Rights Act 2001. However, in many countries such plants can be protected through Breeders' Rights, patents and UPOV Convention.

111. What are the objectives of Protection of Plant Varieties and Farmers' Rights Act in India?

The objectives of the Protection of Plant Varieties and Farmers' Rights Act are:

- (i) to stimulate investments for research and development both in the public and the private sectors for the developments of new plant varieties by ensuring appropriate returns on such investments;
- (ii) to facilitate the growth of the seed industry in the country through domestic and foreign investment which will ensure the availability of high quality seeds and planting material to Indian farmers; and
- (iii) to recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity by rewarding them for their contribution through benefit sharing and protecting the traditional right of the farmers.

More importantly this act provides safeguards to farmers by giving farmers' rights while providing for an effective system of protection of plant breeders' rights. The Act seeks to safeguard researchers' rights as well. It also contains provisions for safeguarding the larger public interest. The farmer's rights include his traditional rights to save, use, share or sell his farm produce of a variety protected under this Act provided the sale is not for the purpose of reproduction under a commercial marketing arrangement.

112. What kind of varieties are registerable under the plant variety Act?

1. A new variety if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.

2. An extant variety if it conforms to criteria of distinctiveness, uniformity and stability.

113. How is an “Extant Variety” defined in PPVFR Act, 2001?

An “Extant Variety” means a variety, which is–

- (i) notified under section 5 of the Seeds Act, 1966 (54 of 1966); or
- (ii) a farmers’ variety; or
- (iii) a variety about which there is common knowledge; or
- (iv) any other variety which is in the public domain.

114. What is the meaning of Farmers’ Variety as per PPVFR Act, 2001?

“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;

where farmer means any person who (i) cultivates crops by cultivating the land himself; or (ii) cultivates crop 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 and identification of their useful properties.

115. What is the meaning of “Essentially Derived Variety” as per PPVFR Act, 2001?

“Essentially Derived Variety” is a variety which is predominantly derived from another variety (protected or otherwise) and conforms to the initial variety in all aspects except for the differences which result from the act of derivation, and yet is clearly distinguishable from such initial variety

116. How novelty, distinctiveness, uniformity & stability have been defined in the Protection of Plant Varieties and Farmers’ Rights Act?

A) Novelty – Plant variety is 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 breeder or his successor for the purpose 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 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, 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) **Distinctiveness** – New plant variety will be considered 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.
- C) **Uniformity** – New plant variety will pass uniformity test, 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) **Stability** – New plant variety will be considered 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.

Compulsory Plant Variety denomination: After satisfying the above four essential criteria every applicant shall assign a single and distinct denomination to a variety with respect to which he is seeking registration.

117. What are farmers’ rights?

The farmers’ rights as defined in the Act are:

- (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) or 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.

Note: Branded seed means any seed put in a package or any other container and labelled in a manner which gives indication that such seed is of a variety protected under this Act.

In addition to the above, where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organization of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organization 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 organization 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, direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or the organization of farmers, as the case may be.

118. Which plant varieties can not be protected under this Act?

A plant variety which is :-

- (i) 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, identify of such variety, or the identity of breeder of such variety;
- (iv) is likely to deceive the public or cause confusion in the public regarding the identity of such variety;
- (v) is comprised of nay matter likely to hurt the religious sentiments respectively of any class or section of the citizens of India;
- (vi) is prohibited for use as a name or emblem for any of the purposes;
- (vii) is comprised of solely or partly of geographical name.

119. What is the term of plant variety protection?

- (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
 - (iii) in the other cases, fifteen years from the date of registration of the variety.
- Initially the certificate of registration 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 revived and renewed for the remaining period on payment of fees as may be fixed by the rules.

120. What is the cost of registering a plant variety?

Some important fees are given below:

No.	Action	Official fee
1	Conducting tests	Dependent on the nature and type of test subject to a maximum of Rs. 50,000 per entry
2	Fees for registration of essentially derived varieties	Individual – Rs. 5,000/- Educational – Rs. 7,000/- Commercial –Rs. 10,000/-
3	Renewal fee per year	Individual – Rs. 5,000/- Educational – Rs. 7,000/- Commercial – Rs. 10,000/-
4	Application for benefit sharing	Rs. 5,000/-

121. What is UPOV?

UPOV is an abbreviation of Union pour la Protection des Obtentions Vegetales (Union for protection of new varieties of plant). It is an international convention which provides a common basis for the examination of plant varieties in different member States of UPOV for determining whether a plant variety merits protection under UPOV or not.