

Frequently Asked **QUESTIONS** about PPV&FR Act, 2001



Protection of Plant Varieties and Farmers' Rights Authority

Department of Agriculture Cooperation & Farmers Welfare

Ministry of Agriculture and Farmers Welfare

Government of India

www.plantauthority.gov.in

Frequently Asked QUESTIONS about PPV&FR Act, 2001

INTRODUCTION

In order to provide for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants it has been considered necessary to recognize and to protect the rights of the farmers in respect their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties. The Govt. of India enacted "The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001" adopting **sui generis** system. Indian legislation is not only in conformity with International Union for the Protection of New Varieties of Plants (UPOV), 1978, but also have sufficient provisions to protect the interests of public sector breeding institutions and the farmers. The legislation recognizes the contributions of both commercial plant breeders and farmers in plant breeding activity and also provides to implement TRIPs in a way that supports the specific socio-economic interests of all the stakeholders including private, public sectors and research institutions, as well as resource-constrained farmers.

To implement the provisions of the Act the Department of Agriculture, Cooperation & Farmers Welfare, Ministry of Agriculture & Farmers Welfare established the Protection of Plant Varieties and Farmers' Rights Authority on 11th November, 2005. The Chairperson is the Chief Executive of the Authority. Besides the Chairperson, the Authority has 15 members, as notified by the Government of India (GOI). Eight of them are ex-officio members representing various Departments/ Ministries, three from SAUs and the State Governments, one representative each for farmers, tribal organization, seed industry and women organization associated with agricultural activities are nominated by the Central Government. The Registrar General is the ex-officio Member Secretary of the Authority.

Objectives of the PPV & FR Act, 2001

1

To establish an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

2

To recognize and protect the rights of farmers in respect of their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties.

3

To accelerate agricultural development in the country, protect plant breeders' rights; stimulate investment for research and development both in public & private sector for the development new of plant varieties.

4

Facilitate the growth of seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers.

General Functions of the Authority

- Registration of new plant varieties, essentially derived varieties (EDV), extant varieties;
- Developing DUS (Distinctiveness, Uniformity and Stability) test guidelines for new plant species;
- Developing characterization and documentation of varieties registered;
- Compulsory cataloging facilities for all variety of plants;
- Documentation, indexing and cataloguing of farmers' varieties;
- Recognizing and rewarding farmers, community of farmers, particularly;
- tribal and rural community engaged in conservation, improvement;
- Preservation of plant genetic resources of economic plants and their wild relatives;
- Maintenance of the National Register of Plant Varieties and
- Maintenance of National Gene Bank.

1 Why protection of plant varieties has become an important issue?

The breeding activities and exploitation of new varieties are the decisive factors for improving rural income and their overall economic development. Since the process of plant breeding is long and expensive, it is important to provide an effective system of plant variety protection with an aim to encourage the development of new varieties of plants for the benefit of society.

2 A. What is a variety?

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 unit with regard to its suitability for being propagating, which remain unchanged after such propagation, and includes propagating material of such variety, extant variety, transgenic variety, farmers' variety and essentially derived variety.

B. Essentially Derived Varieties (EDV):

Means a variety which has been essentially derived from existing variety by any of the following means:

- (i) Genetic Engineering
- (ii) Mutation
- (iii) Tissue Culture Derived
- (iv) Back Cross Derivative
- (v) Any other (Ploidy change etc.)

EDV is clearly distinguishable from such initial variety; and 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 genotype of such initial variety.

3 What is the definition of a farmer in the PPV & FR Act?

Farmers means a 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 preserve, severally or jointly, with any person any wild species or traditional varieties through selection and identification of their useful properties.

4 A. What is a Farmers' Variety?

A variety which

- has been traditionally cultivated and evolved by the farmers in their fields; or
- is a wild relative or land race or a variety about which the farmers possess the common knowledge.
- Farmer's variety is exempted from application/registration fees and his application need not be accompanied with fees, affidavit for terminator technology.

B. Is there any relaxation in purity standards and requirement of seed for test?

The numbers of off types for farmers' varieties shall not exceed double the number of off types prescribed for a new variety. The seed required is half of the quantity prescribed for the new variety.

5 What are Farmers' rights?

1. Farmer who has bred or developed a new variety shall be entitled for registration and other protection under PPV&FR Act, 2001 in the same manner as a breeder of a variety.
2. 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 registered under this Act.
3. Farmer shall be entitle to save, use, sow, re-sow, exchange and 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.

6 What is the duration of protection of a registered plant variety?

The duration of protection of registered varieties is different for different type of crops which are as below:

1. Trees and vines - 18 years.
2. For other crops - 15 years.
3. For extant varieties notified - 15 years from the date of notification under section 5 of the Seeds Act, 1966.

7 Is there any time limit for filing the varieties for registration under Extant Category.

Yes, the time limit is usually fixed by the Authority for 6 years for Extant varieties (other than Farmer Varieties) and 10 years for Registration of Farmers Varieties from the date of publication of approval of Authority in PVJ.

8 Can a variety under Extant category be filed after the prescribed time limit

No

9 Can a new and distinct plant found growing in nature be protected?

As such those plant varieties present in wilderness cannot be registered, under PPV&FR Authority. However, any traditionally cultivated plant variety which has undergone the process of domestication /improvement through human interventions can be registered and protected subjected to fulfilment of the eligible criteria.

10 What are the characteristics which may be used for distinguishing a variety?

The new variety should be distinct from the other varieties for at least one essential characteristic.

11 What are the prerequisites for filing an application form for registration of plant variety?

For registration of a plant variety the following prerequisites has to be completed:

1. Denomination assigned to such variety.
2. Accompanied by an affidavit that variety does not contain any gene or gene sequences involving terminator technology.
3. Complete passport data of parental lines from which the variety has been derived along with its geographical location in India and all such information relating to the contribution if any, of any farmer (s), village, community, institution or organization etc in breeding, evolving or developing the variety.
4. Characteristics of variety with description for Novelty, Distinctiveness, Uniformity and Stability.
5. A declaration that the genetic material used for breeding of such variety has been lawfully acquired.
6. A breeder or other person making application for registration shall disclose the use of genetic material conserved by any tribal or rural families for improvement of such variety.

12 How can I check the status of my application

It is available in the official website of the PPV&FR Authority.

13 What comprises a plant variety protection Application Form?

The application for registration of a variety is to be made in the form prescribed in the PPV & FR Regulations, 2006.

1. Form I - for registration of new variety, extant variety and farmer's variety and
2. Form II - for essentially derived varieties (EDVs).

3. Technical Questionnaire attached with Form I/Form II – for detailed information of the concerned variety.

These filled application forms must be accompanied by the registration fee as notified in the Gazette of India dated 15.06.2015 Details available on(www.plantauthority.gov.in).

14 Who can apply for the registration of a plant variety?

Application for registration of a variety can be made by:

1. any person claiming to be the breeder of the variety;
2. any successor of the breeder of the variety;
3. any person being the assignee or the breeder of the variety in respect of the right to make such application;
4. any farmer or group of farmers or community of farmers claiming to be breeder of the variety;
5. any person authorized to make application on behalf of farmers and
6. any University or publicly funded agricultural institution claiming to be breeder of the variety.

15 Which is the office for making application for the registration of plant varieties?

Application for registration of plant varieties can be made in the office of Registrar, PPV&FRA, New Delhi. The address of the Office is: Registrar, Protection of Plant Varieties and Farmers' Rights Authority, Govt. of India, Ministry of Agriculture & Farmers Welfare, Society Block, 2nd Floor, NASC Complex, DPS Marg, Opposite Todapur, New Delhi – 110012. Also any information regarding the protection, application, fee structure, etc. can be obtained from this office. Completed forms in triplicate, with fee/charges should be submitted to the Registrar with all enclosures, TQ, affidavits in his New Delhi Office or can be sent by Registered Post. Five branch offices have also been opened one at Guwahati (Assam), Ranchi (Jharkhand), Palampur (Himachal Pradesh), Shivamogga (Karnataka) and Pune (Maharashtra) to facilitate the applicants.

16 Can an application for registration of plant varieties be made through an agent?

Yes, a breeder or a farmer can apply for registration either in person or through his agent.

17 Is it necessary to submit the seed / propagating material before registration?

Yes, the breeder shall be required to deposit the seed or propagating material including parental line seeds of registered variety to the Authority. An applicant has to submit a fixed amount of seed sample (breeder seed) with prescribed germination percentage, physical purity and phyto-sanitary

standards. The applicant shall also submit along with the seed/propagating material the seed quality test report.

18 What is done with the seeds received by the Authority?

The seed samples received by the Authority will be properly tested for its purity and germination. A part of the seed sample sent to the test centre for conduct of DUS tests and a part of it is kept by the Authority in the National Gene Bank to maintain the seed samples of the registered varieties for their entire period of protection.

19 Can a person apply for registration of a variety which is already in the market?

Any variety which is already in the market, but not for more than a year, can be applied for registration as a new variety. Other older variety can be applied for registration as Extant Variety.

20 What is the cost of registering a plant variety?

The fee structure as defined by the PPV&FR Authority is as below:

A. Registration Charges

Type of varieties	Registration fee	
Essentially Derived Varieties/New Varieties / Extant Variety about which there is common knowledge	Individual	Rs. 7,000/-
	Educational	Rs. 10,000/-
	Commercial	Rs. 50,000/-
Extant Variety notified under section 5 of the Seeds Act, 1966.		Rs. 2000/-
Farmers' Variety		No fee

B. DUS test fee*

Details available on the official website of the PPV&FR Authority (www.plantauthority.gov.in)

C. Annual Fee

Type of variety	Annual Fees
New Variety	Rs. 2000/- plus 0.2 per cent of the sales value of the seeds of the registered variety during the previous year plus 1 percent of royalty, if any, received during the previous year from the sale proceed of seeds of a registered variety.
Extant variety notified under Section 5 of the Seeds Act, 1966 (54 of 1966)	Rs 2000/- only.

Extant variety other than the category specified above	Rs. 2000/- plus 0.1 per cent of the sales value of the seeds of the registered variety during the previous year plus 0.5 percent of royalty, if any, received during the previous year from the sale proceed of seeds of a registered variety.
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Annual fee shall be determined on the basis of declaration given by the registered breeder or agent or licensee regarding the sales value of the seeds of the variety registered under the Act during the previous year and royalty, if any, received during the previous year from the sale proceed of seeds of the registered variety and verified by the Authority. For update please check the Authority website (www.plantauthority.gov.in).

21 What are the exemptions provided under the PPV & FR Act, 2001?

1. Farmers' Exemption: Farmer shall be entitled to produce, save, use, sow, re sow, exchange, share or sell his farm produce including seed of a variety protected under this Act.
2. Researcher's Exemption:
 - (i) the use of registered variety for conducting experiment.
 - (ii) the use of variety as an initial source of variety for the purpose of creating other varieties.

22 What are the acts of infringement of the rights provided to the registered breeder under the Act?

Following acts may be a case of infringement under the PPV&FR Act:

1. If a person who is not a 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 license or registered agency without their permission of the registered license or registered agent.
2. If a person 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 already registered under this Act, in such a way that it causes confusion in the mind of general people in identifying the registered variety.

23 Is there any punishment if any person falsely represents a variety as a registered variety?

If any person falsely represents a variety as a registered variety then he shall be punishable with imprisonment for a term not less than six months which can be extended up to three years or with a fine not less than Rupees one lakh which may be extend to Rupees five lakhs, or with both.

24 What species can be protected?

The Central Government has notified the following crops with their genera and species eligible for registration as new varieties.

List of 147 Crop species open for registration under New/Extant/Farmers Variety.

Sr.no.	Crop	Botanical name
1.	Rice	<i>Oryza sativa</i> L.
2.	Bread wheat	<i>Triticum aestivum</i> L.
3.	Maize	<i>Zea mays</i> L.
4.	Sorghum	<i>Sorghum bicolor</i> (L.) Moench
5.	Pearl millet	<i>Pennisetum glaucum</i> (L.) R.Br.
6.	Chickpea	<i>Cicer arietinum</i> L.
7.	Mungbean	<i>Vigna radiata</i> (L.) Wilczek
8.	Urdbean	<i>Vigna mungo</i> (L.) Hepper
9.	Fieldpea	<i>Pisum sativum</i> L.
10.	kidney bean	<i>Phaseolus vulgaris</i> L.
11	Lentil	<i>Lens culinaris</i> Medik
12	Pigeon pea	<i>Cajanus cajan</i> (L.) Millsp.
13	Indian mustard	<i>Brassica juncea</i> L. Czern & Coss
14	Karan rai	<i>Brassica carinata</i> A Braun
15	Rapeseed(toria)	<i>Brassica rapa</i> L.
16	Gobhi sarson	<i>Brassica napus</i> L.
17	Groundnut	<i>Arachis hypogaea</i> L.
18	Soybean	<i>Glycine max</i> (L.) Merrill
19	Sunflower	<i>Helianthus annuus</i> L.
20	Safflower	<i>Carthamus tinctorius</i> L.
21	Castor	<i>Ricinus communis</i> L.
22	Sesame	<i>Sesamum indicum</i> L.
23	Linseed	<i>Linum usitatissimum</i> L.
24	Diploid cotton	<i>Gossypium arboreum</i> L.
25	Diploid cotton	<i>Gossypium herbaceum</i> L.
26	Tetraploid cotton	<i>Gossypium hirsutum</i> L.
27	Tetraploid cotton	<i>Gossypium barbadense</i> L.
28	Jute	<i>Corchorus olitorius</i> L.
29	Jute	<i>Corchorus capsularis</i> L.
30	Sugarcane	<i>Saccharum</i> L.
31	Black pepper	<i>Piper nigrum</i> L.
32	Small cardamom	<i>Elettaria cardamomom</i> Maton
33	Turmeric	<i>Curumma longa</i> L.
34	Ginger	<i>Zingiber officinale</i> Rosc.
35	Tomato	<i>Lycopersion lycopersicum</i> (L.) Karsten ex. Farw.
36	Brinjal	<i>Solanum melongena</i> L.

37	Okra	<i>Abelmoschus esculentus</i> (L.) Moench.
38	Cauliflower	<i>Brassica oleracea</i> L.var. <i>botrytis</i>
39	Cabbage	<i>Brassica oleracea</i> L. var <i>capitata</i>
40	Potato	<i>Solanum tuberosum</i> L.
41	Onion	<i>Allium cepa</i> L.
42	Garlic	<i>Allium sativum</i> L.
43	Rose	<i>Rosa</i> spp.(other than <i>R.damascena</i>)
44	Chrysanthemum	<i>Chrysanthemum</i> spp.
45	Mango	<i>Mangifera indica</i> L.
46	Duram wheat	<i>Triticum durum</i> Desf.
47	Dicocum wheat	<i>Triticum dicocum</i> L.
48	Other Triticum species	
49	Isabgol	<i>Plantago ovata</i> Forsk
50	Menthol mint	<i>Mentha arvensis</i> L.
51	Damask Rose	<i>Rosa damascena</i> Mill
52	Periwinkle	<i>Catharanthus roseus</i> L.
53	Brahmi	<i>Bacopa monnieri</i> L.Pennell
54	Coconut	<i>Cocos nucifera</i> L.
55	Orchids	<i>Vanda</i>
56	Orchids	<i>Dandrobium</i>
57	Orchids	<i>Cymbidium</i>
58	Pomegranate	<i>Punica granatum</i> L
59	Orchid	<i>Cattleya</i> Lindl.
60	Orchid	<i>Phalaenopsis</i> Blume
61	Eucalyptus	<i>Eucalyptus camaldulensis</i> Dehnh.
62	Eucalyptus	<i>Eucalyptus tereticornis</i> Sm.
63	Casurina	<i>Casuarina equisetifolia</i> L
64	Casurina	<i>Casuarina junghuhniana</i> Miq.
65	Bitter Gourd	<i>Momordica charantia</i> L.
66	Bottle Gourd	<i>Lagenaria siceraria</i> (Mol.) Standl.
67	Cucumber	<i>Cucumis sativus</i> L.
68	Pumpkin	<i>Cucurbita moschata</i> Duch. ex Poir.
69	Barley	<i>Hordeum vulgare</i> L.
70	Coriander	<i>Coriandrum sativum</i> L.
71	Fenugreek	<i>Trigonella foenum graecum</i> L.
72	Almond	<i>Prunus dulcis</i> (Mill.) D.A. Webb
73	Apple	<i>Malus domestica</i> Borkh
74	Pear	<i>Pyrus communis</i> L.
75	Apricot	<i>Prunus armeniaca</i> L.
76	Cherry	<i>Prunus avium</i> L.
77	Walnut	<i>Juglans regia</i> L.
78	Grapes	<i>Vitis</i> spp.
79	Indian jujube (Ber)	<i>Ziziphus mauritiana</i> Lamk.
80	Tea	<i>Camellia sinensis</i>
81	Tea	<i>Camellia assamica</i>

82	Tea	<i>C.assamica</i> ssp <i>lasiocalyx</i> .
83	Acid Lime	<i>Citrus aurantifolia</i> Swingle
84	Mandarin	<i>Citrus reticulata</i> Blanco
85	Sweet Orange	<i>Citrus sinensis</i> (L.) Osbeck
86	Bougainvillea	<i>Bougainvillea Comm. Ex Juss.</i>
87	Banana	<i>Musa</i> spp.
88	Orchid	<i>Oncidium</i> Sw.
89	Canna	<i>Canna</i> L.
90	Gladiolus	<i>Gladiolus</i> L.
91	Muskmelon	<i>Cucumis melo</i> L.
92	Watermelon	<i>Citrullus Lanatus</i> (Thunb.) Mansf.
93	Jasmine	<i>Jasminum auriculatum</i> . L.
94	Tuberose	<i>Polianthes tuberosa</i> L.
95	Papaya	<i>Carica papaya</i> L.
96	China Aster	<i>Callistephus chinensis</i> (L.)Nees.
97	Peach	<i>Prunus persica</i> L Batsch.
98	Japanese Plum	<i>Prunus salicina</i> L.
99	Strawberry	<i>Fragaria x ananasan</i> Duch.
100	Chilli, Bell Pepper and Paprika	<i>Capsicum annuum</i> L.
101	Finger Millet	<i>Eleusine coracana</i> (L.) Gaertn.
102	Foxtail Millet	<i>Setaria italic</i> (L.) Beauv
103	Vegetable Amaranth	<i>Amaranthus tricolor</i> L.
104	Ridge gourd	<i>Luffa acutangula</i> (L.) Roxb.
105	Spinach beet	<i>Beta vulgaris</i> var. <i>bengalensis</i> Roxb.
106	Carnation	<i>Dianthus caryophyllus</i> L.
107	Orchid	<i>Paphiopedilum</i> Pfitz.
108	Noni	<i>Morinda citrifolia</i> L.
109	Bael	<i>Aegle marmelos</i> (L.) Correa
110	Jamun/Black plum	<i>Syzygium cumini</i> (L.) Skeels.
111	Nutmeg	<i>Myristica fragrans</i> Houtt.
112	Jasmine/Mogra	<i>Jasminum sambac</i> L.
113	Custard apple / Sugar apple	<i>Annona squamosa</i> L.
114	Kalmegh /King of Bitters	<i>Andrographis paniculata</i> (Burm.f.) Wall. ex Nees
115	Karanj	<i>Pongamia pinnata</i> (L.) Pierre.
116	Neem	<i>Azadirachta indica</i> A. Juss.
117	Indian Gooseberry	<i>Emblica officinalis</i> Gaertn.
118	Guava	<i>Psidium guajava</i> L.
119	Litchi	<i>Litchi chinensis</i> Sonn.
120	Marigold	<i>Tagetesspp.</i> L.
121	Betelvine	<i>Piper betle</i> L.
122	Deodar	<i>Cedrus deodara</i> (Roxb.) G.Don
123	Chir Pine	<i>Pinus roxburghii</i> Sargent
124	Mulberry	<i>Morus</i> spp.

125	Jasmine	<i>Jasminum multiflorum</i> L.
126	Common/ Sweet Buckwheat	<i>Fagopyrum esculentum</i>
127	Tartary/ Bitter Buckwheat	<i>Fagopyrum tataricum</i>
128	Rajgeera (the King's grain) or Ramdana (Lord Rama's grain).	<i>Amaranthus hypocondricus</i>
129		<i>Amaranthus cruentus</i>
130		<i>Amaranthus caudatus</i>
131		<i>Amaranthus edulis</i>
132	Faba bean	<i>Vicia faba</i> L.
133	Jatropha	<i>Jatropha curcas</i> L.
134	Proso Millet	<i>Panicum maliaceum</i> L.
135	Barnyard Millet	<i>Echinochloa frumentaceae</i> (Roxb.) Link
136	Little Millet	<i>Panicum sumatrense</i> Roth. Ex. Roemer And Schultes
137	Kodo Millet	<i>Paspalum scorbiculatum</i> L.
138	Elephant Foot Yam	<i>Amorphophallus paeoniifolius</i>
139	Taro	<i>Colocasia esculenta</i>
140	Giant SwampTaro	<i>Cyrtosperma chamissionis/C.merkusii</i>
141	Cashew	<i>Anacardium occidentale</i> L.
142	Arecanut	<i>Areca catechu</i> L.
143	Chironji	<i>Buchananialanzan Sperng.</i>
144	Tamarind	<i>Tamarindusindica</i> L.
145	Sweet potato	<i>Ipomoea batatas</i> (L.) Lam
146	Cassava	<i>Manihotesculenta</i> Crantz.
147	Poplar	<i>Populusdeltoides</i> Bartz.

25 Is there any provision of onsite testing of trees and vines?

Yes, the applicant has an option for on site testing and the fee prescribed will not exceed four times the fee prescribed for normal DUS test. The details of fees is available on PPV&FRA Website(www.plantauthority.gov.in).

26 What is the provision for special test?

The special tests shall be conducted only when DUS testing fails to establish the requirement of distinctiveness. The DUS testing shall be field and multi-location based for at least two crop seasons and special tests be laboratory based. The Authority shall charge separate fees for conducting DUS test and special test on each variety. The fee for DUS and special tests shall be such as provided in column (3) of the Second Schedule for the purpose.

27 How to get information about General and Specific Guidelines for DUS Testing?

"The General and Specific Guidelines for DUS Testing of 147 notified crop species are available in various issues of Plant Variety Journal of India. The PPV&FR Authority in its 28th Meeting held on 22.11.2017 has decided that the printing and circulation of hard copies of Plant Varieties Journal should be

dispensed with effect from December, 2017 and thereafter with effect from January, 2018, the Plant Varieties Journal will be uploaded in the website of the PPV&FR Authority with the digital signature of the Registrar."

28 From which date the PPV&FR Authority starts receiving applications for Registration of Plant Varieties?

The PPV&FR Authority started receiving applications for Registration of Varieties of 12 notified crop species from 21st May, 2007 and at present the Authority is accepting the applications for 147 notified crops species. List available on PPVFRA Website.

29 What are the Business Hours for receiving application and seed samples?

The Business Hours for receiving application and seed samples in the office of Registrar PPV&FR Authority are as under:

S.No.	Particulars	Timings	
1.	Applications for all varieties for the crop species Gazette notified under the Act.	Day Monday to Friday (Working days)	Time 10:00 Hours to 15:00 Hours

30 What are the guidelines for submission of applications for Registration of Plant Varieties?

The guidelines for submission of applications for Registration of Plant Varieties are as under:

1. Every application must be submitted in triplicate and signed by the applicant or their representative. Application should be submitted in hard copy along with all essential requirements by hand/ by post till further notice.
2. Applications will be received from Monday to Friday (working days) from 10:00 Hours to 15:00 hours.
3. Every application must have the name of the applicant, their address and nationally as well as the address of service of their agent (if Applicable).
4. The office of the Registrar shall issue acknowledgment receipt and number which shall be used for all future references including the checking of the status of application.
6. The Application will be received on "first come first serve" basis.
7. No applications will be received after business hours.
8. After submission of application, it will be processed according to the provisions of the Rule 29(2) of the PPV&FR Rules, 2003.

31 What is the difference between the Seeds Act, 1966 and PPV&FR Act, 2001.

Seeds Act, 1966, Seeds Rules 1968 with Seeds (Control Order) 1983 are the legal instruments for regulating the production, distribution and the quality of

certain seeds for sale and for matters connected therewith, whereas the PPV&FR Act, 2001 grants the proprietary ownership of the variety to the plant breeders and farmers for their varieties. Intellectual Property Rights are the private rights which confer to the legitimate owners exclusive rights to produce, sell, market, distribute, import or export the variety registered under the PPV & FR Act.

32 What is UPOV? Is India member of UPOV?

UPOV means “International Union for the Protection of New Varieties of Plants”. India has been given the status of observer.

33 Can a plant variety be protected under the Patent Law in India?

No, Plant variety cannot be patented in India.

34 Can a foreign applicant obtain registration of their variety under PPV & FR Act, 2001?

Yes, the procedure for obtaining plant variety registration is same for Indian citizen and foreigners. However, foreign applicant must furnish their address for service in India while applying for plant variety registration.

35 What is difference between patent and PPV&FR Act?

A patent deals with IPR over devices of Industrial applications whereas PPV & FR Act, 2001 confers IPR to plant breeders who have bred or developed plant varieties. A patent is a set of exclusive rights granted by a state (national government) to an inventor or their assignee for a limited period of time in exchange for the public disclosure of an invention. The PPV&FR Act, give rights to farmers, breeders and researches besides giving protection to varieties of all crop species which are notified under the Act. There is also provision for benefits sharing, compensation to the farmers, recognition and award to the farmers for supporting conservation and sustainable use of plant genetics resource.

36 What is National Gene Fund and for what purpose it is utilized ?

The National Gene Fund has been constituted by the Central Government to promote, recognize and reward those farmers who are engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation in the agro-biodiversity hot-spots and also to a farmer who is engaged in conservation of genetic resources of landraces and wild relatives of economic plants and their improvement through selection and preservation provided material so selected and preserved has been used as donor of genes in varieties registered under the Act.

The Gene fund shall be enriched from the money received in the form of Compensation, Annual fee, Benefit sharing and contributions from National & International Organizations. The money collected under this fund shall

be utilized for reimbursement of benefit sharing, reimbursement of compensation; support and reward the farming communities, particularly the tribal and rural communities engaged in the conservation, improvement and preservation of genetic resources of economic plants and their wild relatives, particularly in the areas identified as agro-biodiversity hotspots.

Gene fund shall also be used for supporting the conservation and sustainable use of genetic resources including in-situ and ex-situ collections and for strengthening the capability of Panchayat in carrying out such conservation and sustainable use.

37 What are the different kind of Award, Reward and Recognition

There are Three types of Award, Reward and Recognitions given by the PPVFR Authority every year.

38 How many Awards every year

Every year Authority conferred 05 Plant Genome Saviour Community Awards, 10 Plant Genome Saviour Farmers Rewards and 20 Plant Genome Saviour Farmers Recognitions.

39 Is there any cash prize for the Award, Reward and Recognitions being given by PPV&FRA

Yes, i) the Authority in consultation with Government of India, has established five Plant Genome Saviour Community Awards of Rs 10 Lakh each along with citation and memento to be conferred every year to the farming communities for their contribution in the conservation of Plant Genetic Resources.

In accordance with the Protection of Plant Varieties and Farmers' Rights (Recognition and Rewards from the Gene Fund) Rules, 2010, ten Plant Genome Saviour Farmer Rewards of Rs 1.5 Lakh each with citation & memento and also twenty Plant Genome Saviour Farmer Recognitions of Rs 1 lakh each annually to the farmers engaged in the conservation of the Genetic Resources of the landraces and wild relatives of economics plants and their improvement through selection and preservation.



40 How to apply for Award

Every year Authority inviting applications for awards, Rewards and Recognitions by way of advertising in leading news paper in (hindi and English) and Application Form is also available on the website of the Authority.

41 What are the benefits for public and/or private sector of India from a convention country agreement?

Public and private sector of India will be able to get registration in convention country based on their registration in India. This will save time and money and based on a single registration they will be able to obtain another registration in convention country.

42 What are the benefits for Indian breeders with regards to India holding an observer status in UPOV?

India is able to observe the techno-legal proceedings going on in UPOV and breeders pick up fine points from UPOV system for adoption in India.

43 Is there any overlap in the benefit sharing provisions of the Biological Diversity Act and the PVP&FR Act?

No absolutely not. The benefit sharing in PPV&FR Act, 2001 applies only to registered varieties and that too the claim for benefit sharing has to be filed within a period of six months from the date of advertisement in the Plant Varieties Journal whereas the benefit sharing under Biological Diversity Act applies to flora and fauna and it is granted at the time of commercial utilisation of biological resources.

44 Is there any relation between provisions of the PPV&FRA Act and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) with respect to material in the public domain?

PPV&FR Act, 2001 grants IPR to plant breeders in India and accordingly material in public domain can be used by anyone without fear of infringement and consequently it differs from ITPGRFA in this regard.

45 Can a breeder ask for a seed sample of a protected variety from the National Gene bank and if so, when?

Breeder can ask for sample of seed of protected variety from National Gene Bank only when the registered breeder has failed to meet the reasonable demands of the public with regard to the registered variety. In such case compulsory license is granted to eligible breeders and royalty is paid to the registered breeder. Further compulsory license is granted only after hearing the registered breeder and granting extension of time for him to produce adequate quantities of registered varieties to meet the demands of public.

46 Is vegetatively propagated material also stored in the National gene bank? Does the authority store a DNA-sample?

Authority maintains vegetatively propagated material in field gene bank and DNA sample is not stored or sought form the applicant breeder.

47 Why do you need to submit inbred seeds for registration of hybrids and what is the provision for its safeguard at the authority gene bank? Is it possible to ask for a sample of the parental lines during the protection of the hybrid and/or after the termination of this right?

As mentioned earlier it is only sought in case of compulsory license that is when the hybrid is registered and if the registered breeder fails to meet the reasonable demands of the public with respect to the registered variety. During the period of protection apart from the case of compulsory license sample will not be granted to any body. Even after the termination of the right the inbred seeds will be returned to the registered breeder.

48 How are seeds of the harvest stored after DUS testing?

Seeds of harvest after DUS testing are destroyed in an eco friendly way.

49 What happens to seeds of genebank storage after the term of protection ends?

The PPV&FR Authority in its 28th meeting has held that seeds of registered variety will be handed over to the National Bank for Plant Genetic Resources.

50 If multiple hybrids from the same applicant have one common parent, does the applicant have to submit common parent seed again and again, as it is meant for gene bank storage only?

Then the applicant can mention the same to the Authority and accordingly the requirement will be dispensed with.

51 Can the applicant ask for the stored seed sample(s) in case of an infringement.

The stored seed sample will be furnished only in case of compulsory license and in case of infringement it will be furnished only on the order of the Hon'ble Court and not otherwise.

52 What are the requirements for a foreign company to have registration of their varieties in India?

Only one condition is required the foreign company has to furnish an address for service in India. Apart from this no other requirement is needed.

53 Can a (foreign) applicant claim priority right for an application in other country(ies) if the first application was filed in India?

If it is a convention country then the applicant can claim priority right otherwise no.

54 Can a (foreign) applicant claim priority right for an application in India if the first application was filed in another country?

No. The priority can be claimed only if the country in which the application has been filed is a convention country.

55 How can the applicant check the real time status of the application at the authority?

The details and status of the application are loaded in the website of the Authority.

56 Is there a maximum period from date of application to finalisation of the procedure?

Yes it is three years from the date of filing of the application but however the application will be processed and registered much earlier if application is complete in all respects and seeds and documents are deposited on time.

57 The authority is asking to submit parental lines in case of an application of the hybrid. Do you check whether these lines are the correct ones?

No the Authority does not check. It accepts the declaration given by the registered breeder in this regard. No checking or verification is done.

58 What are the additional provisions for registration of EDVs in specific transgenic varieties?

EDV can also be registered. However in case of transgenic varieties clearance from GEAC have to be obtained for commercial cultivation.

59 Does the authority use advanced DUS testing procedures like molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability?

No. The DUS testing is morphological based and not molecular based.

60 For each species there are multiple DUS testing stations identified. Can the applicant indicate a preference for one (or two) of the DUS testing stations? Will the applicant be informed?

Yes the applicant can indicate and the applicant will be informed of the same.

61 Is it true that the DUS test will always be performed at two different DUS testing stations? Is this also true for those species with only one year of testing? If so, what happens if the results of the two stations is (slightly) different, for instance because of the climatic influence?

It is true that DUS test will always be performed at two different DUS testing stations but it is also true for extant varieties for one year testing. However, the second centre is only for back up purposes and if any inconsistency arises the data of main centre will be relied upon. Further the main centre is chosen based on the point that where the candidate variety can express its potentiality to the maximum.

62 Is there a public database for choosing reference varieties as checks for data generation?

Currently database is not public but Authority is making efforts to make it public.

63 At what moments will the applicant be informed of the progress in the DUS procedure?

Once the initial scrutiny of the application is over the applicant will be informed of the progress in the DUS procedure.

64 At what moments will the applicant be informed of the progress in the DUS procedure?

There is a procedure of DUS monitoring the applicant can monitor the DUS trials and any time with the permission of the Registrar he can visit the DUS test centre and after the completion of DUS testing the copy of the DUS test report will be forwarded to the applicant.

65 Is there a possibility for the applicant to visit the DUS test of his own variety?

Yes the applicant can monitor his DUS test and can make suggestions and representations.

66 Is there a possibility for breeders to visit the DUS tests of other varieties under application (or to see the application forms) to avoid applications that are not entered by the true breeder?

Yes this is also possible.

67 What are the provisions to safeguard breeder's interest against misuse/ infringements of material under the Act effective from the date of filing to post grant?

Safeguard is provided both during pendency of registration and after registration. During pendency of registration there is provisional protection and after registration there is provision for infringement whereby the infringing materials are seized by the Court and compensation is granted to the registered breeder. Further criminal remedies are also provided for violation of rights of registered breeder.

68 We understand that the current provision providing for provisional provision is deemed invalid by Delhi High Court and now a Special leave for Appeal is filed at the Supreme Court. What is the current situation for breeders that have a right under application?

The Hon'ble Supreme Court of India has been pleased to grant stay against the order of Hon'ble Delhi High Court and accordingly provisional protection is available to all applicant breeders.

69 Please let us know the details of breeder's rights on the exclusivity rights on the registered variety as it relates to sell, export, produce and license etc.

Yes for field crops the breeder has the exclusive right for 15 years and for trees and vines it is 18 years. Exclusive right means other than registered breeder or his agent or licensee, no one can sell, export or produce and market the registered variety and as well as use the registered denomination.

70 Under the farmer's exemption the farmer shall be entitled to produce, save, use, sow, re sow, exchange, share or sell his farm produce, but he is not entitled to sell branded seed. What is the definition of branded here? Is this referring to seed certification or to the use of a protected trademark or to the use of the variety denomination?

Branded Seed means any seed put in a package or container indicating that it is protected under the law. It does not refer to seed certificate or use of protected trade mark. Further use of registered denomination by any person other than registered breeder or his agent or his licensee is not allowed.

71 Is this farmer's exemption also applicable to vegetatively multiplied species? What is meant in this regard with branded seed? Take for example chrysanthemum cuttings. What sort of selling by the grower of self-reproduced cuttings would not be allowed under this farmer's exemption?

Yes farmers exemption is also applicable to vegetatively multiplied species. Here branded seed would mean propagating material put in a package or container indicating that it has protected under the Act. If the grower, uses the registered variety or its denomination without the permission of the registered breeder and brands the registered variety with another or same denomination or applies the registered denomination to unregistered variety then it is prohibited. What is allowed under farmers rights is only use of registered variety in a small scale in an unbranded manner.

72 Genera and species eligible for protection: Kindly let us know which vegetatively propagated genera and species can be protected in India at the time being, Art. 14 and 29 (2) of the PPVFR.

Currently, India has notified 147 crop species notified for registration.

73 What are the possibilities to add more species to the list?.

Fifty more crop species to be notified are in the pipeline.

74 If India, Netherlands and Germany would sign a Convention Country agreement, could species be added to the list for which India does not perform its own DUS testing based on the taking over of a DUS-report from Naktuinbouw and Bundessortemamt?

If convention country agreement is executed then based on the crop species it could be added and necessary amendment can be made in the Rules to accept the DUS testing report from Naktuinbouw and Bundessortemamt.

75 Breeder: Usually, the breeder of a new variety is entitled to Plant Breeders Rights protection. What is the reason for writing in Art. 16 (a) "person claiming to be the breeder"?

The words "person claiming to be the breeder" means nothing but the breeder itself and further it has been drafted to include assignees and successors of the

breeders. The words are used only as an abundant caution that till the rights of breeder over his variety are established he is provisionally treated as person claiming to be the breeder.

76 **Conditions for protection: According to Art. 15 a variety shall be registered if it is new, distinct, uniform and stable and has a proper variety denomination. Please explain the purpose of Art. 21 (3) (c) and (d), which constitutes additional grounds for opposition to the registration.**

Section 21(3)(c) and (d) covers cases when the certificate of registration is not in public interest and it may cause adverse effect on environment. This has been done because as in all IPR laws an IPR should not be a bane to public and it should have public utility and not public adversity.

77 **Transitional period for novelty: Is it possible for breeders – in a limited period of time - to apply for varieties, which do not meet the novelty criteria any more, for species, which are recently included into the list of protectable genera and species (Art. 29 (2)).**

Breeders can apply under extant variety category if their variety does not meet the novelty criteria. Breeders can apply under extant variety category or new variety category only with regard to species notified under Section 29(2) of PPV&FR Act, 2001.

78 **Farmer: The term “farmer” is defined in Art. 2 (k) of the PPVFR and is used in many chapters in the PPVFR. What is the exact meaning of farmer in the area of growing ornamentals and fruits?**

The definition of farmer as defined in Section 2(k) of PPV&FR Act, 2001 is same for farmers of field crops, ornamental crops and fruits. The legal definition of farmer must be understood in socio-economic context as farmers are directly involved in cultivation or directly supervising the cultivation and farmers involved in conservation also come within the definition of farmer. Only small and marginal farmers involved in subsistence farming can claim farmers rights.

79 **Take-over of DUS reports: Is it at this moment possible for the Registrar to take over DUS reports from foreign countries where the variety has been already examined for DUS?**

As reiterated earlier, if the convention country agreement is executed then the DUS testing report of the said countries can be taken on record.

80 **Will it cause a problem if the similar varieties, that are used in the foreign DUS-test, are not available in India?**

As stated above, if the convention country agreement is executed then the DUS testing report of the foreign country will be accepted as such and accordingly the question of non-availability of similar variety in India does not arise.

81 If India, Netherlands and Germany would sign a Convention Country agreement, would it be possible for India to take over DUS reports from the CPVO which are performed by Naktuinbouw or Bundessortenamt?

Yes, if India, Netherlands and Germany sign a convention country agreement it would be possible for India to take over DUS reports from the CPVO which are performed by Naktuinbouw and Bundessortenamt.

82 Propagating material: From the definition in Art. 2 (r) we understand that “propagating material” of a vegetatively reproduced variety is any plant material from which another plant can be reproduced true-to-type. This includes e.g. all cut flowers having meristematic cells. Can you confirm this?

Yes. This is true.

83 Exclusive right of the title holder: From Art. 28 we understand that the Plant Breeders Rights provides to the title holder an exclusive right to produce, sell, market, distribute, import or export the variety. Please explain which plant material is included the scope of the protection, also taking into consideration the definition of “variety” in Art. 2 (za) and the definition of “propagating material” in Art 2 (r).

Plant Breeders Rights are applicable over all plant varieties over which registration is obtained.

84 Self-propagation: Vegetatively propagated ornamental and fruit varieties can be reproduced very easily true-to-type, by using e.g. cuttings or bud-wood. Does Art. 39 (iv) entitle a grower of vegetatively reproduced ornamental and fruit varieties to self-propagate the variety without authorization of the title holder? E.g. would an apple grower be entitled to make 500 trees out of one tree of a protected variety without authorization of the title holder of the variety. Would the grower be entitled to sell the apples from such trees?

Section 39(iv) of PPV&FR Act, 2001 must be interpreted in socio-economic context of India. What is permissible under the Farmers Rights in Indian Law is only commercialisation for subsistence farming. Farmers rights are applicable only for subsistence and marginal farmers and not for commercial farmers. As in the illustrated case if an apple grower under the guise of farmer produces 500 trees out of one registered tree variety and sells the produce without authorisation from the registered breeder, then in such case he will be guilty of infringement.

85 Harvested Material: Is it possible for the title holder of a protected variety to enforce his right in respect of harvested material which originates from illegal propagating material. E.g. can a title holder stop the sales of apples if the apple trees have been planted without authorization?

Yes. If the trees have been planted without authorisation then the registered breeder could proceed legally against the infringer for infringement of plant breeders rights.

86 Essentially Derived Variety: Please clarify if an - protected or unprotected - Essentially Derived Variety falls automatically under the protection of its Initial Variety. What is the meaning of Art 23 (6)?

There is no such case. Protection have to be obtained separately for initial variety and essentially derived variety.

87 Essentially Derived Variety: Please clarify if a mutation of a vegetatively reproduced ornamental or fruit variety is always considered to be an Essentially Derived Variety.

Prima facie a mutation of a vegetative reproduced ornamental or fruit variety is considered to be an essentially derived variety.

88 Essentially Derived Variety: Please explain the tests for an Essentially Derived Variety according to Art. 23 (4).

The DUS testing of EDV is decided by the Authority on case to case basis.

89 Variety Denomination: Is the seller of propagating material of a protected variety obliged to use the variety denomination?

Yes. The licensee or agent of the registered breeder must use the denomination of the variety while dealing with the variety.

90 Exhaustion: When is the Plant Breeders Right for plant material exhausted in the territory of India? Which section in the law provides for exhaustion?

There is no particular section for exhaustion of breeders rights but section 24(6) of the Act makes it clear that after the period of protection the Plant Breeder Rights come to an end 15 years in case of field crops and 18 years in case of trees and vines.

91 Annual Fees: Please explain the calculation method of the annual fee as prescribed in Art. 35 (1).

Annual fee is calculated on basis of sale value that is 0.2% of sale value for new varieties and 0.1% of sale value for extant varieties.

92 Liability for non-performance of propagating material, Art 39 (2): Please explain the liability of the breeder in case propagating material was sold not by him to a farmer, but by a propagator, and the propagating material was failed to provide the performance because of low-quality propagating material. Who has the burden of proof?

The burden of proof is on the claimant to prove that because of low quality propagating material the variety failed to provide the performance. In such case the breeder can always take adequate protection by entering into the license agreement with propagator that in such cases liability will be on the propagator and even if there is no such clause the breeder can always take the defence that propagating material failed due to propagator.

93 Compulsory License: We understand that Art. 47 stipulates that, after the expiry of three years from the granting of the title, a compulsory license may be granted in case that propagating material is not available to the public at a reasonable price. In this case the breeder may be ordered to grant a license to the applicant upon such terms and conditions as it may deem fit. Does this mean that the possibility for a breeder to set the royalty level for his variety is eliminated?

No. Section 51 clearly provides that reasonable compensation will be provided to the breeder that is nothing but royalty and further the breeder can contest on it and further the terms and conditions of compulsory license can be modified or revoked any time at the instance of registered breeder.

94 Innocent infringement, Art. 42: Can you please clarify which duties fall to the farmer in respect of the awareness of the existence of a Plant Breeders Right? What is necessary to make a farmer aware of the existence of a Plant Breeders' Right?

The farmer can be made aware by a cease and desist notice if he is engaged in commercialisation of the registered variety without authorisation from registered breeder.

95 Is publication of the granting of protection for the variety in the Gazette deemed sufficient?

Yes granting of protection of variety in the Gazette is deemed sufficient but still to obtain orders in an infringement a cease and desist notice would be advisable.

96 Enforcement: What is required to allow a title-holder to enter the premises of a supposed infringer?

The registration certificate and order from the Court is sufficient to enter the premises of supposed infringer.

97 Are all varieties in a DUS-trial anonymised under code?

The DUS trial would be anonymised under code.

98 You say that there are two DUS tests performed for back-up purpose. So, if one test fails, because of a lack of uniformity, but the other has a positive result, what is to be done? Will you do another year of testing, again at two locations?

If the test at main nodal centres qualifies DUS testing then the result at the second or co-nodal centre can be ignored. Because the main nodal centre is carefully chosen where the candidate variety can reflect fully its essential characteristics.

99 Are there any plans to examine whether the Indian Technical Questionnaires can be more harmonised with those of UPOV for example by using the same scales?

Yes if convention country agreement is executed the technical questionnaire can be.

100 Is there any connection between DUS tests performed for PPVFR protection and DUS testing for seed marketing registration?

Currently in India both are different the DUS tests are conducted for PPV&FR Protection and testing for seed marketing registration is termed as VCU testing and efforts are being taken to integrate the same.

101 In case a breeder wants to protect a hybrid (and not the parental lines) we understand that the reason to ask a deposit of the parental lines is only for the reason of a compulsory license in regard to seed of the hybrid. But in such a case would it not be more easy to oblige the breeder to provide enough material of the hybrid seed himself?

Claim for compulsory license can be filed only after three years of registration of variety and further the registered breeder can also ask for one year time and further compulsory license is granted only when the registered breeder fails to deliver sufficient quantities to meet the reasonable requirements of the public. Even if compulsory license is granted it can be modified or revoked and the registered breeder is also entitled to royalty. Further parental lines deposited along with registered hybrids are used only in case of compulsory license and not otherwise.

102 Genera and species protected (see CIOPORA Position on General PBR matters, paragraph) India should provide for PBR protection for all genera and species. In order to do so India should be willing to take over DUS reports from foreign countries.

Currently 147 crop species have been notified for registration as extant and new varieties under PPV&FR Act, 2001.

103 Transitional period for varieties of recent creation (see General PBR matters, paragraph 2.1) India should open the possibility for breeders- within a specified time after enacting the respective new law- to apply for all of their varieties, irrespective of how old they are. In return, the duration of protection might be limited to the remaining duration of the respective Plant Breeders' Right in the first country of registration.

Already there is a provision for registration of extant varieties in India law under which an extant varieties which is in commercial chain for more than a year can be registered under the Indian Law and further only in case of extant varieties notified under Section 5 of Seeds Act, 1966 the period of protection is limited to 15 years from the date of notification under Seeds Act, 1966. Apart from this case, the period of protection is 15 years from

the date of grant of certificate of registration in case of field crops and 18 years in case of trees and vines.

104 Application process (see General PBR matters, paragraph 2.4 and 3) The formalities in the application process should not go beyond what is necessary to accomplish the application. The entire application process should be as short as possible. In general, the PBR title should be issued not later than six months after the DUS examination has been completed.

The application is simple and contains only details of the applicant and of the variety. Further when the DUS testing is completed and report is received the same is examined and the variety is advertised in the Plant Variety Journal inviting opposition for a period of three months and thereafter the variety proceeds for registration which is less than six months after the completion of DUS test.

105 Scope of Protection (see CIOPORA Position on Scope of Right) The scope of protection must be at least on the level of the UPOV 1991 Act, i.e. the protection must cover propagating material and harvested material.

As of now the protection extends to propagating material, the variety and its denomination but not to harvested material.

106 The law shall define the term “Propagating Material”, Propagating material should include any material of a plant from which, whether alone or in combination with other parts or products of that or another plant, another plant with the same characteristics can be produced. This seems to be fulfilled in the current Indian legislation, but we wait for a confirmation of the Indian Government.

Section 2(r) of PPV&FR Act, 2001 provides that 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.

107 Preferably, in respect of ornamental and fruit varieties, harvested material as well as products that are obtained directly from material of a protected variety should be protected directly and per se.

As of now there is no such provision, to protect the products that are obtained from the protected variety.

108 The scope of a protected variety shall cover its Essentially Derived Varieties (EDV) and varieties, which are not clearly distinguishable from the protected variety.

The protected variety does not cover essentially derived varieties and under the Indian Law the EDV has to be distinct from IV except for the differences which result from act of derivation.

109 Essentially Derived Varieties (EDV) (see the CIOPORA Position on EDV) For vegetatively reproduced ornamental and fruit varieties the EDV concept shall establish dependency for varieties, which are phenotypically distinct and predominantly derived from the Initial Variety.

The period of protection of both IV and EDV are independent and distinct and do not overlap with each other. Under Indian Law both IV and EDV can be registered if both are distinct and EDV is predominantly derived from IV (except for the differences which result from the act of derivation.)

110 The degree of the phenotypic similarity and the number of phenotypic differences between the EDV and the Initial Variety shall not be taken into consideration for the establishment of dependency, but for the assessment of distinctness.

Section 2(i) provides that the EDV must be distinct from the initial variety however except for the differences which result from the act of derivation.

111 Mutants and GMOs- as far as they are distinct from the Initial Variety- shall be deemed to be EDVs, whenever they retain a very high genetic conformity to the Initial Variety, because mutants and GMOs per definition are predominantly derived from the Initial Variety.

Mutants and GMOs can fall under the Essentially derived variety category under Indian Law and the EDV must be distinct from the initial variety except for the differences which result from the act of derivation.

112 No Farmers' exemption for ornamentals and fruits (see General PBR matters, paragraph 4)The Farmers exemption shall not apply to vegetatively reproduced ornamental and fruit varieties.

As of now Farmers rights are applicable to vegetatively reproduced ornamental and fruit varieties.

113 Applying the farmers' exemption to vegetatively reproduced ornamental and fruit varieties makes a PBR law for such species totally ineffective, and thus is contrary to the UPOV 1991 Convention and the TRIPS Agreement.

The Farmers rights in India Law must be understood in socio-economic context.

114 Compulsory License (see General PBR matters, paragraph 5) The free exercise of a breeder's right shall not be restricted for reasons other than of public interest.

Yes the free exercise of breeder's right is not restricted apart from public interest.

115 Taking into consideration the large assortment of all kinds of ornamental and fruit varieties, in general there exists no public interest in the commercialization of a specific variety of such crops, so that the preconditions for a compulsory license usually are not given as far as ornamental and fruit varieties are concerned.

As of now compulsory license provision is applicable to ornamental and fruit varieties also but compulsory license can be exercised only when reasonable requirements of the public for propagating material has not been met or the same is not made available at reasonable price. Further application for compulsory license can be filed only after three years of the grant of certificate of registration and further one year time can be sought by the registered breeder and even if compulsory license is granted the registered breeder is entitled to royalty.

116 Duration of protection (see General PBR matters, paragraph 6) The duration for PBR shall not be shorter than 20 years from the date of the grant of the breeder's right for trees and vines not shorter than 25 years. Preferably the duration should be 30 years for all species.

In Indian law the period of protection is 15 years from the date of grant of certificate of registration in case of field crops and 18 years in case of trees and vines.

117 Provisional Protection between application and grant (see General PBR matters, paragraph 7) In the PBR laws application for a PBR should be designed as a true object of property of the breeder, which can serve as a basis of contractual exploitation rights and for enforcement, including court proceedings against infringers.

The Indian law treats the Plant Breeders' Rights as an Intellectual Property Right and can serve as a basis of contractual exploitation rights and for enforcement including court proceedings against infringers.

118 The applicant of the PBR should be entitled to enforce his right already during the period between the publication of the application and the grant of the title.

In Indian law the provisional protection is available from the date of filing of application till the date of grant of certificate of registration.

119 Variety Denomination (see General PBR matters, paragraph 8) The use of the variety denomination should be obligatory in relation to propagating material and to harvested material.

The use of variety denomination is obligatory in relation to propagating material and not harvested material.

120 Exhaustion (see CIOPORA Position on Exhaustion) Exhaustion of any PBR shall be strictly limited to the very territory where the PBR is in effect. The marking of material in a protected territory shall trigger the exhaustion only for this very territory. CIOPORA is opposed to any form of international exhaustion.

The plant breeders rights under Indian law is applicable only within the territory of India and is lex loci in nature.

121 Enforcement (see General PBR matters, paragraph 10). In order to be effective, a Plant Breeder' Rights law must be accompanied by effective enforcement tools.

The Indian Plant Varieties Protection law is very effective in nature as there are both civil and criminal remedies for enforcement. Further there are police, court and customs to enforce the rights.

122 The enforcement of IP Rights must be affordable for all title holders, particularly for small and medium sized enterprises.

Yes, the cost of legal proceedings in India are less than in EU and USA. Low cost and effective.

123 Infringers of IP rights shall be obliged to compensate all reasonable costs incurred by enforcement proceedings.

Yes the infringers of IP rights are bound under Indian law to compensate all costs of the proceedings if the court so orders.

124 Plant Breeders' Rights court cases should be directed to selected courts, which are specialized in Plant Breeders' Rights law or at least to courts that already are established for patent infringement cases because of similar experience in industrial property. This guarantees a unitary and qualified case law.

Yes the plant breeders rights will be dealt by specialised courts/tribunals which deal with infringement and other techno-legal issues concerning registration/ revocation of registered variety.

Address for communication:



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