

Views, Experiences and Best Practices as an example of possible options for the national implementation of Article 9 of the International Treaty Submitted by Contracting Parties and Relevant Organizations

Note by the Secretary

This document presents the views, experiences and best practices on the implementation of Farmers' Rights, as set up in Article 9 of the International Treaty submitted by India on 22 June 2018.

The submission is presented in the form and language in which it was received.

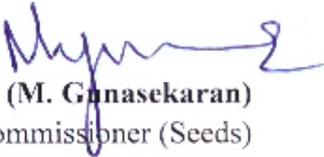
No. 5-1 /2018-SD-V
Government of India
Ministry of Agriculture & Farmers Welfare
Department of Agriculture, Cooperation & Farmers Welfare
(Seeds Division-V)

Shastri Bhawan, New Delhi

Dated the 22nd June, 2018

Subject: :- Invitation to submit views, experience and best practices as example of possible options for national implementation of Article 9 of the International Treaty, and information regarding arrangement for the Ad Hoc Technical Expert Group on Farmers' Rights-reg.

Please refer to your letter no. NCP GB8-05 Farmers' Rights dated 7th May, 2018 regarding the subject mentioned above. The comments on Status of Farmers' Rights in India are enclosed.



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To,

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Status of Farmers' Rights in India

Government of India ratified the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization should, *inter alia*, made provision for giving effect to article 27(3)b in Part-II of the said agreement and the PPV&FR Act was passed in 2001 (53 of 2001) by the Parliament of India. The Act provides a *sui generis* principle and provides for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders.

India is one of the founding member to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and Article 9 of the Treaty specifies for Farmers' Rights. The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to PGRFA, rests with National Governments.

The Act provides exhaustive and wide ranging rights to farmers in accordance with the FAO International Undertaking on Farmers' Rights and relevant CBD Articles on conservation and sharing biodiversity and benefit sharing.

Farmer as per the PPV&FR Act, 2001, Section 2 (k) - means any person who-

- cultivates the crops by cultivating the land himself
- cultivates crops by directly supervising the cultivation of land through other person
- 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

The Act treats the farmer as plant breeder so far as the farmers' variety is concerned and they can register them under the Act without paying any fee. It protects farmers' interest by ensuring access to benefit sharing if their material is used for development of new varieties. Accordingly, the PPV&FR Act includes one of the important provisions related to Farmers' Rights and several other beneficial provisions towards realizing Farmers' Rights as enshrined under the following:

- Section 26: Benefit sharing of using traditional varieties -
- Section 39(1)(i): registration of farmers' variety
- Section 39(iii): recognition, rewards and awards for conservation and sustainable use of plant genetic resources,
- Section 39(iv): Farmers are entitle to save, use, sow, re-sow, exchange, share or sell his farm produce including seeds of a variety protected under the 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,
- Section 39(2): compensation,
- Section 41: rights of community,
- Section 42: protection of innocent infringement,
- Section 44: exemption from fees,
- Section 45: National Gene Fund
- Section 47: compulsory licensing etc.

The Act provides following provisions to the Indian farmers:

1. A farmer has the provision in the Act to breed or develop a new variety which shall be entitled for registration in the same manner as a plant breeder.
2. The farmer is also entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a registered variety under the Act like wise entitled before the enforcement of the Act. Farmers are not entitled to sell branded seed of the variety registered under the Act.
3. Farmers' Variety is the variety which has been traditionally cultivated and evolved by the farmers in their fields or is a wild relative or land race of a variety about which the farmers possess the common knowledge.
4. Registration of farmers variety:- farmers are entitled for the registration of the variety which were bred are developed by them.
5. Farmers are exempted from payment of any fees in respect of any proceeding, inspection of any document or for obtaining any decision/order/document under the Act before the Registrar/Authority/tribunal/High Court.
6. Farmers are entitled to compensation in case of failure of expected performance by registered varieties under the given condition.
7. Any person on behalf of any village community file any claim for compensation if the village or local community has contributed significantly to the evolution of the variety which has been registered under the PPV&FR Act, 2001. The Authority upon receiving objection from the registered breeder shall give an opportunity to breeder and determine the compensation which should be deposited in the Gene Fund within a period of two months.
8. A right established under the Act shall not be deemed to be infringed by a farmer who at the time of such infringement was not aware of the existence of such right and a relief in an infringement suit shall not be granted by court against a farmer who proves at the time of infringement he was not aware of the existence of the right so infringed.
9. Benefit Sharing: -The claims after due examination and receiving counter-claims will be disposed by the Authority. The benefit claim will be decided after providing proper and fair opportunity to be heard to both the claimer and Breeder.

This has been done to safeguard the interests of the millions of farmers / communities / rural / tribal people who are engaged in the conservation and improvement of plant genetic resources. The relevant issues will be harmonization of the international PVP laws in accordance with the Indian system.

For implementing the various provisions of the Act, the Protection of Plant Varieties and Farmers' Rights Authority has been established in New Delhi by the Government of India during November, 2005.

Specific Distinctiveness, Uniformity and Stability (DUS) guidelines for registration of *150 crop species* which have been notified by the Government through the Authority.

The Authority has established 110 distinctiveness, uniformity and stability (DUS) test centers in State Agriculture Universities, ICAR, ICFRE, CSIR & other reputed research institutes.

The Authority has established a National Gene Bank in the premises of Indian Council of Agricultural Research- National Bureau of Plant Genetic Resources, New Delhi. The seeds of the registered varieties and parental lines are being kept in one of the module under medium terms storage facility at 4^o C and 40% RH for the duration of the registration (15 to 18 years depending upon the type of the crop species). Four field gene banks have been established at Balasaheb Sawant Konkan Krishi Vidyapeeth, Dapoli; Birsa Agricultural University, Ranchi; YS Parmar University of Horticulture & Forestry, Solan and CAZRI, Jodhpur, especially for maintaining referral samples of perennial asexually/vegetatively propagated crops

The Authority is also operating a “National Gene Fund” constituted by the Government of India under section 45 of the Act. Amongst other things, the fund is also utilised for supporting the conservation and sustainable use of genetic resources including in-situ and ex-situ collections.

PPV&FRA has already identified 22 agro-biodiversity hotspots representing maximum genetic diversity, availability of wild types / landraces / farmers’ varieties / plant genetic resources of economically important crops. The Authority also developed a mechanism to award / reward those farmers / communities who are engaged in the conservation and improvement of the plant genetic resources through provisions under Section 45 and Rule 70(2). Accordingly, the Authority in consultation with Govt. of India instituted the Plant Genome Saviour Community Award (maximum of five awards in a year comprising of citation, memento and cash of INR 1 million each).

The Government of India has notified the Protection of Plant Varieties and Farmers Rights (Recognition and Reward from the Gene Fund) Rules, 2012, whereby 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 to Plant Genome Saviour Farmer Reward (maximum of 10 rewards in a year comprising of citation, memento and cash of INR 0.15 million each) & Plant Genome Saviour Farmer Recognition (maximum 20 recognitions in a year consisting of a citation, memento and cash of INR 0.1 million each). The details of Awards/Rewards are given in the table given below:

Awards / Reward / Recognition	Awarded	Since
1. Plant Genome Saviour Community Awards	25	2009-10
2. Plant Genome Saviour Farmer Reward	33	2012
3. Plant Genome Saviour Farmer Recognition	66	2012

As per the mandate of the Authority, PPV&FRA is regularly conducting training cum awareness programmes to bring legal literacy among the relevant stakeholders including these communities, also provide intellectual property rights for plant variety protection for farmers’ varieties. For this purpose a farmers’ cell has been established in the Authority under the supervision of the Registrar. Support is also being provided to Biodiversity

Management Committees for panchayat level activities for conservation and preservation of Plant Genetic Resources, with the involvement of the KVKs and State Biodiversity Boards.

Under section 3(7) of the PPV& FR Act, a Standing Committee on Farmers' Rights has been constituted with representation from various sections including eminent scientists, research organisations, NGOs and the farming community. The committee is an advisory body and advises the Authority on the Farmers' Rights and other related issues.

The Authority has published various literature for creating awareness on the provisions of the Act, farmers' rights and frequently asked questions about the rules and regulations in English, Hindi and few other Indian languages like Tamil, Malayalam, Marathi etc. So far, 320 programs have been organised. During this year action has been initiated to organize 250 programmes involving ICAR institutes, SAUs and KVKs. Besides this, State Level Training Cum Awareness Programs are being contemplated.

Five branch offices have been opened at Guwahati, Ranchi, Palampur, Pune and Shivamogga to facilitate the registration of farmers' varieties and also for other varieties. Further, the branch offices also monitor DUS centres / tests; development of DUS guidelines; conducting training and awareness programs for farmers, breeders, NGOs, officers of Departments and other stakeholders.

By recognizing and protecting 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 through PPV&FR Act 2001, India has shown a leadership in implementation of farmers' rights in pursuance to ITPGRFA.

Measures Taken by India for Implementation of Farmers' Rights under PPV&FR Act, 2001

S. no.	Farmers' Rights under ITPGRFA	Measures Taken by Authority for Implementation of Farmers' Rights
1	The protection of traditional knowledge relevant to plant genetic resources for food and agriculture	The mandate of protection of traditional knowledge relevant to plant genetic resources for food and agriculture is not within the statutory mandate of PPV&FR Authority. The PPV&FR Act, 2001 protects traditional varieties conserved by the farmers by registering them as farmers' varieties. Section 2(l) of PPV&FR Act, 2001 provides that farmers variety means a variety which has been traditionally cultivated and evolved by the farmers in their fields or is a wild relative or land race of a variety about which the farmers possess the common knowledge.

2	The right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture	Section 26 of the PPV&FR Act, 2001 provides for benefit sharing and if any variety is registered then if the genetic material of farmers have been utilized in the development of the registered variety then farmers can claim benefit sharing. Section 41 of the PPV&FR Act, 2001 provides for compensation if in a registered variety any village or local community has contributed significantly in the development of registered variety.
3	The right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture	The PPV&FR Authority consists of a farmer representative to protect the interest of farmers and further the said farmer representative is also the member of the standing committee of PPV&FR Authority. The PPV&FR Act, 2001 recognizes farmers as breeders and they are entitled to be awarded, recognized and rewarded every year. The Plant Genome Saviour Award consisting of cash award of Rs.10 Lakhs along with citation and memento is being awarded to five farming communities each. The Plant Genome Savior Farmer Reward consisting of cash award of Rs.1.5 lakhs along with citation and memento is being awarded to ten farmers each and the Plant Genome Saviour Farmer Recognition consisting of Rs.1 Lakh along with citation and memento is being awarded to twenty farmers.
4	The right that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.	Section 39(1)(iv) of PPV&FR Act, 2001 provides that a farmer shall be entitled to save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a variety protected under the Act in an unbranded manner. Branded Seed means any seed put in a package or any other container and labeled in a manner indicating that seed of a variety is protected under the Act.