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Farmer's Rights, Their Scope and Protection in India

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Agriculture, being an important part of the economy and the culture of India, needs to be regulated through legislation to keep a balance between the marketability and growth of the sector. Agriculture was generally excluded from intellectual property protection in India, and there was no legal system of Plant Breeders' or Farmers' rights for ages. As part of the WTO's objectives to promote trade, minimum standards for intellectual property protection were established under the Agreement on TRIPs as a means to reduce barriers to international trade. India, to fulfil TRIPs obligations, passed the Protection of Plant Varieties and Farmers' Rights Act (PPVFA). The act represents a sui generis attempt to balance the rights of farmers and breeders. This article discusses the scope of PVFRA in ensuring and protecting farmers' rights and other plant breeders' rights. The major drawback any legislation faces is the inefficiency in its operation and non-compliance with the principles laid down in the legislation and its working. The influence of political and corporate monopolies may affect the efficient and impartial operation of the act. These aspects are analysed based on the case Kurungati v PepsiCo India. Thus, it is evaluated whether the protection of farmers' rights is ensured through the legislation.

Keywords: *plant varieties, farmers' rights, plant breeders' rights, variety protection.*

INTRODUCTION

Plant variety protection is a specialised type of intellectual property rights aimed at identifying and protecting the creativity of plant breeders. Since the founding of the

International Convention for the Protection of New Varieties of Plants (UPOV) in 1961,¹ plant breeders' rights have developed to grant legal protection to new plant varieties so that breeders can manage the manufacture, dissemination, and commercial use of their protected varieties. But this law has generated worldwide discussion on how to reconcile commercial interests with the long-standing practices of farmers who have traditionally saved, reused, and traded seeds. The global policy environment has increasingly acknowledged the important role of farmers in agricultural diversity and food security. At first, the 1978 UPOV Convention permitted room for farmers' practices through non-commercial exceptions, but the subsequent 1991 revision considerably constricted these freedoms.² The following development of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) in 2001 was a turning point, officially recognising farmers' rights to save, use, exchange, and sell farm-saved seeds, protect traditional knowledge, share benefits, and join in decision-making.

India, with an appreciation of both the value of protection of plant innovation and the maintenance of farmers' traditional methods, crafted its unique solution. The 2001 Protection of Plant Varieties and Farmers' Rights Act (PPVFRFA) created a sui generis system that is very different from the UPOV approach. This path-breaking law openly recognises farmers not only as producers but as conservers and breeders in their own right, entitling them to substantive rights as well as those of commercial plant breeders. The Indian model has gained international recognition as one of the alternative models trying to balance innovation with traditional farming and farmers' livelihoods in the context of a developing country.

MAIN FEATURES OF THE ACT

The Protection of Plant Varieties & Farmers' Rights Bill 2001 was passed by the Rajya Sabha on August 28, 2001. Lok Sabha had already passed the Bill on August 9, 2001³. The Protection

¹ 'Varieties of Plants (UPOV)' (*International Environmental Law Research Centre*) <<https://www.ielrc.org/content/f0303.htm>> accessed 12 May 2025

² Sangeeta Shashikant and François Meienberg, 'International Contradictions on Farmers' Rights: The Potential Impact of UPOV 1991' (*Third World Network*, 03 October 2015) <https://www.twn.my/title2/intellectual_property/info.service/2015/ip151003/457628655560ccf2b0eb85.pdf> accessed 12 May 2025

³ 'Rajya Sabha Passes Protection of Plant Varieties & Farmers' Rights Bill, 2001' (*PIB*, 29 August 2001) <<https://archive.pib.gov.in/archive/releases98/lyr2001/raug2001/29082001/r2908200120.html>> accessed 12 May 2025

of Plant Varieties & Farmers' Rights Act 2001 came into force on November 11, 2005.⁴ The main features and the rights established under the act are discussed below:

Authorities under the Act –

The authority is established under section 3 of the Act. The Protection of Plant Varieties and Farmers' Rights.⁵ The Authority is established by the central government and is headquartered in New Delhi. The authority shall have 15 members and a chairperson,⁶ who is appointed by the central government and shall be a person of outstanding calibre and eminence, with long practical experience to the satisfaction of that Government, especially in the field of plant varietal research or agricultural development.⁷

The other members of the Authority are highly qualified individuals with expertise and experience in various fields relevant to plant rights, including agriculture, horticulture, crop sciences, plant genetic resources, biotechnology, environmental law, and representation from farmers, tribal organizations, women's organizations, the seed industry, and academia, ensuring a multidisciplinary approach to decision-making.⁸

Section 8 lists the general functions to be carried out by the authority, which include the following:

1. Registration of the existing varieties of plants.
2. Document and characterise registered varieties.
3. Recognise and protect farmers' varieties.
4. Ensure seed availability for registered varieties.
5. Collect and disseminate information on plant varieties.
6. Maintain a comprehensive and accurate register of plant varieties.

The legislation further stipulates the establishment of a national register for plant varieties which will contain wherein shall be entered the names of all the registered plant varieties

⁴ Mrinalini Kochupillai, 'The Indian PPV&FR Act, 2001: Historical and Implementation Perspectives' (2011) 16(2) Journal of Intellectual Property Rights

<https://www.researchgate.net/publication/289690029_The_Indian_PPVFR_Act_2001_Historical_and_Implementation_Perspectives> accessed 12 May 2025

⁵ Protection of Plant Varieties and Farmers' Rights Act 2001, s 3

⁶ Protection of Plant Varieties and Farmers' Rights Act 2001, s 3(4)

⁷ Protection of Plant Varieties and Farmers' Rights Act 2001, s 3(5)(a)

⁸ Protection of Plant Varieties and Farmers' Rights Act 2001, s 3(5)(b)

with the names and addresses of their respective breeders, the right of such breeders in respect of the registered varieties, the particulars of the denomination of each Registered variety, its seed or other propagating material along with specification of salient features thereof.⁹

Effect of Registration of Varieties under the Act –

Breeder is defined under the Act to include a person or group of persons, or a farmer or group of farmers, or any institution which has bred, evolved or developed any variety.¹⁰ And they can apply for registration of their variety. The act provides for the registration of different varieties as given under:

Section 14 of the Act envisages the registration of mainly three kinds of varieties, which are:¹¹

- a. of such genera and species as specified under sub-section (2) of section 29; these shall be specified by the central government and will include varieties other than extant and farmers' varieties under the Act. These are typically new, developed, or commercial varieties.
- b. An extant variety means a variety notified under section 5 of the Seeds Act 1966, or a farmers' variety, or a variety about which there is common knowledge, or any other variety which is in the public domain. These are already-existing varieties that were developed or known before the Act came into force.
- c. Farmers' variety, which 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 common knowledge. These are traditional varieties cultivated and preserved by farmers over generations.

⁹ Protection of Plant Varieties and Farmers' Rights Act 2001, s 13(1)

¹⁰ Protection of Plant Varieties and Farmers' Rights Act 2001, s 2(c)

¹¹ Protection of Plant Varieties and Farmers' Rights Act 2001, s 14

Criteria to be satisfied for Registration of Variety –

Section 15 provides for the registration of a new variety. A new variety shall be registered if it conforms to the criteria of novelty, distinctiveness, uniformity and stability. These criteria are explained below:

Novelty: A variety is considered novel if, at the time of applying for its registration, its propagating or harvested material has not been sold or otherwise commercially exploited by the breeder (or their successor) under the following conditions: (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 filing of the application. However, a trial of a new variety which has not been sold or otherwise disposed of shall not affect the right to protection.

Distinct: The variety should be 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.

Uniform: The variety of subjects to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its essential characteristics.

Stable: If the variety's essential characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

FARMERS RIGHTS

Farmers' rights are enumerated under Chapter VI of the Act. A farmer, according to section 2 (k) of the act, is defined as a person who is involved in cultivating crops by cultivating the land by himself or one who indirectly cultivates crops by breeding. The act places the rights of the breeders and farmers on equal footing. It takes into consideration the multiple roles of farmers in cultivating, conserving, developing and selecting varieties and also welcomes the value addition by farmers to wild species or traditional varieties/ landraces through selection and identification of their economic traits.¹²

¹² Protection of Plant Varieties and Farmers' Rights Act 2001

Main Rights available to the Farmers under the Act –

Section 39 of the Act enumerates special rights conferred upon farmers, designed to ensure they are not exploited and to provide them with protections equal to those granted to corporate plant breeders, in recognition of their vital contribution. These rights are listed below as follows:

Registration: Farmers shall be entitled to registration of the new variety they have developed.

Economic Incentives: Farmers 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 recognition and reward from the Gene Fund. Normally, every year, five Plant Genome Saviour Community Awards of Rs. 10 lakh each with citation and memento; ten Plant Genome Saviour Farmer Rewards of Rs 1 Lakh each with citation & memento; and, twenty Plant Genome Saviour Farmer Recognition certificates are given to the farmers or communities contributing significantly to the conservation of the plant genetic resources.¹³

Access to Seeds: 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. This right ensures that the farmers shall have access to seeds. However, they shall not be entitled to sell branded seed of a variety protected under the Act.

Compensation: Farmers are entitled to compensation if they buy propagating material of a registered variety and if the material does not perform as promised, as per the information disclosed by the breeders about expected performance.

Defence: A farmer shall not be deemed to have infringed a right established under this Act if, at the time of the alleged infringement, the farmer was unaware that such a right existed¹⁴.

¹³ *Ibid*

¹⁴ Protection of Plant Varieties and Farmers' Rights Act 2001, s 42

Fee Waiver: A farmer or a group of farmers or a village community shall not be liable to pay any fees in any proceeding before the Authority or Registrar, or the High Court under this Act or the rules made thereunder.

Other Rights available for Farmers –

- If a third party (breeder) wants to use a farmer's variety (extant or new) as a source for the development of an essentially derived variety (EDV), as per Section 28 (6) of the PPV&FR Act, he has to obtain that farmer's prior authorization for commercialization of the variety. This is to enable farmers to negotiate royalties, benefit sharing, etc., in terms of authorisation.¹⁵
- A farmer has the right to access seeds of registered varieties at a reasonable price. If the seeds are not available at a reasonable price within three years of registration, they can request a compulsory license for production and sale as per section 47 of the Act.

LEGAL PRECEDENTS: ANALYSIS AND APPLICATION IN COURTS

An understanding of the PPV&FR Act's success can be gained from the various decrees issued over time. Tensions between plant-breeding companies that seek a more stringent intellectual property rights (IPR) regime and farmers' rights have been brought to light by the case between the multinational food and beverage firm PepsiCo India and the petitioner, farmers' rights activist Kavitha Kuruganti.

Under the statute, this is the first instance of its kind. International intellectual property rights (IPR) conventions aim to grant plant variety breeders the ability to enforce their patents on plant varieties. Activists claim that a few powerful companies are rapidly controlling the plant variety breeding sector in India and around the world. India and other developing nations seek to safeguard the rights of their farmers to use, cultivate, and sell the seeds and harvest of any plant variety they grow, including those that are registered under intellectual property rights.

The case highlighted the potential for companies to use their intellectual property rights to restrict farmers' access to certain varieties and the impact on their livelihoods. The decision

¹⁵ Protection of Plant Varieties and Farmers' Rights Act 2001

of the Hon'ble Court suggests a balance between the intellectual property rights of multinational companies and farmers' rights.

Pioneer Overseas Corporation v Chairperson, PPVFRA & Ors:¹⁶ The Delhi High Court's recent judgment in this case serves as an explanation of the provisions of the PPVFR Act. Pioneer is a company involved in the business of research, development, breeding, production and marketing of plant varieties since the year 1926. Respondent Kaveri Seeds Limited is also involved in the business of research, development, and breeding of seeds and plant varieties.

The acceptance of Kaveri's application to register a variety of maize, known as KMH50, under the Protection of Plant Varieties and Farmers' Rights Act, 2001, is the subject of the current petitions. Pioneer asserts that KMH50 is the same as or comparable to its 30V92 maize variety. Additionally, Pioneer has applied to register 30V92 under the Act. Pioneer had objected to Kaveri's Act-mandated KMH50 registration application. Further, Pioneer accused Kaveri of stealing 30V92 germplasm under the KMH50 denomination. To prove that Kaveri was violating the Act's requirements, Pioneer also applied to undertake a specific test (a DNA test) to ascertain the genetic profiles of KMH50 and 30V92. The DNA profiling of the varieties showed fewer similarities; hence, the petition was rejected.

This decision draws the idea that in situations involving plant variety infringement in the future, the use of scientific evidence such as molecular markers and DNA fingerprinting is probably going to be more important. In order to settle disputes based on convincing scientific evidence of infringement, courts may create a more systematic framework for evaluating expert testimony and scientific data.

PepsiCo v Farmer's Case: In 2019, the American company PepsiCo initiated legal action against 11 Gujarati farmers for growing and selling the FL-2027 (Commercial name FC-5) potato variety that is patented by the company¹⁷. Farmer's rights activists claimed this to be a move exploiting farmer and filed a petition to revoke PepsiCo's registration for FC5.

¹⁶ *Pioneer Overseas Corporation v Chairperson, PPVFRA & Ors* (2019) MANU/DE/2102/2019

¹⁷ Kavitha Iyer, 'India's Potato-Chip Tussle: How Gujarat Farmers Won A Battle – But Not The War – Against PepsiCo' (Article 14, 03 January 2022) <<https://article-14.com/post/india-s-potato-chip-tussle-how-gujarat-farmers-won-a-battle-but-not-the-war-against-pepsico-61d26768dd419>> accessed 12 May 2025

An appeal by PepsiCo India against a December 2021 order by the Protection of Plant Varieties and Farmers Rights Authority (PPVFRA) that had approved Kuruganti's request to have PepsiCo India's registration of the potato variety FL-2027, which is used to make its Lay's potato chips, revoked was heard by the Delhi High Court on September 12, 2022. By India's Protection of Plant Variety and Farmers' Rights Act 2001, the registration was approved in February 2016.¹⁸ PepsiCo India requested that the High Court restore its FL-2027 registration.

PepsiCo has the sole right to produce the variety under Section 28 of the Act¹⁹, and it has claimed infringement of its rights under Section 64 of the PPV&FR Act. This clause forbids the sale, import, export, or production of that variety by anyone other than the seed breeder or a licensed licensee. Except for selling branded seed of a variety protected under this Act, farmers invoked Section 39 of the PPV&FR Act, which safeguards their rights to store, use, sow, resow, exchange, share, or sell their agricultural produce, including seed of a variety protected under this Act. Farmers said that PepsiCo had only agreed to pick up potatoes larger than 45 mm in diameter as part of their contract with the corporation. Nevertheless, there remained uncertainty about the variety in the contract.

A patent's seed rights vary from nation to nation. In the U.S, no other farmer is allowed to plant a seed that has been patented in the United States. However, Section 39(1)(iv) protects farmers in this situation. Under this, farmers were permitted to carry on with their operations as they had been before this Act went into effect. They could, in other words, save, use, plant, replant, trade, share, or sell farm products, including seeds of a variety that is protected by this Act.

All that was stated was that farmers would not be allowed to sell branded seed of a variety that was protected by this Act. And in this case, the seeds sold were not branded seeds. The case was dissolved through government mediation, and the registration was revoked by the court through an order stating that the hardships endured by farmers through the penalty and accusations of the breeder licensee, PepsiCo, were against public order.

¹⁸ Flavia Lopes, 'Explained: The legal battle over the potatoes used to make Lay's chips' *Scroll* (20 September 2022) <<https://scroll.in/article/1033021/explained-the-legal-battle-over-the-potatoes-used-to-make-lays-chips>> accessed 12 May 2025

¹⁹ The Protection of Plant Varieties and Farmers' Rights Act 2001, s 28

These case laws serve as an example of articulating how the Act.²⁰ It might help farmers in ensuring their rights and protecting them from the monopoly of corporate companies, thus ensuring the coexistence of the agricultural system and trading in India and its international influence. But it's obvious from the case that it is indeed the loopholes in the legislation and the dreaded system that allows political and monopolistic entities to influence and benefit from the legislation. The facts of the case prove that the failure of the system that prioritises corporate companies rather than farmers was a reason for the emergence of a dispute between the PepsiCo India company and the farmers. The company, after knowing the market for their product and the advantages it could attain by registering it through the new PPVFR Act, proceeded to do the same. And even in the absence of necessary documents and evidence, they were allowed to register the same.

The target group of the legislation, the real reason for the introduction of this legislation, is farmers, and why they didn't move with the registration processes is a question. The sole reason for this is that even if these rights are there in the legislation, the real targeted group is unaware of their rights, and there's a lack of proper channels to educate them on their rights and make them accessible.

CONCLUSION

The PPVFR Act, 2001, was enacted as a progressive legal framework to balance the intellectual property rights of plant breeders with the traditional rights of farmers in India. While the legislation is commendable for attempting to protect both stakeholders, its implementation has revealed several challenges, particularly affecting small and marginal farmers. Despite the Act granting farmers the right to register their plant varieties, the process is often seen as inaccessible due to its complexity, bureaucratic hurdles, and the technical documentation required, such as proof of distinctiveness and uniformity, which many farmers are ill-equipped to provide without external assistance. This has led to the underutilization of the rights and benefits that the Act intends to extend to the farming community. Additionally, the coexistence of breeder rights and farmer privileges, such as the right to save, use, and exchange seeds, creates legal ambiguities. Farmers may inadvertently infringe on breeders' rights, given the lack of legal awareness and the absence

²⁰ The Protection of Plant Varieties and Farmers' Rights Act 2001

of clear dispute resolution mechanisms. These legal uncertainties have not been adequately addressed in the enforcement structure of the Act.