

# **A CRITICAL ANALYSIS OF THE PROVISIONS CONFERRING INTELLECTUAL PROPERTY RIGHTS TO FARMERS IN REFERENCE TO PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001**

*Written by Deepali Vashist\* & Prof. M. Afzal Wani\*\**

*\* Ph. D scholar*

*\*\* Professor*

---

## **Abstract**

India is considered as one of the richest mega diversity country in the world. It is reported that approximately twenty thousand species of higher plants alone occur in India and twelve thousand species of plants are well-known for their medicinal properties.<sup>1</sup> The credit to maintain such rich plant biodiversity goes to farmers. They are the reservoir of traditional agriculture knowledge, skill and know-how. They transferred their traditional knowledge to their next generations without any expectation in an informal manner

It is a fact that “farmers’ Rights” emerged in Indian legal system to contravene the intellectual property rights of breeders otherwise farmers never claim any intellectual property right. These rights are acclaimed by farmers to secure their control over traditional plant varieties and the plant genetic resources as they are under the fear that in the absence of farmers’ rights over traditional plant variety, breeders may exploit farmers’ treasure available in the form traditional plant variety, landraces and wild-relatives without any hitch by merely doing some minor changes with the help of biotechnology and claim intellectual property rights on the same. To overcome farmers’, fear the legislature has placed farmers’ rights under the same legal enactment under which it grants intellectual property rights to breeders.

The object of this paper is to give an account of farmers’ rights placed in the Protection of Plant Varieties and Farmers’ rights Act, 2001 and to probe whether the aspiration of farmers for

---

<sup>1</sup> R.R. Hanchinal, R. C. Aggarwal, Ravi Prakash, Tammu Stephen and Jyoti Jaiswal, “Impact of Awareness Programmes and Capacity Building in Farmers’ Plant Varieties Registration Under The PPVFR Act” 347-352 *JIPR* Vol 19, (September 2014).

intellectual property rights have been fulfilled or not? If not, then what are the reasons for ineffective implementation of Farmers' rights?

Key words: farmer, farmers' rights, Plant variety Protection, Traditional Knowledge, Plant Genetic Resources etc.

### **1. Farmer and farmers' variety**

The word 'farmer' is known by everyone as a person who does farming activity in the field is recognised as farmer. He is the one who ensures food security in country by using conventional breeding process i.e. by identifying and saving seeds from production and use the same in next growing season. Section 2(k) defines farmer as "a person who cultivates crops by cultivating the land himself; or cultivates crops by directly supervising the cultivation of land through any other person; or conserve and preserve any wild species or traditional plant variety by adding value in traditional variety or wild species by identifying and selecting useful properties."

A farmer is defined in the Act as cultivator, conserver, preserver and breeder. The definition given in the Act covers in its ambit all farmers landed or landless male and female, if he is doing any of the farming activity. The opening words of the definition, "one who cultivates crops by cultivating the land either himself or under whose direct supervision anyone else cultivate the land" means that a person is considered as a farmer if he is related with farming activity irrespective of the consideration whether he has done farming activities on his own land or on someone else land as a labour; or under whose supervision someone else would do farming. Farmer includes a landlord also if he is doing some supervision of farming activity. Thus 'farmer' includes labour also who is doing agrarian activity on others lands under the guidance of the owner of property.<sup>2</sup>

The provision further says a farmer is the one who cultivates crops by traditional breeding process i.e. 'identifying and selecting seeds from his harvest and save them to use in the next seasons' shows that a farmer is the one who has been cultivating crops by traditional breeding process. He deals in traditional varieties or wild species and constantly adding useful properties

---

<sup>2</sup>For giving recognition to the farmers' for his unremitting efforts the legislature put a different chapter on the 'Rights of farmers' under the PPVFR Act.

and values in traditional variety and wild species.<sup>3</sup> It is an addition in the definition which is done to describe the role of farmer by specifying the plant variety in which he is dealing. Farmer conserves wild species in his farm land even if they don't have value in terms of crops as they have some useful properties which are required for the production of particular crops, in this way farmer contribute in maintaining biodiversity.

Thus for fulfilling the criterion of the term 'farmer' a person has to do some agricultural related activity irrespective of the concern whether he is doing all these activities on his own land or someone else land. If he is working as a labour on someone's land then he can still add value to some wild species or in a traditional plant variety and can contribute in plant genetic resources but if he is just supervising the agricultural activity then he is not adding any value in any plant variety but still he is considered as a farmer.

Section 2(1) defines the term "farmers' variety" as "a variety which has been traditionally cultivated and evolved by the farmers in their fields or is a wild species<sup>4</sup> or landraces or a variety about which the farmer possess the common knowledge".<sup>5</sup> Therefore for fulfilling the requisition of 'Farmers variety' a variety should be developed by conventional or traditional breeding process for instance farmer select or identify plant variety and save its propagating material to use in the next harvesting seasons. In conventional breeding process introduction or migration take place only in close related plants.

The term 'landraces' means a domesticated, regional, ecotype and locally adapted traditional variety of a domesticated species of plant that has developed over time through adaptation to its natural and cultural environment of agriculture. These landraces varieties are also known as traditional plant varieties of farmers. They posse a number of desirable trait and characteristics like resistance to insects and pests, maintain soil fertility, heat stress etc. The Act has also not defined the terms common knowledge. In general sense it means something which is known

---

<sup>3</sup>The term wild species has not defined under the Act. Wild species means those plants that are related to cultivated varieties but they are themselves not used in agriculture even though they comprise useful properties.

<sup>4</sup> The Act has not defined the term wild species, landraces and common knowledge. The wild species of plant also contribute in maintain PGR and like landraces they also posses various desirable trait.

<sup>5</sup> PPVFR Act, 2001 section 2(i)

by most of the people or which is in public domain.<sup>6</sup> In comparison to wild-species landraces are more advance.<sup>7</sup>

## **2. Nature of Farmers' Rights**

The term farmers' rights have a profound historic character; existed since the beginning of agriculture. It includes different forms of rights i.e. developmental right or human rights as well as intellectual property right. The developmental rights of farmers includes right to an adequate standard of living, right to food, right to water, right to health, right to education and right to equality and non-discrimination. This form of rights is directly related with the survival of farmer and that's why they are also known as subsistence rights. These rights are not incorporated under the Act even though they are essential for the very existence of farmers. Another form of farmers' right is intellectual property rights of farmers have been incorporated by the legislature under this Act. In wider connotation the term intellectual property rights refers to customary rights of farmer, residuary rights of farmer and ownership rights of farmers in a limited extent.

## **3. What Comprises Intellectual Property Rights of farmers?**

The intellectual property rights of farmers are mainly evolved around seeds and Plant Genetic Resources.<sup>8</sup> Right to seed refer to right to save and use seeds of even protected varieties of breeder whereas rights over PGR refer to right to claim reward and recognition for the conservation of plant genetic resources. Right over PGR are residuary rights and can be claimed by farmer or group of farmers. The Act has also recognised some other form of intellectual property rights like right to claim compensation for inadequate performance of supplying seeds, right to claim compensation for undisclosed use of farmers' variety by any breeder in developing his variety, right to protection against innocent infringement, right to give authorisation for exploitation of farmers' variety. One another form of right specified by the PPVFR Act is right to register traditional plant varieties and new varieties. This ensures ownership rights. The reason for incorporating this right under the Act is to ensure parity between breeders and farmers. The Act confers nine rights to farmer namely:

---

<sup>6</sup> Researcher own submission.

<sup>7</sup> Romesh Kumar Salgotra and Bharat Bhushan Gupta, *Plant Genetic Resources and Traditional knowledge for food security* pp.9- 10.(email)

<sup>8</sup> *Ibid*

### **3.1.Right to register varieties**

The Act empowers farmers to register new variety and traditional variety as farmers' variety. A new variety of farmers refer to, variety prepared by traditional breeding process but new as it is not commercialise till now in market.

Section 39(1) (i) says "a Farmer who has bred/developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act;"

The PPVFR Act enables farmers to get their plant varieties register as a new variety only when he fulfil certain condition enumerated in section 15(3) of PPVFR Act. They are novelty<sup>9</sup>, distinctness<sup>10</sup>, uniformity<sup>11</sup> and stability. It means that this Act does not give any concession to farmers for registering their new variety rather farmer, a pastoral is bound to compete with the tech-savvy breeder to fulfil the technicalities in the form of NDUS. Apart from this farmers are also bound to do registration procedure. It means that farmers who want to register new variety is bound to face other formalities also like filing of application , examination of application, test of the variety, advertisement for opposition, grounds of opposition etc. which is extremely complicated and arduous. Thus, the requirement excludes all possibilities of registering a new plant variety by farmers.

This right become unproductive because of the stringent requirements to be fulfilled by farmers' for registering their plant variety as a new variety. The legislation had to consider the position of farmers before making such kind of provision. Thus, formulating different form of standard for new variety of farmers may have been more useful and practicable. The provision should be made in a way of giving at least some advantages in their competition with multinational corporate plant breeders and seed producers for registering their variety as a new variety.

---

<sup>9</sup> Section 15(3) (a) says a variety is considered as a new variety only when if on the date of filing the application for registration, the propagating or harvested material of such variety has not been sold or otherwise disposed of by the breeder or by anyone with the consent of breeder or his successor for the purposes of exploitation of such variety in India and outside India before the date of filing applications

- (i) in India, earlier than one year,
- (ii) or outside India ,earlier than four years or
- (iii) in case of trees or vines earlier than six years

<sup>10</sup>Section 15(3)(b) says a variety can be consider as distinct, "if it is clearly distinguishable by at least one essential characteristic (principal feature) from any other variety whose existence is a matter of common knowledge in any country at the time of filing of the application".

<sup>11</sup> A variety is considered to be uniform "if subject to the variation that may be expected from the particular features of its propagation it is sufficiently uniform in its essential characteristics".

The PPVFR Act allows farmers to get the registration of their traditional variety as farmers' variety.<sup>12</sup> The object of granting this right to farmers is to empower them to control their traditional variety which is the result of unending efforts of farmers. It means that once the farmer registers his traditional plant variety he gets ownership right over such variety however due to poor framing in some of the provisions especially the definition clause has made the right futile.

The Act defines the term farmers' variety under two different definitions i.e. one in section 2(l) as a variety which has been prepared by a traditional breeding process. It includes wild relatives or landraces of a variety about which the farmers possess the common knowledge. And, another as an extant variety defined in section 2(j) as farmers' variety. Placing the same variety in two different provisions, one as a farmer's variety and another as a part of an extant variety has not served any purpose except causing unnecessary confusion.<sup>13</sup> Apart from this the term 'extant variety' also includes common knowledge variety and variety in public domain. It means wild relatives and landraces which are covered in farmers' variety defined in section 2(l) are also covered in an extant variety as section 2(j) as it includes all varieties which are in public domain.

Apart from this a farmer's variety is registered under the statute only when the application for registration of such variety is made by all the farmers who have contributed in the conservation and development of such plant variety. Thus, it is mandatory for the farmer to involve the whole community associated in the conservation and development of such plant variety unless and until there is clear evidence to establish an exclusive role played by an individual farmer in the origin of the said variety. Compliance of such a difficult condition has shattered the hopes of farmers as an individual for the registration of their variety as maintaining such kind of vigilance can't be expected from a farmer who is ignorant in terms of information.<sup>14</sup>

The next hurdle in the registration procedure of a farmer's variety is related with the conflict between section 39 (1) (ii) and proviso of section 18 (1). The proviso of section 18(1)

---

<sup>12</sup> *Ibid*, Section 14- Any person specified in section 16 may make an application to the Registrar for registration of any variety—

- (a) of such genera and species as specified under sub-section (2) of section 29; or
- (b) which is an extant variety; or
- (c) which is a farmers' variety.

<sup>13</sup>

<sup>14</sup>The table is prepared on the basis of data available on <http://plantaauthority.gov.in/pdf/application%20status.pdf> visited on 26<sup>th</sup> October, 2016.

specifically says that “in case where an application is made by a farmer for the registration of farmers’ variety then he is not bound to comply the mandate given in section 18 (1) (b) to (h) except that the application should be made in such form as may be prescribed”. It shows in case if the application is made for the registration of farmers’ variety the applicant has just required to make application in the prescribed form and nothing else but contrary to the proviso of section 18(1), section 39(1) (ii) says that “farmers’ variety shall be entitled for registration if the application contains declaration as specified in clause (h) of sub-section (1) of section 18”. It means that for the registration of farmers’ variety farmers are bound to comply clause (h) of section 18(1).<sup>15</sup> This contradiction between the two provisions of the Act should be come to an end by certain modification or amendments. All these ambiguities prevalent in the provisions related to registration of farmers’ varieties drag farmers for not registering their varieties.

### **3.2. Right to Reward and Recognition**

Section 39(1) (iii) provides that “a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants<sup>16</sup> and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund:

Provided that the material so selected and preserved has been used as donors of genes in varieties registerable under this Act.”

The PPVFR Act makes provision for rewarding the farmers for their contribution for the conservation of plants in the form of wild relatives or land races. This provision enables the farmer to claim return for the labour and efforts which they are investing from primitive days. This provision also makes it clear that the farmers are getting reward for maintaining wild relatives<sup>17</sup> and landraces<sup>18</sup> even if they are not the part of cultivated crop but comprises some useful properties for commercial purpose. Apart from the ‘Plant Genome Saviour Farmer

---

<sup>15</sup>Sec. 18(1) (h) provides that the applicant give a declaration that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired.

<sup>16</sup> The word economic plant has not defined in PPVFR act. In ordinary language it means a plant which has commercial value.

<sup>17</sup> Wild relatives mean those plants that are related to cultivated varieties but they are themselves not used in agriculture even though they comprise useful properties.

<sup>18</sup> Land races’ means a domesticated, regional, ecotype and locally adapted traditional variety of a domesticated species of plant that has developed over time through adaptation to its natural and cultural environment of agriculture.

Reward' a farmer can also apply for recognition to be called 'Plant Genome Saviour Farmer Recognition' consisting of a citation, memento and cash of rupees one lakh each in a year.<sup>19</sup>

The Authority confers the "Plant Genome Savoir Community Award" also annually on the basis of shortlisted application from the community of farmers/farming community who have a long track record for conserving plant agro-biodiversity. The guidelines and procedure for conferring these awards is available on the PPVFR official website.<sup>20</sup> The basis for incorporating this right under the Act is contribution of farmers from generation in conservation and improvement of plant genetic resources but ironically this endowment has not sufficiently been recognised or rewarded.<sup>21</sup> Though ITPGRFA has given regard to farmers for their contribution but do not acknowledge it as farmers' rights.<sup>22</sup> However section 39(1) (iii) provides that "a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants<sup>23</sup> and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund:

Provided that the material so selected and preserved has been used as donors of genes in varieties registerable under this Act."

The PPVFR Act makes provision for rewarding the farmers for their contribution for the conservation of plants in the form of wild relatives or land races. This provision enables the farmer to claim return for the labour and efforts which they are investing from primitive days. This provision also makes it clear that the farmers are getting reward for maintaining wild relatives<sup>24</sup> and landraces<sup>25</sup> even if they are not the part of cultivated crop but comprises some useful properties for commercial purpose.

---

<sup>19</sup> <http://www.plantauthority.gov.in/PGSFR.htm> visited on 2016-12-01.

<sup>20</sup> <http://www.plantauthority.gov.in/PGSFR.htm> visited on 2016-12-15.

<sup>21</sup> Anshu Pratap Singh, Padmavati Manchikanti and H S Chawla, "Sui generis IPR Laws vis-à-vis Farmers' rights in some Asian Countries: Implication Under WTO" JIPR Vol. 16, March 2011 PP 107-116.

<sup>22</sup> Art. 9.1 recognize the enormous contribution that local, indigenous communities, farmers have made and will continue to make to the conservation and development of PGRFA.

<sup>23</sup> The word economic plant has not defined in PPVFR act. In ordinary language it means a plant which has commercial value.

<sup>24</sup> Wild relatives mean those plants that are related to cultivated varieties but they are themselves not used in agriculture even though they comprise useful properties.

<sup>25</sup> Land races' means a domesticated, regional, ecotype and locally adapted traditional variety of a domesticated species of plant that has developed over time through adaptation to its natural and cultural environment of agriculture.

The word expression used in the proviso shed all hopes of farmers by providing that the farmer is entitle to claim reward only when the farmer's PGR used in any registered variety. It means that the object of the provision is not to appreciate farmer for his contribution in preserving PGR rather it is the price and value of PGR used in any registering variety and government is getting fees and royalty from the registered breeder. the proviso shattered all hopes of farmers by putting a redundant condition that "the material so selected and preserved has been used as donors of genes in varieties registerable under this Act." The word expression used in the proviso shows that farmers are not entitle to claim any reward and recognition unless the conserved material has been used in any registered plant variety. The whole effect of such a condition is farmers do not get reward and recognition for many wild relative or land races which they are conserving from primitive days. Putting such unfavourable condition discourages farmers to maintain wild relatives or landraces. The said provision revealed the concern of legislature for farmers and established the fact that the law makers completely ignored that the conservation of plants is also necessary to maintain biodiversity.<sup>26</sup>

Section 39 (1) (iii) of PPVFR Act provides that the Central Government has notified the PPVFR (Recognition and Reward from the Gene Fund) Rules, 2012 for rewarding and recognizing farmers. For granting rewards and recognition the PPVFR Authority appointed a thirteen member committee<sup>27</sup> to short list the application for these awards and recognition however there is nothing in the rule which provides that on what basis this authority would shortlist the application for reward. The rule is also silent on the point whether there is someone who will supervise the functioning of this committee.

The Authority confers the "Plant Genome Savior Community Award" annually on the basis of shortlisted application from the community of farmers/farming community who have a 'long track record for conserving plant agro-biodiversity' is giving scope to arbitrariness which should be removed by specifying an exact time period for considering contribution.<sup>28</sup>

Applications are invited from all the farmers, community of farmers, particularly the tribal and rural communities engaged in conservation, improvement and preservation of genetic resources of economic plants and their wild relatives particularly in the areas identified as

---

<sup>26</sup> Researcher own submission.

<sup>27</sup>Rule 4(3) PPVFR (Recognition and Reward from the Gene Fund) Rules, 2012.( The detail about the formation Committee is available in annual report of PPVFR Authority 2011-12 , p.37)

<sup>28</sup>

agro bio-diversity hotspots in India. These awards cannot exceed five awards in a year. The Plant Genome Savior Community Award consisting of a cash of rupees ten lakh each, a citation and a memento.<sup>29</sup> The guidelines and procedure for conferring these awards is available on the PPVFR official website.<sup>30</sup> These Genome Saviour Award and Recognition motivates farmers for the contribution in conserving and maintaining varietal wealth of crop plants.

But the people, who are entitled for claiming such rewards, are aware of it or is there any programme and policy which aware farmers about such rights and recognition. In this regard there is a need to establish an institution in each village which would inform them about such rights and recognition and also help them to apply for such recognitions and rewards.

The basis for incorporating this right under the Act is contribution of farmers from generation in conservation and improvement of plant genetic resources but ironically this endowment has not sufficiently been recognised or rewarded.<sup>31</sup> Though ITPGRFA has given regard to farmers for their contribution but do not acknowledge it as farmers' rights.<sup>32</sup> However section 39(1) (iii) provides that "a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants<sup>33</sup> and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund:

Provided that the material so selected and preserved has been used as donors of genes in varieties registerable under this Act."

The PPVFR Act makes provision for rewarding the farmers for their contribution for the conservation of plants in the form of wild relatives or land races. This provision enables the farmer to claim return for the labour and efforts which they are investing from primitive days. This provision also makes it clear that the farmers are getting reward for maintaining wild

---

<sup>29</sup> See on <http://www.plantauthority.gov.in/PGSFA.htm> visited 2016-12-13.

<sup>30</sup> <http://www.plantauthority.gov.in/PGSFR.htm> visited on 2016-12-15.

<sup>31</sup> Anshu Pratap Singh, Padmavati Manchikanti and H S Chawla, "Sui generis IPR Laws vis-à-vis Farmers' rights in some Asian Countries: Implication Under WTO" JIPR Vol. 16, March 2011 PP 107-116.

<sup>32</sup> Art. 9.1 recognize the enormous contribution that local, indigenous communities, farmers have made and will continue to make to the conservation and development of PGRFA.

<sup>33</sup> The word economic plant has not defined in PPVFR act. In ordinary language it means a plant which has commercial value.

relatives<sup>34</sup> and landraces<sup>35</sup> even if they are not the part of cultivated crop but comprises some useful properties for commercial purpose.

The word expression used in the proviso shed all hopes of farmers by providing that the farmer is entitle to claim reward only when the farmer's PGR used in any registered variety. It means that the object of the provision is not to appreciate farmer for his contribution in preserving PGR rather it is the price and value of PGR used in any registering variety and government is getting fees and royalty from the registered breeder. The proviso shattered all hopes of farmers by putting a redundant condition that "the material so selected and preserved has been used as donors of genes in varieties registerable under this Act." The word expression used in the proviso shows that farmers are not entitle to claim any reward and recognition unless the conserved material has been used in any registered plant variety. The whole effect of such a condition is farmers do not get reward and recognition for many wild relative or land races which they are conserving from primitive days. Putting such unfavourable condition discourages farmers to maintain wild relatives or landraces. The said provision revealed the concern of legislature for farmers and established the fact that the law makers completely ignored that the conservation of plants is also necessary to maintain biodiversity.<sup>36</sup>

Section 39 (1) (iii) of PPVFR Act provides that the Central Government has notified the PPVFR (Recognition and Reward from the Gene Fund) Rules, 2012 for rewarding and recognizing farmers. For granting rewards and recognition the PPVFR Authority appointed a thirteen member committee<sup>37</sup> to short list the application for these awards and recognition however there is nothing in the rule which provides that on what basis this authority would shortlist the application for reward. The rule is also silent on the point whether there is someone who will supervise the functioning of this committee.

The Authority confers the "Plant Genome Savior Community Award" annually on the basis of shortlisted application from the community of farmers/farming community who have a

---

<sup>34</sup>Wild relatives mean those plants that are related to cultivated varieties but they are themselves not used in agriculture even though they comprise useful properties.

<sup>35</sup>Land races' means a domesticated, regional, ecotype and locally adapted traditional variety of a domesticated species of plant that has developed over time through adaptation to its natural and cultural environment of agriculture.

<sup>36</sup> Researcher own submission.

<sup>37</sup>Rule 4(3) PPVFR (Recognition and Reward from the Gene Fund) Rules, 2012.( The detail about the formation Committee is available in annual report of PPVFR Authority 2011-12 , p.37)

‘long track record for conserving plant agro-biodiversity’ is giving scope to arbitrariness which should be removed by specifying an exact time period for considering contribution.<sup>38</sup>

Applications are invited from all the farmers, community of farmers, particularly the tribal and rural communities engaged in conservation, improvement and preservation of genetic resources of economic plants and their wild relatives particularly in the areas identified as agro bio-diversity hotspots in India. These awards cannot exceed five awards in a year. The Plant Genome Savior Community Award consisting of a cash of rupees ten lakh each, a citation and a memento.<sup>39</sup> The guidelines and procedure for conferring these awards is available on the PPVFR official website.<sup>40</sup> These Genome Saviour Award and Recognition motivates farmers for the contribution in conserving and maintaining varietal wealth of crop plants.

But the people, who are entitled for claiming such rewards, are aware of it or is there any programme and policy which aware farmers about such rights and recognition. In this regard there is a need to establish an institution in each village which would inform them about such rights and recognition and also help them to apply for such recognitions and rewards.

### **3.3. Right to Seeds**

Seed is the most essential input in agriculture, as the response of all other input depends on the quality of seeds to a great extent in a way it determines the quality and quantity of production.<sup>41</sup> The right to seed is inevitable for the existence of farming community. Its aim is to enable farmers to access quality seeds. In an agrigarian country like India; farmers are the biggest seed producer. Right to seeds includes right to save the seed from one’s crop and use the saved seed for sowing, exchanging, sharing or selling with other farmers. It is a traditional right enjoyed by the farmers from time immemorial.

By incorporating such right the Act empowers the farmers to continue its old age practice which is generally prohibited in all other forms of IPR be it a patent or PVP. They both put restriction on this practice of farmers which is a peculiar feature of agriculture in India. Before the formal

---

<sup>38</sup>

<sup>39</sup> See on <http://www.plantauthority.gov.in/PGSFA.htm> visited 2016-12-13.

<sup>40</sup> <http://www.plantauthority.gov.in/PGSFR.htm> visited on 2016-12-15.

<sup>41</sup> B L Manjunatha, D U M Rao, M B Dastagiri, J P Sharma and R Roy Burman, Need for Government Intervention in Regulating Seed sale Price and Trait Fees: A case of Bt Cotton, *JIPR* Vol 20, November 2015, pp 375-387.

configuration of seed Industry seeds were the common property of the men and women who actively involved in farming activity. Infact even after the formation of India Seed industry and, before the entrance of private seed sector, farmers were considered as the almost reliable producer of seeds. They fulfilled their requirement of seeds by mutual exchange at local level. But when the Government of India decided to grant certain right to farmers, the right to seed is considered as a pivotal right. This is the reason the PPVFR Act embraced it and allows farmers to save seed to all varieties, including varieties registered under this Act as:

“farmers are 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:

Provided that the farmer shall not be entitle to sell branded seed of a variety protected under this Act.

Explanation – for the purpose of clause (iv), “branded seed” means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act”.<sup>42</sup>

The PPVFR Act very categorically provides that farmers are free to use, save, sow, resow, exchange, share or sell his farm produce or even the farm produce of any registered variety and, it is the reason only this right is available to farmers irrespective of the size of their holding. The proviso of section 39(1) (iv) provided that “the farmer shall not be entitled to sell branded seed of a variety protected under this Act”. It connotes restriction which put by the legislature in the form of proviso is, farmers cannot sell any branded seed. The term ‘branded seed’ stand for any protected seeds put in packages and containers and labels in a way indicting that the seed belongs to the registered variety. It means that if a breeder after registration of plant variety takes, one step further that he sells his seeds or make them or labelled them and thereafter, make them available in the market in a labelled packet which shows that the seed belongs to register variety then he can prevent farmers to exercise his right over seed.

The right to seed covered under this provision empower the farmers to get access to seed even if it belongs to a breeders’ registered plant variety. Thus, farmers are free to use and exploit (even commercialization) any breeders’ variety registered under the Act. This freedom is

---

<sup>42</sup> Sec.39 (iv) PPVFR Act, 2001.

enjoyed by the India farmers' as India is not a signatory of UPOV 1991. UPOV 1978 Act incorporated this right as farmers' privilege while UPOV 1991 made it an optional exception.<sup>43</sup> This right has been recognized by ITPGRFA under article 9.3 and preamble of treaty.<sup>44</sup>

For the viability of right to seed, the Act provides for compulsory licensing. Section 47 states that the PPVFR Authority has the power to issue compulsory license, against any registered variety, if after three year of its registration the breeder or any other person who is entitled to produce such variety fails to produce and sale seed at reasonable price. Thus, through compulsory licensing seed can be made available to farmers by the PPVFR Authority.<sup>45</sup>

In India, the main distress of farmers is how to get access to high quality seeds which is not solved by merely granting right to seeds under the Act. It can be resolved by conferring duty on Panchayat to distribute quality seeds among farmers by adopting a viable mechanism.<sup>46</sup> The right to seed also related with good quality seeds which is consider as a part of right to quality seeds. Thus merely granting right to seeds under the Act will not bring the change rather there must be some mechanism by which supply of quality seeds ensures.

#### **3.4. Right to get Compensation for the losses suffered because of spurious quality of seeds**

The breeder of a registered plant variety has exclusive right after its registration. But unfortunately some breeder misuse the protection by making exaggerated claims on the agronomic performance of their modern seeds and cause delusion among farmers about the performance. To safeguard the interest of farmer from such exaggerated claims, the PPVFR Act provides:

“Where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organization of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organization of farmers, as the case may be, the expected performance under given conditions, and if such propagating material fails to provide such performance under such given conditions, the farmer or the group of farmers or the organization of farmers, as the case may be, may claim compensation in the prescribed

---

<sup>43</sup> For details kindly refer to chapter 3.

<sup>44</sup> For details kindly refer to chapter 3.

<sup>45</sup> It is explained in detail in chapter 5 under caption compulsory licensing.

<sup>46</sup> <http://www.ebc-india.com/lawyer/articles/95v5a2.htm> visited on 2017-02-01.

manner before the Authority and the Authority, after giving notice to the breeder of the variety and after providing him an opportunity and after providing him an opportunity to file opposition in the prescribed manner and after hearing the parties, may direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or the organization of farmers, as the case may be”<sup>47</sup>

Thus, if a farmer purchased any seeds (genetically modified) under the delusion and in the end realize deceit because of the seeds’ underperformance the farmers have the right to claim compensation. To safeguard the farmers from such losses the legislature enacted the provision which put mandate on breeders that they sale their seed to the farmers with the agronomic performance and cultivating conditions in which the seeds give desired results or expected performance.

The term ‘expected performance’ could be higher yield, better pest or disease resistance, better quality, and so on. In the event seeds fail to give performance on having cultivated under the specified conditions, the PBR-holder will be made liable to pay compensation to affected farmers.<sup>48</sup>

### **3.5. Right to Get Information about the Use of traditional varieties**

For the protection of farmers’ interest section 40 states that the breeder or any other person who has applied for registration of a plant variety has the duty to disclose the information regarding the genetic material conserved by any tribal or rural families in the breeding or development of such variety”.<sup>49</sup>

Sub-clause (2) of section 40 provides that if the registrar feels that the breeder of a registered variety knowingly or wilfully concealed such information fails to disclose any information related to use of farmers’ variety then the registrar has the power to reject the application for registration.

### **3.6. Rights to Claim Compensation as a Communities’ Right**

---

<sup>47</sup> Section 39(2)

<sup>48</sup> Authors own submission.

<sup>49</sup> Section 40

This provision enables villagers or farming community for getting compensation for their contribution in the evolution of new variety. The amount is claimed by the claimant for the contribution they made in the conservation and development of variety which has been registered under the Act.<sup>50</sup> The application for claiming compensation is made before any centre notified by the authority. There after the centre verifies the claim of such community of farmers and if the claim is find it to be true then the centre would forward its report to the PPVFR Authority.<sup>51</sup>

If the PPVFR Authority is convinced with the findings or report of the centre then the PPVFR Authority will determine whether the claimant's variety actually used as a donor or initial variety in the development of plant variety which is registered under the PPVFR Act. If it affirm then the Authority issue notice to the registered breeder or his successor or assignee to give reply for such application or claim.<sup>52</sup> Upon receiving the notice from the authority the registered breeder or his successor or assignee may file objection to the claim within three months from the date of receiving notice.<sup>53</sup> On the basis of reply if the breeder fails to answer within the stipulated period of time, the authority decide the legibility for quantum of compensation and direct the breeder to pay compensation and submit the amount in the Gene Fund under sub-clause (c) of sub-section (1) of section 45.

### **3.7. Right to Protection Against Innocent Infringement**

Section 42 of the Act provides safeguard against innocent infringement to the farmers irrespective of the point, in legal jurisprudence 'violation of a law committed out of ignorance is not held as an admissible innocence'. No prosecution would take place against farmers, if the farmer makes an affirmation that he was not aware of the legal provision deemed to have been violated by him at the time of such commission.<sup>54</sup>

Section 42 says "notwithstanding anything contained in this Act a right established under this Act shall not be deemed to be infringed by a farmer who at the time of such infringement was

---

<sup>50</sup>Researcher own observation.

<sup>51</sup> Sec.21 PPVFR Act, 2001

<sup>52</sup> The notice shall be given in form O-12 of the III schedule.

<sup>53</sup> The objection shall be filed in the form PV-26 of I schedule.

<sup>54</sup><http://www.mssrf.org/sites/default/files/Manual%20on%20farmers%20rights.pdf> visited on 10<sup>th</sup> December, 2014.

not aware of the existence of such right". It means that the provision extends protection to farmers by shielding them from prosecution for infringement of the breeders' rights.

### **3.8. Farmers' Authorisation for Further Transfer Rights**

Section 43 provides that the breeder of a new variety or essential derived variety cannot further authorise anybody to use, sale and resale his variety without the permission of farmers if he develops or create his variety by using farmers' variety as a parent variety. It means such variety can only be further transferred or assigned when there is a permission of farmers for such transfer and assignment.

### **3.9 Exemption from fees**

According to section 44 a farmer or group of farmers or village or community is not bound to pay any fees in proceeding before the authority, registrar, and the appellate tribunal and in the High court.<sup>55</sup> The term fee for any proceeding includes any fee payable for inspection of any document or for obtaining a copy of any decision or order or document under this Act.<sup>56</sup> By the PPVFR Rules, 2016 farmer are even not bound to pay even annual fees for renewal for certificate of registration.

These are the rights which are recognised under the PPVFR statute as farmers' rights but unfortunately the bliss of privileges in totality do not reach to the claimants. It might be because of some ambiguities in the provisions of statute related to farmers' rights vis-a-vis failing to implement provisions related to farmers rights would be a heavy loss for all farmers who need farmers' rights to protect their livelihoods, secure their access to resources, protect their right to seeds and help them to come out of the vicious circle of poverty.

## **4. Conclusion and Suggestions**

Although the Act has theoretically recognised intellectual property rights of farmers but with the passage of time it has also been established that farmers are actually not much benefited by this legislative framework either because of inadequacy in the framing of provisions or lack of awareness among farmers about the existence of such statute. For the effective implementations of the rights conferred to the farmers it is required that these steps should be adopted:

---

<sup>55</sup> *Ibid* Sec 44

<sup>56</sup> Sumit Chakravarty, Gopal Shukla, Suman Malla and C P Suresh, "Farmers' right in Conserving Plant Biodiversity with Special Reference to North- East India, JIPR May 2008, PP225-232.

- a) For effective implementation of intellectual property rights of farmers that farmers must know and understand the basic concept of Intellectual property rights and why these rights are conferred and what would be the nature of benefits given under this Act.
- b) The provisions related to farmers' rights must be reframed in simplified language i.e. inspite of using technical and ambiguous language the provision should be made easy and clear. The ambiguities and inadequacy prevalent in various provision of the statute specially for registering traditional plant varieties and for claiming compensation and rewards should be relooked so that farmers could claim them.
- c) The ambit of certain rights should be widened especially provision related to claiming compensation in case of losses suffered by a farmer because of spurious quality of seeds. The amount of compensation granted should not be limited to loss of harvest or production but it may also include any loss suffered to land also in the form of soil erosion.
- d) The number of rewards and recognitions given must be decided in proportion to the farming population existed in country. Some effective mechanism should be adopted which motivates farmers for doing efforts for claiming certain rewards and recognitions.
- e) There is an unfolding ambiguity in the content of farmer, farmers' rights and community. For general understanding group of local farmers is known as community so it is not required to draw a line of distinction between farmer and farming community though there is not a single provision in the Act define community but the rights of community are specifically given in section 41and 43. This categorisation causing hurdle for farming community as the categorisation reflect that a farmer as an individual cannot exercise the rights given in the specified sections till he has not made the claim along with whole community.