

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 4 | Issue 4**

---

**2021**

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Sui Generis Protection to the Plant Varieties and Farmer's Rights in India

---

KHUSHI AGRAWAL<sup>1</sup>

## ABSTRACT

*Plant variety protection covers intellectual property rights over varieties of plants which allow the right holder to exercise exclusive trade rights for a defined period of time. Article 27(3)(b) of the TRIPS Agreement requires each of the Member States of the WTO, within stated time frames, to provide protection to the plants by means of domestic law. Farmers' rights to conserve improve, and make available plant genetic resources for the production of a new plant variety should be recognized and protected at all times. Farmers' and breeders' rights are described in this article, which is outlined in numerous sections of the Plant Varieties and Farmers' Rights Act, 2001 (PVPFR Act) and have been recognized in cases such as PepsiCo vs. the Farmers.*

**Keywords-** Rights, Plants, Variety, Agreement.

A sui generis system in India for the effective protection of plant varieties as well as the rights of plant breeders and farmers is given under Plant Variety Protection and Farmers Rights Act, 2001. This gives the breeder legal protection to a plant species in the form of Plant Breeder's Rights, an element of the IPR system, which provides exclusive rights to a registered plant breeder.

The sui generis system provides a choice of new sorts of intellectual property rights that are not necessarily based on existing rights, such as patents or plant breeder rights. The concept of sui generis protection gives conceptual justification for developing countries to go beyond traditional IPR categories and protect specific invention categories in accordance with the field's distinctiveness and the needs of individual countries. It also provides the basis for intellectual property rights integration and sustainable development.<sup>2</sup>

Agricultural innovations in India were not protected by intellectual property before the TRIPS Agreement came into effect. Article 27.3(b) of TRIPS states that World Trade Organization (WTO) countries shall propose patent protection in relation to intellectual property, an effective

---

<sup>1</sup> Author is a student at Symbiosis Law School, Noida, India.

<sup>2</sup> Rohan Dang, Chandni Goel, 'Sui Generis Plant Variety Protection: The Indian Perspective', American Journal of Economics and Business Administration, 1 (4): 303-312 (2009).

sui generis system, or a mixture of two plant types.<sup>3</sup> The Farmers' Rights Act, 2001 was fully implemented in India in 2007. The breeder or his successor, agent or authorization holder shall have the sole right of production, selling, marketing, distributing, importation or export, in accordance with the provisions of section 28 of the Plant Varieties and Farmers' Rights Act of 2001.

In accordance with section 39(1)(iv) of the Plant Varieties and Farmers' Rights Act, 2001, a farmer is presumed to have the same rights as before the law to conserve, use, sow, resow, exchange, share, or sell "agricultural produce," including seeds of protected types. The farmer does not have the right to sell protected variety branded seeds. An explanation of "branded seed" given under this section refers to seeds in a container or package, marked as a protected variety.<sup>4</sup>

Section 39(1)(iii) provides for registration of farmer's varieties that fulfill the required condition. Farmers are also given recognition and reward for conservations. The commercial gains of the registered varieties shall be shared fairly by plant breeders and legal bodies, including farmers who offer the Plant Genetic Resources for growing new varieties to breeders.<sup>5</sup>

Farmers have the right to access registered seed varieties at a fair and remunerative price. If these criteria are not met, the breeder's exclusive right to the variety is suspended under the compulsory licensing provision, and the breeder must license the variety's production, distribution, and sale.<sup>6</sup>

The Protection of Plant Varieties and Farmers' Rights Act gives farmers the privilege of complete waiver from any type of fee or other payment that is normally payable for the variety registration, the distinctness, uniformity, and stability, and any other services rendered by the Protection of Plant Varieties and Farmers' Rights Authority, as well as for infringement or other courts, tribunal or other legal proceedings.<sup>7</sup>

A farmer will not be penalized if he or she can show in court that he or she was unaware of the existence of any rights at the time of the infringement, as outlined in the Protection of Plant Varieties and Farmers' Rights Act. This clause is based on the farmers' centuries-long

---

<sup>3</sup> Sujith Koonan, 'India's Sui Generis System of the Plant Varieties Protection', International Environmental Law Research Centre (2004).

<sup>4</sup> **PepsiCo vs the Farmers, 2019**

<sup>5</sup> Section 26 of the Protection of Plant Varieties and Farmers' Rights Act, 2001

<sup>6</sup> Section 47 of the Protection of Plant Varieties and Farmers' Rights Act, 2001

<sup>7</sup> Section 44 of the Protection of Plant Varieties and Farmers' Rights Act, 2001

unrestricted rights to all varieties of seed, the unique nature of the Protection of Plant Varieties and Farmers' Rights Act, and the farmers' lack of legal knowledge.<sup>8</sup>

Farmers must grant prior consent for the marketing of their varieties, whether existing or new when they are used as source material by a third party for the development of an essentially derived variety. Farmers can negotiate the terms of authorization with the breeder, which could include royalties, benefit-sharing, and other factors.<sup>9</sup>

Registered seeds should be sold under approved management conditions with full disclosure of their agronomic performance. If such seeds are sold to farmers but fail to perform in the manner recommended, the farmer may, through the intervention of the Protection of Plant Varieties and Farmers' Rights Act Authority, claim compensation from the breeder.<sup>10</sup>

The law also stipulates the registered plant species to be protected, i.e. New Species, Variety of the extent, Variety of farmers, essentially derived variation.

Any of this kind that meets the DUS (distinctive, Uniform, Stable) criterion and which is New is eligible for this kind of protection and is registered under this Act. Any type of protection that meets the DUS criteria. The industrialization inventive step criterion, which the patent system requires, is not obligatory for the protection of vegetable varieties. The duration of the Registered Variety Protections may range from one plant to another – 1) eighteen years after the registration date, tree and vines are reserved for the protection of the variety, 2) 15 year after the Central Government has notified this variety under the Seed Act, 1966 and 3) fifteen years after the date of the registration of this variety.

In addition, the plant varieties referred to in the following are non-registerable as provided by the 'Act' where: the prevention of the exploitation of a variety by the commercial means is needed to safeguard public or public moral or human, animal or plant lives and health or to avoid serious damage to the environment. The species belongs to the species or genus not included in the Central Government notification.

The Protection of Plant Varieties and Farmers' Rights Act sets out the system and mechanisms for registering new plant species that meet new, distinctive, uniform, and stable characteristics. Registration for trees and vines is valid for 9 years which can be renewed till 18 years and for other crops for 6 years which can be renewed till 15 years. Such rights shall also be subject to duties.

---

<sup>8</sup> Section 42 of the Protection of Plant Varieties and Farmers' Rights Act, 2001

<sup>9</sup> Section 28(6) of the Protection of Plant Varieties and Farmers' Rights Act, 2001

<sup>10</sup> Section 39(2) of the Protection of Plant Varieties and Farmers' Rights Act, 2001

India has taken a bold step in complying with the TRIPS commitment to offer intellectual property protection for plant species by taking the sui generis path. The flexibility provided for in Article 27.3(b) was utilized and a system for the fulfilment of farmers' rights was envisaged. Nothing to the contrary would have breached India's legal duties under the International Treaty on Farmers' and Plant Genetic Resources, 2001. Despite the efforts and clarifications by the government, there are gaps in knowledge and obstacles for farmers when they file for formal IP rights. The following are the main issues and likely solutions:

There is no discussion of legislative attempts in India in terms of assimilation of large-scale public interests. More imagination and far greater public engagement are needed before a law can emerge in Parliament that reflects national self-interest. In addition, existing laws should be changed in order to meet with national interests in view of Indian farmers' socio-demographic and economic conditions and traditional farming methods.

Registration and maintenance of the "new farmer's variety" cost a farmer a huge amount. Nearly 2-3 lakh rupees can come depending on the cost of the crop. The registration price of Rs 7,000 is compulsory, together with the DUS exam fee of Rupees 2 lakhs. It is evident that a cost of this kind is expensive to a normal farmer. It is therefore proposed that status costs be reviewed so that the registration is easier.

For one who is produced by informal breeding, the main hurdle a claimant is to meet in registering a variety. In this situation too, the farmer must give all information requested in Form 1, which is otherwise necessary for the registration of new breeding technologically produced variety. This means that a petitioner who wishes to register a new species after informal breeding must additionally submit such information as technical details (lab test reports/field tests), DUS criteria, and so on. The government should first create different conditions for checking and recording "new farmer's varieties" generated through informal breeding in order to promote informal breeding, which is equivalent to the official breeding by agricultural communities.

\*\*\*\*\*