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

Act 53 of 2001. 97 sections. Bare Act with the official footnotes.

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Official file: https://indiacode.gov.in/server/api/core/bitstreams/e04ea3dd-cccf-4562-82ee-d661b9af0c8e/content

Every section online, with the old and new law side by side and exam questions:
https://www.lawmaker.in/bare-acts/protection-of-plant-varieties-and-farmers-rights-act-2001

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[30th October, 2001.]

An Act to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

WHEREAS it is considered necessary to recognise and protect 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;

AND WHEREAS for accelerated agricultural development in the country, it is necessary to protect plant breeders' rights to stimulate investment for research and development, both in the public and private sector, for the development of new plant varieties;

AND WHEREAS such protection will facilitate the growth of the seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers;

AND WHEREAS, to give effect to the aforesaid objectives, it is necessary to undertake measures for the protection of the rights of farmers and plant breeders;

AND WHEREAS India, having ratified the Agreement on Trade Related Aspects of Intellectual Property Rights should, inter alia, make provision for giving effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the said Agreement relating to protection of plant varieties.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

Section 1. Short title, extent and commencement

(1) This Act may be called the Protection of Plant Varieties and Farmers' Rights Act, 2001.

(2) It extends to the whole of India.

(3) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

[1] 11th November, 2005, ss. 2 to 13 (both inclusive) and ss. 95, 96 and 97, vide notification No. S.O. 1588(E), dated 11th November, 2005, see Gazette of India, Extraordinary, Part II, sec. 3(ii). 19th October, 2006, s. 1 and ss. 14 to 94 (both inclusive) vide notification No. S.O. 1797(E), dated 19th October, 2006, see Gazette of India Extraordinary, Part II, sec. 3(ii).

Section 2. Definitions

In this Act, unless the context otherwise requires,-

(a) "Authority" means the Protection of Plant Varieties and Farmers' Rights Authority established under sub-section (1) of section 3;

(b) "benefit sharing", in relation to a variety, means such proportion of the benefit accruing to a breeder of such variety or such proportion of the benefit accruing to the breeder from an agent or a licensee of such variety, as the case may be, for which a claimant shall be entitled as determined by the Authority under section 26;

(c) "breeder" means a person or group of persons or a farmer or group of farmers or any institution which has bred, evolved or developed any variety;

[1]* * * * *

(e) "Chairperson" means the Chairperson of the Authority appointed under clause (a) of sub-section (5) of section 3;

(f) "convention country" means a country which has acceded to an international convention for the protection of plant varieties to which India has also acceded, or a country which has a law on protection of plant varieties on the basis of which India has entered into an agreement for granting plant breeders' right to the citizens of both the countries;

(g) "denomination", in relation to a variety or its propagating material or essentially derived variety or its propagating material, means the denomination of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, expressed by means of letters or a combination of letters and figures written in any language;

(h) "essential characteristics" means such heritable traits of a plant variety which are determined by the expression of one or more genes of other heritable determinants that contribute to the principle features, performance or value of the plant variety;

(i) "essentially derived variety", in respect of a variety (the initial variety), shall be said to be essentially derived from such initial variety when it-

(i) is predominantly derived from such initial variety, or from a variety that itself is predominantly derived from such initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of such initial variety;

(ii) is clearly distinguishable from such initial variety; and

(iii) conforms (except for the differences which result from the act of derivation) to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotype of such initial variety;

(j) "extant variety" means a variety available in India which is-

(i) notified under section 5 of the Seeds Act, 1966 (54 of 1966); or

(ii) farmers' variety; or

(iii) a variety about which there is common knowledge; or

(iv) any other variety which is in public domain;

(k) "farmer" means any person who-

(i) cultivates crops by cultivating the land himself; or

(ii) cultivates crops by directly supervising the cultivation of land through any other person; or

(iii) conserves and preserves, severally or jointly, with any other 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;

(l) "farmers' variety" means a variety which-

(i) has been traditionally cultivated and evolved by the farmers in their fields; or

(ii) is a wild relative or land race of a variety about which the farmers possess the common knowledge;

(m) "Gene Fund" means the National Gene Fund constituted under sub-section (1) of section 45;

[2]* * * * *

(p) "member" means a member of the Authority appointed under clause (b) of sub-section (5) of section 3 and includes the member-secretary;

[3][(q) "prescribed" means,-

(i) in relation to proceedings before a High Court, prescribed by rules made by the High Court; and

(ii) in other cases, prescribed by rules made under this Act;]

(r) "propagating material" means any plant or its component or part thereof including an intended seed or seed which is capable of, or suitable for, regeneration into a plant;

(s) "Register" means a national Register of Plant Varieties referred to in section 13;

(t) "Registrar" means a Registrar of Plant Varieties appointed under sub-section (4) of section 12 and includes the Registrar-General;

(u) "Registrar-General" means the Registrar-General of Plant Varieties appointed under sub-section (3) of section12;

(v) "Registry" means the Plant Variety Registry referred to in sub-section (1) of section 12;

(w) "regulations" means regulations made by the Authority under this Act;

(x) "seed" means a type of living embryo or propagule capable of regeneration and giving rise to a plant which is true to such type;

[4]* * * * *

(za) "variety" means a plant grouping except micro-organism within a single botanical taxon of the lowest known rank, which can be-

(i) defined by the expression of the characteristics resulting from a given genotype of that plant grouping;

(ii) distinguished from any other plant grouping by expression of at least one of the said characteristics; and

(iii) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation,

and includes propagating material of such variety, extant variety, transgenic variety, farmers' variety and essentially derived variety.

[1] Clause (d) omitted by Act 33 of 2021, s. 23 (w.e.f. 4-4-2021).

[2] Clauses (n) and (o) omitted by Act 33 of 2021, s. 23 (w.e.f. 4-4-2021).

[3] Subs. by s. 23, ibid., for clause (q) (w.e.f. 4-4-2021).

[4] Clauses (y) and (z) omitted by Act 33 of 2021, s. 23 (w.e.f. 4-4-2021).

CHAPTER II PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS AUTHORITY AND REGISTRY

Protection of Plant Varieties and Farmers' Rights Authority

Section 3. Establishment of Authority

(1) The Central Government shall, by notification in the Official Gazette, establish an authority to be known as the Protection of Plant Varieties and Farmers' Rights Authority for the purposes of this Act.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of properties, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The head office of the Authority shall be at such place as the Central Government may, by notification in the Official Gazette, specify and the Authority may, with the previous approval of the Central Government, establish

branch offices at other places in India.

(4) The Authority shall consist of a Chairperson and fifteen members.

(5) (a) The Chairperson, to be appointed by the Central Government, shall be a person of outstanding caliber and eminence, with long practical experience to the satisfaction of that Government especially in the field of plant varietal research or agricultural development.

(b) The members of the Authority, to be appointed by the Central Government, shall be as follows, namely:-

(i) the Agriculture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, ex officio;

(ii) the Deputy Director General incharge of Crop Sciences, Indian Council of Agricultural Research, New Delhi, ex officio;

(iii) the Joint Secretary incharge of Seeds, Government of India, Department of Agriculture and Cooperation, New Delhi, ex officio;

(iv) the Horticulture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, ex officio;

(v) the Director, National Bureau of Plant Genetic Resources, New Delhi, ex officio;

(vi) one member not below the rank of Joint Secretary to the Government of India to represent the Department of Bio-technology, Government of India, ex officio;

(vii) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Environment and Forests, Government of India, ex officio;

(viii) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Law, Justice and Company Affairs, Government of India, ex officio;

(ix) one representative from a National or State level farmers' organisation to be nominated by the Central Government;

(x) one representative from a tribal organisation to be nominated by the Central Government;

(xi) one representative from the seed industry to be nominated by the Central Government;

(xii) one representative from an agricultural University to be nominated by the Central Government;

(xiii) one representative from a National or State level women's organisation associated with agricultural activities to be nominated by the Central Government; and

(xiv) two representatives of State Governments on rotation basis to be nominated by the Central Government.

(c) The Registrar-General shall be the ex officio member-secretary of the Authority.

(6) The term of office of the Chairperson and the manner of filling the post shall be such as may be prescribed.

(7) The Chairperson shall appoint a Standing Committee consisting of five members, one of whom shall be a member who is a representative from a farmers' organisation, to advise the Authority on all issues including farmers' rights.

(8) The Chairperson shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed. The allowances for non-official members for attending the meetings of the Authority shall be such as may be prescribed.

(9) The Chairperson may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, he shall be deemed to have vacated his office.

(10) On the resignation of the Chairperson or on the vacation of the office of the Chairperson for any reason, the Central Government may appoint one of the members to officiate as Chairperson till a regular Chairperson is appointed in accordance with clause (a) of sub-section (5).

Section 4. Meetings of Authority

(1) The Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings [including the quorum at its meetings and the transaction of business of its Standing Committee appointed under sub-section (7) of section 3] as may be prescribed.

(2) The Chairperson of the Authority shall preside at the meetings of the Authority.

(3) If, for any reason the Chairperson is unable to attend any meeting of the Authority, any member of the Authority chosen by the members present shall preside at the meeting.

(4) All questions which come before any meeting of the Authority shall be decided by a majority of the votes of the members of the Authority present and voting and in the event of equality of votes, the Chairperson of the Authority or

in his absence, the person presiding shall have and exercise a second or casting vote.

(5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member, concerned or interested, shall not attend that meeting.

(6) No act or proceeding of the Authority shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as the Chairperson or a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Section 5. Committees of Authority

(1) The Authority may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

(2) The persons appointed as members of the committee under sub-section (1) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.

Section 6. Officers and other employees of Authority

Subject to such control and restriction as may be prescribed, the Authority may appoint such officers and other employees as may be necessary for the efficient performance of its functions and the method of appointment, the salary and allowances and other conditions of service of such other officers and employees of the Authority shall be such as may be prescribed.

Section 7. Chairperson to be Chief Executive

The Chairperson shall be the Chief Executive of the Authority and shall exercise such powers and perform such duties as may be prescribed.

Section 8. General functions of Authority

(1) It shall be the duty of the Authority to promote, by such measures as it thinks fit, the encouragement for the development of new varieties of plants and to protect the rights of the farmers and breeders.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1) may provide for-

(a) the registration of extant varieties subject to such terms and conditions and in the manner as may be prescribed;

(b) developing characterisation and documentation of varieties registered under this Act;

(c) documentation, indexing and cataloguing of farmers' varieties;

(d) compulsory cataloguing facilities for all varieties of plants;

(e) ensuring that seeds of the varieties registered under this Act are available to the farmers and providing for compulsory licensing of such varieties if the breeder of such varieties or any other person entitled to produce such variety under this Act does not arrange for production and sale of the seed in the manner as may be prescribed;

(f) collecting statistics with regard to plant varieties, including the contribution of any person at any time in the evolution or development of any plant variety, in India or in any other country, for compilation and publication;

(g) ensuring the maintenance of the Register.

Section 9. Authentication of orders, etc., of Authority

All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other member authorised by the Authority in this behalf.

Section 10. Delegation

The Authority may, by general or special order in writing, delegate to the Chairperson, any member or officer of the Authority subject to such conditions or limitations, if any, as may be specified in the order, such of its powers and functions (except the power to make regulations under section 95) under this Act as it may deem necessary.

Section 11. Power of Authority

In all proceedings under this Act before the Authority or the Registrar,-

(a) the Authority or the Registrar, as the case may be, shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) the Authority or the Registrar may, subject to any rule made in this behalf under this Act, make such orders as to cost as it considers reasonable and any such order shall be executable as a decree of a civil court.

Section 12. Registry and offices thereof

(1) The Central Government shall establish, for the purposes of this Act, a Registry which shall be known as the Plant Varieties Registry.

(2) The head office of the Plant Varieties Registry shall be located in the head office of the Authority, and for the purpose of facilitating the registration of varieties, there may be established, at such places, as the Authority may think fit, branch offices of the Registry.

(3) The Authority shall appoint a Registrar-General of Plant Varieties who shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and such other matters as may be prescribed.

(4) The Authority may appoint such number of Registrars as it thinks necessary for registration of plant varieties under the superintendence and direction of the Registrar-General under this Act and may make regulations with respect to their duties and jurisdiction.

(5) The term of office and the conditions of service of the Registrars shall be such as may be provided by regulations.

(6) The Authority may, by notification in the Official Gazette, define the territorial limits within which a branch office of the Registry may exercise its functions.

(7) There shall be a seal of the Plant Varieties Registry.

Section 13. National Register of Plant Varieties

(1) For the purposes of this Act, a Register called the National Register of Plant Varieties shall be kept at the head office of the Registry, wherein shall be entered the names of all the registered plant varieties 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 and such other matters as may be prescribed.

(2) Subject to the superintendence and direction of the Central Government, the Register shall be kept under the control and management of the Authority.

(3) There shall be kept at each branch office of the Registry a copy of the Register and such other documents as the Central Government may, by notification in the Official Gazette, direct.

CHAPTER III REGISTRATION OF PLANT VARIETIES AND ESSENTIALLY DERIVED VARIETY

Application for registration

Section 14. Application for registration

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.

Section 15. Registrable varieties

(1) A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.

(2) Notwithstanding anything contained in sub-section (1), an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under the regulations.

(3) For the purposes of sub-sections (1) and (2), as the case may be, a new variety shall be deemed to be-

(a) novel, if, at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety-

(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 date of filing such application:

Provided that a trial of a new variety which has not been sold or otherwise disposed of shall not affect the right to protection:

Provided further that the fact that on the date of filing the application for registration, the propagating or harvested material of such variety has become a matter of common knowledge other than through the aforesaid manner shall not affect the criteria of novelty for such variety;

(b) distinct, if it is clearly distinguishable by at least one essential characteristic from any another variety whose existence is a matter of common knowledge in any country at the time of filing of the application.

Explanation.-For the removal of doubts, it is hereby declared that the filing of an application for the granting of a breeder's right to a new variety or for entering such variety in the official register of varieties in any convention country shall be deemed to render that variety a matter of common knowledge from the date of the application in case the application leads to the granting of the breeder's right or to the entry of such variety in such official register, as the case may be;

(c) 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;

(d) stable, if its essential characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

(4) A new variety shall not be registered under this Act if the denomination given to such variety-

(i) is not capable of identifying such variety; or

(ii) consists solely of figures; or

(iii) is liable to mislead or to cause confusion concerning the characteristics, value identity of such variety or the identity of breeder of such variety; or

(iv) is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under this Act; or

(v) is likely to deceive the public or cause confusion in the public regarding the identity of such variety; or

(vi) is likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or

(vii) is prohibited for use as a name or emblem for any of the purposes mentioned in section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950); or

(viii) is comprised of solely or partly of geographical name:

Provided that the registrar may register a variety, the denomination of which comprises solely or partly of a geographical name, if he considers that the use of such denomination in respect of such variety is an honest use under the circumstances of the case.

Section 16. Persons who may make application

(1) An application for registration under section 14 shall be made by-

(a) any person claiming to be the breeder of the variety; or

(b) any successor of the breeder of the variety; or

(c) any person being the assignee of the breeder of the variety in respect of the right to make such application; or

(d) any farmer or group of farmers or community of farmers claiming to be the breeder of the variety; or

(e) any person authorised in the prescribed manner by a person specified under clauses (a) to (d) to make application on his behalf; or

(f) any university or publicly funded agricultural institution claiming to be the breeder of the variety.

(2) An application under sub-section (1) may be made by any of the persons referred to therein individually or jointly with any other person.

Section 17. Compulsory variety denomination

(1) Every applicant shall assign a single and distinct denomination to a variety with respect to which he is seeking registration under this Act in accordance with the regulations.

(2) The Authority shall, having regard to the provisions of any international convention or treaty to which India has become a party, make regulations governing the assignment of denomination to a variety.

(3) Where the denomination assigned to the variety does not satisfy the requirements specified in the regulations, the Registrar may require the applicant to propose another denomination within such time as may be specified by such regulations.

(4) Notwithstanding anything contained in the Trade Marks Act, 1999 (47 of 1999), a denomination assigned to a variety shall not be registered as a trade mark under that Act.

Section 18. Form of application

(1) Every application for registration under section 14 shall-

(a) be with respect to a variety;

(b) state the denomination assigned to such variety by the applicant;

(c) be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology;

(d) be in such form as may be specified by regulations;

(e) contain a complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organisation in breeding, evolving or developing the variety;

(f) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration;

(g) be accompanied by such fees as may be prescribed;

(h) contain a declaration that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired; and

(i) be accompanied by such other particulars as may be prescribed:

Provided that in case where the application is for the registration of farmers' variety, nothing contained in clauses (b) to (i) shall apply in respect of the application and the application shall be in such form as may be prescribed.

(2) Every application referred to in sub-section (1) shall be filed in the office of the Registrar.

(3) Where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application.

Section 19. Test to be conducted

(1) Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantity of seed of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether seed of such variety along with parental material conform to the standards as may be specified by regulations:

Provided that the Registrar or any person or test centre to whom such seed has been sent for conducting test shall keep such seed during his or its possession in such manner and in such condition that its viability and quality shall remain unaltered.

(2) The applicant shall deposit such fees as may be prescribed for conducting tests referred to in sub-section (1).

(3) The tests referred to in sub-section (1) shall be conducted in such manner and by such method as may be prescribed.

Section 20. Acceptance of application or amendment thereof

(1) On receipt of an application under section 14, the Registrar may, after making such inquiry as he thinks fit with respect to the particulars contained in such application, accept the application absolutely or subject to such conditions or limitations as he deems fit.

(2) Where the Registrar is satisfied that the application does not comply with the requirements of this Act or any rules

or regulations made thereunder, he may, either-

(a) require the applicant to amend the application to his satisfaction; or

(b) reject the application:

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of presenting his case.

Section 21. Advertisement of application

(1) Where an application for registration of a variety has been accepted absolutely or subject to conditions or limitations under sub-section (1) of section 20, the Registrar shall, as soon as after its acceptance, cause such application together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for registration of which such application is made including its photographs or drawings, to be advertised in the prescribed manner calling objections from the persons interested in the matter.

(2) Any person may, within three months from the date of the advertisement of an application for registration on payment of the prescribed fees, give notice in writing in the prescribed manner, to the Registrar of his opposition to the registration.

(3) Opposition to the registration under sub-section (2) may be made on any of the following grounds, namely:-

(a) that the person opposing the application is entitled to the breeder's right as against the applicant; or

(b) that the variety is not registrable under this Act; or

(c) that the grant of certificate of registration may not be in public interest; or

(d) that the variety may have adverse effect on the environment.

(4) The Registrar shall serve a copy of the notice of opposition on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(6) Any evidence upon which the opponent and the applicant may rely shall be submitted, in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give an opportunity to them to be heard, if so desired.

(7) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not.

(8) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the cost of proceedings before him and in default of such security being duly given may treat the opposition or application, as the case may be, as abandoned.

(9) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he may think fit.

Section 22. Registrar to consider grounds of opposition

The Registrar shall consider all the grounds on which the application has been opposed and after giving reasons for his decision, by order, uphold or reject the opposition.

Registration of essentially derived variety

Section 23. Registration of essentially derived variety

(1) An application for the registration of an essentially derived variety of the genera or species specified under sub-section (2) of section 29 by the Central Government shall be made to the Registrar by or on behalf of any person referred to in section 14 and in the manner specified in section 18 as if for the word "variety", the words "essentially derived variety" have been substituted therein and shall be accompanied by such documents and fees as may be prescribed.

(2) When the Registrar is satisfied that the requirements of sub-section (1) have been complied with to his satisfaction, he shall forward the application with his report and all the relevant document to the Authority.

(3) On receipt of an application under sub-section (2), the Authority shall get examined such essentially derived variety to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.

(4) When the Authority is satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety, it may direct the Registrar to register such essentially derived variety and the Registrar shall comply with the direction of the Authority.

(5) Where the Authority is not satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety it shall refuse the application.

(6) The rights of the breeder of a variety contained in section 28 shall apply to the breeder of essentially derived variety:

Provided that the authorisation by the breeder of the initial variety to the breeder of essentially derived variety under sub-section (2) of section 28 may be subject to such terms and conditions as both the parties may mutually agree upon.

(7) An essentially derived variety shall not be registered under this section unless it satisfies the requirements of section 15 as if for the word "variety", the words "essentially derived variety" have been substituted therein.

(8) When an essentially derived variety has been registered by the Registrar in compliance with the direction of the Authority under sub-section (4), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy thereof to the Authority and to such other authority, as may be prescribed, for information.

CHAPTER IV DURATION AND EFFECT OF REGISTRATION AND BENEFIT SHARING

Section 24. Issue of certificate of registration

(1) When an application for registration of a variety (other than an essentially derived variety) has been accepted and either-

(a) the application has not been opposed and the time of notice of opposition has expired; or

(b) the application has been opposed and the opposition has been rejected,

the Registrar shall register the variety.

(2) On the registration of the variety (other than an essentially derived variety), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy thereof to the Authority for determination of benefit sharing and to such other authority, as may be prescribed, for information. The maximum time required by the Registrar for issuing the certificate of registration from the date of filing of the application for registration of a variety shall be such as may be prescribed.

(3) Where registration of a variety (other than an essentially derived variety), is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

(5) The Registrar shall have power to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of application for registration and decision taken by the Authority on such application.

(6) The certificate of registration issued under this section or sub-section (8) of section 23 shall be valid for nine years in the case of trees and vines and six years in the case of other crops and may be reviewed and renewed for the remaining period on payment of such fees as may be fixed by the rules made in this behalf subject to the condition that the total period of validity shall not exceed,-

(i) in the case of trees and vines, eighteen years from the date of registration of the variety;

(ii) in the case of extant variety, fifteen years from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act, 1966 (54 of 1966); and

(iii) in other cases, fifteen years from the date of registration of the variety.

Section 25. Publication of list of varieties

The Authority shall, within such intervals as it thinks appropriate, publish the list of varieties which have been registered during that interval.

Section 26. Determination of benefit sharing by Authority

(1) On receipt of copy of the certificate of registration under sub-section (8) of section 23 or sub-section (2) of section 24, the Authority shall publish such contents of the certificate and invite claims of benefit sharing to the variety registered under such certificate in the manner as may be prescribed.

(2) On invitation of the claims under sub-section (1), any person or group of persons or firm or governmental or non-governmental organisation shall submit its claim of benefit sharing to such variety in the prescribed form within such period, and accompanied with such fees, as may be prescribed:

Provided that such claim shall only be submitted by any-

(i) person or group of persons, if such person or every person constituting such group is a citizen of India; or

(ii) firm or governmental or non-governmental organisation, if such firm or organisation is formed or established in India.

(3) On receiving a claim under sub-section (2), the Authority shall send a copy of such claim to the breeder of the variety registered under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim within such period and in such manner as may be prescribed.

(4) The Authority shall, after giving an opportunity of being heard to the parties, dispose of the claim received under sub-section (2).

(5) While disposing of the claim under sub-section (4), the Authority shall explicitly indicate in its order the amount of the benefit sharing, if any, for which the claimant shall be entitled and shall take into consideration the following matters, namely:-

(a) the extent and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed;

(b) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.

(6) The amount of benefit sharing to a variety determined under this section shall be deposited by the breeder of such variety in the manner referred to in clause (a) of sub-section (1) of section 45 in the National Gene Fund.

(7) The amount of benefit sharing determined under this section shall, on a reference made by the Authority in the prescribed manner, be recoverable as an arrear of land revenue by the District Magistrate within whose local limits of jurisdiction the breeder liable for such benefit sharing resides.

Section 27. Breeder to deposit seeds or propagating material

(1) The breeder shall be required to deposit such quantity of seeds or propagating material including parental line seeds of registered variety in the National Gene Bank as may be specified in the regulations for reproduction purpose at the breeder's expense within such time as may be specified in that regulation.

(2) The seeds or propagating material or parental line seeds to be deposited under sub-section (1) shall be deposited to the National Gene Bank specified by the Authority.

Section 28. Registration to confer right

(1) Subject to the other provisions of this Act, a certificate of registration for a variety issued under this Act shall confer an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety:

Provided that in the case of an extant variety, unless a breeder or his successor establishes his right, the Central Government, and in cases where such extant variety is notified for a State or for any area thereof under section 5 of the Seeds Act, 1966 (54 of 1966), the State Government, shall be deemed to be the owner of such right.

(2) A breeder may authorise any person to produce, sell, market or otherwise deal with the variety registered under this Act subject to such limitations and conditions as may be specified by regulations.

(3) Every authorisation under this section shall be in such form as may be specified by regulations.

(4) Where an agent or a licensee referred to in sub-section (1) becomes entitled to produce, sell, market, distribute, import or export a variety, he shall apply in the prescribed manner and with the prescribed fees to the Registrar to register his title and the Registrar shall, on receipt of application and on proof of title to his satisfaction, register him

as an agent or a licensee, as the case may be, in respect of the variety for which he is entitled for such right, and shall cause particulars of such entitlement and conditions or restrictions, if any, subject to which such entitlement is made, to be entered in the Register:

Provided that when the validity of such entitlement is in dispute between the parties, the Registrar may refuse to register the entitlement and refer the matter in the prescribed manner to the Authority and withhold the registration of such entitlement until the right of the parties in dispute so referred to has been determined by the Authority.

(5) The Registrar shall issue a certificate of registration under sub-section (4) to the applicant after such registration and shall enter in the certificate the brief conditions of entitlement, if any, in the prescribed manner, and such certificate shall be the conclusive proof of such entitlement and the conditions or restrictions thereof, if any.

(6) Subject to any agreement subsisting between the parties, an agent or licensee of a right to a variety registered under sub-section (4) shall be entitled to call upon the breeder or his successor thereof to take proceedings to prevent infringement thereof, and if the breeder or his successor refuses or neglects to do so within three months after being so called upon, such registered agent or licensee may institute proceedings for infringement in his own name as if he were the breeder, making the breeder or his successor a defendant.

(7) Notwithstanding anything contained in any other law, a breeder or his successor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(8) Nothing in this section shall confer on a registered agent or registered licensee of a variety any right to transfer such right further thereof.

(9) Without prejudice to the registration under sub-section (4), the terms of registration-

(a) may be varied by the Registrar as regards the variety in respect of which, or any condition or restriction subject to which, it has effect on receipt of an application in the prescribed manner of the registered breeder of such variety or his successor;

(b) may be cancelled by the Registrar on the application in the prescribed manner of the registered breeder of such variety or his successor or of the registered agent or registered licensee of such variety;

(c) may be cancelled by the Registrar on the application in the prescribed manner of any person other than the breeder, his successor, the registered agent or the registered licensee on any of the following grounds, namely:-

(i) that the breeder of a variety or his successor or the registered agent or registered licensee of such variety, misrepresented, or failed to disclose, some fact material to the application for registration under sub-section (4) which if accurately represented or disclosed would have justified the refusal of the application for registration of the registered agent or registered licensee;

(ii) that the registration ought not to have been effected having regard to the right vested in the applicant by virtue of a contract in the performance of which he is interested;

(d) may be cancelled by the Registrar on the application in the prescribed manner of the breeder of a registered variety or his successor on the ground that any stipulation in the agreement between the registered agent or the registered licensee, as the case may be, and such breeder or his successor regarding the variety for which such agent or licensee is registered is not being enforced or is not being complied with;

(e) may be cancelled by the registrar on the application of any person in the prescribed manner on the ground that the variety relating to the registration is no longer existing.

(10) The registrar shall issue notice in the prescribed manner of' every application under this section to the registered breeder of a variety or his successor and to each registered agent or registered licensee (not being the applicant) of such variety.

(11) The Registrar shall, before making any order under sub-section (9), forward the application made in that behalf along with any objection received by any party after notice under sub-section (10) for the consideration of the Authority, and the Authority may, after making such inquiry as it thinks fit, issue such directions to the Registrar as it thinks fit and the Registrar shall dispose of the application in accordance with such directions.

Section 29. Exclusion of certain varieties

(1) Notwithstanding anything contained in this Act, no registration of a variety shall be made under this Act in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment.

(2) The Central Government shall, by notification in the Official Gazette, specify the genera or species for the purposes of registration of varieties other than extant varieties and farmers' varieties under this Act.

(3) Notwithstanding anything contained under sub-section (2) and sub-sections (1) and (2) of section 15, no variety of

any genera or species which involves any technology which is injurious to the life or health of human beings, animals or plants shall be registered under this Act.

Explanation.-For the purposes of this sub-section, the expression "any technology" includes genetic use restriction technology and terminator technology.

(4) The Central Government shall not delete any genera or species from the list of genera or species specified in a notification issued under sub-section (2) except in the public interest.

(5) Any variety belonging to the genera or species excluded under sub-section (4) shall not be eligible for any protection under this Act.

Section 30. Researcher's rights

Nothing contained in this Act shall prevent-

(a) the use of any variety registered under this Act by any person using such variety for conducting experiment or research; or

(b) the use of a variety by any person as an initial source of variety for the purpose of creating other varieties:

Provided that the authorisation of the breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.

Section 31. Special provisions relating to application for registration from citizens of convention countries

(1) With a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purposes of this Act.

(2) Where a person has made an application for the granting of a breeder's right to a variety or for entering such variety in the official register of varieties in a convention country and that person, or any person entitled to make application on his behalf under section 14 or section 23, makes an application for the registration of such variety in India within twelve months after the date on which the application was made in the convention country, such variety shall, if registered under this Act, be registered as of the date on which the application was made in the convention country and that date shall be deemed for the purposes of this Act to be the date of registration.

(3) Where applications have been made for granting of a breeder's right to a variety, or for entering such variety in the official register of varieties in two or more convention countries, the period of twelve months referred to in sub-section (2) shall be reckoned from the date on which the earlier or earliest of those applications were made.

(4) Nothing in this Act shall entitle the breeder of a registered variety for infringement of rights other than protected under this Act which took place prior to the date of application of registration under this Act.

Section 32. Provisions as to reciprocity

Where any country declared by the Central Government in this behalf by notification in the Official Gazette under sub-section (1) of section 31 does not accord to citizens of India the same rights in respect of the registration and protection of a variety, as it accords to its own nationals, no national of such country shall be entitled, either solely or jointly with any other person, to apply for the registration of a variety or be entitled to get a variety registered under this Act.

CHAPTER V SURRENDER AND REVOCATION OF CERTIFICATE AND RECTIFICATION AND CORRECTION OF REGISTER

Section 33. Surrender of certificate of registration

(1) A breeder of a variety registered under this Act may, at any time by giving notice in the prescribed manner to the Registrar, offer to surrender his certificate of registration.

(2) Where such an offer is made, the Registrar shall notify in the prescribed manner every registered agent or registered licensee relating to such certificate.

(3) Any of such agent or licensee may, within the prescribed period after such notification, give notice to the Registrar of his opposition to the surrender and where any such notice is given, the Registrar shall intimate the contents of such notice to the breeder of such variety.

(4) If the Registrar is satisfied after hearing the applicant and all the opponents, if desirous of being heard, that the certificate of registration may properly be surrendered, he may accept the offer and by order revoke the certificate of

registration.

Section 34. Revocation of protection on certain grounds

Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the Authority on any of the following grounds, namely:-

(a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;

(b) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;

(c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;

(d) that the breeder has failed to provide an alternative denomination of the variety which is the subject matter of the registration to the Registrar in case where the earlier denomination of such variety provided to the Registrar is not permissible for registration under this Act;

(e) that the breeder did not provide the necessary seeds or propagating material to the person to whom compulsory licence has been issued under section 47 regarding the variety in respect of which registration certificate has been issued to such breeder;

(f) that the breeder has not complied with the provisions of this Act or rules or regulations made thereunder;

(g) that the breeder has failed to comply with the directions of the Authority issued under this Act;

(h) that the grant of the certificate of registration is not in the public interest:

Provided that no such protection shall be revoked unless the breeder is given a reasonable opportunity to file objection and of being heard in the matter.

Section 35. Payment of annual fees and forfeiture of registration in default thereof

(1) The Authority may, with the prior approval of the Central Government, by notification in the Official Gazette, impose a fee to be paid annually, by every breeder of a variety, agent and licensee thereof registered under this Act determined on the basis of benefit or royalty gained by such breeder, agent or licensee, as the case may be, in respect of the variety, for the retention of their registration under this Act.

(2) If any breeder, agent or licensee fails to deposit the fees referred to in sub-section (1) imposed upon him under that sub-section in the prescribed manner up to two consecutive years, the Authority shall issue notice to such breeder, agent or licensee and on service of such notice if he fails to comply with the direction in the notice, the Authority shall declare all the protection admissible under the registration certificate issued to such breeder or agent or licensee forfeited.

(3) The arrears of fee imposed under sub-section (1) shall be deemed to be the arrears of land revenue and shall be recoverable accordingly.

Section 36. Power to cancel or change registration and to rectify the Register

(1) On an application made in the prescribed manner to the Registrar by any person aggrieved, the Registrar may make such order as he may think fit for cancelling or changing any certificate of registration issued under this Act on the ground of any contravention of the provisions of this Act or failure to observe a condition subject to which such registration certificate is issued.

(2) Any person aggrieved by the absence or omission from the Register of any entry, or by any entry made in the Register without sufficient cause, or by any entry wrongly remaining on the Register, may apply in the prescribed manner to the Registrar and the Registrar may make such order for making, expunging or varying the entry as he may think fit.

(3) The Registrar may, in any proceeding under this section, decide any question that may be necessary or expedient to decide in connection with the rectification of the Register.

(4) The Registrar on his own motion may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

Section 37. Correction of Register

(1) The Registrar may, on an application in the prescribed manner by the breeder of a variety registered under this Act,-

(a) correct any error in the Register in the name, address or description of such breeder or any other entry relating to such variety;

(b) enter in the Register any change in the name, address or description of such breeder;

(c) cancel the entry in the Register of the variety in respect of which such application is made; and may make any consequential amendment or alteration in the certificate of registration and for that purpose require the certificate of registration to be produced to him.

(2) The Registrar may, on application made in the prescribed manner by a registered agent or a registered licensee of a variety and after notice to the registered breeder of such variety, correct any error, or enter any change, in the name, address or description of such registered agent or registered licensee, as the case may be, in the Register or certificate of registration issued under this Act.

Section 38. Alteration of denomination of a registered variety

(1) The breeder of a variety registered under this Act may apply in the prescribed manner to the Registrar to delete any part or to add to or alter the denomination of such variety in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit to avoid any conflict with the rights of other breeders of the varieties registered under this Act.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the denomination of the variety as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

CHAPTER VI FARMERS' RIGHTS

Section 39. Farmers' rights

(1) Notwithstanding anything contained in this Act,-

(i) a farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act;

(ii) the farmers' variety shall be entitled for registration if the application contains declaration as specified in clause (h) of sub-section (1) of section 18;

(iii) 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 in the prescribed manner for recognition and reward from the Gene Fund:

Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act;

(iv) a 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:

Provided that the farmer shall not be entitled 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.

(2) Where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organisation of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organisation 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 organisation of farmers, as the case may be, may claim compensation in the prescribed manner before the Authority and the Authority, after giving notice to the breeder of the variety 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 organisation of farmers, as the case may be.

Section 40. Certain information to be given in application registration

(1) A breeder or other person making application for registration of any variety under Chapter III shall disclose in the application the information regarding the use of genetic material conserved by any tribal or rural families in the breeding or development of such variety.

(2) If the breeder or such other person fails to disclose any information under sub-section (1), the Registrar may, after being satisfied that the breeder or such person has wilfully and knowingly concealed such information, reject the application for registration.

Section 41. Rights of communities

(1) Any person or group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation may, on behalf of any village or local community in India, file in any centre notified, with the previous approval of the Central Government, by the Authority, in the Official Gazette, any claim attributable to the contribution of the people of that village or local community, as the case may be, in the evolution of any variety for the purpose of staking a claim on behalf of such village or local community.

(2) Where any claim is made under sub-section (1), the centre notified under that sub-section may verify the claim made by such person or group of persons or such governmental or non-governmental organisation in such manner as it deems fit, and if it is satisfied that such village or local community has contributed significantly to the evolution of the variety which has been registered under this Act, it shall report its findings to the Authority.

(3) When the Authority, on a report under sub-section (2) is satisfied, after such inquiry as it may deem fit, that the variety with which the report is related has been registered under the provisions of this Act, it may issue notice in the prescribed manner to the breeder of that variety and after providing opportunity to such breeder to file objection in the prescribed manner and of being heard, it may subject to any limit notified by the Central Government, by order, grant such sum of compensation to be paid to a person or group of persons or governmental or non-governmental organisation which has made claim under sub-section (1), as it may deem fit.

(4) Any compensation granted under sub-section (3) shall be deposited by the breeder of the variety in the Gene Fund.

(5) The compensation granted under sub-section (3) shall be deemed to be an arrear of land revenue and shall be recoverable by the Authority accordingly.

Section 42. Protection of innocent infringement

Notwithstanding anything contained in this Act,-

(i) a right established under this 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

(ii) a relief which a court may grant in any suit for infringement referred to in section 65 shall not be granted by such court, nor any cognizance of any offence under this Act shall be taken, for such infringement by any court against a farmer who proves, before such court, that at the time of the infringement he was not aware of the existence of the right so infringed.

Section 43. Authorisation of farmers' variety

Notwithstanding anything contained in sub-section (6) of section 23 and section 28, where an essentially derived variety is derived from a farmers' variety, the authorisation under sub-section (2) of section 28 shall not be given by the breeder of such farmers' variety except with the consent of the farmers or group of farmers or community of farmers who have made contribution in the preservation or development of such variety.

Section 44. Exemption from fees

A farmer or group of farmers or village community shall not be liable to pay any fees in any proceeding before the Authority or Registrar [1]*** or the High Court under this Act or the rules made thereunder.

Explanation.-For the purposes of this section, "fees in any proceeding" includes any fees payable for inspection of any document or for obtaining a copy of any decision or order or document under this Act or the rules made thereunder.

[1] The words "or the Tribunal" omitted by Act 33 of 2021, s. 23 (w.e.f. 4-4-2021).

Section 45. Gene Fund

(1) The Central Government shall constitute a Fund to be called the National Gene Fund and there shall be credited thereto-

(a) the benefit sharing received in the prescribed manner from the breeder of a variety or an essentially derived variety registered under this Act, or propagating material of such variety or essentially derived variety, as the case may be;

(b) the annual fee payable to the Authority by way of royalty under sub-section (1) of section 35;

(c) the compensation deposited in the Gene Fund under sub-section (4) of section 41;

(d) the contribution from any national and international organisation and other sources.

(2) The Gene Fund shall, in the prescribed manner, be applied for meeting-

(a) any amount to be paid by way of benefit sharing under sub-section (5) of section 26;

(b) the compensation payable under sub-section (3) of section 41;

(c) the expenditure for supporting the conservation and sustainable use of genetic resources including in-situ and ex-situ collections and for strengthening the capability of the Panchayat in carrying out such conservation and sustainable use;

(d) the expenditure of the schemes relating to benefit sharing framed under section 46.

Section 46. Framing of schemes, etc

(1) The Central Government shall, for the purposes of section 41 and clause (d) of sub-section (2) of section 45, frame, by notification in the Official Gazette, one or more schemes.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the scheme may provide for all or any of the following matters, namely:-

(a) the registration of the claims for the purposes of section 41 under the scheme and all matters connected with such registration;

(b) the processing of such claims for securing their enforcement and matters connected therewith;

(c) the maintenance of records and Registers in respect of such claims;

(d) the utilisation, by way of disbursal (including apportionment) or otherwise, of any amounts received in satisfaction of such claims;

(e) the procedure for disbursal or apportionment by the Authority in the event of dispute regarding such claims;

(f) the utilisation of benefit sharing for the purposes relating to breeding, discovery or development of varieties;

(g) the maintenance and audit of accounts with respect to the amounts referred to in clause (d).

CHAPTER VII COMPULSORY LICENCE

Section 47. Power of Authority to make order for compulsory licence in certain circumstances

(1) At any time, after the expiry of three years from the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seed or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seed or other propagating material of that variety.

(2) Every application under sub-section (1) shall contain a statement of the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(3) The Authority, after consultation with the Central Government, and if satisfied after giving an opportunity to the breeder of such variety to file opposition and after hearing the parties, on the issue that the reasonable requirements of the public with respect to the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price, may order such breeder to grant a licence to the applicant upon such terms and conditions as it may deem fit and send a copy of such order to the Registrar to register the title of such applicant as licensee under sub-section (4) of section 28 on payment of such fees by the applicant as is referred to in that sub-section.

Section 48. When requirement of public deemed to have not been satisfied

In determining the question as to whether the reasonable requirements of the public for seeds of a variety or its propagating material as referred to in sub-section (1) or sub-section (3) of section 47, the Authority shall take into account-

(i) the nature of the variety, the time which has elapsed since the grant of the certificate of registration of the variety, price of the seed of the variety and the measures taken by the breeder or any registered licensee of the variety to

meet the requirement of the public; and

(ii) the capacity, ability and technical competence of the applicant to produce and market the variety to meet the requirement of the public.

Section 49. Adjournment of application for grant of compulsory licence

(1) If the breeder of a variety registered under this Act in respect of which any application has been pending before the Authority under section 47 makes a written request to the Authority on the ground that due to any reasonable factor, such breeder has been unable to produce seed or other propagating material of the variety on a commercial scale to an adequate extent till the date of making such request, the Authority may, on being satisfied that the said ground is reasonable, adjourn the hearing of such application for such period not exceeding twelve months in aggregate as it may consider sufficient for optimum production of the seed or propagating material of such variety, as the case may be, by such breeder.

(2) No adjournment of the application under sub-section (1) shall be granted unless the Authority is satisfied that the breeder of the variety registered under this Act in respect of which such application is made, has taken immediate measures to meet the reasonable requirements of the public for the seed or other propagating material of such variety.

Section 50. Duration of compulsory licence

The Authority shall determine the duration of the compulsory licences granted under this Chapter and such duration may vary from case to case keeping in view the gestation periods and other relevant factors but in any case it shall not exceed the total remaining period of the protection of that variety and when a compulsory licence is granted the prescribed authority shall, in the prescribed manner make available to the licensee of such compulsory licence, the reproductive material of the variety relating to such compulsory licence stored in the National Gene Bank or any other centre.

Section 51. Authority to settle terms and conditions of licence

(1) The Authority shall, while determining the terms and conditions of a compulsory licence under the provisions of this Chapter, endeavour to secure-

(i) reasonable compensation to the breeder of the variety relating to the compulsory licence having regard to the nature of the variety, the expenditure incurred by such breeder in breeding the variety or for developing it, and other relevant factors;

(ii) that the compulsory licensee of such variety possesses the adequate means to provide to the farmers, the seeds or other propagating material of such variety, timely and at reasonable market price.

(2) No compulsory licence granted by the Authority shall authorise the licensee to import the variety relating to such licence or any seed or other propagating material of such variety from abroad where such import would constitute an infringement of the rights of the breeder of such variety.

Section 52. Revocation of compulsory licence

(1) The Authority, on its own motion or on application from an aggrieved person made to it in the prescribed form, if it is satisfied that a compulsory licensee registered under this Chapter has violated any terms or conditions of his licence or it is not appropriate to continue further such licence in public interest, may, after giving such licensee an opportunity to file opposition and of being heard, make order to revoke such licence.

(2) When a licence is revoked under sub-section (1) by an order of the Authority, the Authority shall send a copy of such order to the Registrar to rectify the entry or correct the Register relating to such revocation and the Registrar shall rectify the entry or correct the Register accordingly.

Section 53. Modification of compulsory licence

The Authority may, on its own motion or on application from licensee of a compulsory licence, after providing the opportunity of being heard to the breeder of the variety registered under this Act relating to such compulsory licence, if it considers, in public interest, so to do, modify, by order, such terms and conditions as it thinks fit and send a copy of such order to the Registrar to correct the entries and Register according to such modification and the Registrar shall ensure such corrections to be made accordingly.

CHAPTER VIII APPEALS

Section 54. Tribunal

[Tribunal.] -Omitted by the Tribunals Reforms Act, 2021 (33 of 2021), s. 23 (w.e.f. 4-4-2021).

Section 55. Composition of Tribunal

[Composition of Tribunal.] -Omitted by s. 23, ibid. (w.e.f. 4-4-2021).

Section 56. Appeals to [1][High Court]

(1) An appeal shall be preferred to the [1][High Court] within the prescribed period from any-

(a) order or decision of the Authority or Registrar, relating to registration of a variety; or

(b) order or decision of the Registrar relating to registration as an agent or a licensee of a variety; or

(c) order or decision of the Authority relating to claim for benefit sharing; or

(d) order or decision of the Authority regarding revocation of compulsory licence or modification of compulsory licence; or

(e) order or decision of the Authority regarding payment of compensation, made under this Act or the rules made thereunder. (2) Every such appeal shall be preferred by a petition in writing and shall be in such form and shall contain such particulars as may be prescribed.

[2]* * * * *

[1] Subs. by s. 23, ibid., for "Tribunal" (w.e.f. 4-4-2021).
[2] Sub-section (3) omitted by Act 33 of 2021, s. 23 (w.e.f. 4-4-2021).

Section 57. Orders of [1][High Court]

(1) The [1][High Court] may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The [1][High Court] may, at any time within thirty days from the date of the order, with a view to rectifying the mistake apparent from the record, amend any order passed by it under sub-section (1), and make such amendment if the mistake is brought to its notice by the appellant or the opposite party.

(3) In every appeal, the [1][High Court] may, where it is possible, hear and decide such appeal within a period of one year from the date of filing of the appeal.

(4) The [1][High Court] shall send a copy of any order passed under this section to the Registrar.

[2]* * * * *

[1] Subs. by s. 23, ibid., for "Tribunal" (w.e.f. 4-4-2021).
[2] Sub-section (5) omitted by s. 23, ibid. (w.e.f. 4-4-2021).

Section 58. Procedure of Tribunal

[Procedure of Tribunal] -Omitted by the Tribunals Reforms Act, 2021 (33 of 2021), s. 23 (w.e.f. 4-4-2021).

Section 59. Transitional provision

[Transitional provision] -Omitted by s. 23, ibid. (w.e.f. 4-4-2021).

CHAPTER IX FINANCE, ACCOUNTS AND AUDIT

Section 60. Grants by Central Government

The Central government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants and loans of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Section 61. Authority Fund

(1) There shall be constituted a fund to be called the Protection of Plant Varieties Authority Account and there shall be credited thereto-

(a) all grants and loans made to the Authority by the Central Government under section 60;

(b) all fees received by the Authority and the Registrars except the annual fee determined on the basis of benefit or royalty under sub-section (1) of section 35;

(c) all sums received by the Authority from such other sources as may be decided upon by the Central

Government.

(2) The Protection of Plant Varieties Authority Account shall be applied for meeting-

(a) the salaries, allowances and other remuneration of the Chairperson, officers and other employees of the Authority and allowances, if any, payable to the members;

(b) the other expenses of the Authority in connection with the discharge of its functions and for purposes of this Act.

Section 62. Budget, accounts and audit

(1) The Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the Gene Fund) and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in his behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Section 63. Financial and administrative powers of the Chairperson

The Chairperson shall exercise such financial and administrative powers over the functions of the Authority as may be prescribed:

Provided that the Chairperson shall have the authority to delegate such of his financial and administrative powers as he may think fit to a member or any other officer of the Authority subject to the condition that the member or such other officer shall, while exercising such delegated powers, continue to be under the direction, control and supervision of the Chairperson.

CHAPTER X INFRINGEMENT, OFFENCES, PENALATIES AND PROCEDURE

Infringement

Section 64. Infringement

Subject to the provisions of this Act, a right established under this Act is infringed by a person-

(a) who, not being the breeder of a variety registered under this Act or a registered agent or a registered licensee of that variety, sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered licence or registered agency without permission of the registered licensee or registered agent, as the case may be;

(b) who uses, sells, exports, imports or produces any other variety giving such variety, the denomination identical with or deceptively similar to the denomination of a variety registered under this Act in such manner as to cause confusion in the mind or general people in identifying such variety so registered.

Section 65. Suit for infringement, etc

(1) No suit-

(a) for the infringement of a variety registered under this Act; or

(b) relating to any right in a variety registered under this Act,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purposes of clauses (a) and (b) of sub-section (1), "District Court having jurisdiction" shall mean the District Court within the local limit of whose jurisdiction the cause of action arises.

Section 66. Relief in suits for infringement

(1) The relief which a court may grant in any suit for infringement referred to in section 65 includes an injunction and at the option of the plaintiff, either damages or a share of the profits.

(2) The order of injunction under sub-section (1) may include an ex parte injunction or any interlocutory order for any of the following matters, namely:-

(a) discovery of documents;

(b) preserving of infringing variety or documents or other evidence which are related to the subject-matter of the suit;

(c) attachment of such property of the defendant which the court deems necessary to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

Section 67. Opinion of scientific adviser

(1) When the court has to form an opinion upon any question of fact or a scientific issue, such court may appoint an independent scientific adviser to suggest it or to inquire into and report upon the matter to enable it to from the desired opinion.

(2) The scientific adviser may be paid such remuneration or expenses as the court may fix.

Offences, penalties and procedure

Section 68. Prohibition to apply the denomination of a registered variety

(1) No person other than the breeder of a variety registered under this Act or a registered licensee or a registered agent thereof shall use the denomination of that variety in the manner as may be prescribed.

(2) A person shall be deemed to apply the denomination of a variety registered under this Act who-

(a) applies it to the variety itself; or

(b) applies it to any package in or with which the variety is sold, or exposed for sale, or had in possession such package for sale or for any purpose of trade or production; or

(c) places, encloses or annexes the variety which is sold, or exposed for sale, or had in possession for sale or for any purpose of trade or production, in or with any package or other thing to which the denomination of such variety registered under this Act has been applied; or

(d) uses the denomination of such variety registered under this Act in any manner reasonably likely to lead to the belief that the variety or its propagating material in connection with which it is used is designated or described by that denomination; or

(e) in relation to the variety uses such denomination in any advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and such variety is delivered to a person in pursuance of a request or order made by reference to the denomination as so used.

(3) A denomination shall be deemed to be applied to a variety whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, such variety or to any package or other thing.

Section 69. Meaning of falsely applying denomination of a registered variety

(1) A person shall be deemed to falsely apply the denomination of a variety registered under this Act who, without the assent of the breeder of such variety,-

(a) applies such denomination or a deceptively similar denomination to any variety or any package containing such variety;

(b) uses any package bearing a denomination which is identical with or deceptively similar to the denomination of such variety registered under this Act, for the purpose of packing, filling or wrapping therein any variety other than such variety registered under this Act.

(2) Any denomination of a variety registered under this Act falsely applied as mentioned in sub-section (1), is in this Act referred to as false denomination.

(3) In any prosecution for falsely applying a denomination of a variety registered under this Act the burden of proving the assent of the breeder of such variety shall lie on the accused.

Section 70. Penalty for applying false denomination, etc

(1) Any person who-

(a) applies any false denomination to a variety; or

(b) indicates the false name of a country or place or false name and address of the breeder of a variety registered under this Act in the course of trading such variety,

shall, unless he proves that he acted, without intend to defraud, be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years, or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Section 71. Penalty for selling varieties to which false denomination is applied, etc

Any person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or production of any variety to which any false denomination is applied or to which an indication of the country or place in which such variety was made or produced or the name and address of the breeder of such variety registered under this Act has been falsely made, shall, unless he proves-

(a) that having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the denomination of such variety or that any offence had been committed in respect of indication of the country or place in which such variety registered under this Act, was made or produced or the name and address of the breeder of such variety;

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his possession with respect to the person from whom he obtained such variety; or

(c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Section 72. Penalty for falsely representing a variety as registered

Whoever makes any representation with respect to the denomination of a variety or its propagating material or essentially derived variety or its propagating material not being variety or its propagating material or essentially derived variety or its propagating material registered under this Act, to the effect that it is a variety or its propagating material or essentially derived variety or its propagating material registered under this Act or otherwise represents any variety, or its propagating material, or essentially derived variety or its propagating material not registered under this Act to the effect that it is registered under this Act shall be punishable with imprisonment for a term, which shall not be less than six months but which may extend to three years, or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Section 73. Penalty for subsequent offence

Whoever, having already been convicted of an offence under this Act is again convicted of such offence shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to three years, or with fine which shall not be less than two lakh rupees but which may extend to twenty lakh rupees, or with both.

Section 74. No offence in certain cases

The provisions of this Act relating to offences shall be subject to the right created as recognised by this Act and no act or omission shall be deemed to be an offence under the provisions of this Act if such act or omission is permissible under this Act.

Section 75. Exemption of certain persons employed in ordinary course of business

Where a person accused of an offence under this Act proves that in the ordinary course of his employment, he has acted without any intention to commit the offence and having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the act so charged as an offence and on demand made by or on behalf of the prosecutor, he gave all the information in his possession with respect to the persons on whose behalf the offence was committed, he shall be acquitted.

Section 76. Procedure where invalidity of registration is pleaded by the accused

(1) Where the offence charged under this Act is in relation to a variety or its propagating material or essentially derived variety or its propagating material registered under this Act and the accused pleads that the registration of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, is invalid and the court is satisfied that such offence is prima facie not tenable, it shall not proceed with the charge but shall adjourn the proceedings for three months from the date on which the plea of the accused is recorded to enable

the accused to file an application before the Registrar under this Act for the rectification of the Register on the ground that the registration is invalid.

(2) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.

(3) If within a period of three months or within such extended time as may be allowed by the court, the accused fails to apply to the Registrar for rectification of the Register, the court shall proceed with the case as if the registration were valid.

(4) Where before institution of a complaint of an offence referred to in sub-section (1), any application for the rectification of the Register concerning the registration of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, in question on the ground of invalidity of such registration has already been properly made to and is pending before the Registrar, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification.

Section 77. Offences by companies

(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER XI MISCELLANEOUS

Section 78. Protection of security of India

Notwithstanding anything contained in this Act, the Authority or the Registrar shall-

(a) not disclose any information relating to the registration of a variety or any application relating to the registration of a variety under this Act, which it considers prejudicial to the interest of the security of India; and

(b) take any action regarding the cancellation of registration of such varieties registered under this Act which the Central Government may by notification in the Official Gazette specify in the interest of the security of India.

Explanation.-For the purposes of this section, the expression "security of India" means any action necessary for the security of India which relates to the use of any produce of any variety registered under this Act directly or indirectly for the purposes of war or military establishment or for the purposes of war or other emergency in international relations.

Section 79. Implied warranty on sale of registered variety, etc

Where a denomination of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act has been applied to the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on sale or in the contract for sale of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, the seller shall be deemed to warrant that the denomination is a genuine denomination and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, or contract to and accepted by the buyer.

Section 80. Death of party to a proceeding

If a person who is a party to a proceeding under this Act (not being a proceeding in a court) dies pending the proceeding, the Authority or the Registrar, as the case may be, may, on request, and on proof to the satisfaction of such Authority or Registrar, of the transmission of the interest of the deceased person, substitute in the proceedings his successor in interest in his place, or, if the Authority or the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving party, permit the proceedings to continue without the substitution of his successor in interest.

Section 81. Right of registered agent and the registered licensee to institute suit

The registered agent or the registered licensee of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act may institute appropriate proceedings in the court under this Act on behalf of the breeder of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, if such agent or licensee has been authorised in the prescribed manner by such breeder for doing so.

Section 82. Evidence of entry in Register, etc., and things done by the Authority and the Registrar

(1) A copy of any entry in the Register, or of any document issued under this Act purporting to be certified by the Authority or the Registrar and sealed with the seal of such Authority or Registrar, as the case may be, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

(2) A certificate purporting to be under the hand of the Authority or the Registrar, as the case may be, as to any entry, matter or things that such Authority or Registrar is authorised by this Act or the rules to make or do shall be prima facie evidence of the entry having been made, and of the content thereof, or of the matter or things having been done or not done.

Section 83. Authority, Registrar and other officers not compellable to production of Register, etc

The Authority or the Registrar or any officer working under the Authority or the Registrar, as the case may be, shall not, in any legal proceedings, be compelled to produce the Register or any other document in its or his custody, the content of which can be proved by the production of a certified copy issued under this Act in the prescribed manner or to appear as a witness to prove the matter therein recorded unless by order of the court made for special cause.

Section 84. Document open to public inspection

Any person may, on an application to the Authority or the Registrar, as the case may be, and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the Register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document.

Section 85. Report of Authority to be placed before Parliament

The Central Government shall cause to be placed before both Houses of Parliament once a year a report regarding the performance of the Authority under this Act.

Section 86. Government to be bound

The provisions of this Act shall be binding on the Government.

Section 87. Proceedings before Authority or Registrar

All proceedings before the Authority or the Registrar, as the case may be, relating to registration of variety or essentially derived variety, registration of agent, registration of licence or registration of compulsory licensing under this Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860) and the Authority or the Registrar, as the case may be, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 88. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government, or against the Chairperson, or members, or the Registrar or any person acting under such Government, Authority or Registrar under the provisions of this Act, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation, scheme or order made thereunder.

Section 89. Bar of jurisdiction

No civil court shall have jurisdiction in respect of any matter which the Authority or the Registrar [1]*** is empowered by or under this Act to determine.

[1] The words "or the Tribunal" omitted by Act 33 of 2021, s. 23 (w.e.f. 4-4-2021).

Section 90. Members and staff of Authority, etc., to be public servants

The Chairperson, members, officers and other employees of the Authority and the Registrar-General and the officers and other employees working under him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Section 91. Exemption from tax on wealth and income

Notwithstanding anything contained in the Wealth-tax Act, 1957 (27 of 1957), the Income-tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of its wealth, income, profits or gains derived.

Section 92. Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Section 93. Power of Central Government to give directions

The Central Government may give directions to the Authority as it may think necessary in the public interest for the execution of all or any of the functions of the Authority under any provision of this Act or rules and regulations made thereunder.

Section 94. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid before each House of Parliament.

Section 95. Power to make regulations

(1) The Authority may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) duties and jurisdiction of the Registrars under sub-section (4) of section 12;

(b) the term of office and the conditions of service of the Registrars under sub-section (5) of section 12;

(c) the criteria of distinctiveness, uniformity and stability for registration of extant variety under sub-section (2) of section 15;

(d) the manner in which a single and distinct denomination to a variety shall be assigned by the applicant under sub-section (1) of section 17;

(e) the matters governing the assignment of denomination to a variety under sub-section (2) of section 17;

(f) the time within which the Registrar may require the applicant to propose another denomination under sub-section (3) of section 17;

(g) the form of application under clause (d) of sub-section (1) of section 18;

(h) the standards for evaluating seed during tests under sub-section (1) of section 19;

(i) the quantity of seeds or propagating material including parental line seeds to be deposited by a breeder and the time to be specified under sub-section (1) of section 27;

(j) the limitations and conditions subject to which a breeder may authorise a person to produce, sell, market or otherwise deal with variety under sub-section (2) of section 28;

(k) the form for authorisation under sub-section (3) of section 28.

Section 96. Power of Central Government to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(i) the term of office of the Chairperson and the manner of filling the post under sub-section (6) of section 3;

(ii) the salary and allowances of the Chairperson and his conditions of service in respect of leave, pension, provident fund and other matters and the allowances for non-official members for attending the meeting under sub-section (8) of section 3;

(iii) the time and place of meetings of the Authority and the rules of procedure in regard to the transaction of business at its meetings [including the quorum at its meetings and the transaction of business of its Standing Committee appointed under sub-section (7) of section 3] under sub-section (1) of section 4;

(iv) the control and restriction regarding appointment of the officers and other employees of the Authority and the method of such appointment, salary and allowances and other conditions of service under section 6;

(v) the powers and duties of the Chairperson under section 7;

(vi) the terms and conditions subject to which and the manner in which the measures referred to in sub-section (1) of section 8 may provide for the registration of new extant varieties under clause (a) of sub-section (2) of that section;

(vii) the manner for arranging production and sale of the seed under clause (e) of sub-section (2) of section 8;

(viii) the orders by the Authority or the Registrar as to costs under clause (b) of section 11;

(ix) the salary and allowances of Registrar-General of Plant Varieties and the conditions of service in respect of his leave, pension, provident fund and other matters under sub-section (3) of section 12;

(x) the matters to be included in the National Register of Plant Varieties under sub-section (1) of section 13;

(xi) the manner of authorising a person under clause (e) of sub-section (1) of section 16;

(xii) the fees under clause (g) and the other particulars under clause (i) which shall accompany the application under sub-section (1) of section 18;

(xiii) the form of application under the proviso to sub-section (1) of section 18;

(xiv) the period within which after making application a proof of the right to make the application is to be furnished under sub-section (3) of section 18;

(xv) the fees to be deposited by the applicant under sub-section (2) of section 19;

(xvi) the manner and method of conducting the tests under sub-section (3) of section 19;

(xvii) the manner of advertising application, conditions or limitations and specifications of variety for registration including its photographs or drawings under sub-section (1) of section 21;

(xviii) the manner of giving notice and the fees payable therefor under sub-section (2) of section 21;

(xix) the manner of sending counter-statement under sub-section (4) of section 21;

(xx) the manner of submitting evidence and the time within which such evidence may be submitted under sub-section (6) of section 21;

(xxi) the documents and fees under sub-section (1) and the tests to be conducted and the procedure to be followed under sub-section (3) of section 23;

(xxii) the form of a certificate of registration and the other authority to which a copy thereof shall be sent under sub-section (8) of section 23;

(xxiii) the form of a certificate of registration and the other authority to which a copy thereof and the maximum time for issuing the certificate of registration under sub-section (2) of section 24;

(xxiv) the manner of giving notice to the applicant under sub-section (3) of section 24;

(xxv) the fees for review and renewal under sub-section (6) of section 24;

(xxvi) the contents of the certificate and the manner of publishing such contents and inviting claim of benefits sharing under sub-section (1) of section 26;

(xxvii) the form for submitting claims of benefit sharing and the fees to be accompanied therewith under

sub-section (2) of section 26;

(xxviii) the manner in which and the time within which opposition to claims shall be submitted under sub-section (3) of section 26;

(xxix) the manner of making reference under sub-section (7) of section 26;

(xxx) the manner of making an application for registration for title and the fees to be accompanied therewith under sub-section (4) of section 28;

(xxxi) the manner of referring the disputes regarding registration of entitlement under the proviso to sub-section (4) of section 28;

(xxxii) the manner to enter into a certificate the brief conditions of entitlement under sub-section (5) of section 28;

(xxxiii) the manner of making an application for varying the terms of registration under clause (a) of sub-section (9) of section 28;

(xxxiv) the manner of making an application by the registered breeder and certain other for cancellation of terms of registration under clause (b) of sub-section (9) of section 28;

(xxxv) the manner of application by any person other than the breeder, his successor, the registered agent or the registered licensee for cancellation of terms of registration under clause (c) of sub-section (9) of section 28;

(xxxvi) the manner of application for cancellation of the terms of registration under clause (d) of sub-section (9) of section 28;

(xxxvii) the manner of application for cancellation of the terms of registration under clause (e) of sub-section (9) of section 28;

(xxxviii) the manner of issuing notice to the registered breeder of a variety or his successor or to each registered agent or registered licensee (not being the applicant) under sub-section (10) of section 28;

(xxxix) the manner of giving notice to the registrar under sub-section (1) of section 33;

(xl) the manner of notifying to the registered agent or registered licensee under sub-section (2) of section 33;

(xli) the period within which the notice of opposition under sub-section (3) of section 33 may be given;

(xlii) the manner of making application under section 34;

(xliii) the manner of depositing fees under sub-section (2) of section 35;

(xliv) the manner of making application under sub-section (1) of section 36;

(xlv) the manner of applying to the Registrar under sub-section (2) of section 36;

(xlvi) the manner of giving notice under sub-section (4) of section 36;

(xlvii) the manner of application under sub-section (1) of section 37;

(xlviii) the manner of making application under sub-section (2) of section 37;

(xlix) the manner to apply to the Registrar under sub-section (1) of section 38;

(l) the manner of advertising application and to give notice to the Registrar, and the time from the date of the advertisement within which a person may give such notice under sub-section (2) of section 38;

(li) the manner of advertising the denomination of the variety under sub-section (3) of section 38;

(lii) the manner of recognition and reward from Gene Fund under clause (iii) of sub-section (1) of section 39;

(liii) the manner of claiming compensation and filing of opposition under sub-section (2) of section 39;

(liv) the manner of issuing notice and filing objection under sub-section (3) of section 41;

(lv) the manner of receiving benefit sharing under clause (a) of sub-section (1) of section 45;

(lvi) the manner of applying Gene Fund under sub-section (2) of section 45;

(lvii) the particulars to be contained in the application under sub-section (2) of section 47;

(lviii) the authority and the manner in which such authority shall make available to the compulsory licensee the reproduction material of the variety under section 50;

(lix) the form for making application under sub-section (1) of section 52;

(lx) the period within which an appeal shall be preferred under sub-section (1) of section 56;

(lxi) the form of petition and the particulars which such petition shall contain under sub-section (2) of section 56;

(lxii) the form for preparing annual statement of accounts under sub-section (1) of section 62;

(lxiii) the financial and administrative powers which the Chairperson shall exercise under section 63;

(lxiv) the manner of using the denomination of a variety under sub-section (1) of section 68;

(lxv) the manner of authorising registered agent or registered licensee under section 81;

(lxvi) the manner of issuing certified copy of content of Register or any other document under section 83;

(lxvii) the fees payable for obtaining a certified copy of, or to inspect, any entry in the Register or any other document under section 84;

(lxviii) any other matter which is to be, or may be, prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of this Act.

Section 97. Rules, regulations and schemes to be laid before Parliament

Every rule and every regulation and every scheme made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or scheme or both Houses agree that the rule or regulation or scheme should not be made, the rule or regulation or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or scheme.

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