

10. PLANT BREEDERS' RIGHTS ACT 2016: AN OVERVIEW OF PAKISTAN'S PLANT VARIETY PROTECTION LEGISLATION

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ABSTRACT

As a member of the World Trade Organization and bound by the TRIPS Agreement, Pakistan is required to provide protection of new plant varieties. Article 27.3(b) of the TRIPS Agreement requires members to protect breeders' rights either by patents or by an effective *sui generis* system or with a combination of both. As a developing country, Pakistan was allowed to defer TRIPS compliance until 2000. In 2000, Pakistan updated its patent laws in order to meet its obligations under TRIPS but excluded plant varieties from the patentable subject matter. A plant variety protection (PVP) legislation in Pakistan remained overdue since 2000. The Pakistan government made several attempts to update its legal and institutional regime in order to be TRIPS compliant, but its efforts failed to achieve the desired result. Adoption of a PVP legislation remained a challenge for the government as Pakistan is an agricultural country where the informal seed sector meets 80% of the annual seed requirements. Pakistan finally adopted the Plant Breeders' Rights Act (PBRA) in December 2016. This paper provides an overview of the PBRA 2016 and discusses the salient features of this PVP legislation in the light of the standards set by the Union for Protection of New Varieties of Plants (UPOV) Convention.

Keywords: *Pakistan, TRIPS, UPOV, plant variety, plant breeders, biodiversity, food security, agriculture, farmers' rights, seed quality*

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plant health.¹³ The Act requires the Registrar to provide an opportunity for both the applicant and the opponent to be heard.¹⁴

The Act has also provided the option of post-grant opposition proceedings. The Act stipulates that:

[a]t any time within twelve months after the grant of a certificate, any person interested who did not oppose the grant of the certificate may make an application to the Registrar for an order revoking the certificate on any one or more of the grounds upon which the grant of certificate could have been opposed.¹⁵

In instances where action for infringement or proceedings for the revocation of a certificate is pending in any court, post-grant opposition proceedings can be initiated only with the prior permission of the court.¹⁶

If the application is successful, the certificate of plant breeders' rights will be issued to the applicant on payment of the prescribed fee.¹⁷ The certificate will be recorded in the Register and made publicly available.¹⁸ Under the Act, the owner of plant breeders' rights 'shall be the breeder or discoverer of the variety' who 'may be a natural or legal person.'¹⁹

The Act grants the following exclusive rights to the owner of a protected variety:

(a) offering for sale or selling or marketing of the reproductive or vegetative propagating material of the protected variety in Pakistan;

(b) importing the reproductive or vegetative propagating material of the protected variety into Pakistan or exporting it from Pakistan;

(c) conditioning or multiplying the reproductive or vegetative propagating material of the protected variety; (d) carrying out of any of the acts identified in clauses (a), (b), and (c) in relation to an essentially derived variety provided the provided variety is not itself an essentially derived variety;

(d) carrying out any of the acts identified in clauses (a), (b), and (c) in relaPafnoelfary

¹³ *ibid.*

¹⁴ Plant Breeders' Rights Act, No. 19.4 of 2016, The Gazette of Pakistan, 8 December 2016.

¹⁵ Plant Breeders' Rights Act, No. 27 of 2016, The Gazette of Pakistan, 8 December 2016.

¹⁶ *ibid.*

¹⁷ Plant Breeders' Rights Act, No. 21 of 2016, The Gazette of Pakistan, 8 December 2016.

(vi) importing, (vii) stocking for any of the purposes mentioned in (i) to (vi), above.²¹

The PBRA 2016 provides disclosure of origin as well as access-benefit sharing requirements. The Act requires applications for protection to contain 'a complete identification data of the parental lines from which the variety has been derived along with the geographical location in or outside Pakistan from where the genetic material has been taken.'²² The Act requires the application to 'be accompanied by written consent of the authority representing the public sector, private sector or the local community in cases where the plant variety is developed from traditional varieties,'²³ alongside 'documents relating to the compliance of any law regulating access to genetic and biological resources.'²⁴

The Act entitles the owner of the initial variety to claim benefit sharing in plant varieties that are derived from the initial variety. The Act requires the Registrar to invite claims of benefit sharing from 'any person or group of persons or firm or governmental or non-governmental organization'²⁵ provided that claims are submitted by any '(a) person or group of persons, if such person or every person constituting such group is a citizen of Pakistan; or (b) firm or governmental or non-governmental organization, if such firm or organization is formed or established in or outside Pakistan.'²⁶ The Act requires the Registrar to take into consideration the following factors while disposing of the claims of benefit sharing:

(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; and (b) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.²⁷

Certain exceptions to infringement of exclusive rights have been provided under the Act in an attempt to balance competing interests. These exceptions include:

(a) any act done privately on a non-commercial basis;

(b) any act done for scientific research or plant breeding as an initial source of variety for the purpose of creating other varieties ...;

(c) any act done for the purpose of breeding other plant varieties ...; and

(d) a farmer to be entitled to save, use, sow, re-sow, exchange, share or sell his farm produce provided that the farmer shall not be entitled to sell seed of a variety protected under this Act on a commercial basis without complying with the requirements of Seed Act, 1976.²⁸

Farmers have been provided certain rights under the Act in the form of exceptions. The use of these exceptions is further constrained by the requirements of the Seed Act 1976 and the Seed (Amendment) Act 2015. Pakistan's seed law and regulation have a close relationship with Pakistan's PVP legislation.

²¹ International Convention For The Protection Of New Varieties Of Plants of 2 December 1961 as Revised at Geneva on 10 November 1972, on October 23, 1978, and on 19 March 1991.(10) Article 14.

²² Plant Breeders' Rights Act, No. 15(f) of 2016, The Gazette of Pakistan, 8 December 2016.

²³ Plant Breeders' Rights Act, No. 15(g) of 2016, The Gazette of Pakistan, 8 December 2016.

²⁴ Plant Breeders' Rights Act, No. 15(h) of 2016, The Gazette of Pakistan, 8 December 2016.

²⁵ Plant Breeders' Rights Act, No.32 of 2016, The Gazette of Pakistan, 8 December 2016.

²⁶ *ibid.*

²⁷ Plant Breeders' Rights Act, No. 32(5) of 2016, The Gazette of Pakistan, 8 December 2016.

²⁸ Plant Breeders' Rights Act No. 25 of 2016, The Gazette of Pakistan, 8 December 2016.

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