

Protection of plant varieties & Farmers rights

Dr. V.C.Vivekanandan

MHRD IP Chair Professor

Nalsar University of Law

www.nalsarpro.org vivek@nalsarpro.org

Differing
concepts of
resources
and
ownership

**Plant –
cultivated, wild
or managed**

**Botanical
variety**

Genome

**Knowledge about
use and
management**



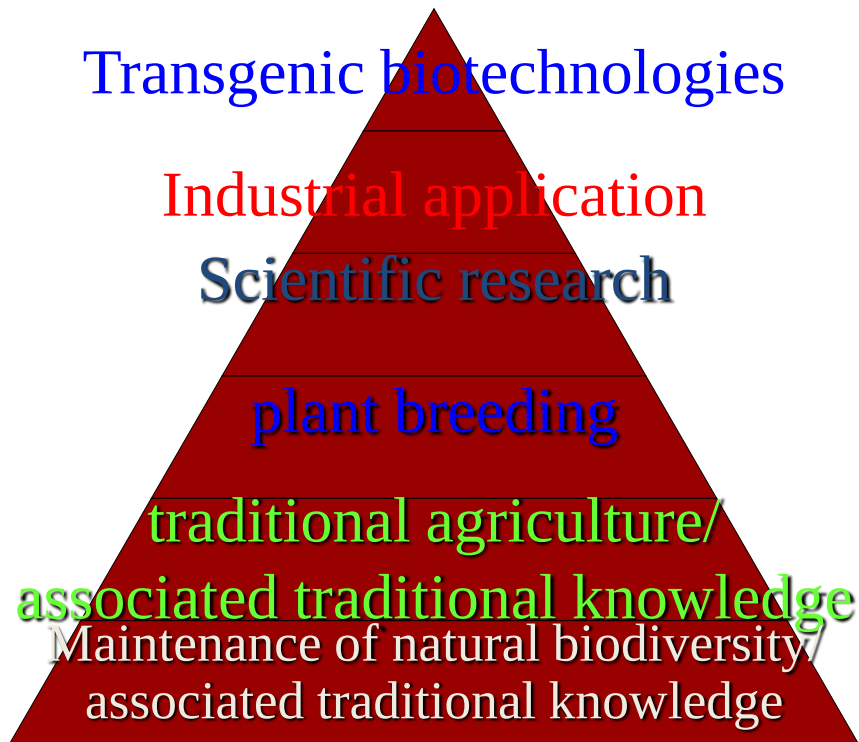
**Real & moveable
property, access
control, resource
sovereignty (visa,
permit)**

Variety right

Patent right

**Knowledge and
cultural rights**

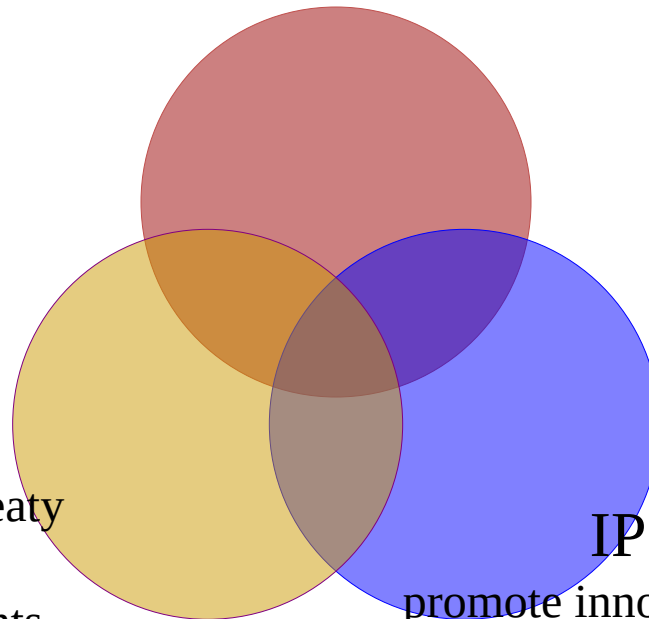
The Pyramid of stake holders



Overlapping international mechanisms

Convention on Biological Diversity:
In situ conservation

FAO – International Treaty
access to and use of
exotic agricultural plants
in germplasm collections



IP system and TRIPS
promote innovation, development of innovation
transfer and dissemination of technology

SUI GENERIS -

- Sui Generis Option is of significance to the developing countries to retain the rights of the farmers as well as the indigenous races or land races.
- This option also opens the strategy for benefit sharing and issues of prior informed consent and issues of Traditional Knowledge.
- Landraces may be excluded from IP protection by the requirement that a new variety is distinct from "varieties of common knowledge".

Protection of Plant Varieties and Farmers Rights Act of 2001

- **Plants produced through conventional breeding such as crossing and selection are considered biological and would not be protected.**
- **Plant varieties through biotechnological methods, genetic manipulation, gene insertion or transfer can be protected.**
- **Concept of non-biological process is very complex and new.**
- **The variety should be distinct, new, homogenous and stable.**

PPVFR ACT 2001

- ◆ The Act provides for registration of a new variety, which does propagation.
- ◆ not contain any gene or any gene consequences involving terminator technology.

The Act provides for protection to distinct and new plant varieties asexually produced.

- ◆ The new variety should be distinct, it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge.
- ◆ The new variety should be uniform in its essential characteristic.
- ◆ Should be stable, its essential characteristic remains unchanged after repeated cultivation

PROTECTION OF PLANT VARIETIES AND FARMERS' ACT 2001.

- **New variety can be registered with a denomination.**
- **Criteria for registration of denomination is similar to trademark registration.**
- **Each applicant should make available with application such quantity of seeds of variety for purpose of conducting tests.**
- **On acceptance of an application it would be advertised.**
- **Is subject to opposition by any person within a period of three months from date of advertisement.**

PROTECTION OF PLANT VARIETIES AND FARMERS' ACT 2001.

- Registration is valid for 9 years in case of trees and vines.
- For a period of 6 years in case of other crops.
- Maximum protection granted in case of trees and vines is 18 years.
- In case of extant varieties 15 years.
- In other cases 15 years.

PROTECTION OF PLANT VARIETIES AND FARMERS' ACT 2001.

Registration grants exclusive rights on the breeder or his successor or his agent or licensee to

- Produce
- Sell
- Market
- Distribute
- Import or export
- Variety.

- The Act provides for a Register called National Register of Plant Varieties at the head office of the Plant Varieties Registry wherein shall be entered:-
- The names of all the registered plant varieties with names and addresses of their respective breeders;
- The right of such breeders in respect of the registered variety;
- 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.

Applicant

- Breeder of the variety
- Any successor of the breeder of the variety
- Assignee of the breeder of the variety
- Farmer or group of farmers or community of farmers claiming to be breeder of the variety.
- Any University or funded Agricultural Institution claiming to be breeder of the variety.

Farmers' Rights

- Farmer who has bred or developed a new variety is entitled to registration and protection like a breeder.
- Farmer shall 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 the Act.

Rights of Communities

- Any person, group of persons or any Governmental or non-governmental organization may on behalf of any village or local community in India file application for protection of any claim attributable to the contribution of the people of that village or local community in the evolution of any variety.
- Farmer or Group of farmers or village or community shall not be liable to pay any fee.

Disclosure

- Breeder or any other person applying for registration shall disclose in the application information regarding use of genetic material conserved by any Tribal or rural families in the breeding or development of such variety.
- Non-disclosure of such information would lead to rejection of the application.

Gene fund

- National Gene Fund shall be constituted by the Central Govt. for meeting.
- Any amount paid by way of benefit sharing.
- The compensation payable.
- The expenditure for supporting the conservation and sustainable use of genetic resources including in situ and ex situ collections.
- The expenditure of the scheme relating to benefit sharing.

Compulsory License

- Compulsory license to undertake production, distribution and sale of the seed or other propagating material of the variety can be filed to the authority after expiry of 3 years from date of issue of certificate of registration on the ground that
- Reasonable requirements of the public for seeds or other propagating material of the variety have not been satisfied.
- The seed or other propagating material of the variety is not available to the public at reasonable price.

A LAST WORD

- THANK YOU FOR YOUR TIME
- Looking forward your questions or comments or observations