Plant Varieties Conservation Act, 2019

(Act No. VI of 2019)

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Plant Varieties Conservation Act, 2019

(Act No. VI of 2019)

[9 May, 2019]

An Act to provide for the establishment of the Plant Varieties Conservation Authority, conservation of plant varieties, registration, protection of the rights of breeders and farmers and for matters ancillary thereto

WHEREAS the contribution of farmers and breeders to agricultural development and national food security is very important;

WHEREAS it is necessary to provide encouragement, guidance and assistance to the farmers for effective delivery of the benefits of plant research, variety development, seed production, use, distribution, marketing, export and breeding and conservation of plant varieties to them;

WHEREAS it is expedient to acknowledge the contribution of breeders and farmers in the conservation of plant genetic resources in variety development and breeding activities in the public and private sectors;

WHEREAS the People's Republic of Bangladesh is a member of the World Trade Organisation and committed to abide by the Agreement on Trade Related Aspects of Intellectual Property Rights; and

WHEREAS Bangladesh is committed to abide by the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture; and

WHEREAS it is expedient and necessary to make provisions for the establishment of an Authority, conservation of plant varieties, registration, protection of the rights of breeders and farmers and for matters ancillary thereto;

It is hereby enacted as follows:-

CHAPTER I

Preliminary, etc.

- **1. Short title and commencement.-** (1) This Act may be called the Plant Varieties Conservation Act, 2019.
- (2) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.
- **2. Definitions.-** Unless there is anything repugnant in the subject or context, in this Act,-
 - (1) "essentially derived variety" means a variety which is produced by propagation or transformation from another primary variety and in which the following characteristics exist as a result of the fusion of genotypes or genotypes of that primary variety, namely:-

- (i) the variety produced is clearly distinct or different from the original variety; and
- (ii) the essential characteristics of the produced variety are consistent with the primary variety;
- (2) "Authority" means the Plant Varieties Conservation Authority established under section 4;
- (3) "farmer" means a person living in Bangladesh who-
 - (a) cultivates crops or plants on his own land or on other's land or in any place suitable for cultivation; or
 - (b) directly supervises the farming activities by employing other people; or
 - (c) individually or collectively preserves and develops identifying and selecting good traits wild species or widely used and conventional varieties, i.e. landraces or farmer's varieties which have been cultivated for a long time;
- (4) "farmer's rights" means the rights described in section 23;
- (5) "farmer's variety" means-
 - (a) the variety which is invented by the farmer and which the farmer has been cultivating on his land, and
 - (b) a variety which is related to a wild variety or landraces, the origin of which is unknown but the farmer has knowledge of that variety;
- (6) "genetic resource" means the complete, partial or reproductive part of a plant such as seed, organ, tissue and cell, gene and genomic deoxyribonucleic acid sequence; and includes all varieties of a particular species;
- (7) "company" means any company as defined in clause (d) of sub-section (1) of section 2 of the Companies Act, 1994 (Act No. XVIII of 1994);
- (8) "Chairman" means the Chairman of the Authority;
- (9) "variety" means the variety mentioned in clause (3) of section 2 of the Seeds Act, 2018 (Act No. VI of 2018);
- (10) "National Seed Board" means the National Seed Board constituted under section 3 of the Seeds Act, 2018 (Act No. VI of 2018);
- (11) "GMO (Genetically Modified Organism)" means a genetically modified organism, which is modified or transformed by genetic technology at the molecular level and is capable of generating new traits or manifesting new traits;
- (12) "naming" means the name of the variety concerned or its seed or propagating part, which is expressed in any language by a set of letters or simultaneously by a set of letters and numbers:
- (13) "Register book" means the registration book referred to in section 15;

- (14) "prescribed" means prescribed by rules or, as the case may be, by regulations;
- (15) "breeder" means a person who-
 - (a) has bred or invented a plant variety which is new in the contemporary period in Bangladesh;
 - (b) is the employer of the person referred to in clause (a) or who has employed him in the work of breeding or innovation; or
 - (c) is the heir or as the case maybe, successor of the person referred to in clause (a) or (b);
- (16) "regulations" means regulations made under this Act;
- (17) "seed" means the seed referred to in clause (12) of section 2 of the Seeds Act, 2018 (Act No. VI of 2018);
- (18) "rules" means rules made under this Act;
- (19) "Board" means the Board of Directors constituted under section 8 of this Act;
- (20) "Registrar" means the Registrar appointed under section 12; and
- (21) "protected variety" means the species of plant registered in accordance with the provisions of section 15.
- **3. Act to override any other law.-** Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall prevail.

CHAPTER II

Establishment of the Authority, Management, Functions, Board, etc.

- **4. Establishment of the Authority.-** (1) After the commencement of this Act, the Government shall, as soon as possible, by notification in the official Gazette, establish an Authority to be called the 'Plant Varieties Conservation Authority'.
- (2) The Authority shall be a statutory body having perpetual succession and a common seal with power, subject to the provisions of this Act to acquire, hold and dispose of property both immovable and movable, and may by its name sue and be sued.
- **5. Office of the Authority.-** (1) The head office of the Authority shall be located at such place as may be designated by the Government.
- (2) The Authority may, if necessary, with the prior approval of the Government, establish its branch office at any place in Bangladesh.
- **6. Powers and functions of the Authority.-** For the purposes of this Act, the powers and functions of the Authority shall be as follows, namely: -
 - (a) to determine, publish and propagate plant genus and species;
 - (b) to register plant varieties for protection, issue of registration certificate, and cancel registration for violation of the provisions of this Act or the rules or regulations made thereunder;

- (c) to determine the procedure of examination of applications for conservation of plant varieties;
- (d) to exchange information on plant varieties conservation and to establish regional and international cooperation for the purpose of testing plant varieties in a more advanced manner;
- (e) to determine the rights of the breeders, the tenure of the rights, limitation of the rights, or, as the case maybe, to suspend or revoke of the rights, or to determine the procedures of similar matters and implement thereof;
- (f) to take steps to giving effect to the rights of farmers, individuals, groups or breeders;
- (g) to award certificates and prizes in recognition of contribution to variety innovation and development;
- (h) to proper implement the provisions of this Act, or rules or regulations made thereunder, and monitor or evaluate it regularly;
- (i) to prepare annual report with details of overall activities and submit it to the Government;
- (j) for the purpose of this Act, to do all ancillary functions and other complementary and relevant functions mentioned above; and
- (k) to perform any other duties and functions as may be assigned to the Authority, from time to time, by the Government.
- **7. General management and administration.-** The general management and administration of the Authority shall be vested in the Board and the Board may exercise all the powers and perform all the functions, which the Authority may exercise and perform.
- **8. Constitution of the Board of Directors.-** (1) The Authority shall have a Board of Directors, which shall consist of the following members, namely: -
 - (a) Chairman, who shall also be its President;
 - (b) one representative nominated by the Ministry of Agriculture not below the rank of Deputy Secretary of the Research Wing of the Ministry;
 - (c) Director (Field Wing), Department of Agricultural Extension;
 - (d) Member Director (Grain), Bangladesh Agricultural Research Council;
 - (e) General Manager (Seeds), Bangladesh Agriculture Development Corporation;
 - (f) Director (Research), Bangladesh Agricultural Research Institute;
 - (g) Director (Research), Bangladesh Rice Research Institute;
 - (h) Director (Research), Bangladesh Jute Research Institute;
 - (i) Director (Research), Bangladesh Institute of Nuclear Agriculture;

- (j) a professor with experience in plant variety matters nominated by the Vice Chancellor of Bangabandhu Sheikh Mujibur Rahman Agricultural University;
- (k) Director, Seed Certification Agency;
- (l) a representative not below rank of Senior Scientific Officer nominated by the National Institute of Biotechnology;
- (m) a representative not below the rank of Senior Scientific Officer nominated by the Bangladesh National Herbarium;
- (n) Chief Seed Scientist, Ministry of Agriculture;
- (o) a representative nominated by the Bangladesh Seed Association;
- (p) a representative nominated by the Bangladesh Genetics and Plant Breeding Association; and
- (q) Registrar, the Plant Varieties Conservation Authority, who shall also be its Member-Secretary.
- (2) The nominated members referred to in clauses (j), (o) and (p) of sub-section (1) shall hold office for a term of 3 (three) years from the date of their nomination:

Provided that the Government may, in the public interest, before the expiration of such term, remove any nominated member, without showing any cause, and the nominated members may also resign his office at any time writing under his hand addressed to the Chairman.

- **9. Meeting of the Board, etc.-** (1) Subject to the other provisions of this section, the Board may determine the procedure of its meetings.
- (2) The Chairman shall preside over all meetings of the Board, and in his absence the member appointed by the Government to perform the duties of the Chairman shall preside over, but if such member is not appointed, the senior most member of the Board shall preside over the meeting.
- (3) At least one meeting of the Board shall be held in every 6 (six) months, but in case of emergency the meeting of the Board may be called on short notice.
- (4) The Member Secretary shall convene the meeting of the Board with the consent of the Chairman at such date, time and place fixed by him.
- (5) To constitute a quorum of a meeting the presence of at least one-third of the total members of the Board shall be required, but no quorum shall be required in case of adjourned meeting.
- (6) At the meeting of the Board, each member shall have one vote, but in case of equality of votes, the person presiding over shall have a second or casting vote.
- (7) No act or proceeding of the Board shall be invalid or be called in question merely on the ground of existence of any vacancy in, or any defect in the constitution of, the Board.
 - **10. Chairman of the Authority.-** (1) The Authority shall have a Chairman.

- (2) The Chairman shall be the full-time and the Chief Executive of the Authority.
- (3) The Chairman shall be appointed by the Government and the terms and conditions of his service shall be determined by the government.
- (4) If a vacancy occurs in the office of the Chairman or the Chairman is unable to perform his duties on account of absence, illness or any other reason, the member appointed by the Government shall perform the duties of the Chairman until a newly appointed Chairman holds his office or the Chairman is able to resume of the duties of his office.
- 11. Responsibilities of the Chairman.- (1) The Chairman shall be responsible for performing the following duties in accordance with the provisions of this Act, or the rules or regulations made thereunder, namely:-
 - (a) to exercise the powers conferred by this Act for the purpose of carrying out all the activities of the Authority properly;
 - (b) to perform all the duties necessary for the efficient management and operation of the Authority;
 - (c) to control over all employees of the Authority and their activities;
 - (d) to implement the decisions of the Board of Directors of the Authority; and
 - (e) to perform such other duties as may be assigned to him by the Board, from time to time.
- (2) The Chairman shall be accountable to the Government for the discharge of his duties and the exercise of his powers.
- **12. Registrar of the Authority.-** (1) The Authority shall have a Registrar, who shall be appointed from amongst the Deputy Secretaries or equivalents of the Government.
- (2) The Registrar shall perform such duties and discharge such functions as may be assigned by the Authority and shall be accountable to the Chairman for the activities performed by him.
- **13. Appointment of employees.-** (1) The Authority may appoint such number of employees as may be necessary for the efficient performance of its functions in accordance with the organogram approved by the Government and following the general and special instructions given from time to time by the Government.
- (2) The conditions of appointment and service of the employees of the Authority shall be prescribed by regulations.

CHAPTER III

Genus and Species of Plants, Species Registration, Conservation, etc.

- **14. Determination of plant genus and species, etc.-** (1) For the purposes of this Act, the Authority may, by notification in the official Gazette, determine the genus and species of plants.
- (2) The Authority may take measures to update regularly the genus and species of plants determined under sub-section (1) and to publish them on the website.

Explanation.- For the purpose of this section, 'plant genus' means such plant genetic resource or plant variety, which is useful and economically valuable for use in agriculture, food, medicine, nutrition and environmental protection.

- **15. Registration of plant variety conservation, etc.-** (1) For the purposes of this Act, the variety invented by a breeder shall be registered as essentially derived variety or farmer's variety and GMO protected variety.
- (2) For registration as a protected variety under sub-section (1), an application shall be made to the Authority in the manner and form prescribed by rules.
- (3) The fee prescribed by rules shall be paid along with the application made under subsection (2) and the details of the technical and breeding method of the concerned protected variety shall be submitted in the prescribed form.
- (4) The application submitted under sub-section (2) shall be duly examined in the manner prescribed by rules.
- (5) The Authority, after examining the application submitted under sub-section (4), shall, if deemed fit, issue a certificate of registration as a protected plant variety.
- (6) The varieties registered under this section shall be kept in a register book with necessary information in both manual and digital manner.
- (7) If any person wishes to collect information about a protected variety, he shall apply to the Registrar of the Authority and the Authority may provide such information in favour of the person concerned.
- (8) If a breeder wishes to conceal the information of the variety protected in his name in the register book referred to in sub-section (6), he shall inform the Authority in writing, and the Authority may, if it considers reasonable, mark it as confidential.
- (9) Notwithstanding anything contained in sub-section (6), if any information kept in the register book is marked as confidential under sub-section (8), such information shall not be provided in favour of any person.
- (10) A person, on whose name a protected plant variety is registered under this section, may at any time withdraw his registration by a written application to the Authority.
- **16.** Eligibility of the applicant for registration, etc.- (1) The following persons and organisations shall be deemed to be eligible to apply for conservation of plant varieties, namely:-
 - (a) Bangladeshi citizens or legal persons or institutions;
 - (b) a citizen of any other country or a legal person or any organisation having an office in Bangladesh;
 - (c) Bangladeshi citizen or a legal person who has invented a new variety of plant while working abroad or in a foreign organisation or through any other cooperation, and has applied for the conservation of that variety under this Act with the permission of that country or organisation;

- (d) the citizens or organisations of the State parties of such international conventions or agreements to which Bangladesh is a party;
- (e) any authorised agent or heir of the breeder and any farmer or association of farmers claiming to be the breeder; and
- (f) any state-run organisation or institute or university or authority.
- (2) If an employee, or a person employed, on contract basis, in a job of an organisation breeds a variety of plant, and if there is no other condition to the contrary in the terms of service or in the contract, the head of the concerned organisation or the authorised employee or employing Authority may apply for its conservation.
- (3) If more than one breeder invent new plant variety, they may jointly or one of the breeders empowered by them may submit an application for conservation of the variety.
- (4) If more than one breeder jointly breed or invent a new plant variety and are interested in jointly conserving its rights, then an application for joint conservation shall be submitted under the signature of all of them.
- **17. Disqualification of the applicant for registration.-** For the purposes of this Act, no person shall be eligible to apply for registration of conservation of plant varieties, if he -
 - (a) violates any provision of this Act or the Seeds Act, 2018;
 - (b) fails to provide or, as the case may be, submit the following information in his application, namely: -
 - (i) evidence of use of farmer's knowledge or genetic resources in breeding the variety applied for registration,
 - (ii) an agreement in the form approved by the Authority, with reference to the terms and conditions pertaining to the benefits arising out of the breeding rights from the farmer or the association of farmers for the use of the farmer's knowledge or genetic resources, and
 - (iii) in the case of genetic resources collected from outside of Bangladesh, such materials are collected in accordance with the laws of the country and permission to apply in favor of the applicant for conservation of plant variety derived from it;
 - (c) is disqualified in accordance with the provisions of the Convention on Biological Diversity or the International Treaty on Plant Genetic Resources for Food and Agriculture;
 - (d) invents a variety using deoxyribonucleic acid restriction technology or terminator technology.

Explanation.- For the purpose of this section, 'terminator technology or deoxyribonucleic acid restriction technology' means genetic change in the variety by which the germination capacity of the seed is hindered in the following year.

18. Priority of application.- (1) If a breeder referred to in clauses (b), (c) and (d) of sub-section (1) of section 16 submits an application to another country, then in computing the

time limit for submission of application under this Act for conservation of the concerned variety, there will be given 12 (twelve) months priority.

- (2) In order to obtain priority under sub-section (1), the breeder shall specify in the next application the country mentioned in the first application and the date of submission of the application.
- (3) In the case of calculation of time under this section, the calculation shall start from the date of submission of the first application.
- **19.** Conditions for conservation of plant varieties, etc.-. (1) If the following characteristics exist, a plant variety may be conserved, namely: -
 - (a) novelty;
 - (b) distinctness;
 - (c) uniformity; and
 - (d) stability.
- (2) The novelty referred to in clause (a) of sub-section (1) means a variety invented 1 (one) year prior to submission of application within Bangladesh or 4 (four) years prior to submission of application outside Bangladesh for registration of protected variety under this Act, or in the case of trees and herbaceous plants, it shall mean a variety invented 6 (six) years prior to the submission of application for which no seed or crop has been sold or transferred.
 - (3) The sale or transfer of a protected variety to another shall not impair the novelty, if-
 - (a) the breeder himself or his successor has the right to produce the seed of the respective variety:

Provided that the produced shall in such case be returned to the breeder or his successor; and

- (b) the variety is officially listed for the establishment of animal safety or for testing or business entry and is part of the fulfillment of statutory or administrative obligations.
- (4) For the purpose of this section,-
 - (i) the distinctness referred to in clause (b) of sub-section (1) shall mean a variety which may be clearly distinguished from other existing varieties at the time of submission of the application for protection of the variety;
 - (ii) the uniformity mentioned in clause (c) of sub-section (1) shall mean a variety which has sufficient similarity to the characteristics of the plant varieties:

Provided that even if diversity appears in the case of a particular breeding method, such diversity shall be within the acceptable limits approved by the National Seed Board; and

- (iii) the stability referred to in clause (d) of sub-section (1) shall mean the variety, basic characteristics of which remain unchanged in the last step of the breeding or specific breeding cycle.
- (5) If any variety invented by a breeder applies for registration in another country, the variety shall be deemed to be a known variety from the date of application.
- **20.** Naming of protected varieties, etc.- (1) Each protected variety shall be marked by a group name.
- (2) If the protected variety is registered under any name, it shall be deemed to be a perpetual name and the name shall remain in force even after the expiry of the period of registration of the said variety.
- (3) The characteristics, value or identity of the variety or the identity of the breeder, shall be specifically mentioned for the purpose of the meaning of any variety under this section.
- (4) It shall be different from the naming of any existing varieties of the same plant species or closely related species.
- (5) If the name proposed by a breeder does not meet the conditions of sub-section (3), the Authority shall direct the breeder to propose a different name within the prescribed time and if the proposal is approved, the Authority may register the variety under that name.
- (6) If the name proposed by a breeder cannot be used due to prior right, the Authority may direct the breeder to submit a proposal for a new name for the variety concerned.
- (7) If the application for registration of the name of the protected variety appears to be initially correct and acceptable to the Authority, it shall be pre-published by a notice in the government Gazette, electronic Gazette (if any), website and a widely circulated Bengali and an English national daily newspapers, to inform the Authority if anyone has any objection to that name.
- (8) In accordance with the provisions of sub-section (7), if anyone has any objections or suggestions regarding the registration of the pre-published name, it shall be sent to the Authority in writing within 60 (sixty) days of pre-publication, along with the required documents.
- (9) The Authority, after considering the objections or suggestions received under subsection (8), shall approve it as soon as possible with or without amendment and shall make its final publication in the official Gazette.
- (10) If after the acceptance of the naming proposal under this section, it is found that the applicant has concealed any information and has illegally used and proposed the name of a farmer's variety, the authority may immediately cancel the naming.

CHAPTER IV

Breeder's Rights, Tenure, Farmer's Rights, etc.

21. Breeder's rights, etc.- (1) In order to use the protected variety in accordance with the provisions of this Act, the approval of the concerned breeder shall be obtained for the following cases, namely:-

- (a) production and re-production;
- (b) bringing in suitable conditions for the purpose of procreation or using for procreation;
- (c) displays and offers for sale;
- (d) sales or otherwise marketing;
- (e) import or export; and
- (f) storage for any one of the purposes mentioned in clauses (a) to (e).
- (2) Subject to not being inconsistent with this Act, or the rules or regulations made thereunder and subject to the conditions specified in the registration certificate, a breeder may delegate the power of approval referred to in sub-section (1) to any other person or institution.
- (3) If a person invents one or more new varieties, preserving the basic characteristics of the breeding, by using one or more of the varieties protected by the breeder, the rights of the breeder who invented the original protected variety shall remain in force.
 - (4) Notwithstanding anything contained in sub-section (1), a person may-
 - (a) preserve seeds of any protected variety produced by him for agricultural production in the following season; or
 - (b) use the preserved seeds referred to in clause (a) for his own use, or by exchanging any other seed with another farmer for his own use;
 - (c) use the protected varieties for research and testing purposes; or
 - (d) use the protected variety as the primary source for the purpose of inventing a new variety.
- (5) The Authority may, for the public interest, in accordance with the provisions of this Act, limit the rights of the use of protected varieties by the breeders in the following areas, namely:-
 - (a) disease prevention;
 - (b) conservation of the environment and biodiversity;
 - (c) to prevent the misuse of unilateral trade, i.e., if the supply of seeds of protected varieties is intentionally kept inadequate to meet the demand and thus, the price of seeds is increased in the market, or if the new plant variety is not marketed within 3 (three) years of the registration;
 - (d) any crisis situation related to state discipline; and
 - (e) any other public welfare requirement at the discretion of the Authority or the government.
- (6) The Authority may, with the approval of the government, restrict or, as the case may be, prohibit the rights of breeders to the production, sale, distribution, import or use of GMO varieties, by notification in the official Gazette.

- (7) The Authority may, in order to deal with the situation referred to in clauses (c) and (d) of sub-section (5), limit the rights of the concerned breeder by giving him a reasonable opportunity of being heard and may grant permission to one or more persons or organisations the rights for production, sale, distribution, import or use of the protected variety, subject to the conditions referred to in sub-section (8).
- (8) At the time of granting permission under sub-section (7), the protected variety shall remain in force for at least 3 (three) years after registration and appropriate remuneration shall be fixed for the concerned breeders.
- (9) The Authority may revoke such permission if the circumstances under which the authority had granted the permission referred to in sub-section (7) no longer exist.
- (10) If the permission under sub-section (9) is withdrawn or revoked, the concerned persons or organisations shall not be able to produce, sell, distribute or import the protected variety.
- **22.** Tenure of the rights of breeders, suspension, revocation of rights, etc.- (1) The tenure of the approval for the use of the protected variety of the concerned breeder as per subsection (1) of section 21 shall be as follows, namely:
 - (a) 16 (sixteen) years in case of fruit trees, other tree species and perennial herbaceous species; and
 - (b) 14 (fourteen) years for all other plant species.
- (2) In case of calculating the period mentioned in sub-section (1), the calculation shall start from the date of submission of application for registration of protected variety or the date of receipt of priority mentioned in section 18, whichever is earlier.
- (3) The Authority may suspend or revoke the rights of breeders granted under this Act in the following cases or for the following reasons, namely: -
 - (a) there was no novelty or distinctiveness of the variety at the time of issuance of the certificate of registration;
 - (b) lack of acceptable limits or stability of uniformity in the plant variety;
 - (c) if the breeder does not provide the necessary information and materials within the prescribed time by the Authority for verifying the maintenance of the plant variety;
 - (d) if the breeder fails to pay the registration fee required to maintain his rights within the prescribed time;
 - (e) if the name of a plant variety is canceled after registration and the breeder does not propose any other suitable name within the prescribed time;
 - (f) if the breeder does not pay the compensation related to any variety within the prescribed time; and
 - (g) if the certificate of registration of the protected variety has been issued to a person other than the one to whom it is to be issued and if the certificate has not been handed over to the appropriate person.

- (4) The Authority may, before suspending or revoking the rights of a breeder under subsection (3), give notice to him stating the reasons thereof and may direct him to submit a report on the activities performed by him within the period specified in the notice.
- (5) The Authority shall analyze the report submitted under sub-section (4) and take appropriate decision regarding the suspension or revocation of the rights of the breeders, and such decision shall be deemed final.
- (6) If the right of the breeder is revoked in accordance with the provisions of sub-section (5), he may not claim any right under this Act.
- (7) Production, re-production, preservation, use, reuse, exchange or sale may be made without changing the name of the concerned protected variety even after the expiry of the period mentioned in sub-section (1).
- (8) If a person has a legal interest with a breeder in accordance with the provisions of this Act, he may apply to the Authority for declaring the sole or absolute rights of the concerned breeder as null and void.
- **23.** Farmer's rights.- (1) The Authority shall protect and enforce the following rights of the farmers, namely:-
 - (a) the right to submit the application for registration and conservation of the newly invented variety by the farmer;
 - (b) the rights conferred by this Act on the protected varieties;
 - (c) the right to receive recognition certificates or financial assistance or rewards in the prescribed manner from the funds of any farmer or farmer's association concerning the conservation and development of any genetic resources of landraces.
 - (d) the right to recognition from farmers and farmer's associations for the conservation of traditional knowledge of plant genetic resources used in food, agriculture and medicine;
 - (e) the right to avail the benefits arising out of the variety if the farmer's protected variety is used by any breeder for the development of that variety;
 - (f) the right to participate in decisions on matters relating to the conservation and sustainable use of plant genetic resources; and
 - (g) if the public or private breeders register the name of any of the plant variety traditionally used by the farming community as a protected variety in their own name, the Authority may cancel it.
- (2) Notwithstanding the rights mentioned in sub-section (1), a farmer may produce, reproduce, preserve, use, reuse, exchange or sell the seed of a protected variety without the purpose of commercial marketing.

Explanation.- For the purpose of this section, 'traditional knowledge' means all kinds of knowledge, intellect and intellectual practice and culture related to biodiversity and biological resources, which is prevalent in written, oral, folklore and story form and which is

logical, real or metaphorical or symbolic or graphical and which is not the result of the invention or effort of a single person.

- **24. Rights of individuals, associations or organisations, etc.-** (1) If any person, organisation, society, association or institution contributes to the invention of any protected variety and the said person, organisation, society, association or institution may apply to the Authority for registration of the protected variety claiming participation in the rights and benefits of breeders.
- (2) Notwithstanding anything contained in sub-section (1), if any person, organisation, society, association or institution has contributed to the invention of a protected variety, and if such variety is solely registered under this Act in favour of a breeder, the person, organisation, society, association or institution may claim compensation.
- **25.** Certificates of recognition, awards, etc.- (1) The Authority may issue 'Certificate of Recognition' in favour of the concerned person, community or organisation for special contribution in conservation and development of plant varieties.
- (2) If a plant variety invented by a breeder is eligible to have a certificate as a new variety but no application for its conservation has been submitted, it shall be deemed to be recognized, and considered as a national asset.
- (3) The Authority may, considering the importance of contribution to the conservation and development of plant varieties in the country, grant research grants or financial rewards irrespective of educational qualifications, whether institutional or informal.

CHAPTER V

Offences, Punishment, Investigation, Trial, etc.

- **26. Offences and penalty.-** (1) If a person falsely names a protected variety, or voluntarily uses false information about a country or place, breeder or his address during commercial use of a registered variety, it shall be deemed to be an offence under this Act and he shall be punished with imprisonment for a term which may extend to 2 (two) years or with fine which may extend to 5 (five) lakh taka or with both.
- (2) If a person uses the wrong name of a registered protected variety, or falsifies or distorts the name of the country or place or the name and address of the breeder, or sells, displays for sale, trades or keeps in his possession for production of such variety, it shall be deemed to be an offence under this Act and he shall be punished with imprisonment for a term which may extend to 2 (two) years or with fine which may extend to 5 (five) lakh taka or with both.
- **27. Offences committed by the company.-** If an offence under this Act is committed by a company, the owner, director, manager, secretary or any other officer who is in charge of directing the business of the company at the time of the offence, shall be deemed guilty unless he proves that the offence was committed without his knowledge or he tried his best to prevent the offence.
- **28. Investigations and trial.-** The investigation and trial of any offence committed under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act No. V of 1898).

- **29. Cognizance of the offences.-** Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no court shall take cognizance of any offence under this Act without the written complaint of the Chairman or the person authorised by the Chairman in the prescribed manner.
- **30.** Non-cognizable and bailable offences. The offences under this Act shall be non-cognizable and bailable.
- 31. Compensation.- Compensations mentioned in this Act and any other legitimate compensation may be realised in the amount and manner prescribed by the rules by any farmer, individual, organisation, society, association, institution or aggrieved citizen who has been suffered loss and aggrieved by the willful negligence of any breeder or seed producer while breeding or innovating new plant variety.

CHAPTER VI

Funding, Budget, Accounting, etc.

- **32. Fund of the Authority.-** (1) For the purpose of this Act, the Authority shall have a fund called 'Plant Varieties Conservation Authority Fund'.
- (2) The said fund shall consist with the money received from the following sources, namely: -
 - (a) grants and donations made by the government;
 - (b) grants made by local authorities and other agencies;
 - (c) grants received from any foreign government or international organisation with the prior approval of the government;
 - (d) fees and money received by the Authority;
 - (e) loans taken from banks or from any government approved financial institution or foreign institution with the prior approval of the government;
 - (f) money derived from benefits and profits earned through the management of funds; and
 - (g) funds and grants received from other legitimate sources with the prior approval of the government.
- (3) The funds of the Authority shall be deposited in a scheduled bank and such funds shall be managed in the manner prescribed by rules.
- (4) The salaries and allowances of the Chairman, Registrar, employees of the Authority and other expenses necessary for conducting the functions of the Authority may be met from the fund:

Provided that in the case of expenditure of funds, the relevant existing rules and regulations shall be followed.

(5) The Authority may, with the approval of the Board, invest its funds in a profitable sector of any scheduled bank or government financial institution.

- (6) After discharging all of its expenses in each financial year, the Authority shall deposit the surplus money of its fund in the government treasury.
- **Explanation**.- For the purpose of this section, scheduled bank means 'Scheduled Bank' as defined in Article 2 (j) of Bangladesh Bank Order, 1972 (President's Order No. 127 of 1972).
- **33. Power to take loan.-** The Authority may, with the prior approval of the government, take loans from any bank, financial institution or any government institution or foreign institution for the performance of its duties and functions.
- **34. Budget.-** Every year within the period prescribed by the government, the Authority shall submit the annual budget statement to the government for approval for the next financial year, and shall state the amount of money required from the government in that year.
- **35.** Accounts and audit.- (1) The Authority shall maintain its accounts of income and expenditure properly and shall prepare an annual statement of accounts.
- (2) The Comptroller and Auditor General of Bangladesh shall audit the accounts of the Authority every year and shall submit a copy of the audit report to the Authority and the Government.
- (3) If any objection is raised on the audit report mentioned in sub-section (2), the Authority shall immediately take appropriate action for its disposal.
- (4) In addition to the audit referred to in sub-section (2), the accounts of the Authority may be audited by a 'Chartered Accountant' as defined in Article 2(1)(b) of the Bangladesh Chartered Accountants Order, 1973 (President's Order No. 2 of 1973), and for this purpose, the Authority may appoint one or more 'chartered accountants' and such appointed chartered accountants shall be remunerated by the Government at the rate prescribed by regulations.
- (5) The Comptroller and Auditor General or any person authorised by him or the 'Chartered Accountant' appointed under sub-section (4) for the purpose of auditing the accounts of the Authority, may examine all records, documents, annual balance sheets, cash or bank deposits of the Authority, reserves or other assets, etc. and may question the Chairman, Registrar or any other employee of the Authority.
- (6) In the case of application of the provisions of this section, the provisions of the Financial Reporting Act, 2015 (Act No. 16 of 2015), where applicable, shall be followed.
- **36. Annual statement.-** (1) Within 90 (ninety) days of the end of each financial year, the Authority shall submit to the government an annual statement containing the details of the activities performed in that year.
- (2) The government may, if necessary, call upon the Authority for any information, statement, estimate, statistics or any other information relating to its functions or management, and the Authority shall be bound to provide it to the government.

CHAPTER VII

Miscellaneous

37. Power to make rules.- For the purposes of this Act, the government may, by notification in the official Gazette, make rules.

- **38. Power to make regulations.-** The Authority may, with the prior approval of the government, by notification in the official Gazette, make such regulations as are not inconsistent with this Act and the rules made thereunder.
- **39. Publication of authentic English text.-** (1) After the commencement of this Act, the government may, by notification in the official Gazette, publish an authentic English text of the original Bangla text of this Act.

(2) In case of conflict between Bangla and English texts, the Bangla text shall prevail.