

KARNATAKA COMMUNITY INTELLECTUAL RIGHTS BILL 1994

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A SUI GENERIS SYSTEM IN RESPECT OF PLANT VARIETIES

Section 1. This Act may be cited as the Karnataka Community Intellectual Rights Act 1994.

Section 2. In this Act the following terms shall bear the following meanings:

- (a) "Commercial utilisation" occurs when the innovation and any process relating to it or product embodying it is made available for sale in the modern market sector.
- (b) "local community" refers to a group of people having a long standing social organisation that binds them together whether in a defined area or howsoever otherwise and shall include indigenous peoples, and local populations, and shall where appropriate refer to any organisation duly registered under the provisions of this Act to represent its interests.
- (c) "innovation" shall include any collective and cumulative knowledge or technology of the use, properties, values and processes of any plant variety and any plant or part thereof rendered of any or enhanced use or value as a result of the said cumulative knowledge or technology whether documented, recorded, oral, written or howsoever existing including any alteration, modification, improvement thereof.
- (d) "innovator" shall mean the local community responsible for the innovation.
- (e) "plant variety" shall include a plant species or category of a lower level or any part thereof or germplasm therein whether domesticated or not used in accordance with established customs practices laws by local communities for a particular purpose that requires a prior knowledge of a particular property of the plant such as food, medicine and dye.
- (f) the "state" shall refer to the appropriate government ministries or the government as a whole where the context so far admits.

Section 3. Ownership and Custodianship

- (1) The local community shall at all times and in perpetuity be the lawful and sole owners of the innovation.
- (2) No such innovation or invention shall be sold, assigned, transferred or dealt with in anyway except by the community/ies either singly or, in case of negotiations with foreign based institutions and individuals, jointly with the State Government or any body duly ac recited to act on its behalf.
- (3) No innovations shall be sold assigned transferred or' dealt in any way whereby the status of the local] community as custodians and stewards of the innovation is impaired.

Section 4. Free exchange among communities

(1) There shall be free access to, and the local communities shall make available, its innovation and practices in relation thereof to other communities wherever situate without any payment or reward provided always that such innovation is not acquired for commercial utilisation.

(2) Such acquiring communities shall make the said innovation available to any other community on the same basis and terms as set to in Section 3 (1) hereof .

Section 5. Use for Commercial purposes

(1) The community/ies shall have rights on all these innovations and shall, together with the State Government or any body duly appointed by it jointly negotiate terms and conditions for making it available to foreign nationals or for commercial utilisation to the private sector.

(2) Any person, body, organisation or corporation using any innovation or any part thereof for commercial utilisation shall pay to the local community which is the custodian or stewards of the said innovation a sum representing not less than twenty per centum of the gross sales of any product or process incorporating the said innovation.

(3) Any local community may opt to be said a non-monetary equivalent as may be determined by the local community in accordance with its customs, practices and usages.

(4) Nothing in this section shall prevent more than one person, body, organisation or corporation from using any innovation or any part thereof for commercial utilisation and at the same or any other time.

(5) The payment shall be made:

a) to an organisation duly registered under the provisions of this Act as representing the local communities.

b) where no such organisation exists, to the State Government or any body duly accredited by it, which shall hold it in trust for the local community/ies pending its registration under the provisions of this Act.

c) in respect of an innovation, which is, as at the date of coming into force of this Act, developed by a community, to the State Government which then applies any such monies for the protection, development and maintenance of its genetic resources,

(6) All the monies or their equivalent received by the local community or the State as its trustee shall be applied for such purpose as jointly decided by the local community and the state, including but not limited to the protection, development and maintenance of its genetic resources.

(7) In the case when a private patent Or protection under any other system is granted to an Innovation owned by a community which has failed to register the variety, the community can stake such claim at any In tar date with retrospective effect, and the patent or other protection granted to the corporation will stand revoked.

Section 6. Registration of Local Community

(1) Any local community may apply to be registered as an organisation to represent its interest provided that its failure to do so will not prejudice its custodianship or stewardship of its innovation.

(2) Registration shall be affected by attending at the Registry set up under this Act and providing and completing the particulars set out in form 1.

(3) The community may change the particulars by attending at the Registry and filling Form II.

Section 7. The Registry of Innovation (ROI)

The Community may register its innovation in the ROI provided always that non-registration will not mean that the community was/is not the custodian or steward of the invention under Clause I hereof.

Section 8. Proof of invention

(1) Upon the duly constituted representatives of the Community declaring in a form or manner valid by their laws, customs or practices that they have been using the custodians or stewards of an innovation, the innovator shall be deemed to vest in the Community.

(2) Anyone wishing to challenge this will bear the legal and evidentiary burden of proof for doing so.

Section 9. Technical Institution

There shall be nominated by the State in consultation with the communities, technical institutions to assist the community to identify and characterise their innovation.

Section 10. Co-ownership with community

(1) Nothing in this Act shall prevent any other community wherever situate from establishing their rights to ownership and custodianship or stewardship of an innovation.

(2) In such event, the community shall be co-owners and co-stewards or custodians of the innovation.

(3)(a) The co-ownership and co-stewardship will carry with it the same rights, duties, obligations attached as herein before set out save that they shall be co-terminous and enjoyed together with the co-stewards or custodians.

(3)(b) All benefits that accrue to one co-owner and co-steward shall ensure to the benefit of the other co-owner and co-stewards.

(3)(c) Each co-owner and co-steward shall hold in trust all rights, obligations, rewards, remuneration, etc. for the other co-owner and co-steward.

Section 11. Co-ownership with the State

(1) The state shall act as co-owner of the genetic resources of the entire territory of India for the explicit purpose of negotiating access to genetic resources by foreign/commercial

interests and for ensuring payment of royalties where applicable. The state shall also be ensure equitable disbursement of such payments.

(2) Such action by the state shall be carried out jointly with the community.

Section 12. Any state, non-governmental organisation or the local community and/or its duly registered organisation shall have the locus to enforce, monitor and further the local community's innovation and any matters in relation to its utilisation, exchange or impairment, whether in Court or elsewhere provided always that the duly registered organisation of the local community shall take precedence.

APPENDIX - I

FORM - I

Registration Form for Communities

Name of Village:

Population (as per latest census):

Postal Address:

Major Occupations:

Name of Elected Leader/s:

Other Local Leaders:

Date and Place of Registration:

FORM - II

Forms for Registration of Innovation/Resource

Name of Innovation/Resource:

Name of Community (including Registration No.if any):

Description of Innovation/Resource:

Source of Innovation/Resource:

Uses of Innovation/Resource:

Statement of Objects and Reasons

After having become a signatory to the Biodiversity Convention and committed to conserving the diversity of the various life-forms found In the territory of Karnataka It has become necessary to explicitly recognise the rights of the community to such diversity as they have been the originators and conservors of the diversity; to protect the common property status of biodiversity; to keep knowledge of biodiversity utilisation in the intellectual commons to enable local communities to continue to have free access to biodiversity and to knowledge of its use and to bring to local communities - the custodians and collective owners of biodiversity - the rightful share of benefits when biodiversity utilisation is commercialised.

Hence the Bill.

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