

Legislation Briefing Note

**The Biological
Diversity Act 2002
&
Biological
Diversity Rules
2004**

The Biological Diversity Act 2002 and Biological Diversity Rules 2004¹

This Act provides for conservation of biological diversity, sustainable use of biological resources, and sharing of the benefits arising out of the use of these resources and associated knowledge.

This Act extends to the whole of India.

1. What are the definitions of the terms used in this Act?

According to this Act:

- "biological diversity" means the variability among living organisms and the ecological systems of which they are part. It includes diversity within species or between species and ecosystems.
- "biological resources" means plants, animals and micro-organisms, as well as their parts, genetic materials and by-products (excluding value added products like processed food) with actual or potential use or value. Human genetic material is not included in the definition of biological resources.
- "bio-survey and bio-utilisation" mean survey or collection of species, sub-species, genes, components and extracts of biological resources for any purpose. This includes describing distinctive characteristics or features of such resources, preparing of inventories, and bio-assay (appraisal of the biological activity of a substance by testing its effect on an organism and comparing the result with some agreed standard).
- "local bodies" means Panchayats and Municipalities. In the absence of Panchayats and Municipalities, any institution of self-government constituted under any Act is considered as a 'local body'.

2. What are the authorities and funds set up under the Act?

Decision making bodies will be set up at three levels: a National Biodiversity Authority (NBA), State Biodiversity Boards (SBB) and local Biodiversity Management Committees (BMC). Details of each are as follows:

National Biodiversity Authority (Section 8)

The Central Government will establish a National Biodiversity Authority (NBA), located at Chennai, consisting of the following members:

1. A chairperson who is an eminent person having adequate knowledge and experience in biodiversity issues.
2. Three ex-officio members from the Ministries of tribal and environmental affairs. One member will represent the Ministry dealing with Tribal Affairs and two members will represent the Ministry dealing with Environment and Forest,

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- of whom one shall be the Additional Director General of Forest or the Director General of Forest.
- Seven ex-officio members to represent the Ministries of the Central Government dealing with agricultural research and education, biotechnology, ocean development, agriculture and co-operation, Indian systems of medicine and homeopathy, science and technology, scientific and industrial research.
 - Five non-official members.

The NBA can constitute a committee to look into matters related to agricultural biodiversity or wild relatives of agricultural species, or other committees as it deems fit (Section 13).

The functions of the NBA are (Section 18):

- Granting, rejecting, and regulating foreign access to India's biodiversity and associated knowledge, including applications for IPRs, and ensuring equitable benefit-sharing while granting such access.
- Opposing IPRs outside India which have not obtained the NBA's approval.
- Revoking access to biological resources if conditions of granting the approval are violated or if there are over-riding environmental concerns.
- Advising the Central Government regarding conservation and sustainable use of biodiversity, and equitable sharing of benefits.
- Collating and publishing data on various aspects of biodiversity.
- Coordinating activities of State Biodiversity Boards and providing them technical guidance.
- Advising State Governments regarding biodiversity heritage sites (See Part 9 below).

State Biodiversity Board (Section 22)

The State Government will appoint State Biodiversity Boards (SBB), consisting of:

- A chairperson.
- Maximum five ex-officio members from concerned state government departments.
- Maximum of five members to be appointed among experts in concerned fields.

The functions of the SBB are (Section 23):

- Advising the State Government regarding the conservation and sustainable use of biodiversity, and the equitable sharing of benefits.
- Approving or rejecting requests for commercial utilisation or bio-survey and bio-utilisation of any biological resource by Indians.
- To perform other functions as may be necessary.

Biodiversity Management Committee (Section 41)

Every local body must constitute a Biodiversity Management Committee (BMC) within its area for the purpose of promoting conservation, sustainable use and documentation of biodiversity including preservation of habitats, conservation of agricultural biodiversity and micro-organisms, and chronicling of knowledge relating to biodiversity.²

² The national level Rules specify that the main function of the BMC is the preparation of a People's Biodiversity Register, documenting local knowledge. Some states such as Madhya Pradesh and Sikkim, however, have in their Rules provided overall functions of conservation, sustainable use, and benefit-sharing to the BMCs.

The BMC will consist of seven persons, with at least 1/3rd being women, and at least 18% being Scheduled Tribes and Scheduled Castes.

The BMC may collect fees from any person for accessing or collecting biological resources for commercial purposes from areas falling within its territorial jurisdiction.

The NBA and SBB must consult the BMC while taking any decision relating to the use of biological resources which fall within the latter's jurisdiction.

Corresponding to the above three levels, National, State, and Local Biodiversity Funds are to be created. These funds can be collected from various sources, and spent to carry out the activities under the Act including facilitating benefit-sharing with local communities (see Part 6 below).

3. How does this Act seek to regulate foreign access to biological resources?

The following kinds of persons need previous approval of the National Biodiversity Authority to obtain any biological resource occurring in India or knowledge associated with it, for any purpose including research or commercial utilisation (Section 3):

- A person who is not a citizen of India.
- A non-resident Indian as defined in clause (30) of section 2 of the Income tax Act 1961.
- A body corporate, association or organisation which is –
 - Not incorporated or registered in India, or
 - Incorporated or registered in India but with any non-Indian participation in its share capital or management.

The procedure for applying for access to biological resources are given in detail in the Rules.

Without previous approval of the National Biodiversity Authority, no person can transfer the results of research relating to biological resources occurring in, or obtained from India, to the persons mentioned in the above list (Section 4).

Procedures for such 'third party transfers' are given in the Rules.

Applications for access to biological resources can be rejected on the grounds that access will endanger biodiversity, threaten the livelihoods of local people, or otherwise undermine national interests.

The above provisions, regarding the transfer or exchange of biological resources and related information, do not apply to collaborative research projects between government-sponsored institutions and similar institutions in other countries. Such collaborative research must be approved by the Central Government and conform to the policy guidelines issued by the Central Government (Section 5).

The Central Government can exempt certain biological resources that are normally traded commodities, such as commonly exported crops, from the provisions of the Act. A list of these has to be published in the official gazette. Additionally, importers of such commodities have to declare that they will not use them for research or development of products and processes for commercialisation.

4. How does this Act seek to regulate Indian access to biological resources?

Citizens of India or body corporates or associations registered in India (with no

foreign participation) can obtain any biological resource for commercial utilisation, bio-survey or bio-utilisation, after informing the State Biodiversity Authority (Section 7).

The State Biodiversity Authority can, in consultation with local bodies and after making enquiries, prohibit or restrict such activity if it feels that the activity is detrimental to conservation, sustainable use of bio-diversity or equitable benefit-sharing (Section 24).

This provision does not apply to the local people and communities of an area, including growers and cultivators of biodiversity, and vaid and hakims who have been practicing indigenous medicine (Section 7).

5. How does this Act seek to regulate intellectual property rights (IPRs)?

No person can apply for IPRs, in or outside India, for an invention based on research/information on a biological resource obtained from India, without the previous approval of the NBA {Section 6(1)}.

The procedures for seeking approval are given in the Rules.

If a person applies for a patent or any other IPR, the application has to be decided on by the NBA within a period of three months. Only if the NBA is satisfied that the applicant has fulfilled all the necessary requirements, does it allow for filing a subsequent IPR (Section 18).

These provisions do not apply to a person applying for an IPR for a plant variety, as per the Protection of Plant Varieties and Farmers' Rights Act 2001³ {Section 6(3)}.

On receipt of an application to approve an IPR, the NBA will make enquiries and if necessary constitute an expert committee to look into the matter. The NBA can approve or reject the application subject to recommendations. The NBA must give a public notice of any approval granted {Section 19(3) & (4) and 20(4)}.

6. How does the Act envisage benefit-sharing with local communities?

If access to biological resources or the grant of IPRs is approved, the SBB or NBA will ensure the equitable sharing of benefits arising from their use. Benefits are to be shared between the applicant and the "benefit-claimers" (i.e. communities and persons who have been conserving the biological resources and created knowledge, practices and innovations related to the resources). Such benefit-sharing arrangements will be based on mutually agreed terms and conditions between the applicant, local bodies⁴ concerned and the benefit claimers [Section 21(1)].

Benefit-sharing could take the following forms [Section 21 (2)]:

1. Joint ownership of IPRs between the applicant and the NBA or between the applicant and the benefit-claimers.
2. Transfer of technology to the benefit-claimers.
3. Location of research and development, and production units in such areas which will facilitate better living standards for the benefit-claimers.
4. Association of Indian scientists, benefit-claimers and the local people with research and development in biological resources.

³ Under this Act, new varieties of crops and other plants can be given intellectual property rights, while safeguarding certain rights of farmers to use such varieties.

⁴ Panchayats and Municipalities, within the meaning of clause (1) of article 243B and clause (1) of 243Q of the Constitution and in the absence of any Panchayats or Municipalities, institutions of self government constituted under any other provision of the Constitution or any Central Act or State Act.

5. Setting up of venture capital fund⁵ for aiding the benefit-claimers.

6. Payment of monetary and non-monetary benefits to the benefit-claimers.

Where there are identifiable individuals or organisations from which biological resource or knowledge is accessed, the Authority may take steps to ensure that the agreed amount is paid directly to them through the district administration. Where such individuals or group of individuals or organization cannot be identified, the monetary benefits shall be deposited in the National Biodiversity Fund.

7. How does the Act seek to protect traditional knowledge?

The Act puts responsibility upon the Central Government to respect and protect the knowledge of local people relating to biodiversity on the recommendation of the NBA through measures such as registration of traditional knowledge at local, state or national level {Section 36(5)}.

No procedures for this have been laid out in the Rules so far.

8. What are the other conservation provisions under the Act?

The Act provides for a number of conservation actions, listed as duties of the Central Government:

1. To develop national strategies, plans and programmes for the conservation, promotion and sustainable use of biodiversity. This includes measures for identification and monitoring of areas rich in biological resources, promotion of in situ and ex situ conservation of biological resources, and incentives for research, training and public education to increase awareness about biodiversity {Section 36(1)}.
2. To issue directives to the State Government to take appropriate action, where any area rich in biodiversity is being threatened {Section 36(2)}.
3. To assess the environmental impact of projects which are likely to have adverse effects on biodiversity {Section 36(4i)}.

No procedures for this have been laid out in the Rules so far.

4. To regulate, manage and control risks associated with the use and release of living modified organisms resulting from bio-technology, likely to have an adverse impact on biodiversity and human health. {Section 36(4ii)}

No procedures for this have been laid out in the Rules so far.

5. To notify (i.e. declare), any species which is on the verge of extinction, as a threatened species, and regulate or prohibit its collection, and take steps to rehabilitate and preserve those species. This must be done in consultation with the concerned State Government (Section 38).

The procedure for notifying species is given in the Rules.

6. To designate, in consultation with the NBA, institutions as repositories for different categories of biological resources. The repositories will keep the biological material in safe custody. Anyone discovering a new taxon (genus, species, variety, breed, etc) must notify the repositories, and deposit specimens with them (Section 39).

⁵ Private investments into newly emerging technologies and industries, by people/organisations other than those who own or promote these technologies/industries.

⁶ This is currently governed by relevant notifications under the Environment Protection Act 1986.

⁷ This is currently governed by the relevant notification on genetically modified organisms under the Environment Protection Act 1986.

The procedure relating to designating institutions as repositories for different biological is given in the Rules.

States are given the conservation responsibility of declaring biodiversity heritage sites (see Part 9 below).

9. What are biodiversity heritage sites?

The State Government can, in consultation with local bodies, notify areas of biodiversity importance as biological heritage sites. In consultation with the Central Government, the State Government will frame rules for the conservation and management of such sites, and prepare schemes for compensating or rehabilitating people economically affected by the notification of such sites (Section 37).

No procedure for this is laid out in the Rules so far.

10. What dispute resolution mechanisms are in the Act?

If a dispute arises between the National and State Biodiversity Boards, they may refer an appeal to the Central Government, in Form V to the Secretary, MoEF, GoI. In case of a dispute between State Biodiversity Boards, the Central Government will refer the matter to the NBA (Section 50).

Any person aggrieved by a decision of the NBA or an SBB, may file an appeal to the High Court within 30 days after the decision has been communicated to him/her. (Section 52).

No such provision is given in relation to BMCs.

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