

CAMPAIGN FOR CONSERVATION AND COMMUNITY CONTROL OVER BIODIVERSITY

Address for Correspondence: 134, Tower 10, Supreme Enclave
Mayur Vihar Phase- I, Delhi- 110091, Tel: 011- 22753714

8th February 2010

The Biological Diversity Act, 2002 and its relevance to the Bt Brinjal situation

1. The legal status of biological resources in the country

The Biological Diversity Act, 2002 is essentially about regulating use of biological resources and related knowledge. It does not lay down whom they belong to, be it people or the government. After the Convention on Biological Diversity (CBD) [from where the BD Act derives its objectives] the Indian state has sovereignty over its biological resources. It is to exercise this on behalf of its peoples with the prior informed consent of its local communities in whom the sovereignty ultimately lies. This law therefore does not give agricultural universities the right or any legal basis on which to sign agreements on the use of people's biological resources that they hold in trust i.e. farmers' brinjal varieties in this case, without full disclosure and discussion with the farmers. This of course presuming that by exercising sovereignty the state, in the name of an entire nation, defends collective interests addressing intergenerational equity, food security, public health, improved quality of life and the conservation of biological resources.

2. Federal set-up and decentralised decision-making

In order to achieve the above, the law has put into place a three-tier institutional structure: a National Biodiversity Authority (NBA) based in Chennai; State Biodiversity Boards (SBBs) at every state; and Biodiversity Management Committees (BMCs) at panchayat/municipality levels. If any foreign entity (defined in the Act) wants to access the India's biodiversity (wild or cultivated) and/or associated traditional knowledge, approval of the NBA is mandatory. The NBA needs to "consult" the relevant local BMCs before granting an approval. In case of a fully Indian entity, they need to only intimate the SBB which can put forth some conditions. [Sections 3, 7 & 41 (1)]

3. The community's option to say 'no' to the use of local varieties for genetic modification

It is mandatory under the law for the State to set up Biodiversity Management Committees (BMCs) at the local level through which people can exercise the sovereign right say 'yes' or 'no'. The NBA and the SBBs are required by this law to mandatorily consult with the BMCs while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the BMC, whether it is in their physical possession or lying in a university gene bank. This has not been done in the instance when the original Brinjal germplasm was accessed by the Tamil Nadu Agricultural University (TNAU). [See Section 41(2)]

4. The responsibility of the Central Government to take measures of conservation

Legally there is nothing that prevents the MOEF from taking any measures to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology. *[See Section 36(4)(ii)]*

5. The treatment of foreign corporations and Indian companies that may have any non-Indian participation in their share capital or management

MAHYCO/MHSCL (as mentioned in the MTA with NBA) would come within the term 'person' (that includes both natural and legal person) who would need to take NBA permission before transfer of research results to any non-Indian person, body or company like East West Seed (Bangladesh), or University Phillipines. Mahyco has taken permission from the NBA for transfer of research results of the cry1AC gene introduced Brinjal at least thrice from NBA in the year 2007. It is however being argued that Mahyco is incorporated in India. But it has 26% of non-Indian participation, therefore it needs to be treated as an Indian company with non-Indian participation. In which case NBA approval for accessing the Brinjal germplasm was essential. *[See Section 3(2)(c) (ii) & 4]*

6. NBA's permission to transfer to another country (spreading GM in India's neighbourhood)

With NBA approval it seems any Genetic Modification (GM) related research results can be exported to any country. This is what has been effected through the MTA signed by MAHYCO with NBA on 24/04/07 to pass on research results to East West Seeds (Bangladesh) Limited. Links to the other related approvals granted to MAHYCO that the Campaign RTI got NBA to post on its site 2008 following an order from the Central Information Commission. (http://www.nbaindia.org/approvals/approved_form2_5meeting.htm) *[See Section 4]*

7. The issue of normally traded commodities

The Act deals with 'genetic resources' not raw materials in bulk or products. By definition it is meant to deal with plants, animals and micro-organisms, their parts, their genetic material and by-products (excluding value added products). Routine trading activities are dealt by the Ministry of Commerce. The exemption is meant to allow for those items which are under regular export to continue to do so without taking permission from the NBA. Otherwise for every mango or spice etc. which is to be traded out of India as a commodity, permission would be required from the NBA.

Under NBA, the process of identification of normally traded commodities has been on since 2004. In July of 2009 the final suggestions of the normally traded commodities related committee was sent to the MoEF for their approval. There was a committee set up which worked on the possible vegetables/spices to be listed as part of this notification. Prior to this notification institutions and individuals were putting in applications seeking exemption under Section 40 and it was being done on the discretion of the committee in question. *[See Sections 2(c) and 40]*

8. The pure research versus commercial activities

The line between non-commercial research and commercially-motivated activities is fast blurring. In the new generation of increasing public-private research, even the law makers are aware of it. The law defines "commercial use" to include "genes used for improving crops and livestock through

genetic intervention”, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, diary farming, animal husbandry or bee keeping. *[See Section 2(f)]*

9. *The situation with 'collaborative research'*

Bt Brinjal has been developed as part of the Agricultural Biotechnology Support Project (ABSP II) which is a collaborative research project. In this case the agricultural university/Indian institution may take the plea that NBA approval for transfer of biological resources between institutions, (including Government sponsored institutions of India and outside India), is not required IF it can show that such collaborative research projects conform to the policy guidelines issued by the Central Government in this behalf (CSIR Guidelines on the matter) and has been approved by the Central Government. The NBA also has a set of Guidelines for Collaborative Research Projects. *[See Section 5]*

Relevant web links:

The text of the law <http://www.grain.org/brl/?docid=322&lawid=1378>

The NBA site <http://www.nbaindia.org/>

For further details:

Kalpavriksh Environmental Action Group (kanchikohli@gmail.com)

GRAIN (shalini@grain.org)