

THE BIOLOGICAL DIVERSITY ACT, 2002

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THE BIOLOGICAL DIVERSITY ACT, 2002

INTRODUCTION

To provide for conservation of Biological Diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources and knowledge, a Convention, the United Nations Convention on Biological Diversity was held at Rio de Janeiro in 1992, wherein the sovereign rights of the State over their Biological resources reaffirmed. India being signatory to the said Convention found it necessary to give effect to the said Convention. Accordingly the Biological Diversity Bill was introduced in the Parliament.

The Bill was introduced in Lok Sabha on 15th May, 2000. Report of the Standing Committee on Science & Technology, Environment & Forests was laid on the table of Lok Sabha on 4th December, 2001. It was passed by the Lok Sabha on 2nd December, 2002 and by Rajya Sabha on 11th December, 2002.

THE BIOLOGICAL DIVERSITY ACT, 2002

(18 of 2003)

[5th February, 2003]

An Act to provide for conservation of Biological Diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto.

WHEREAS India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto:

AND WHEREAS India is a party to the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992:

AND WHEREAS the said Convention came into force on the 29th December, 1993:

AND WHEREAS the said Convention reaffirms the sovereign rights of the States over their biological resources;

AND WHEREAS the said Convention has the main objective of conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of utilization of genetic resources;

AND WHEREAS it is considered necessary to provide for conservation, sustainable utilization and equitable sharing of benefits arising out of utilization of genetic resources and also to give effect to the said Convention;

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.---(i) This Act may be called the Biological Diversity Act, 2002

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions---In this Act, unless the context otherwise requires,-

(a) “benefit claimers” means the conservers of biological resources, their by-products, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application:

(b) “ biological diversity” means the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of eco- systems;

(c) “biological resources” means plants, animals and micro-organisms or parts thereof, their genetic material and by- products (excluding value added products) with actual or potential use or value but does no include human genetic material:

(d) “bio-survey and bio-utilization” means survey or collection of species, sub- species, genes, components and extracts of biological resources for any purpose and includes characterization, inventorisation and bioassay:

(e) “ Chairperson” means the Chairperson of the National Biodiversity Authority or, as the case maybe, of the State Biodiversity Board:

1. Sections 1,2,8 to 17,48,54,59,62,63,64,& 65 came into force on 01-10-2003 vide S.O. 1146 (E), dated 1st October,2003, published in the Gazette of India, Extra, Pt. II, Sec. 3(ii), dated 1st October, 2003.

Section 3 to 7, 18 to 47,49 to 53,55 to 58, 60 and 61 came into force on 01-07-2004 vide S.O.753(E), dated 1st July, 2004, published in the Gazette of India, Extra, Pt.II, Sec.3(ii), dated 1st July, 2004.

- (f) “ commercial utilization” means end user of biological resources for commercial utilization such as drugs, industrial enzymes, food flavors , fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and 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, dairy farming, animal husbandry or bee keeping;
- (g) “fair and equitable benefit sharing” means sharing of benefits as determined by the National Biodiversity Authority under section 21;
- (h) “Local bodies” means panchayats and Municipalities, by whatever name called, within the meaning of clause (1) of article 243B and clause (1) of article 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;
- (i) “member” means member of the National Biodiversity Authority or a State Biodiversity Board and includes the Chairperson;
- (j) “National Biodiversity Authority” means the National Biodiversity Authority established under section 8;
- (k) “Prescribed” means prescribed by rules made under this Act;
- (l) “regulations” means regulations made under this Act;
- (m)“research” means study or systematic investigation of any biological resource or technological application, that use biological systems, living organisms or derivatives thereof to make or modify products or processes for any use;
- (n) “State Biodiversity Board” means the State Biodiversity Board established under section 22;
- (o) “sustainable use” meaning the use of components of biological diversity in such manner and at such rate that does not lead to the long-term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations.
- (p) “value added products” means products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form.

CHAPTER II

REGULATION OF ACCESS TO BIOLOGICAL DIVERSITY

3. Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority. —

(1) No person referred to in sub-section (2) shall without previous approval of the National Biodiversity Authority, obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilisation.

(2) The persons who shall be required to take the approval of the National Biodiversity Authority under sub-section (1) are the following, namely:-

- a) A person who is not a citizen of India;
- b) A citizen of India, who is a non-resident as defined in clause (30) of section 2 of the income-tax Act, 1961 (43 of 1961);
- c) A body corporate, association or organization —
 - i. Not incorporated or registered in India; or
 - ii. Incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management.

COMMENTS

Any person (i) who is not a citizen of India, (ii) a citizen of India, who is non-resident; (iii) a body corporate, association or organization not incorporated or registered in India, or incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management is required to take prior approval of the National Biodiversity Authority for obtaining any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilisation.

4. Results of research not to be transferred to certain persons without approval of National Biodiversity Authority. -----

No person shall, without the previous approval of the National Biodiversity Authority, transfer the results of any research relating to any biological resources occurring in, or obtained from India for monetary consideration or otherwise to any person who is not a citizen of India or citizen of India who is non – resident as defined in clause (30) of section 2 of the Income-tax Act, 1961 (43 of 1961) or a body corporate or organization which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management.

Explanation – For the purposes of this section, “transfer” does not include publication of research papers or dissemination of knowledge in any seminar or workshop, if such publication is as per the guidelines issued by the Central Government.

COMMENTS

Without prior approval of the National Biodiversity Authority, results of any research relating to any biological resources occurring in, or obtained from India for monetary consideration so otherwise can be transferred to any person who is not a citizen of India or citizen of India who is non-resident, or a body corporate or organization which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management.

5. Section 3 and 4 not to apply to certain collaborative research projects

(1) The provisions of sections 3 and 4 shall not apply to collaborative research projects involving transfer or exchange of biological resources or information relating thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in sub – section (3).

(2) All collaborative research projects, other than those referred to in sub-section (1) which are based on agreement concluded before the commencement of this Act and in force shall, to the extent the provisions of agreement are inconsistent with the provisions of this Act or any guidelines issued under clause (a) of sub-section (3), be void.

(3) For the purpose of sub-section (1), collaborative research projects shall-----

- (a) conform to the policy guidelines issued by the Central Government in this behalf.
- (b) Be approved by the Central Government.

6. Application for intellectual property rights not to be made without approval of National Biodiversity Authority -----

(1) No person shall apply for any intellectual property right, by whatever name called, in or outside in India for any invention based on any research or information on biological resource obtained from India without obtaining the previous approval of the National Biodiversity Authority before making such application :

Provided that if a person applies for a patent, permission of the National Biodiversity Authority may be obtained after the acceptance of the patent but before the sealing of the patent by the patent authority concerned :

Provided further that the National Biodiversity shall dispose of the application for permission made to it within a period of ninety days from the date of receipt thereof.

(2) The National Biodiversity Authority may, while granting the approval under this section, impose benefit sharing fee or royalty or both or impose conditions including the sharing of financial benefits arising out of the commercial utilisation of such rights.

(3) The provisions of this section shall not apply any person making an application for any right under any law relating to protection of plant varieties enacted by Parliament.

(4) Where any right is granted under law referred to in sub-section (3), the concerned authority granting such right shall endorse a copy of such document granting the right to the National Biodiversity Authority.

COMMENTS

Without obtaining prior approval of the National Biodiversity Authority no person can apply for any intellectual property right in or outside India for any invention based on research or information on a biological resource obtained from India.

7. Prior intimation to State Biodiversity Board for obtaining biological resource for certain purpose ----- No person who is a citizen of India or a body corporate, association or organization which is registered in India, shall obtain any biological resource for commercial utilisation, or bio-diversity and bio-utilisation for commercial utilisation except after giving prior intimation to the State Biodiversity Board concerned.

Provided that the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and vaidas and hakims, who have been practicing indigenous medicine.

CHAPTER III

NATIONAL BIODIVERSITY AUTHORITY

8. Establishment of National Biodiversity Authority ----- (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there

shall be established by the Central Government for the purposes of this Act, a body to be called the National Biodiversity Authority.

(2) The National Biodiversity Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The head office of the National Biodiversity Authority shall be at Chennai and the National Biodiversity Authority may, with the previous approval of the Central Government, establish offices at other places in India.

(4) The National Biodiversity Authority shall consist of the following Members, namely -

(a) a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the Central Government.

(b) three *ex officio* members to be appointed by the Central Government, one representing the Ministry with Tribal Affairs and two representing the Ministry dealing with Environment and Forests of whom one shall be the Additional Director General of Forests or the Director General of Forests.

(c) seven *ex officio* members to be appointed by the Central Government to represent respectively the Ministers of the Central Government dealing with -----

(i) Agricultural Research and Education

(ii) Biotechnology

(iii) Ocean Development

(iv) Agriculture and Cooperation

(v) Indian System of Medicine and Homeopathy

(vi) Science and Technology

(vii) Scientific and Industrial Research

(d) five non-official members to be appointed from amongst specialists and scientist having special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge-holders of biological resources.

9. Conditions of service of Chairperson and Members ----- The term of office and conditions of service of the Chairperson and the other members other than ex officio members of National Biodiversity Authority shall be such as may be prescribed by the Central Government.

10. Chairperson to be Chief Executive of National Biodiversity Authority ----- The Chairperson shall be the Chief Executive of the National Biodiversity Authority and shall exercise such powers and perform such duties, as may be prescribed.

11. Removal of members --- The Central Government may remove from the National Biodiversity Authority any member who, in its option has –

- (a) been adjudged as an insolvent or
- (b) been convicted of an offence which involved moral turpitude or
- (c) become physical or mentally incapable of acting as a member or
- (d) so abused his position as to render his continuance in office detrimental to the public interest or
- (e) acquired such financial or other interest as is likely to affect prejudicially his functions as a member.

12. Meeting of National Biodiversity Authority:----- (1) The National Biodiversity Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be prescribed.

(2) The Chairperson of the National Biodiversity Authority shall preside at the meetings of the National Biodiversity authority.

(3) If for any reason the Chairperson is unable to attend any meeting of the National Biodiversity Authority, any member of the National Biodiversity Authority chosen by the members present at the meeting shall preside at the meeting.

(4) All questions which come before any meeting of the National Biodiversity Authority shall be decided by a majority of the votes of the members present and voting and in the event of equality of votes, the Chairperson or, in his absence, the person presiding, shall have and exercise a second or casting vote.

(5) Every member who is in any way, whether directly, indirectly or personally, concerned or interest in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member concerned or interested shall not attend that meeting.

(6) No act or proceeding of the National Biodiversity Authority shall be invalidated merely by reason of –

(a) any vacancy in, or any defect in the constitution of, the National Biodiversity Authority, or

(b) any defect in the appointment of a person acting as a member, or

(c) any irregularity in the procedure of the National Biodiversity authority not affecting the merits of the case.

13. Committee of National Biodiversity Authority ---- (1) The National Biodiversity Authority may constitute a committee to deal with agro biodiversity.

Explanation --- For the purpose of this sub-section “agro-biodiversity” means biological diversity of agriculture related species and their wild relatives.

(2) Without prejudice to the provisions of sub-section (1), the National Biodiversity Authority may constitute such member of committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act.

(3) A committee constituted under this section, shall co-opt such number of persons, who are not members of the National Biodiversity Authority, as it may think fit and the persons so co-opted shall have the right to attend the meetings of the committee and take part in its proceedings but shall not have the right to vote.

(4) The persons appointed as members of the committee under sub-section (2) shall be entitled to receive such allowances or fees for attending the meetings of the committee as maybe fixed by the Central Government.

14. Officers and employees of National Biodiversity Authority --- (1) The National Biodiversity Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and conditions of service of such officers and other employees of the National Biodiversity Authority shall be such as may be specified by regulations.

15. Authentication of orders and decisions of National Biodiversity Authority ---- All orders and decisions of the National Biodiversity Authority shall be authenticated by the signature of the Chairperson or any other member authorized by the National Biodiversity Authority in this behalf and all other instruments executed by the National Biodiversity Authority shall be authenticated by the signature of an officer of the National Biodiversity Authority authorized by it in this behalf.

16. Delegation of powers ----- The National Biodiversity Authority may, be general or special order in writing, delegate to any member, officer of the National Biodiversity Authority or any other person subject to such conditions, if any, as may be specified in the order, such of the powers and functions under this Act (except the power to prefer an appeal under section 50 and the power to make regulations under section 64) as it may deem necessary.

17. Expenses of National Biodiversity Authority to be defrayed out of the Consolidated Fund of India ----- The salaries and allowances payable to the members and the administrative expenses of the National Biodiversity Authority including salaries, allowances and pension payable to or in respect of the officers and other employees of the National Biodiversity Authority shall be defrayed out of the Consolidated Fund of India.

CHAPTER IV FUNCTIONS AND POWERS OF THE NATIONAL BIODIVERSITY AUTHORITY

18. Function and powers of National Biodiversity Authority ---- (1) It shall be the duty of the National Biodiversity Authority to regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefits sharing.

(2) The National Biodiversity Authority may grant approval for undertaking any activity referred to in section 3, 4 and 6.

(3) The National Biodiversity Authority may ----

(a) advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilisation of biological resources.

(b) advise the State Government in the selection of areas of biodiversity, importance to be notified under sub-section (1) of section 37 as heritage sites and measures for the management of such heritage sites.

(c) perform such other functions as may be necessary to carry out the provisions of this Act.

(4) The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country

outside India on any biological resources obtained from India or knowledge associated with such biological resources obtained from India or knowledge associated with such biological resource which is derived from India.

CHAPTER V

APPROVAL BY THE NATIONAL BIODIVERSITY AUTHORITY

19. Approval by National Biodiversity Authority for undertaking certain activities

--- (1) Any person referred to in sub-section (2) of section 3 who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilisation or for bio-survey and bio-utilisation or transfer the results of any research relating to biological resources occurring in or obtained from India, shall make application in such form and payment of such fees as may be prescribed, to the National Biodiversity Authority.

(2) Any person who intends to apply for a patent or any other form of intellectual property protection whether in India or outside India referred to in sub-section (1) of section 6, may make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(3) On receipt of an application under sub-section (1) or sub-section (2), the National Biodiversity Authority may after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to any regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the imposition of charge by way of royalty or for reasons to be recorded in writing, reject the application.

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

COMMENTS

For obtaining any biological resource occurring in India or knowledge associated thereto for research or for commercial utilisation or for bio-survey and bio-utilization or

transfer the results of any research relating to biological resources occurring in or obtained from India, an application is to be made in the prescribed form with prescribed fee to National Biodiversity Authority.

(20) Transfer of biological resource or knowledge --- (1) No person who has been granted approval under section 19 shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval except with the permission of the National Biodiversity Authority.

(2) Any person who intends to transfer any biological resource or knowledge associated thereto referred to in sub section (1) shall make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(3) On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reason to be recorded in writing, reject the application. Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

21. Determination of equitable benefit sharing by National Biodiversity Authority:--

(1) The National Biodiversity Authority shall while granting approval under section 19 or section 20 ensure that the terms and conditions subject to which approval is granted secures equitable sharing of benefits arising out of the use of accessed biological resources, their by-products, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers.

(2) The National Biodiversity Authority shall, subject to any regulations made in this behalf, determine the benefit sharing which shall be given effect in all or any of the following manner, namely :--

(a) Grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers:

(b) Transfer of technology

(c) Location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;

(d) Association of Indian scientists, benefit claimers and the local people with research and development in biological resources and biosurvey and bio-utilisation;

(e) Setting up of venture capital fund for aiding the cause of benefit claimers;

(f) Payment of monetary compensation and other non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.

(3) Where any amount of money is ordered by way of benefit sharing, the National Biodiversity Authority may direct the amount to be deposited in the National Biodiversity Fund-

Provided that where biological resource or knowledge was a result of access from specific individual or group of individuals or organizations, the National Biodiversity Authority may direct that the amount shall be paid directly to such individual or group of individuals or organizations in accordance with the terms of any agreement and in such manner as it deems fit.

(4) For the purposes of this section, the National Biodiversity Authority shall, in consultation with the Central Government, by regulations, frame guidelines.

CHAPTER VI

STATE BIODIVERSITY BOARD

22. Establishment of State Biodiversity Board. ____ (I) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established by that Government for the purposes of this Act, a Board for the State to be known as the(name of the State) Biodiversity Board.

(2) Notwithstanding anything contained in this section, no State Biodiversity Board shall be constituted for a Union Territory and in relation to a Union territory, the National Biodiversity Authority shall exercise the powers and perform the functions of a State Biodiversity Board for that Union territory.

Provided that in relation to any Union territory, the National Biodiversity Authority may delegated all or any of its powers or functions under this sub-section to such person or group of persons as the Central Government may specify

(3) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said byname sue and be used

(4) The Board shall consist of the following members, namely:-

(a) A Chairperson who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the State Government:

(b) Not more than five *ex officio* members to be appointed by the State Government to represent the concerned Departments of the State Government:

(c) Not more than five members to be appointed from amongst experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources

(5) The head office of the State Biodiversity Board shall be at such places the State Government may, by notification in the Official Gazette, specify

23. Functions of State Biodiversity Board._____ The functions of the State Biodiversity Board shall be to____

(a) Advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity sustainable use of its components and equitable sharing of the benefits arising out of the utilisation of biological resources:

(b) Regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilisation of any biological resource by Indians:

(c) Perform such other functions as maybe necessary to carryout the provisions of this Act or as maybe prescribed by the State Government

24. Power of State Biodiversity Board to restrict certain activities violating the objectives of conservation etc._____ (1) Any citizen of India or a body corporate, organization or association registered in India intending to undertake any activity referred to in section 7 shall give prior intimation in such form as may be prescribed by the State Government to the State Biodiversity Board.

(2) On receipt of intimation under sub-section (1), the State Biodiversity Board may, in consultation with the local bodies concerned and after making such enquiries as it may deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity:

Provided that no such order shall be made without giving an opportunity of being heard to the person affected. Any information given in the form referred to in sub section (1)

the prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto

25. Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board:___ The provisions of section 9 to 17 shall apply to a State Biodiversity Board and shall have effect subject to the following modifications, namely:___

(a) reference to the Central Government shall be construed as references to the State Government

(b) references to the National Biodiversity Authority shall be construed as references to the State Biodiversity Board:-

(c) Reference to the Consolidated Fund of India shall be construed as reference to the Consolidated Fund of the State.

CHAPTER VII

FINANCE ACCOUNTS AND AUDIT OF NATIONAL BIODIVERSITY AUTHORITY

26. Grants or Loans by the Central Government___ The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the National Biodiversity Authority by way of grants or loans such sums of money as the Central Government may think fit for being utilized for the purposes of this Act

27. Constitution of National Biodiversity Fund.____(I) There shall be constituted a Fund to be called the National Biodiversity Fund and there shall be credited thereto___

(a) any grants and loans made to the National Biodiversity Authority under section 26:

(b) all charges and royalties received by the National Biodiversity Authority under this Act; and

(c) all sums received by the National Biodiversity Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for_____.

(a) Channeling benefits to the benefit claimers:

(b) Conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed:

(c) socio-economic development of are as referred to include (b) in consultation with the local bodies concerned.

28. Annual report of National Biodiversity Authority____ The National Biodiversity Authority shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and furnish, to the Central Government, before such date as may be prescribed, its audited copy of accounts together with auditors report thereon

29. Budget, accounts and audit.____(I) The National Biodiversity Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the National Biodiversity Fund) and prepare and annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor- General of India

(2) The accounts of the National Biodiversity Authority shall be audited by the Comptroller and Auditor- General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the National Biodiversity Authority to the Comptroller and Auditor-General of India.

(3) The comptroller and auditor-General of India and any other person appointed by him in connection with the audit of the accounts, National Biodiversity Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the National Biodiversity Authority.

(4) The accounts of the National Biodiversity Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government.

30. Annual report to be laid before Parliament ---- The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.

CHAPTER VIII
FINANCE, ACCOUNTS AND AUDIT OF STATE
BIODIVERSITY BOARD

31. Grant of money by the State Government to State Biodiversity Board -----

The State Government may, after due appropriation made by the State Legislature by law in this behalf, pay to the State Biodiversity Board by way of grants or loans such sums of money as the State Government may think fit for being utilized for the purposes of this Act.

32. Constitution of State Biodiversity Fund----- (1) There shall be constituted a Fund to be called the State Biodiversity Fund and there shall be credited thereto---

- (a) any grants and loans made to the State Biodiversity Fund under section 31
- (b) any grants or loans made by the National Biodiversity Authority.
- (c) all sums received by the State Biodiversity Fund from such other sources as may be decided upon by the State Government.

(2) The State Biodiversity Fund shall be applied for ----

- (a) the management and conservation of heritage sites
- (b) compensating or rehabilitating any section of the people economically affected by notification under sub-section (1) of section 37.
- (c) conservation and promotion of biological resources.
- (d) socio-economic development of areas from where such biological resources or knowledge associated thereto has been accessed subject to any order made under section 24, in consultation with the local bodies concerned.
- (e) meeting the expenses incurred for purposes authorized by this Act.

33. Annual report of State Biodiversity Board ----- The State Biodiversity Board shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government.

34. Audit of accounts of State Biodiversity Board ----- The accounts of the State Biodiversity Board shall be maintained and audited in such manner as may, in consultation with the Accountant-General of the State, be prescribed and the State Biodiversity Board shall furnish, to the State Government, before such date as may be prescribed, its audited copy of accounts together with auditors report thereon.

35. Annual report of the State Biodiversity Board to be laid before State Legislature ----- The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the House of State Legislature.

CHAPTER

DUTIES OF THE CENTRAL AND THE STATE GOVERNMENTS

36. Central Government to develop National strategies, plan, etc. for conservation, etc., of biological diversity ---- (1)The Central Government shall develop national strategies, plan, programs for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of in situ and ex situ conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity.

(2) Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.

(3) The Central Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral or cross – sectoral plan, programs and policies.

(4) The Central Government shall undertake measures ---

(i) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects and where appropriate provide for public participation in such assessment.

(ii) to regulate manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

(5)The Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity Authority through such measures, which may include registration of

such knowledge at the local, State or national levels, and other measures for protection, including *sui generis* system.

Explanation – For the purpose of this section ----

- (a) “ex situ conservation” means the conservation of components of biological diversity outside their natural habitats.
- (b) In situ conservation” means the conservation of ecosystem and natural habitats and the maintenance and recovery of viable populations species in their natural surroundings and in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

37. Biodiversity heritage sites ---- (1) Without prejudice to any other law for the time being in force, the State Government may, from time to time in consultation with the local bodies, notify in the Official Gazette areas of biodiversity importance as biodiversity heritage sites under this Act.

(2) The State Government, in consultations with the Central Government, may frame rules for the management and conservation of all the heritage sites.

(3) The State Government shall frame schemes for compensating or rehabilitating any person or selection of people economically affected by such notification.

38. Power of Central Government to notify threatened species ----- Without prejudice to the provisions of any other law for the time being in force, the Central Government, in consultation with the concerned State Government, may from time to time notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species.

39. Power of Central Government to designate repositories --- (1) The Central Government may, in consultation with the National Biodiversity Authority, designate institutions as repositories under this Act for different categories of biological resources.

(2) The repositories shall keep in safe custody the biological material including voucher specimens deposited with them.

(3) Any new taxon discovered by any person shall be notified to the repositories or any institution designated for this purpose and he shall deposit the voucher specimens with such repository or institution.

40. Power of Central Government to exempt certain biological resources ----

Notwithstanding anything contained in this Act, the Central Government may, in consultation with the National Biodiversity Authority, by notification in the Official Gazette, declare that the provisions of this Act shall not apply to any items, including biological resources normally traded as commodities.

CHAPATER X

BIODIVERSITY MANAGEMENT COMMITTEES

41. Constitution of Biodiversity Management Committees --- (1) Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and micro organisms and chronicling of knowledge relating to biological diversity.

Explanation. ----- For the purposes of this sub-section, ----

- (a) “Cultivar” means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation;
- (b) “folk variety” means a cultivated variety of plant that was developed, grown and exchanged in formally among farmers;
- (c) “landrace” means primitive cultivar that was grown by ancient farmers and their successors.

(2) The National Biodiversity Authority and the State Biodiversity Board shall consult the Biodiversity Management Committees while talking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee.

(3) The Biodiversity Management Committees may levy charges by way of collection fees from any person for accessing or collecting any biological resource for commercial purpose from areas falling within its territorial jurisdiction.

CHAPTER XI

LOCAL BIODIVERSITY FUND

42. Grants to local Biodiversity Fund. ---- The State Government may, after due appropriation made by State Legislature by law in this behalf, pay to the Local Biodiversity Funds by way of grants or loans such sums of money as the State Government may think fit for being utilized for the purposes of this Act.

43. Constitution of Local Biodiversity Fund. ----- (I) There shall be constituted a Fund to be called the Local Biodiversity Fund at every area notified by the State Government where any institution of self- government is functioning and there shall be credited thereto-----

- (a) Any grants and loans made under section 42:
- (b) Any grants or loans made by the National Biodiversity Authority.
- (c) Any grants or loans made by the State Biodiversity Boards:
- (d) Fees referred to in sub-section (3) of section 41 received by the Biodiversity Management Committee:
- (e) All sums received by the Local Biodiversity Fund from such other sources as may be decided upon by the State Government.

44. Application of Local Biodiversity Fund.--- (I) Subject to the provisions of sub-section (2), the management and the custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied in the manner as maybe prescribed by the State Government.

(2) The fund shall be used for conservation and promotion of biodiversity in the areas falling within the jurisdiction of the concerned local body and for the benefit of the community in so far such use is consistent with conservation of biodiversity.

45. Annual report of Biodiversity Management Committees. ----- The person holding the custody of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time as maybe prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the concerned local body.

46. Audit of accounts of Biodiversity Management Committees.---The accounts of the Local Biodiversity Fund shall be maintained and audited in such manner as

may, in consultation with the Accountant- General of the State, be prescribed and the person holding the custody of the Local Biodiversity Fund shall furnish, to the concerned local body, before such date as may be prescribed, its audited copy of accounts together with auditors' report thereon.

47. Annual report etc., of the Biodiversity Management Committee to be submitted to District Magistrate.—Every local body constituting a Biodiversity Management Committee under sub-section (I) of section 41, shall cause, the annual report and audited copy of accounts together with auditor's report thereon referred to in sections 45 and 46, respectively and relating to such Committee, to be submitted to the District Magistrate having jurisdiction over the area of the local body.

CHAPTER XII MISCELLANEOUS

48. National Biodiversity Authority to be bound by the directions given by Central Government.---(I) Without prejudice to the foregoing provisions of this Act, the National Biodiversity Authority shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the National Biodiversity Authority shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

49. Power of State Government to give directions.---(I) Without prejudice to the foregoing provisions of this Act, the State Biodiversity Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the State Government, may give in writing to it from time to time:

Provided that the State Biodiversity Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section

(2) The decision of the State Government whether a question is one of policy or not shall be final.

50. Settlement of disputes between State Biodiversity Boards. ---(I) If a dispute arises between the National Biodiversity Authority and a State Biodiversity Board, the said Authority or the Board, as the case maybe, may prefer an appeal to the Central Government within such time as maybe prescribed.

(2) Every appeal made under sub-section (I) shall be in such form as may be prescribed by the Central Government.

(3) The procedure for disposing of an appeal shall be such as maybe prescribed by the Central Government.

Provided that before disposing of an appeal, the parties shall be given a reasonable opportunity of being heard.

(4) If a dispute arises between the State Biodiversity Boards, the Central Government shall refer the same to the National Biodiversity Authority

(5) While adjudicating any dispute under sub-section (4), the National Biodiversity Authority shall be guided by the principles of natural justice and shall follow such procedure as may be prescribed by the Central Government.

(6) The National Biodiversity Authority shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely.

(a) Summoning and enforcing the attendance of any person and examining him on oath:

(b) Requiring the discovery and production of documents:

(c) Receiving evidence on affidavits:

(d) Issuing commissions for the examination of witnesses or documents:

(e) Reviewing its decisions:

(f) Dismissing an application for default or deciding it *ex parte*;

(g) Setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(h) Any other matter which may be prescribed.

(7) Every proceeding before the National Biodiversity Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the India Penal Code (45 of 1860) and the National Biodiversity Authority

shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

51. Members, Officers, etc., of National Biodiversity Authority and State Biodiversity board deemed to be public servants. --- All members, officers and other employees of the National Biodiversity Authority or the State Biodiversity Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the India Penal Code (45 of 1860).

52. Appeal.----- Any person, aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, may file an appeal to the High Court within thirty days from the date of communication to him, of the determination or order of the National Biodiversity Authority or the State Biodiversity Board, as the case may be:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

53. Execution of determination or order---- Every determination of benefit sharing or order made by the National Authority or State Biodiversity Board under this Act or the order made by the High Court in any appeal against any determination or order of the National Biodiversity Authority or a State Biodiversity Board shall, on a certificate issued by any officer of the National Biodiversity Authority or a State Biodiversity Board or the Registrar of the High Court, as the case maybe, deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court.

Explanation --- For the purposes of this section and section 52, the expression “State Biodiversity Board” included the person or group of persons to whom the powers or functions under sub-section (2) of section 22 have been delegated under the proviso to that sub-section and the certificate relating to such person or group of persons under this section shall be issued by such person or group of persons, as the case may be.

54. Protection of action taken in good faith --- No suit, prosecution or other legal proceedings shall lie against the Central Government or the State Government or any member, officer or employee of National Biodiversity Authority or the State Biodiversity Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made there under.

55. Penalties ---(1) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 3 or section 4 or section 6 shall be punishable with

imprisonment for a term which may extend to five years, or with fine which may extend to ten lakh rupees and where the damage caused exceeds ten lakh rupees such fine may commensurate with the damage caused, or with both.

(2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 7 or any order made under sub-section (2) of section 24 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees or with both.

COMMENTS

Contravention or attempts to contravene or abetting contravention of the provisions of (i) section 3 or section 4 or section 6 is punishable with imprisonment upto five years, or with fine upto ten lakh rupees and where the damage caused, exceeds ten lakh rupees fine may commensurate with the damage caused or with both; (ii) section 7 or any order made under section 24(2) is punishable with imprisonment upto three years, or with fine five lakh rupees, or with both.

56. Penalty for contravention of directions or orders of Central Government, State Government, National Biodiversity Authority and State Biodiversity Boards---- If any person contravenes any direction given or order made by the Central Government, the State Government, the National Biodiversity Authority or the State Biodiversity Board for which no punishment has been separately provided under this Act, he shall be punished with a fine which may extend to one lakh rupees to two lakh rupees and in the case of continuous contravention with additional fine which may extend to two lakh rupees everyday during which the default continuous.

57. Offices by companies ----- (1) Where an offence or contravention under this Act has been committed by a company, every person who at the time the offence or contravention was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

(2) Notwithstanding anything contained in sub-section (1), where an offence or contravention under this Act has been committed by a company and it is proved that the offence or contravention has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly.

Explanation --- For the purposes of this section -----

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director” , in relation to a firm, means a partner in the firm.

58. Offences to be cognizable and non-bailable.----- The offences under this Act shall be cognizable and non-bailable.

59. Act to have effect in addition to other Acts ----- The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or wildlife.

60. Power of Central Government to give direction to State Government ---- The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule or delegation or order made there under.

61. Cognizance of offences ----- No Court shall take cognizance of any offence under this Act except on a complaint made by ---

- (a) the Central Government or any authority or officer authorized in this behalf by that Government, or
- (b) any benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint authorized as aforesaid.

COMMENTS

Cognizance of any offence under the Act can be taken by court only on a complaint made by (i) the Central Government or any authority or officer authorized by that Government; or (ii) any benefit claimant who has given notice of thirty days of such offence and of his intention to make a complaint to Central Government.

62. Power of Central Government to make rules --- (1) The Central Government may, by notification in the Official Gazette, make rules* for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generally of the foregoing power, such rules may provide for all or any of the following matters, namely-----

(a) terms and conditions of service of the Chairperson and member under section 9;

(b) powers and duties of the Chairperson under section 10;

(c) procedure under sub-section(1) of section 12 in regard to transaction of business at meetings;

(d) form of application and payment of fees for undertaking certain activities under sub-section (1) of section 19;

(e) the form and manner of making an application under sub-section (2) of section 19;

(f) form of application and manner for transfer of biological resource or knowledge under sub-section (2) of section 20;

(g) form in which, and the time of each financial year at which, the annual report of the National Biodiversity Authority shall be prepared and the date before which its audited copy of accounts together with auditor's report thereon shall be furnished under section 28;

(h) form in which the annual statement of account shall be prepared under sub-section(1) of section (29);

(i) the time within which and the form in which, an appeal may be preferred, the procedure for disposing of an appeal and the procedure for adjudication, under section 50;

(j) the additional matter in which the National Biodiversity Authority may exercise powers of civil court under clause (j) of sub-section (6) of section 50;

(k) the manner of giving notice under clause (b) of section 61;

(l) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this section and every regulations made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification

in the rules or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

63. Power the State Government to make rules ----- (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely-----

(a) the other functions to be performed by the State Biodiversity Board under clause (c) of section 24;

(b) the form in which the prior intimation shall be given under sub-section (1) of section 24;

(c) the form in which, and the time of each financial year at which, the annual report shall be prepared under section 33;

(d) the manner of maintaining and auditing the accounts of the State Biodiversity Board and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 34;

(f) the manner of management and custody of the Local Biodiversity fund and the purposes for which such Fund shall be applied under sub-section (1) of section 44;

(g) the form of annual report and the time at which such report shall be prepared during each financial year under section 45;

(h) the manner of maintaining and auditing the accounts of the Local Biodiversity Fund and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 46;

(i) any other matter which is to be, or may be, specified.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

64. Power to make regulations ----- The National Biodiversity Authority shall, with the previous approval of the Central Government by notification in the Official Gazette, make regulations for carrying out the purposes of this Act.

65. Power to remove difficulties ----- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty;

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.