

THE BIOLOGICAL DIVERSITY ACT, 2002 – SCOPE, ACCESS AND SUSTAINABLE USE

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ABSTRACT

India harbors a rich diversity of life at ecosystem, species and varietal levels and is a vast repository of traditional knowledge associated with biological resources. India, In response to the Convention on Biological Diversity (CBD) and in order to provide a national framework to deal with conservation, sustainable use and fair and equitable sharing of benefits, brought the Biological Act into force in the year 2002 which born out of India's attempt to realize the objectives enshrined in the convention which recognizes the sovereign rights of states to use their own biological resources of the states. This Biological Diversity Act of 2002 covers conversation, use of biological resources and associated knowledge occurring in India for commercial or research purposes of bio survey and bio utilization. The law provides a framework for access to biological resources and sharing the benefits arising out of such access and use. This enactment covered foreigners and non-resident Indian, body corporate, associations that are nor either not incorporated or incorporated in India with non-Indian participation in its share capital or management. The present paper is focusing the first objective to study the scope and sustainable use of the components of bio diversity law. The second objective is to examine access and the extent of benefit sharing.

KEY WORDS: Ecosystem – Convention - Biological resources – Associated knowledge – Sustainable use – Access – Benefit sharing.

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INTRODUCTION: THE LAW AND THE CONVENTION-SCOPE

The Biological Diversity Act, 2002 was brought into existence out of India's attempts and efforts to realize the objectives in the United Nations Convention on Biological Diversity (CBD) 1992 which recognizes the sovereign rights of states use their own biological resources. The Act denotes the conservation, use of biological resources and associated knowledge occurring in India for commercial or research purposes or for the purpose of bio-survey and bio-utilization. It provides a framework for access to biological resources and sharing the benefits arising out of such access and use. The scope of the Act covered foreigners, non-resident Indians, body corporate. It was adopted by the Conference of Parties to the Convention on Biological Diversity as its tenth meeting on 29th October, 2010 in Nagoya Japan. The government of India has approved the ratification of Nagoya Protocol on 4th October, 2014. This protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their utilization provided a transparent legal framework for the effective implementation of one of three objectives of the Convention on Biological Diversity. The fair equitable sharing of benefits arising out of the utilization of generic resources by appropriate access to generic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies and by appropriate funding; thereby contributing to the convention of biological diversity and sustainable use of its components.

ORGANIZATIONAL STRUCTURE OF NATIONAL BIODIVERSITY AUTHORITY

The National Biodiversity Authority (NBA) is headed by a Chairperson assisted by his Personal Secretary. The NBA is organized by its Secretary assisted by his Personal Secretary. Under the Secretary, three territorial directions; Technical, Finance and Administration wings are functioning. Under the Technical Wing; One Legal Advisor, Two Technical Officers are designated assisted by their Technical Assistants.

BIODIVERSITY CONSERVATION: THE LAW- ACCESS AND BNEFIT SHARING

Access to bio-resources and / or associated knowledge from India is considered and approved by the National Biodiversity Authority (NBA) in accordance with Sections 3, 4 and 6 of Biological Diversity Act, 2002 and Rules 14, 17, 18 and 19 of Biological Diversity Rules, 2004. The National Biodiversity Authority so far received around 700 requisitions related to access to bio-

resources/associated knowledge and benefit sharing. The request for benefit sharing is made in the following forms to enforce benefit sharing mechanism as and when commercialization of accessed biological/genetic resources is done.

Form I: Access to biological resources and associated traditional knowledge

Form II: Transferring the results of research to foreign nationals, companies, NRI's for commercial purposes.

Form III: Seeking no objection for obtaining Intellectual Property Rights

Form IV: Third Party transfer of the accessed biological resources and associated knowledge

As per the Act, the National Biodiversity Authority shall consult the Biodiversity Management Committee (BMC) 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.

INDIA-UNDP PROJECT ON STRENGTHENING INSTITUTIONAL STRUCTURE TO IMPLEMENT THE BIODIVERSITY ACT: SUSTAINABLE USE AND ACCOMPLISHMENTS

India – UNDP Project on “Strengthening Institutional Structures to Implement the Biological Diversity Act” is being implemented since 2009 in the states of Jharkhand and Madhya Pradesh which have rich and globally significant biodiversity. The project is being supported by UNDP and implemented by Ministry of Environment and Forests, Government of India with National Biodiversity Authority (NBA) as the responsible party. The project is addressing the challenges of implementing the Biological Diversity Act by strengthening the State Biodiversity Boards and by constituting Biodiversity Management Committees (BMCs) through capacity building, awareness generation, education, data base development and networking.

The main focus of the project is to strengthen the institutional capacities at various levels and of different stakeholders within the UN Development Assistance Framework (UNDAF) and to bring

in changes to manage natural resources in an integrated, participatory and sustainable manner. The Project Management Unit (PMU) which works at NBA, Chennai is involved in monitoring and evaluation of the project activities being undertaken by the State Project Units functioning in Bhopal in Madhya Pradesh and Ranchi in Jharkhand. The PMU makes periodical visits to BMCs and interact with the local community for the effectively implementation of the project activities thereby strengthening the bottom level institutional structure.

PROJECT OUPUTS-SUSTAINABLE USE

- Institutional capacity of relevant National, State and Local Institutions enhanced for effective implementation of Biological Diversity Act
- Enhanced understanding at National, State and Local Institutions for conservation (*in situ* and *exsitu*) of bio-resources and ecosystems
- Knowledge sharing among National, State and Local Institutions for effective implementation of Biological Diversity Act

ACCOMPLISHMENTS

- Constituted 26 BMCs in Jharkhand and 795 BMCs in Madhya Pradesh
- Organized 13 awareness campaigns for effective implementation of Biological Diversity Act And Rules
- Developed 52 Peoples Biodiversity Registers
- Identified 8 Biodiversity Heritage Sites for notifications
- Conducted 9 trainings for income generation through multiple livelihoods
- Creation of database on conservation and sustainable utilization of Bio-resources
- Creation of database for ABS applications

CONCLUSION

This project has resulted in several outcomes that will help to achieve the objectives of the Department of Conservation's biodiversity offset program. Comment on these outcomes is provided under each objective below.

Devise objective measures for comparing biodiversity at impact and offset sites.

We used objective measurements for one set of condition-area models, and consider these to have good utility for setting time-bound, measureable targets.

Develop a cost-effective mechanism to establish that there has been no net loss in biodiversity at impact and offset sites.

Good quality information on vegetation composition and structure can be collected relatively efficiently, but obtaining the same level of information on fauna assemblages requires greater input of resources. Leslie matrices offer a good solution for effective use of fauna information.

Identify places where biodiversity can be restored to achieve a net gain, via a transparent re-creation or enhancement process.

The results of this project indicate that net gains will be difficult to achieve in habitats with low natural productivity and where impacts affect biodiversity values at or close to their benchmark condition.

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