

## TUNING INDIAN BIO DIVERSITY LAWS WITH NAGOYA PROTOCOL: AN ANALYSIS

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### ABSTRACT

The conservation of biological diversity is a serious and common concern. The better management of biological resources and biodiversity is essential for the welfare of human beings. As per the international obligation the Government of India, enacted the Biological Diversity Act, 2002. This Act provides conservation of biological diversity, presently there are many lacunas are present in this Act. But the cumbersome process regarding the permission and application of patent is the most impeding provision. New amendment in Biological Diversity Act 2002 endeavors to tune it with the Nagoya Convention. Secondly to remove the lacunas of the present Act and to create a favorable climate for collaborative research and investment. In new amendment Act it is also aimed to simplify the patent application procedure. In new amendment Act Ayush practitioners have been exempted from the Act's scope. In new amendment Act seeks to bring more foreign investment in biological resources, research, patent and commercial utilization, without compromising the national interest. The major concern with the amendment bill is that the corporate or foreign interest could use the loopholes of permission given to traditional medicine and use it for commercial purposes, without sharing the benefits with the conservers of biodiversity. It is imperative that new laws not only be regulatory, but also be executed with the involvement of local people, particularly village *sabhas* and *panchayats*.

**Keywords:** Biological diversity, Biological Diversity Act, 2002, Biological Diversity and Nagoya Protocol, New Amendment 2022, Patent Application Procedure.

## INTRODUCTION

The term 'biodiversity' is a simple contraction of 'biological diversity', biodiversity is the sum total of all biotic variation from the level of genes to ecosystems.<sup>i</sup> Biodiversity is all the different kinds of life you will find in one area. The variety of animal, plants, fungi and even microorganisms like bacteria that make up our natural world.<sup>ii</sup> Biodiversity is 'the variety of life' and refers collectively to variation at all levels of biological organization.<sup>iii</sup> And according to section 2 (b) of the Act,<sup>iv</sup> Biological Diversity means the variability among living organisms from all sources, including interalia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and this includes diversity within species, between species and of ecosystems. In simple terms it can be said that our outer environment is the bio diversity. And as environment is important for our existence, on the same footing it is important to conserve the bio diversity for other living organisms. The conservation of biological diversity is a serious and common concern. The better management of biological resources and biodiversity is essential for the welfare of human beings.<sup>v</sup> Because biodiversity is a base for customary and contemporary medicines, a foundation of food, provides raw materials for trade and industry. From last some decades, the environment and biodiversity is in danger situation by the activities of human beings. Therefore it is important to protect the biodiversity.

## LEGAL FRAMEWORK

United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992, and India was a party and signatory of the said convention.<sup>vi</sup> The said Convention reaffirms the sovereign rights of the States over their biological resources. As per the international obligation the Government of India, enacted the Biological Diversity Act, 2002. This Act provides 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.

## IMPORTANT PROVISIONS

The Biological Diversity Act puts forth definitions, principles, appointed authorities, procedures, mechanisms for conservation, access benefits, etc, all related to biodiversity. It also mentions an institutional structure to be established for the same purpose.

**Management structure of Biodiversity Act:** presently there are three tiered structure at the national, state and local level in the Act.

**National Biodiversity Authority <sup>vii</sup> (NBA)**

All matters relating to requests for access by foreign individuals, institutions or companies, and all matters relating to transfer of results of research to any foreigner will be dealt with by the National Biodiversity Authority.<sup>viii</sup> These persons cannot undertake biodiversity related activities without approval of National Biodiversity Authority.<sup>ix</sup> But such permission not required by government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in the Act.<sup>x</sup>

**State Biodiversity Boards <sup>xi</sup> (SBB)**

All matters relating to access by Indians for commercial purposes will be under the purview of the State Biodiversity Boards (SBB). The Indian industry will be required to provide prior intimation to the concerned SBB about the use of biological resource.<sup>xii</sup> The State Board will have the power to restrict any such activity, which violates the objectives of conservation, sustainable use and equitable sharing of benefits. However the local people and communities of the area, including growers and cultivators of biodiversity, and *vaid*s and *hakims*, who have been practicing indigenous medicine are exempted from purview of the Act.

**Biodiversity Management Committees <sup>xiii</sup> (BMCs)**

Institutions of local state government will be required to set up biodiversity management Committees in their respective areas for conservation, sustainable use, and documentation of biodiversity and chronicling of knowledge relating to biodiversity. NBA and SBBs are required to consult the concerned BMCs on matters related to use of biological resources and associated knowledge within their jurisdiction.

**People's Biodiversity Register <sup>xiv</sup> (PBR)**

The main function of the BMC is to prepare Peoples Biodiversity Register in consultation with local people. The Register shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them. Many of our local people or ecosystem people possess valuable knowledge of uses of biodiversity such as herbal remedies and vegetable dyes, much of the knowledge of the status and dynamics of biodiversity also resides with the people at grassroots. There is tremendous valuation from place to place in the distribution and uses of biodiversity, therefore documentation has to be highly location specific and time specific. The PBR is a complex process involving a series of activities linked to each other in many different ways. All local bodies have the responsibility of documentation of local biological resources. Comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them. Data about the local *Vaidas* and practitioners using the biological resources. Details of the access to biological resources and traditional knowledge graded, details of collection fee imposed and details of the benefits derived and mode of their sharing. People's have two kinds of knowledge. Knowledge of uses that might find commercial application and that might need to be guarded with respect to IPR. And second is knowledge pertinent to prudent management of natural resources that might be widely shared with benefit to all concerned without any unfair commercial profits accruing to any party. The NBA and the SBB shall provide guidance and technical support to the BMC for preparing Peoples Biodiversity Registers.<sup>xv</sup> The Peoples Biodiversity Registers shall be maintained and validated by the BMC.

## **LACUNAS OF THE PRESENT ACT**

Presently there are many lacunas are present in this Act. But the cumbersome process regarding the permission and application of patent is the most impeding provision. Which does not create a favorable climate for collaborative research and investment. Similarly on 29 October 2010, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity was adopted in Nagoya, Japan. Being a supplementary agreement to the Convention on Biological Diversity it is one of the most important multilateral environmental treaties recently adopted. The Protocol entered into force on 12 October 2014 thus marking an important step towards

the Implementation of the Convention on Biological Diversity.<sup>xvi</sup> India was signatory member state to this convention. Therefore, according to the convention, certain changes has to be carried out in the present Biodiversity Act. Step in this direction taken by the government of India on December 2021, when the ‘Biological Diversity Amendment Bill’ was introduced in Loksabha, lower house of the parliament.<sup>xvii</sup>

## **NEED FOR PROPOSED AMENDMENT**

The main objective behind this amendment is to bring changes in the present Biological Diversity Act 2002 to tune it with the Nagoya Convention. Secondly to remove the lacunas of the present Act and to create a favorable climate for collaborative research and investment. By simplifying procedure for permission and application of patent. So also to facilitate the access to biological resources and traditional knowledge by India traditional medicine sector.

### ***Burdensome Process:***

Government of India Ministry of Ayush is promoting the traditional medical knowledge of India and practitioners and scientists of *Ayurveda*, *Siddha*, *Unani* and Homeopathy.<sup>xviii</sup> This need wide range of plant based medicine. There is a global rise in the use of traditional medicines. Therefore government of India prepaid national list of essential medicine which includes medicinal plants.<sup>xix</sup> The present law creates impediment in the work of Ayush ministry as well as for the other industrial and research sector. So they expressed concern about the procedure under the present law and urge to government to simplify and speed it. Similarly they asked the government to lower the compliance burden. In order to create favorable climate for collaborative research and investment.

## **KEY AMENDMENTS IN NEW ACT**

***Access and Benefit Sharing:***

In new amendment Act it is also aimed to simplify the patent application procedure<sup>xx</sup> as well as to expand the extend of access and benefit sharing with local communities. This measure aim to align domestic legislation with the 2010 Nagoya protocol.Under the Convention of Biological Diversity and Nagoya Protocol on access and benefit sharing to which India is Party,<sup>xxi</sup> it is mandated that benefit derived from the use of biological recourses are shared in fair and equitable manner among the indigenous and local communities. When an Indian or foreign company or individual accesses biological resources such as medicinal plants and associated knowledge, it has to take prior consent from the National Biodiversity Board. The board can impose a benefit sharing fees or royalty or impose condition so that the company shares the monetary benefit from commercial utilization of these resources with local people who are conserving biodiversity in the region.

***Exemptions:***

In new amendment Act Ayush practitioners have been exempted from the Act's scope<sup>xxii</sup> which is a significant step because the Ayush business relies heavily on India's biological resources. Therefore exempting Ayush practitioners would boost their business. This is the aim of central government by these steps it wish to promote and strengthen awareness and interest about AYUSH Systems of Medicine and to facilitate International promotion, development and recognition.<sup>xxiii</sup>

***Foreign Investment:***

In new amendment Act seeks to bring more foreign investment in biological resources, research, patent and commercial utilization, without compromising the national interest. The Government of India has undertaken deep structural and sustained reforms to strengthen the healthcare sector and has also announced conducive policies for encouraging foreign direct investment which is planed under the NITI Aayog.<sup>xxiv</sup> This move is beneficial to the government of India as well as it achieves the goal of Nagoya Protocol. It is going to boost Indian medicine system. It will also help to reduce the pressure on wild medicinal plants by encouraging cultivation of medicinal plants and encourage Indian system of medicine.

**DRAWBACKS OF NEW AMENDMENT**



***Commercialization:***

The major concern with the amendment bill is that the corporate or foreign interest could use the loopholes of permission given to traditional medicine and use it for commercial purposes, without sharing the benefits with the conservers of biodiversity.<sup>xxv</sup> As it is observed that every investor wants to gain more and more profit from the business. In this case also there is scope that these loopholes can be detrimental to the interest of native people. In the present Act the interests of the native people are protected but in view of the proposed amendment their interests are compromised.

***Ignoring Bio-Utilization & Local Communities:***

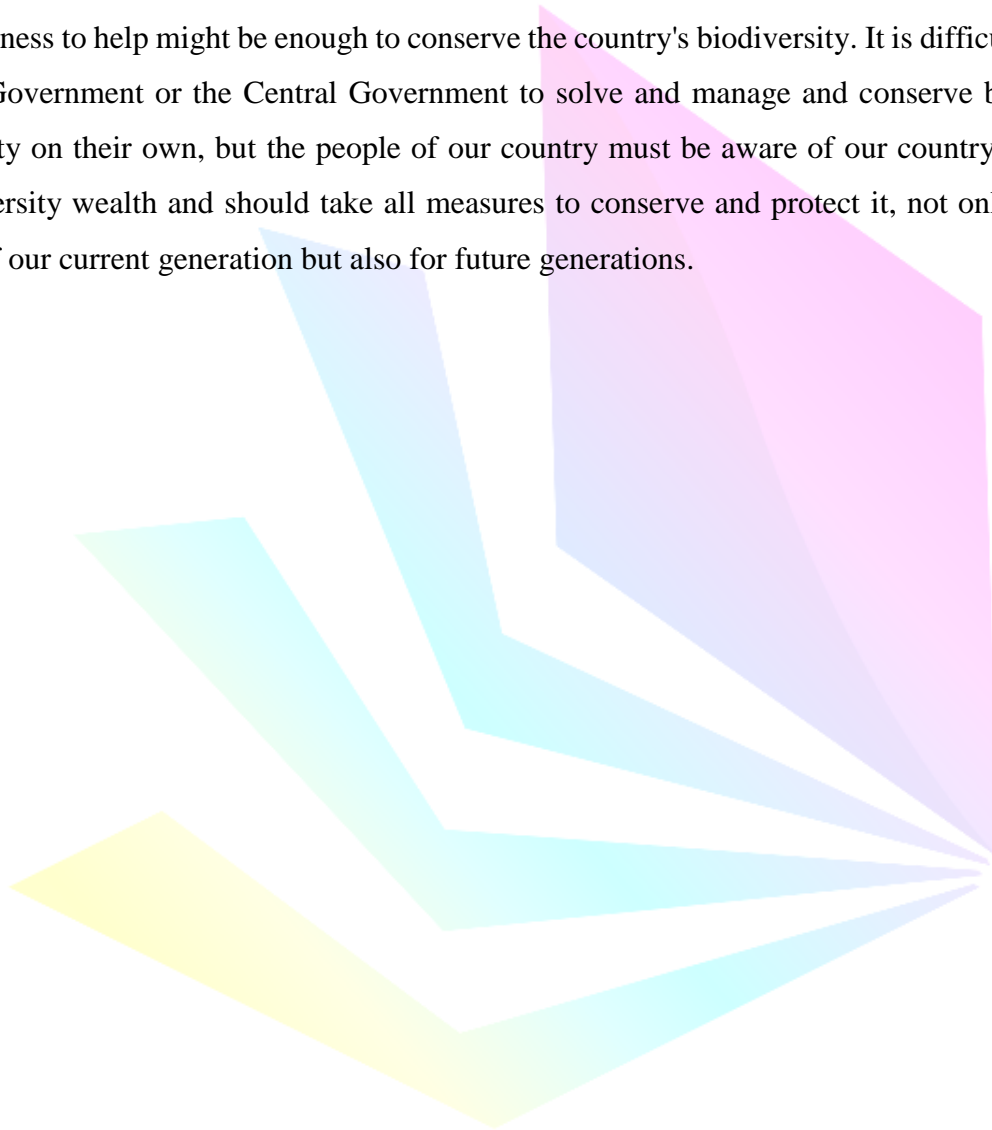
The Bio-Utilization means utilization of biological resources, typically via biotechnology.<sup>xxvi</sup> The bill has excluded the term bio utilization which is an important element in the Act leaving out bio utilization would leave out an array of activities like characterization, incentivisation and bioassay which are undertaken with commercial motive. The amendment does not mention any provision for protecting, conservation of bio diversity or increasing local community's stake in sustainable use.

***Contrary to Biological Diversity Act 2002:***

The main focus of the bill is to facilitate trade in biodiversity as appose to conservation, protection of biodiversity and knowledge of local communities. The amendment is completely contrary to the aim and objective of the Principal Act.<sup>xxvii</sup> Wherein it speaks about the conservation, sustainable utilization and equitable sharing of resources. Therefore the proposed amendment is industry oriented and does not speaks about conservation, protection of biodiversity. Indian biodiversity indeed requires good protection by putting its legal framework and policies to action. The time period of 2014 to 2017 saw a 7.8% increase in the number of threatened and endangered species.<sup>xxviii</sup>

**CONCLUSION**

The government must work to develop confidence between its agencies in the region and the people who rely on these jungles by considering them as equal citizens in the same way that everyone else in the country is treated. It is imperative that new laws not only be regulatory, but also be executed with the involvement of local people, particularly village *sabhas* and *panchayats*. Local communities will get greater benefits, including learning how to establish business, if they are empowered and capacity building is done. Local people's engagement and willingness to help might be enough to conserve the country's biodiversity. It is difficult for the State Government or the Central Government to solve and manage and conserve biological diversity on their own, but the people of our country must be aware of our country's natural biodiversity wealth and should take all measures to conserve and protect it, not only for the sake of our current generation but also for future generations.





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