

THE LEGAL REGIME FOR THE CONSERVATION OF BIODIVERSITY IN INDIA: AN OVERVIEW

By *Dr. Rakesh Chandra*

*Academician, Former Civil Servant, LL.M. from B.B.A. (Central) University, Lucknow, Ph.D.
in Law from Lucknow University, India*

ABSTRACT

India is a land of rich biodiversity including flora, fauna and aquatic animals. From a biodiversity angle, the whole country can be divided into 18 biosphere reserves and 4 of the 36 biodiversity hotspots. Western Ghats is the richest biodiversity zone in India consisting of 7402 species of flowering plants and 1814 species of non-flowering plants. Undoubtedly, this vast reservoir of biodiversity resources needs to be protected for the benefit of the people living in this country. Keeping in view this vision, the Government of India passed the Biological Diversity Act, 2002 to give effect to the United Nations Convention on Biological Diversity (CBD) in 1992 that strives for sustainable, fair and equitable sharing of benefits arising out of the utilisation of biological resources and associated traditional knowledge. In 2021, the Biological Diversity (Amendment) Bill, 2021 was introduced in Lok Sabha on 16th December 2021 which was referred to a Joint Parliamentary Committee (JPC) four days later because of concerns over the proposed amendments favouring the industry and contradicting the spirit of the Convention on Biological Diversity (CBD). The Committee's report was tabled in Parliament on 2nd August 2022. The Bill brought in the light of recommendations of the Committee was put up in the current Monsoon session of the Parliament and it was passed by Lok Sabha on 25th July, 2023, and by Rajya Sabha on August 1, 2023. The amended Bill promotes 'ease of doing business' and would exempt users of codified traditional knowledge and AYUSH (Ayurveda, Yoga and Naturopathy, Unani, Siddha, and Homeopathy) practitioners from sharing benefits with local communities. This paper tries to explore the efficacy of these legislations in preserving and protecting the rich biodiversity of the country and also proposes some remedial measures.

Keywords: Biological Diversity Act, 2002, Biological Diversity (Amendment) Bill, 2023, Convention on Biological Diversity (CBD), AYUSH, Biosphere Reserves.

INTRODUCTION

India is a land gifted with very rich biodiversity. There are innumerable species of flora and fauna in existence here since ancient times. Our great ancestors believed that conservation of nature is the only hope for the future generations. The Vedas, Upanishads, itihasa and Puranas teach us to worship rivers, mountains, lakes, animals, birds, flora as an embodiment of divine elements. Our scriptures lavishly refer to them as manifestations of Prana of Shakti in all forms of matter. We worship them in our daily lives. However, during the last few decades, the loss in biodiversity is quite evident. In this context, it may be noted that biodiversity conservation is a global issue. The United Nations Convention on Biodiversity (CBD) was the landmark step in this direction. This happens to be one of the key agreements which were adopted during the Earth Summit held in Rio de Janeiro in 1992. The objectives of this Convention were conservation of biodiversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of genetic resources. India ratified the Convention in 1994. Since then, several steps have been taken in pursuance of the commitments under the Convention. The first major step was to pass a legislation named as the Biological Diversity Act, 2002 to give effect to the provisions of this Convention. Further, a National Biodiversity Action Plan was prepared in 2008, and an Addendum to this Plan was brought forward in 2014 which contained 20 national targets on biodiversity. In the year 1973-74, the idea of 'Biosphere Reserve' was initiated by UNESCO under its Man and Biosphere (MAB) Programme. This Programme was launched in 1970 with the objectives of development of a basis for the rational use and conservation of the resources of the biosphere and for the improvement of the relationship between man and the environment. In its follow up, the Indian National Man and Biosphere (MAB) Committee was formed which identifies and recommends potential sites for designation as Biosphere Reserves in tune with the UNESCO guidelines and criteria. Currently, there are 18 designated Biosphere Reserves in all. Out of these, 10 Biosphere Reserves have found place in the World Network of Biosphere Reserves of UNESCO. In this regard, the environment and forest, along with line departments of the concerned State and Union Territories are the implementing organizations. Lead institutes, especially identified for the

Biosphere Reserves, conduct research activities on the sanctioned research projects. The scheme of Biodiversity Conservation was initiated during 1991-92 during the Eight Plan period. It was aimed to ensure coordination among various agencies dealing with the issues related to conservation of biodiversity, and to review, monitor and evolve adequate policy instruments for the same. India has also declared 36 Biodiversity sites, out of which 14 sites having unique, ecologically fragile ecosystems, endowed with rich biodiversity, were declared as Biodiversity Heritage Sites after January 2022.

INDIA'S LEGAL FRAMEWORK FOR BIODIVERSITY CONSERVATION

The Biological Diversity Act, 2002

Salient Features

1. Section 2(b) of the Act defines "biological diversity" which means the variability among living organisms from all sources and ecological complexes of which they are part. It is inclusive of diversity within species or between species and of ecosystems.
2. Section 2(c) defines "biological resources" which includes plants, animals and micro-organisms or parts thereof, their genetic material and by-products with actual or potential use or value. However, it does not include human genetic material. This definition of biological reserves is very exhaustive.
3. Section 2(d) contains the definition of "bio-survey and bio-utilisation". It means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterisation, inventorisation and bioassay.
4. Section 2(f) defines "commercial utilisation" which means end uses of biological resources for commercial utilisation such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts, and genes used for improving crops and livestock through genetic intervention. However, it does not include conventional breeding or traditional practices used in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping.
5. Section 2(j) is about "National Biodiversity Authority " while is established under Section 8 of the Act. According to Section 8, the Central Government will establish

such Authority. Section 18 of the Act defines the functions and powers of this Authority.

6. Section 2(n) defines "State Biodiversity Board" established under Section 22 of the Act. Under this Section, the State Government will establish this Authority and Section 23 describes the functions of this Board.
7. Section 2(o) defines "sustainable use" which is very important. It says that components of biological diversity should be used in such a manner that does not lead to the long-term decline of biological diversity. That is how its potential to meet the needs and aspirations of present and future generations will be maintained.
8. According to Section 3, only those persons previously authorized by the National Biodiversity Authority, can obtain any biological resource occurring in India of knowledge associated thereto for research or for commercial utilisation or for bio-survey and bio-utilisation. Any unauthorized access will be considered theft or biopiracy, and therefore, punishable under law. The following four kinds of access that are exempt from seeking prior approval under the Act;ⁱ
 - a. All local people and communities of the area, including growers and cultivators of biodiversity. Indigenous medicine practitioners such as vaidas and hakims are included in this category.
 - b. Access for bioresources exported as commodities. The list of species is regularly updated by the National Biodiversity Authority.
 - c. Collaborative research projects including those involving an Indian and a foreign entity. This is applicable only if Intellectual Property Rights are involved.
 - d. Any access being made under the Protection of Plant Variety and Farmers Rights Act, 2001, for Plant Breeder Rights.
9. Section 37 of the Act envisages the notification of biodiversity heritage sites by the Central Government in consultation with the concerned State Government.
10. Section 38 empowers the Central Government to notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species in consultation with the concerned State Government. It may also prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species.

11. Section 41 stipulates the constitution of Biodiversity Management Committee by every local body 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 microorganisms and chronicling of knowledge relating to biological diversity. These Committees may levy charges by way of collection fees from any person for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction.
12. The State Government may, after following the appropriate legislative process, pay to the Local Biodiversity Funds by way of grants or loans such sums of money as the State Government deems fit for the purposes of this Act.
13. According to the Biological Diversity Act, 2002, and the corresponding Rules of 2004, all the Biodiversity Management Committees are required to prepare People's Biodiversity Registers (PBRs). This is an exercise to document all the resources and the knowledge that has been developed over the years in the jurisdiction of any local body. Currently, printed PBRs and online databases like PeBInfo and Indian Biodiversity Information System that are maintained by the National Biodiversity Authority and the State Biodiversity Boards are used for benefit sharing agreements in case the access is approved by either of these bodies.ⁱⁱ

The Biological Diversity (Amendment) Bill, 2023

The Biological Diversity (Amendment) Bill, 2023 was passed by Lok Sabha on 25th July this year by a voice vote. The Bill was introduced in Parliament on 16 December 2021 but was sent to a Joint Parliamentary Committee four days later in the wake of serious concerns raised by the members. It was averred by them that the proposed amendments will favour the industry and contradict the spirit of the Convention on Biological Diversity (CBD). Introducing the Bill, the Union Minister of Forest, Environment and Climate Change, Bhupender Yadav said that the Bill is "significant because the whole world is undergoing a triple crisis now. On one side is the crisis of climate change, on another is the crisis of desertification of land, and on the third, the crisis of the loss of biological resources." The Bill seeks to promote "ease of doing business " and exempt users of codified traditional knowledge and Ayurveda, Yoga and

Naturopathy, Unani, Siddharth, and Homeopathy (AYUSH) practitioners from sharing benefits with local communities. Its other provisions are following:

1. A person cannot share or transfer any result of the research on any biological resource occurring in, or obtained or accessed from, India or associated traditional knowledge, for monetary consideration or otherwise, to an individual without the prior approval in writing of the NBA, except the codified traditional knowledge which is only for Indians.
2. Definition of a foreign company has been now aligned with the Company Act, 2013 definition. This is aimed at bringing the companies under the purview of the Regulatory Framework of NBA for commercial utilisation and obtaining patent and other companies by SBB. According to the provisions of the Bill, companies incorporated or registered in India, not controlled by foreigners as per the Companies Act, 2013, are to be treated at par with Indian companies.
3. The Bill allows domestic companies to use the biodiversity without obtaining permission from the respective Biodiversity Boards. The proposed amendment envisages that only foreign controlled companies will require permission. This indicates that companies with foreign companies-controlled shares would also be exempted.
4. A new Section 36 has been included which emphasizes the monitoring of Biological Resources obtained from foreign countries for use in India in the light of Nagoya Protocol on access and benefit sharing. Section 36 (B) enables the state government to develop strategies and plans for conservation and sustainable use of biological diversity.
5. A new Section 41 highlights the functions of the Biodiversity Management Committees in clear terms. By introducing Section 41(18), an attempt has been made to strengthen these Committees.
6. The amendments include the term "codified traditional knowledge ", under which the users, including practitioners of Indian systems of medicine, will be exempted from the provisions of approvals for access or sharing benefits which indicates that the domestic companies making profits don't have to share profits.

A Critique of the Biological Diversity Act, 2002 and the Amendment Bill, 2023.

1. The Biological Diversity Act, 2002 mandates the constitution of Biodiversity Management Committees at the panchayats and municipalities level. However, it may be anybody's guess regarding the completion of the process. Moreover, the selection of their members is not above bias.
2. Preparation of People's Biodiversity Registers

This is a very important aspect of the Act and Rules, 2004. Its purpose is to prepare an inventory of the whole biodiversity lying in the territory of a panchayat or municipality. After listing these items, further initiatives can be taken by the State Biodiversity Boards, and on their recommendations, by the National Biodiversity Authority. However, this appears to be a distant dream. In fact, the officials made responsible for implementation of this mandate have, in general, not been imparted proper training and awareness about the whole concept. What constitutes biodiversity and how to record it correctly matter most. Unfortunately, this aspect is taken lightly by the administrators. Lack of proper monitoring mechanism is another concerning factor. For this purpose, scientists appointed by the National Biodiversity Authority provide a database format which is filled by BMCs. Often, the assistance of college students or local NGOs is sought. This has resulted in the following three problems:ⁱⁱⁱ

1. "The documentation exercise for PBRs does not legally require prior informed consent of the knowledge holders;
2. The BDA does not provide mechanisms to legally protect the knowledge collected through PBR. Security and leakage of documented knowledge could encourage biopiracy.
3. The quality of databases is varied given the diverse methodologies adopted in documentation and no legal requirement for validation. So, it is unclear if they can serve as evidence to defend against IPRs."

In 2016, a case, National Green Tribunal Original Application No. 347 of 2016, Chandra Bhal Singh v. Union of India, was filed in the National Green Tribunal seeking the Tribunal's intervention to expedite the setting up of BMCs and preparing PBRs. The Tribunal in its order dated 12 April 2019, directed immediate compliance with these provisions. In an interim order, the Tribunal observed:

"Having regard to the laudable objective to meet the necessity of conservation of biological diversity, delay of more than 16 years in complying with the mandate of law is a matter of serious concern."

In its order dated 9 August 2019, the NGT issued directions to all state governments to comply with these orders before 31 January 2020.^{iv}

Whether coal is a 'bioresource'? This question came up for consideration when the Madhya Pradesh State Biodiversity Board served notices to the three subsidiaries of Coal India Limited- Southeastern Coalfields Limited, Western Coalfields Limited and Northern Coalfields Limited suggesting that coal is a 'bioresource' and, therefore, its extraction is possible only with the prior permission of Madhya Pradesh State Biodiversity Board and the payment of an access fee as per the BDA. The NCL responded by denying this claim. A case was filed by a local BMC of the village Eklahara in Madhya Pradesh before the Bhopal Bench of the National Green Tribunal. In that case, the MPSBB argued that coal being of plant origin has to be treated as a biological resource. The Environment Ministry and the NBA responded that coal is not covered in the definition of biological resource. The National Green Tribunal concluded in favour of the Environment Ministry and the NBA. This indicates that the definition of bioresource in the Act of 2002 needs a more specific interpretation.^v

The access question has become a matter of dispute between the Environment Ministry, the NBA and SBBs, especially after the CBD's Nagoya Protocol on Access and Benefit Sharing (ABS) came into existence on 29 October 2010. This Protocol requires countries to evolve a robust legal regime for regulating ABS. Several SBBs have sought clarity on their role in determination of access fees and sharing of benefits safeguards for Indian companies. It was again through litigation, the NGT put in place ABS Guidelines in 2014. Since then, the matter continues to be agitated before various High Courts. The necessary clarification in the Act is still lacking.^{vi}

The Amendment Bill, 2023 has not found favour with the experts and activists. Their concerns are as under:

1. These amendments do not address the issues related to biodiversity conservation in India;

2. One of the major concerns regarding the Bill is decriminalising offences under the Act and making them punishable only with a penalty between Rs. 100,000 and Rs. 5 million. Continuing violations can attract an additional penalty of up to Rs. 1 crore. This will not deter the offenders who make exorbitant profits by trading in the biological resources illegally.
3. The Bill exempts users of codified traditional knowledge and AYUSH practitioners from sharing benefits with local communities which is not fair. The Bill doesn't define codified traditional knowledge. How one can differentiate codified traditional knowledge under AYUSH from the traditional knowledge of local communities who have conserved and protected biological reserves is a moot question.
4. Another critical advantage comes in the way of companies. That is regarding intellectual property rights. Earlier, the law stipulated that approval of the National Biodiversity Authority was essential before applying for patents involving biological resources obtained from India and for sealing the patent. The new rule says that approval is required only before the grant of patents.^{vii}
5. Given the paltry allocation of funds for conservation, the free run allowed to the corporate sector will further aggravate the existing deplorable state of affairs in the realm of biodiversity conservation in India.

CONCLUSION

In the wake of the UN Convention on Biological Diversity, India has come up with a legislation known as the Biological Diversity Act, 2002. An Amendment has also been introduced in the original Act which has been passed by Lok Sabha. The Act contains several provisions to sustain biodiversity in a systematic manner. But it appears that their implementation is lacking in spirit and enthusiasm. The People's Biodiversity Registers are one of the examples of this lethargy. There are few points which need clarification in the Act itself. The proposed amendment has not touched the contentious issues already facing the biodiversity preservation phenomena. Instead, it has opened the floodgates for the direct and almost uninhibited intrusion of the corporate sector which has nothing to do with the preservation of biodiversity in India. Moreover, the people who are nurturing the bioresources for the ages have been sent to oblivion. In such a situation, it is not difficult to visualize the future situation. The end result

of losing our precious biological resources is not a far-fetched idea. This is high time the experts, activists and the members of civil society acted in unison to safeguard the rich biodiversity.

ENDNOTES

ⁱ Kanchi Kohl, Manju Menon, *Development of Environmental Laws in India* 211, Cambridge University Press, New York, 2021.

ⁱⁱ Ibid.

ⁱⁱⁱ Kanchi Kohli, Manju Menon, *Development of Environmental Laws in India* 214, Cambridge University Press, New York, 2021.

^{iv} Ibid.

^v Ibid. p. 214--15.

^{vi} Ibid, p.216-17.

^{vii} Latha Jishnu, How companies got their way on biodiversity 44, *Down To Earth*, 1-15 September, 2023.