

Bill No. 158 of 2021

THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

A

BILL

further to amend the Biological Diversity Act, 2002.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Biological Diversity (Amendment) Act, 2021.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

18 of 2003.

2. In the Biological Diversity Act, 2002 (hereinafter referred to as the principal Act), in the preamble,—

Amendment of preamble.

(a) for the word “party”, the word “Party” shall be substituted;

(b) for the words beginning with “AND WHEREAS it is considered necessary”, and ending with “give effect to the said Convention”, the following shall be substituted, namely:—

“AND WHEREAS India is a Party to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity which was adopted on the 29th October, 2010 in Nagoya, Japan; 5

AND WHEREAS it is considered necessary to provide for conservation, sustainable utilisation, fair and equitable sharing of the benefits arising out of utilisation of biological resources and also to give effect to the said Convention.” 10

Amendment
of section 2.

3. In section 2 of the principal Act,—

(i) for clause (a), the following clauses shall be substituted, namely:—

‘(a) “access” means collecting, procuring or possessing any biological resource occurring in or obtained from India or associated traditional knowledge thereto, for the purposes of research or bio-survey or commercial utilisation; 15

(aa) “benefit claimers” means the conservers of biological resources, their by-products, creators or holders of associated traditional knowledge thereto (excluding codified traditional knowledge only for Indians) and information relating to the use of such biological resources, innovations and practices associated with such use and application;’; 20

(ii) in clause (b), after the words “biological diversity”, the words ‘or “biodiversity” ’ shall be inserted;

(iii) for clauses (c) and (d), the following clauses shall be substituted, namely:—

‘(c) “biological resources” include plants, animals, micro-organisms or parts of their genetic material, derivatives (excluding value added products), with actual or potential use or value for humanity, but does not include human genetic material; 25

(d) “bio-survey” means survey or collection of any taxa, varieties, genes, components and extracts of biological resource for any purpose;’;

(iv) after clause (f), the following clause shall be inserted, namely:— 30

‘(fa) “derivative” means a naturally occurring biochemical compound or metabolism of biological resources, even if it does not contain functional units of heredity;’;

(v) after clause (g), the following clauses shall be inserted, namely:—

‘(ga) “folk variety” means a cultivated variety of plant that was developed, grown and exchanged informally among farmers; 35

(gb) “India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory; 40
80 of 1976.

(gc) “landrace” means primitive cultivar that was grown by ancient farmers and their successors;’;

(vi) after clause (i), the following clause shall be inserted, namely:—

‘(ia) “Member-Secretary” means the full time Secretary of the National Biodiversity Authority, or of the State Biodiversity Board, as the case may be;’.

4. In Chapter II of the principal Act, in the Chapter heading, for the word “DIVERSITY”,
5 the word “RESOURCES” shall be substituted.

Amendment
of heading of
Chapter II.

5. In section 3 of the principal Act,—

Amendment
of section 3.

(a) in sub-section (2), in clause (c), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

10 “(ii) incorporated or registered in India under any law for the time being in force, which is a foreign controlled company.”;

(b) the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of this section,—

15 (a) “associated knowledge” shall include traditional knowledge or contemporary knowledge in any form relating to the biological resources;

18 of 2013. (b) “foreign controlled company” means a foreign company within the meaning of clause (42) of section 2 of the Companies Act, 2013 which is under the control of a foreigner.

20 6. For section 4 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section 4.

25 “4. No person or entity shall share or transfer any result of the research on any biological resource occurring in, or obtained or accessed from, India or associated traditional knowledge thereto, for monetary consideration or otherwise, to a person referred to in sub-section (2) of section 3, without the prior written approval of the National Biodiversity Authority, except the codified traditional knowledge which is only for Indians:

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

Provided that the provisions of this section shall not apply if publication of research papers or dissemination of knowledge in any seminar or workshop involving financial benefit is as per the guidelines issued by the Central Government:

30 Provided further that where the results of research are used for further research, then, the registration with National Biodiversity Authority shall be necessary:

35 Provided also that if the results of research are used for commercial utilisation or for obtaining any intellectual property rights, within or outside India, prior approval of National Biodiversity Authority shall be required to be taken in accordance with the provisions of this Act.”.

7. In section 5 of the Principal Act, in sub-section (I),—

Amendment
of section 5.

(i) in marginal heading, for the words and figures “Sections 3 and 4”, the words “Certain provisions” shall be substituted;

40 (ii) for sub-section (I), the following sub-section shall be substituted, namely:—

“(I) The provisions of clause (a) of sub-section (I) of section 3 shall not apply to collaborative research projects involving transfer or exchange of

biological resource or associated traditional knowledge 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).”.

Amendment
of section 6.

8. In section 6 of the principal Act,—

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(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) Any person or entity applying for an intellectual property right, covered under sub-section (2) of section 3, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority before grant of such intellectual property rights. 10

(1A) Any person applying for any intellectual property right, covered under section 7, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall register with the National Biodiversity Authority before grant of such intellectual property rights. 15 20

(1B) Any person covered under section 7 who has obtained intellectual property right, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority at the time of commercialisation.”. 25

(b) in sub-section (3), the words “enacted by the Parliament” shall be omitted.

Substitution of
new section
for section 7.

9. For section 7 of the principal Act, the following section shall be substituted, namely:—

“7. (1) No person, other than the person covered under sub-section (2) of section 3, shall access any biological resource and its associated knowledge for commercial utilisation, without giving prior intimation to the concerned State Biodiversity Board, subject to the provisions of clause (b) of section 23 and sub-section (2) of section 24: 30

Prior
intimation to
State
Biodiversity
Board for
accessing
biological
resource for
certain
purposes.

Provided that the provisions of this section shall not apply to the codified traditional knowledge, cultivated medicinal plants and its products, local people and communities of the area, including growers and cultivators of biodiversity, *vaid*s, *hakims* and registered AYUSH practitioners who have been practicing indigenous medicines, including Indian systems of medicine for sustenance and livelihood. 35

(2) The manner of issuing certificate of origin for cultivated medicinal plants shall be such as may be prescribed.”. 40

Amendment
of section 8.

10. In section 8 of the principal Act,—

(a) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The Head office of the National Biodiversity Authority shall be at Chennai and the Central Government may, by notification in the Official Gazette, establish regional offices in other places in India.”; 45

(b) in sub-section (4),—

(i) for clauses (a), (b) and (c), the following clauses shall be substituted, namely:—

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

(b) sixteen *ex officio* members to be appointed by the Central Government, representing the Ministries dealing with—

10 (i) Agricultural Research and Education;

(ii) Agriculture and Farmers Welfare;

(iii) Ayurveda, Unani, Siddha, Sowa Rigpa, Yoga and Naturopathy and Homoeopathy;

(iv) Biotechnology;

15 (v) Environment and Climate Change;

(vi) Forests and Wildlife;

(vii) Indian Council of Forestry Research and Education;

(viii) Earth Sciences;

(ix) Panchayati Raj;

20 (x) Science and Technology;

(xi) Scientific and Industrial Research;

(xii) Tribal Affairs;

(c) four representatives from State Biodiversity Boards on rotational basis;

25 (ii) in clause (d),—

(A) for the word “specialists”, the words “specialists, legal experts” shall be substituted;

(B) for the word “equitable”, the words “fair and equitable” shall be substituted;

30 (iii) after clause (d), the following clause shall be inserted, namely:—

“(e) a Member-Secretary, who shall have experience in matters relating to biodiversity conservation, to be appointed by the Central Government.”.

11. In section 9 of the principal Act,—

35 (a) in the marginal heading, for the words “Chairperson and members”, the words “Chairperson, members and Member-Secretary” shall be substituted;

(b) after the words “National Biodiversity Authority”, the words “and of Member-Secretary” shall be inserted.

Amendment
of section 9.

Insertion of new section 10A.	<p>12. After section 10 of the principal Act, the following section shall be inserted, namely:—</p>	
Member-Secretary.	<p>“10A. (1) The Member-Secretary shall be the chief coordinating officer and the convener of the National Biodiversity Authority and shall assist that Authority in the discharge of its functions under this Act.</p>	5
	<p>(2) The Member-Secretary shall perform such other functions as may be prescribed.”.</p>	
Amendment of section 13.	<p>13. In section 13 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—</p>	
	<p>“(2) The National Biodiversity Authority may also constitute such number of committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act.”.</p>	10
Amendment of section 15.	<p>14. In section 15 of the principal Act,—</p>	
	<p>(i) after the words “signature of the Chairperson”, the words “or Member-Secretary” shall be inserted;</p>	15
	<p>(ii) for the words “signature of an officer”, the words “signature of Member-Secretary or an officer” shall be substituted.</p>	
Amendment of section 16.	<p>15. In section 16 of the principal Act, after the words “delegate to any member”, the words “or Member-Secretary” shall be inserted.</p>	
Amendment of section 18.	<p>16. In section 18 of the principal Act,—</p>	20
	<p>(a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—</p>	
	<p>“(1) The National Biodiversity Authority shall, with the approval of the Central Government, make regulations to provide for access to biological resources and associated traditional knowledge thereto, and for determination of fair and equitable sharing of benefits.</p>	25
	<p>(2) It shall be the duty of the National Biodiversity Authority to regulate any activity referred to in sections 3, 4 and 6 by granting or rejecting approvals.”;</p>	
	<p>(b) in sub-section (3),—</p>	
	<p>(i) in clause (a), for the word “equitable”, the words “fair and equitable” shall be substituted;</p>	30
	<p>(ii) in clause (b), for the words “heritage sites”, the words “biodiversity heritage sites” shall be substituted;</p>	
	<p>(iii) after clause (b), the following clause shall be inserted, namely:—</p>	
	<p>“(ba) advise the State Biodiversity Boards on any matter relating to the implementation of the Act.”;</p>	35
	<p>(c) for sub-section (4), the following sub-section shall be substituted, namely:—</p>	
	<p>“(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 resource which is found in or brought from India, including those deposited in repositories outside India, or associated traditional knowledge thereto accessed.”.</p>	40

17. In section 19 of the principal Act,—

Amendment
of section 19.

(a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

5 “(1) Any person referred to in sub-section (2) of section 3 who intends to access biological resource or associated traditional knowledge thereto for commercial utilisation, shall make an application to the National Biodiversity Authority, in such form and on payment of such fee, as may be prescribed.

10 (2) Any person referred to in sub-section (2) of section 3 who intends to apply for a patent or any other form of intellectual property rights, whether in India or outside India, referred to in sub-section (1) of section 6, may make an application to the National Biodiversity Authority in such form, on payment of such fee, and in such manner, as may be prescribed.

15 (2A) Any person referred to in sub-section (1A) of section 6 shall register with National Biodiversity Authority at the time of making application under sub-section (2), and persons referred to in sub-section (1B) of section 6 shall obtain prior approval from National Biodiversity Authority at the time of commercialisation.”;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

20 “(3A) The National Biodiversity Authority shall, while granting approval under this section, determine the benefit sharing in such manner as may be specified by regulations made in this behalf:

25 Provided that if the National Biodiversity Authority is of the opinion that such an activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or fair and equitable sharing of benefits arising out of such activity, it may, by order, for reasons to be recorded in writing, prohibit or restrict any such activity:

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

(c) for sub-section (4), the following sub-section shall be substituted, namely:—

30 “(4) The National Biodiversity Authority shall place in public domain details of every approval granted or rejected under this section.”.

18. In section 20 of the principal Act,—

Amendment
of section 20.

(i) in the marginal heading, for the words “biological resource or knowledge”, the words “results of research” shall be substituted;

35 (ii) for sub-section (1), the following sub-section shall be substituted, namely:—

40 “(1) Any person or entity who intends to transfer the results of any research on biological resources, which are found in or brought from India, including those deposited in repositories outside India or associated traditional knowledge thereto, to persons referred to under sub-section (2) of section 3 for monetary consideration or otherwise, he shall make an application to the National Biodiversity Authority in such form and on payment of such fee, as may be prescribed.”;

(iii) in sub-section (2), for the words “any biological resource or knowledge associated thereto”, the words “the results of research” shall be substituted;

45 (iv) for sub-sections (3) and (4), the following sub-sections shall be substituted, namely:—

“(3) On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquiries, as it deems fit, by order,

grant approval, subject to such terms and conditions, as it may deem fit, including benefit sharing or otherwise, as per the guidelines or for reasons to be recorded in writing, or reject the application:

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person concerned. 5

(4) The National Biodiversity Authority shall place in public domain the details of every approval granted or rejected under this section.”.

Amendment
of section 21.

19. In section 21 of the principal Act,—

(a) in the marginal heading, for the word “equitable”, the words “fair and equitable” shall be substituted; 10

(b) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The National Biodiversity Authority shall, while determining benefit sharing for the approval granted under this Act, ensure that the terms and conditions subject to which the approval is granted secures fair and equitable sharing of benefits arising out of the use of accessed biological resources, their derivatives, 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, and the Biodiversity Management Committee represented by the National Biodiversity Authority.”; 15

(c) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:— 20

“Provided that where biological resource or associated knowledge was a result of access from an individual or group of individuals or organisations, the National Biodiversity Authority may direct that the amount shall be paid directly to such benefit claimer or organisation in accordance with the terms of any agreement and in such manner as it deems fit.”. 25

Amendment
of section 22.

20. In section 22 of the principal Act,—

(i) in sub-section (2), in the proviso, after the words “group of persons”, the words “or body” shall be inserted;

(ii) in sub-section (4), for clauses (a), (b) and (c), the following clauses shall be substituted, namely:— 30

“(a) a Chairperson, who shall be an eminent person having adequate knowledge, expertise and experience in the conservation and sustainable use of biological diversity and in matters relating to fair and equitable sharing of benefits, to be appointed by the State Government; 35

(b) not more than seven *ex officio* members to be appointed by the State Government to represent the concerned departments of the State Government, including departments dealing with Panchayati Raj and tribal affairs;

(c) not more than five non-official members to be appointed from amongst specialists, legal experts, scientists having special knowledge in matters relating to conservation of biological diversity, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources.”. 40

Amendment
of section 23.

21. In section 23 of the principal Act, for clauses (a) and (b) the following clauses shall be substituted, namely:— 45

“(a) advise the State Government on matters relating to the conservation of biodiversity, sustainable use of its components and fair and equitable sharing of

benefits arising out of the utilisation of biological resources or associated traditional knowledge thereto, in conformity with the regulations or guidelines, if any, issued by the Central Government or the National Biodiversity Authority;

(b) regulate any activity referred to in section 7 by granting or rejecting approvals;

5 (ba) determine the fair and equitable sharing of benefits as provided under the regulations made in this behalf by the National Biodiversity Authority while granting approvals;”.

22. In section 24 of the principal Act,—

Amendment
of section 24.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

10 “(1) Any person other than the person referred to in sub-section (2) of section 3, intending to undertake any activity covered under section 7, shall give prior intimation to the State Biodiversity Board in such form as may be prescribed by the State Government.”;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

15 “(3) If the State Biodiversity Board is of the opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or fair and equitable sharing of benefits arising out of such activity, it may by order, restrict or reject such activity:

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

(4) The State Biodiversity Board shall place in public domain the details of every approval granted or rejected under this section.”.

23. In section 27 of the principal Act,—

Amendment
of section 27.

25 (i) in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

“(b) all sums including charges and benefit sharing amount received by the National Biodiversity Authority;”;

(ii) in sub-section (2),—

30 (A) in the opening portion, for the word “applied”, the word “utilised” shall be substituted;

(B) for clauses (b) and (c), the following clauses shall be substituted, namely:—

“(b) conservation and sustainable use of biological resources;

35 (c) socio-economic development of areas from where such biological resources or associated traditional knowledge have been accessed in consultation with the Biodiversity Management Committee or local body concerned:

40 Provided that when it is not possible to identify the area from where the biological resources or associated traditional knowledge have been accessed, the fund shall be utilised for socio-economic development of the area where such biological resources occur;

(d) activities to meet the purposes of the Act.”.

24. In section 32 of the principal Act,—

Amendment
of section 32.

45 (i) in sub-section (1), for clause (c), the following clause shall be substituted, namely:—

“(c) all sums including charges and benefit sharing amount received by the State Biodiversity Board and from such other sources as may be decided by the State Government;”;

(ii) in sub-section (2),—

(A) in the opening portion, for the word “applied”, the word “utilised” shall be substituted; 5

(B) after clause (a), the following clause shall be inserted, namely:—

“(aa) channelling benefits to the benefit claimers;”;

(C) in clause (c), for the word “promotion”, the word “sustainability” shall be substituted; 10

(D) for clause (d), the following clause shall be substituted, namely:—

“(d) socio-economic development of areas from where such biological resources or associated traditional knowledge have been accessed in consultation with the Biodiversity Management Committee or local body concerned: 15

Provided that when it is not possible to identify the area from where the biological resources or associated traditional knowledge have been accessed, the fund shall be utilised for socio-economic development of the area where such biological resources occur;”;

(E) for clause (e), the following clauses shall be substituted, namely:— 20

“(e) making grants or loans to the Biodiversity Management Committees;

(f) the activities to meet the purposes of the Act.”.

Amendment
of section 36.

25. In section 36 of the principal Act,—

(i) for the marginal heading, the following shall be substituted, namely:— 25

“Central Government to develop national strategies and plans for conservation and sustainable use of biological diversity.”;

(ii) in sub-section (1), for the words “conservation of biological resources, incentives”, the words “conservation of biological resources, including cultivars, folk varieties and landraces, incentives” shall be substituted; 30

(iii) in sub-section (3), for the words “sectoral or cross-sectoral plans, programmes and policies”, the words “sectoral policies or cross-sectoral plans and programmes” shall be substituted;

(iv) after sub-section (5) and before the *Explanation*, the following sub-section shall be inserted, namely:— 35

“(6) The Central Government shall involve the National Biodiversity Authority or State Biodiversity Boards to undertake measures for conservation and sustainable use of biological diversity or associated traditional knowledge thereto.”.

Insertion of
new sections
36A and 36B.

Measures to be
taken by
National
Biodiversity
Authority.

26. After section 36 of the principal Act, the following sections shall be inserted, namely:— 40

“36A. The Central Government may authorise National Biodiversity Authority or any other organisation to take any measures necessary to monitor and regulate within the territory of India, the access and utilisation of biological resources obtained from a foreign country in order to meet the international obligations to which India is a signatory. 45

5 36B. (1) The State Government shall develop strategies, plans, programmes 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, including cultivars, folk varieties and landraces, incentives for research, training and public education to increase awareness with respect to biodiversity, in conformity with the national strategies, plans and programmes.

State Government to develop strategies and plans for conservation and sustainable use of biological diversity.

10 (2) The State Government shall, as far as practicable, wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral policies or cross-sectoral plans and programmes.”

27. In section 37 of the principal Act, —

Amendment of section 37.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

15 “(1) Without prejudice to any other law for the time being in force, based on the recommendations of the State Biodiversity Board, the State Government may, from time to time, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act:

Provided that the State Biodiversity Board shall consult the local body and the Biodiversity Management Committee concerned before making such recommendations.”;

20 (b) in sub-section (2), for the words “heritage sites”, the words “biodiversity heritage sites” shall be substituted.

28. In section 38 of the principal Act, the following proviso shall be inserted, namely:—

Amendment of section 38.

“Provided that the Central Government may delegate such power to the State Government:

25 Provided further that where such power is delegated to the State Government, it shall consult the National Biodiversity Authority before issuing any such notification.”.

29. For section 40 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 40.

30 “40. 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 all or any of the provisions of this Act shall not apply to biological resources when normally traded as commodities or to the items derived from them, including agricultural wastes, as notified and cultivated medicinal plants and their products for entities covered under section 7, registered as per the regulations made or as prescribed:

Provisions of this Act not to apply in certain cases.

35 Provided that no exemption shall be made for the activities referred to in sub-sections (1) and (2) of section 6.”.

30. In section 41 of the principal Act,—

Amendment of section 41.

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

40 “(1) Every local body at the Gram Panchayat level in the rural areas and act the Nagar Panchayat or Municipal Committee or Municipal Corporation level in the urban areas shall constitute a Biodiversity Management Committee (by whatever name called) within its area for the purpose of promoting conservation of landraces, folk varieties, farmers’ varieties, and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity sustainable use and documentation of biological diversity:

45

Provided that the State Government may constitute Biodiversity Management Committees at the intermediate or district Panchayat level for achieving the objectives of this Act.

(IA) The functions of Biodiversity Management Committee so constituted shall include conservation, sustainable use and documentation of biological diversity, including conservation of habitats, landraces, folk varieties, cultivars, domesticated breeds of animals, and microorganisms, and chronicling of associated traditional knowledge thereto relating to biological diversity. 5

(IB) The composition of the Biodiversity Management Committee shall be such as may be prescribed by the State Government: 10

Provided that the number of members of the said Committee shall not be less than seven and not exceeding eleven.”;

(b) in sub-section (2), for the words “and knowledge associated with such resources”, the words “or associated traditional knowledge thereto” shall be substituted; 15

(c) the following *Explanation* shall be inserted, namely:—

‘*Explanation.*—For the purposes of this section,—

(a) “cultivar” means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation; 20

(b) “folk variety” means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;

(c) “landrace” means primitive cultivar that was grown by ancient farmers and their successors;

(d) “farmers’ variety” means a variety which— 25

(i) has been traditionally cultivated and evolved by the farmers in their field; or

(ii) is a wild relative or landrace of a variety about which the farmers possess the common knowledge;’.

Amendment of section 43. **31.** In section 43 of the principal Act, in sub-section (1), for clause (e), the following clause shall be substituted, namely:— 30

“(e) benefit sharing amount and all other sums received by the Local Biodiversity Fund from such other sources as may be decided by the State Government.”.

Substitution of new section for section 44. **32.** For section 44 of the principal Act, the following section shall be substituted, namely:— 35

“44. (1) The Local Biodiversity Fund shall be utilised in accordance with the regulations and the guidelines made in this behalf, for—

(a) the conservation of biodiversity including restoration of areas;

(b) the socio-economic development of the community without compromising the conservation concerns; and 40

(c) the administrative expenses of the Biodiversity Management Committee.

(2) The Fund shall be utilised in such manner as may be prescribed by the State Government.”.

Application of Local Biodiversity Fund.

33. For section 45 of the principal Act, the following section shall be substituted, namely:—	Substitution of new section for section 45.
5 “45. The custodian of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time as may be prescribed by the State Government, its annual statement giving a full account of its activities during the previous financial year, and submit the same to the local body concerned with a copy to the State Biodiversity Board.”.	Annual statement of Biodiversity Management Committees.
34. For section 46 of the principal Act, the following section shall be substituted, namely:—	Substitution of new section for section 46.
10 “46. (1) The Biodiversity Management Committee shall maintain the accounts which shall be audited in such manner as may be prescribed by the State Government.	Audit of accounts of Biodiversity Management Committees.
15 (2) The Biodiversity Management Committee shall furnish to the local body concerned and to the State Biodiversity Board, before such date as may be prescribed by the State Government, its audited copy of accounts together with auditor’s report thereon.”.	
35. In section 50 of the principal Act, in the marginal heading, the words “between the State Biodiversity Board” shall be omitted.	Amendment of section 50.
20 36. In section 52 of the principal Act, in sub-section (1), for the words “benefit sharing or order”, the words “fair and equitable sharing of benefits or order or direction” shall be substituted.	Amendment of section 52.
37. In section 53 of the principal Act,—	Amendment of section 53.
(i) for the words “benefit sharing”, the words “fair and equitable sharing of benefits” shall be substituted;	
25 (ii) after the words “order made by the High Court”, the words “or the National Green Tribunal” shall be inserted;	
(iii) after the words “Registrar of the High Court”, the words “or the Registrar of the National Green Tribunal” shall be inserted;	
(iv) in the <i>Explanation</i> , after the words “group of persons”, wherever they occur, the words “or body” shall be substituted.	
30 38. For section 55 of the principal Act, the following sections shall be substituted, namely:—	Substitution of new sections 55, 55A and 55B for section 55.
35 “55. If any person or entity covered under sub-section (2) of section 3 or section 7 contravenes or attempts to contravene or abets the contravention of the provisions of clauses (a) and (b) of sub-section (1) of section 3 or section 4 or section 6 or section 7, such person shall be liable to pay penalty which shall not be less than one lakh rupees, but which may extend to fifty lakh rupees, but where the damage caused exceeds the amount of penalty, such penalty shall be commensurate with the damage caused, and in case, the failure or contravention continues, an additional penalty may be imposed, which shall not exceed one crore rupees and such penalty shall be decided by the adjudicating officer appointed under section 55A.	Penalties.
40 45 55A. (1) For the purposes of determining the penalties under section 55, the Central Government may appoint an officer not below the rank of Joint Secretary to the Government of India or a Secretary to the State Government to be the adjudicating officer, to hold inquiry in the prescribed manner and to impose the penalty so determined:	Adjudication of penalties.

Provided that the Central Government may appoint as many adjudicating officers as may be required.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for, or relevant to, the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person concerned has failed to comply with the provisions of clauses (a) and (b) of sub-section (1) of section 3 or section 4 or section 6 or section 7, he may impose such penalty as he thinks fit in accordance the provisions of section 55: 5 10

Provided that no such penalty shall be imposed without giving the person concerned an opportunity of being heard in the matter.

(3) Any person aggrieved by the order made by the adjudicating officer under sub-section (2) may prefer an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010. 15 19 of 2010.

(4) Every appeal under sub-section (3) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person.

(5) The National Green Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against. 20

Power to enter, inspect, survey, etc.

55B. Any authority or officer empowered by the Central Government may, for the purposes of carrying out inspection, survey or any such activity, have all or any of the following powers, namely:—

(a) the power to enter upon any land, vehicle, or premises and to inspect, investigate, survey, and collect information and make a map of the same and seize the materials and records; 25

(b) the powers of a civil court to compel the attendance of anyone, including witnesses and production of documents and material objects;

(c) the power to issue a search-warrant; 30

(d) the power to hold an inquiry and in the course of such inquiry, receive and record evidence;

(e) such other power as may be prescribed.”.

Omission of section 58.

39. Section 58 of the principal Act shall be omitted.

Insertion of new section 59A.

40. After section 59 of the principal Act, the following section shall be inserted, namely:— 35

Act not to apply to certain persons.

“59A. The provision of this Act shall not apply to any person who has been given any approval or granted any right under any law relating to protection of plant varieties enacted by Parliament to the extent that such approvals or rights given under that Act does not require similar approval under this Act.”. 40

Amendment of section 61.

41. In section 61 of the principal Act,—

(a) in the opening portion, for the word “complaint”, the words “written complaint” shall be substituted;

(b) in clause (b), for the words “any benefit claimer”, the words “any person or a benefit claimer” shall be substituted. 45

42. In section 62 of the principal Act, in sub-section (2),—

Amendment
of section 62.

(i) for clause (a), the following clauses shall be substituted, namely:—

“(a) the manner of issuing certificate of origin for cultivated medicinal plants under sub-section (2) of section 7;

5 (aa) the terms and conditions of service of the Chairperson, Member-Secretary and other members under section 9;”;

(ii) after clause (b), the following clause shall be inserted, namely:—

“(ba) the other functions to be performed by the Member-Secretary;”;

10 (iii) in clause (e), after the word “application”, the words “and payment of fees” shall be inserted;

(iv) after clause (e), the following clause shall be inserted, namely:—

“(ea) form of application and payment of fees under sub-section (1) of section 20;”;

(v) after clause (j), the following clauses shall be inserted, namely:—

15 “(ja) the manner of holding inquiry by the adjudicating officer under section 55A;

(jb) the other power under clause (e) of section 55B;”.

43. In section 63 of the principal Act, in sub-section (2),—

Amendment
of section 63.

(i) after clause (e), the following clause shall be inserted, namely:—

20 “(ea) the composition of the Biodiversity Management Committee under sub-section (1B) of section 41;”;

(ii) in clause (f), for the word “applied”, the word “utilised” shall be substituted;

(iii) in clause (g), for the words “annual report”, the words “annual statement” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Biological Diversity Act, 2002 was enacted to provide for the 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.

2. The said Act seeks to fulfill India's obligations under the Convention of Biological Diversity and Nagoya Protocol on Access and Benefit Sharing and to ensure that the benefits derived from the use of biological resources and associated traditional knowledge are shared in a fair and equitable manner among the indigenous and local communities.

3. The said Act provides for a decentralised three-tiered mechanism comprising the National Biodiversity Authority, the State Biodiversity Board or Union territory Biodiversity Councils, as the case may be, and the Biodiversity Management Committees. The Biodiversity Management Committees are integral part of the local self-governing bodies, including Panchayats and Municipalities. Each Biodiversity Management Committees prepare People's Biodiversity Registers which keep a record of all flora and fauna including details of traditional knowledge available in their region.

4. The said Act provides a mechanism for accessing and sharing of biological or genetic resources and fair and equitable benefits arising therefrom, with the Biodiversity Management Committees. The National Biodiversity Authority, the State Biodiversity Board or Union territory Biodiversity Councils, as the case may be, and the Biodiversity Management Committees are inter-connected and ensure access and benefit sharing while accessing biological resources for research, patents, transfer of results and commercial utilisation of biological resources.

5. In this background, concerns were raised by the stakeholders representing Indian system of medicine sector, seed sector, industry sector and research sector urging to simplify, streamline and reduce compliance burden in order to encourage conducive environment for collaborative research and investments, simplify patent application process, widen the scope of levying access and benefit sharing with local communities and for further conservation of biological resources.

6. The Biological Diversity (Amendment) Bill, 2021, *inter alia*, seeks to—

(i) reduce the pressure on wild medicinal plants by encouraging cultivation of medicinal plants;

(ii) encourage Indian system of medicine;

(iii) facilitate fast-tracking of research, patent application process, transfer of research results while utilising the biological resources available in India without compromising the objectives of United Nation Convention on Biological Diversity and its Nagoya Protocol;

(iv) decriminalise certain provisions;

(v) bring more foreign investments in the chain of biological resources, including research, patent and commercial utilisation, without compromising the national interest.

7. The Bill seeks to achieve the above objects.

BHUPENDER YADAV.

NEW DELHI;

The 9th December, 2021.

FINANCIAL MEMORANDUM

The provisions of the Bill do not involve any expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill seeks to amend section 18 of the Biological Diversity Act, 2002 so as to empower the National Biodiversity Authority to make regulations with the approval of the Central Government to provide for access to biological resources and associated traditional knowledge thereto, and for determination of fair and equitable sharing of benefits.

Clause 17 of the Bill seeks to amend section 19 of the said Act so as to empower the National Biodiversity Authority to make regulations to provide for the manner of determination of the benefit sharing while granting approval by that Authority.

Clause 42 of the Bill seeks to amend sub-section (2) of section 62 of the said Act relating to power of the Central Government to make rules. The said clause seeks to empower the Central Government to make rules, *inter alia*, in respect of matters relating to—(i) the manner of issuing certificate of origin for cultivated medicinal plants; (ii) the terms and conditions of service of Member-Secretary and the other functions to be performed by the Member-Secretary; (iii) the form of application and payment of fees for grant of approval to transfer the results of any research on biological resources by any person or entity; (iv) the manner of holding inquiry by the adjudicating officer; (v) the other powers required for carrying out inspection, survey or any such activity by an authority or officer empowered by the Central Government.

Clause 43 of the Bill seeks to amend sub-section (2) of section 63 of the said Act relating to power of the State Government to make rules. The said clause seeks to empower the State Government to make rules to provide for the composition of the Biodiversity Management Committee.

The matters in respect of which rules or regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE BIOLOGICAL DIVERSITY ACT, 2002
(18 OF 2003)

* * * * *

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 utilisation of genetic resources;

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

* * * * *

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

(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 not include human genetic material;

(d) “bio-survey and bio-utilisation” means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterisation, inventorisation and bioassay;

* * * * *

CHAPTER II

REGULATION OF ACCESS TO BIOLOGICAL DIVERSITY

3. (1) * * * * * Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority.

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

* * * * *

(c) a body corporate, association or organisation—

* * * * *

(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.

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

4. 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 or a body corporate or organisation which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management.

43 of 1961.

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.

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

5. (1) The provisions of sections 3 and 4 shall not apply to collaborative search 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).

* * * * *

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

6. (1) No person shall apply for any intellectual property right, by whatever name called, in or outside India for any invention based on any research or information on a 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 Authority shall dispose of the application for permission made to it within a period of ninety days from the date of receipt thereof.

* * * * *

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

* * * * *

Prior intimation to State Biodiversity Board for obtaining biological resource for certain purposes.

7. No person, who is a citizen of India or a body corporate, association or organisation which is registered in India, shall obtain any biological resource for commercial utilisation, or bio-survey 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 *vaid*s and *hakims*, who have been practicing indigenous medicine.

CHAPTER III

NATIONAL BIODIVERSITY AUTHORITY

Establishment of National Biodiversity Authority.

8. (1) * * * * *

(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 dealing 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 Ministries of the Central Government dealing with—

- (i) Agricultural Research and Education;
- (ii) Biotechnology;
- (iii) Ocean Development;
- (iv) Agriculture and Cooperation;
- (v) Indian Systems of Medicine and Homoeopathy;
- (vi) Science and Technology;
- (vii) Scientific and Industrial Research;

(d) five non-official members to be appointed from amongst specialists and scientists 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. The term of office and conditions of service of the Chairperson and the other members other than *ex officio* members of the National Biodiversity Authority shall be such as may be prescribed by the Central Government.

Conditions of service of Chairperson and members.

* * * * *

13. (1) * * * * *

Committees of National Biodiversity Authority.

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

* * * * *

15. All orders and decisions of the National Biodiversity Authority shall be authenticated by the signature of the Chairperson or any other member authorised 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 authorised by it in this behalf.

Authentication of orders and decisions of National Biodiversity Authority.

16. The National Biodiversity Authority may, by 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.

Delegation of powers.

* * * * *

CHAPTER IV

FUNCTIONS AND POWERS OF THE NATIONAL BIODIVERSITY AUTHORITY

Functions and powers of National Biodiversity Authority.

18. (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 benefit sharing.

(2) The National Biodiversity Authority may grant approval for undertaking any activity referred to in sections 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 Governments 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 resource obtained from India or knowledge associated with such biological resource which is derived from India.

CHAPTER V

APPROVAL BY THE NATIONAL BIODIVERSITY AUTHORITY

Approval by National Biodiversity Authority for undertaking certain activities.

19. (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.

* * * * *

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

Transfer of biological resource or knowledge.

20. (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 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.

21. (1) The National Biodiversity Authority shall while granting approvals 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.

Determination of equitable benefit sharing by National Biodiversity Authority.

* * * * *

(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 organisations, the National Biodiversity Authority may direct that the amount shall be paid directly to such individual or group of individuals or organisations in accordance with the terms of any agreement and in such manner as it deems fit.

* * * * *

CHAPTER VI

STATE BIODIVERSITY BOARD

22. (1) * * * * *

Establishment of 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 delegate 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.

* * * * *

(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.

* * * * *

23. The functions of the State Biodiversity Board shall be to—

Functions of State Biodiversity Board.

(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 utilisation or bio-survey and bio-utilisation of any biological resource by Indians;

* * * * *

Power of State Biodiversity Board to restrict certain activities violating the objectives of conservation, etc.

24. (1) Any citizen of India or a body corporate, organisation 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.

* * * * *

(3) Any information given in the form referred to in sub-section (1) for prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.

* * * * *

Constitution of National Biodiversity Fund.

27. (1) There shall be constituted a Fund to be called the National Biodiversity Fund and there shall be credited thereto—

* * * * *

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

* * * * *

(2) The Fund shall be applied for—

* * * * *

(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 areas referred to in clause (b) in consultation with the local bodies concerned.

* * * * *

Constitution of State Biodiversity Fund.

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

* * * * *

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

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

* * * * *

(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 the purposes authorised by this Act.

* * * * *

CHAPTER IX

DUTIES OF THE CENTRAL AND THE STATE GOVERNMENTS

36. (1) The Central Government shall develop national strategies, plans, programmes 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.

Central Government to develop National strategies, plans, etc., for conservation, etc., of biological diversity.

* * * * *

(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 plans, programmes and policies.

* * * * *

(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 purposes 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 ecosystems and natural habitats and the maintenance and recovery of viable populations of 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. (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.

Biodiversity heritage sites.

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

* * * * *

38. 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.

Power of Central Government to notify threatened species.

* * * * *

40. 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.

Power of Central Government to exempt certain biological resources.

CHAPTER X

BIODIVERSITY MANAGEMENT COMMITTEES

41. (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 microorganisms and chronicling of knowledge relating to biological diversity.

Constitution of Biodiversity Management Committee.

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 informally 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 Boards shall consult the Biodiversity Management Committees while taking 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.

* * * * *

Constitution of Local Biodiversity Fund.

43. (1) 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—

* * * * *

(e) all sums received by the Local Biodiversity Fund from such other sources as may be decided upon by the State Government.

Application of Local Biodiversity Fund.

44. (1) 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, be in the manner as may be 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.

Annual report of Biodiversity Management Committees.

45. The person holding the custody of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time 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 concerned local body.

Audit of accounts of Biodiversity Management Committees.

46. 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 auditor’s report thereon.

* * * * *

Settlement of disputes between State Biodiversity Boards.

50. (1) * * * * *

Appeal.

52. 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.

19 of 2010. Provided further that nothing contained in this section shall apply on and from the commencement of the National Green Tribunal Act, 2010:

19 of 2010. Provided also that any appeal pending before the High Court, before the commencement of the National Green Tribunal Act, 2010, shall continue to be heard and disposed of by the High Court as if the National Green Tribunal had not been established under section 3 of the National Green Tribunal Act, 2010.

* * * * *

53. Every determination of benefit sharing or order made by the National Biodiversity Authority or a 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 may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court. Execution of determination or order.

Explanation.—For the purposes of this section and section 52, the expression “State Biodiversity Board” includes 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.

55. (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. Penalties.

(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.

* * * * *

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

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

* * * * *

(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, to the Central Government or the authority or officer authorised as aforesaid.

62. (1) * * * * * Power of Central Government to make rules.
 (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) terms and conditions of service of the Chairperson and members under section 9;

* * * * *

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

* * * * *

Power of State
Government
to make rules.

63. (1) * * * * *

(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:—

* * * * *

(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;

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further to amend the Biological Diversity Act, 2002.

(Shri Bhupender Yadav, Minister of Environment, Forest and Climate Change)

MGIPMRND—1539LS(S3)—10-12-2021.