

Comments Received on Amendments to B.D.Act 2002 and Rules 2004.

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2.	Dr. V. S. Vijayan, Chairman, Kerala SBB
3.	Dr. B.S. Burfal, Chairman, Uttaraanchal SBB
4.	Smt. Nandita Chandavarkar, ABLE, Bangalore
5.	Dr. Neelima Jerath, Member Secretary, Punjab Biodiversity Board
6.	Dr. C.A. Viraktamath, UAS, Bangalore
7	Dr. Priyadarsanan Dharma Rajan, ATREE, Bangalore
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9	Dr. Uma Melkani, Head, Dept. of Environmental Sciences, G.B. Pant University, Uttaraanchal
10	Smt. Kanchi Kohli, Kalpavriksh, Pune
11	Smt. Thulika Sinha, Assistant Director, National Seed Association of India, New Delhi
12	Shri. N. S. Yadav, Member, Gujarat SBB
13	Shri. Bransdon Corrie, CCF (BDC), Goa
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Comments Received on Amendments to Biological Diversity Act 2002 and Rules 2004.

Sec.	Sections of BD Act, 2002	Comments on Amendments
	Chapter - I	
1	<p>Preliminary</p> <p>1.Short title, extent and commencement</p> <p>(1) This Act may be called the Biological Diversity Act, 2002.</p> <p>(2) It extends to the whole of India.</p> <p>(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:</p> <p>Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.</p>	
2	<p>2. Definitions</p> <p>In this Act, unless the context otherwise requires,-</p> <p>(a) "benefit claimers" means the conservers of biological resources, their byproducts, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application;</p> <p>(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;</p> <p>(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;</p>	<p>Smt. Thulika Sinha</p> <p>S.2(a) ‘benefit claimers’ means the conservers of biological resources, their byproducts, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application, <u>as listed in the Schedule A</u></p>
		<p>Smt. Thulika Sinha</p> <p>S.2(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, <u>as listed in Schedule</u></p>

		<p><u>-B.</u></p> <p>S.2(c)“biological resources” means <u>indigenous</u> plants, animals and micro-organisms or parts thereof, genetic material and by products (excluding value added products) with actual or potential use or value, but does not include human genetic material;</p> <p>Dr. Nandita Chandavarkar</p> <p>S.2(c) All genetically modified/transgenic organisms should be excluded from the purview of this definition.</p> <p>S.2(c) Biological Resources: The present definition of biological resources is wide an should incorporate the following</p> <p>Dr. Priyadarsanan Dharma Rajan</p> <p>S.2(c) If the benefit sharing need to be made realistic and the community/country has to make any benefit out of the TK, modify Sect.2 (c) to include all value added products based on Folk and Traditional Knowledge (e.g. Ayurvedic drugs) and bring all corporate, including the Indian ones under the purview of Sect.3 (subsect. ii) of the Biological Diversity Act.</p>
	<p>(d) "bio survey and bio utilization" means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterization, inventorisation and bioassay;</p>	<p>Smt. Thulika Sinha</p> <p>S.2(d) "bio survey and bio utilization" means survey or collection of <u>Indigenous</u> species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterization, inventorisation and bioassay;</p>
	<p>(e) "Chairperson" means the Chairperson of the National Biodiversity Authority or, as the case may be, of the State Biodiversity Board;</p>	
	<p>(f) "commercial utilization" means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes</p>	<p>Dr. V. S. Vijayan</p> <p>S.2(f) In the ‘does not include’ list, we may include <u>fishery and forestry</u></p> <p>Dr. Nandita Chandavarkar</p>

	<p>(o) "sustainable use" means the use of components of biological diversity in such manner and at such rate that does not lead to the long term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations;</p> <p>(p) "value added products" means products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form.</p>	<p>Dr. V.S. Vijayan</p> <p>S.2(o): Use of Biological components depends on the "<u>ecosystem sustainability</u>" and hence, it needs to be mentioned specifically.</p> <p>S.2(p): The present definition of value added product needs clarity, so as to, (a) exclude it from the purview of biological resources, and (b) specifically include only those products that are derived after subjecting the ingredients to certain applications and processes that identify them as a value added product.</p> <p>Additional sub Section may be added.</p>
		<p>Dr. V. S. Vijayan Definition of IPR and Traditional knowledge also may be given</p> <p>q) "IPR" means:</p> <p>(r) "Traditional Knowledge" means:</p>
2	Chapter - II	
3	<p>Regulation of Access to Biological Diversity</p> <p>Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority</p>	<p>Dr. V .S. Vijayan</p> <p>Chapter two should not be on access to biodiversity. It should deal with how biodiversity could be conserved, especially those facing extinction. A series of activities to be taken on ecosystem basis to ensure conservation should be given here. This should be followed by how to make sustainable use of the biodiversity, especially for alleviation of poverty. It should also give provisions for how to control over use.</p> <p>Approval of the NBA for use of any bio-resource or Traditional Knowledge shall be given only after getting the written consent of the concerned BMC through SBB. The NBA shall have full authority to refuse approval to any international corporate/ university/ Institution even after the BMC and SBB clear</p>

		<p>the same, considering the international situations. However, the NBA shall have no authority to give permission, if the BMC and BMC and SBB are against it.</p> <p>Add: (d) a non Indian in a registered Society in India</p>
	<p>3. (1) No person referred to in sub section (2) shall, without previous approval of the National Biodiversity Authority, obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio survey and bio utilization.</p> <p>(2) The persons who shall be required to take the approval of the National Biodiversity Authority under sub section (1) are the following, namely:</p> <p>(a) a person who is not a citizen of India;</p> <p>(b) a citizen of India, who is a non resident as defined in clause (30) of section 2 of the Income tax Act, 1961;</p> <p>(c) a body corporate, association or organization-</p> <p>(i) not incorporated or registered in India; or</p> <p>(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.</p>	<p>Smt Thulika Sinha</p> <p>S.3(1) Add Proviso Biological resources of which India is a country of origin</p> <p>S.3(2) Any non Indian participation of at least 26% in its share capital or non Indian participation at board level in the management</p> <p>FICCI</p> <p>S.3 (2) of the BDA Act: Permission for access by companies not registered or incorporated in India Need of one body for section 3(2) companies. It would be prudent to define in this guideline only one body/authority with whom such section 3(2) companies need to deal for all aspects and not make them deal with multiple parties. This will encourage compliance and sustainable utilization, improve productivity for all parties.</p> <p>Need of one body for S.3(2) companies</p> <p>It would be prudent to define in this guideline only one body/authority with whom such section-3(2) companies need to deal for all aspects and not make them deal with multiple parties. This will encourage compliance and sustainable utilization, improve productivity for all parties.</p> <p>FICCI</p> <p>S.3(2) : Permission for access by companies not registered or incorporated in India</p> <p>The guidelines are generally considered principally applicable to section-3(2) companies as defined under BDA, which is not true. As all organizations who apply for an IPR, will need to get approval from NBA before the IPR is sealed, it will be applicable to Indian firms also. This</p>

		need to be made clear in a preamble.
		<p>S.3(2) companies who have invested in research in India and have longstanding contribution to developments in India need to be differentiated from “fly by night, bio prospecting only interest” companies while deciding on access permissions and benefit sharing. A statement may be inserted at appropriate section to give such a guideline.</p> <p>The Guidelines have provided for detailed provisions for BS between user and provider or NBA where applicable. The BS can be both in monetary and non-monetary terms. The Guidelines should build in clear sections for negotiations between user and provider/NBA for arriving at the “quantum of BS” both –monetary and non-monetary on mutually agreed terms (MAT). Hence it is suggested that specific guidelines on actual percentages of BS may not be prescribed in the document.</p> <p>It is to be recognized that non-monetary BS when agreed , it would be possible to compute a ‘ allocated cost by the firm to be spent on making all the non-monetary benefits happen at the place decided”.</p> <p>During decisions on access permissions, BS, permission for Associated Knowledge (AK) it would be prudent to provide for use of an arbitration process involving either subject experts or scientists or business heads who understand the issues, to sort out any differences and difficulties and avoid huge litigation.</p> <p>Dr. Neelima Jerath</p> <p>The proviso of S.3 (3) clause for independent Environment and social impact assessment and PIC of BMC prior to approval by NBA.</p> <p>Smt.Kanchi Kohli</p> <p>S.3(3): The approval by the NBA shall be preceded by an independent Environment and Social Impact Assessment and Prior Informed Consent of BMC and/or local Panchayats/autonomous district council or any</p>

		other equivalent body.
4	<p>Results of research not to be transferred to certain persons without approval of National Biodiversity Authority</p> <p>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 organization which is not registered or incorporated in India or which has any non Indian participation in its share capital or management.</p> <p>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.</p>	
5	<p>5.(1) The provisions of sections 3 and 4 shall not apply to collaborative research projects involving transfer or exchange of biological resources or information relating thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in sub section (3).</p> <p>(2) All collaborative research projects, other than those referred to in sub section (1) which are based on agreements concluded before the commencement of this Act and in force shall, to the extent the provisions of agreement are inconsistent with the provisions of this Act or any guidelines issued under clause</p>	<p>Dr.V.S.Vijayan</p> <p>S.5: Permission by the National Biodiversity Authority as required under Sections 3, 4, 5 above shall not be granted without prior written consent of the concerned State Biodiversity Board. And the State Biodiversity Board shall obtain the written consent of the concerned Biodiversity Management Committee before issuing such consent to the National Biodiversity Authority</p> <p>S.5(1) :Alter the above to</p> <p>Application for Intellectual Property Rights not to be made without approval of NBA , the NBA in turn should get the prior written approval of the BMC through the SBB.</p> <p>Dr. Nandita Chandavarkar</p>

<p>(a) of sub section (3), be void.</p> <p>(3) For the purposes of sub section (1), collaborative research projects shall-</p> <p>(a) conform to the policy guidelines issued by the Central Government in this behalf;</p> <p>(b) be approved by the Central Government.</p>	<p>Non-Indian Participation: S.3&4.of the BD Act previous approval of NBA is required for anybody corporate, association or organization that is “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” for the use of biological resources for research and the transfer of such research. Instead of treating every organization registered in India and having non-Indian participation, it is suggested that the rigours of Sections 3 and 4 and other similar provisions should be made applicable to an organization only if it has non-Indian participation of > 50% by FIPB definition of foreign owned or controlled, in its paid up capital</p> <p>Dr. Viraktamath et al</p> <p>S.5 (1) The provisions of sections 3 and 4 shall not apply to basic research on biodiversity, as well as collaborative research projects involving transfer or exchange of biological resources or information relating thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in sub-section (3)</p> <p>Kindly note that legislations like the Protection of Plant Varieties and Farmers’ Rights Act, 2001 have included provisions for exempting basic research (Section 30 of PPV & FR Act, 2001: Nothing contained in this Act shall prevent</p> <p>(a) the use of any variety registered under this Act by any person using such variety for conducting experiment or research)</p> <p>Dr. Priyadarsanan Dharma Rajan et al</p> <p>S.5 (1) may be amended to exempt all basic research in biodiversity as “Section 5(1)...sections 3 and 4 shall not apply to basic research on biodiversity, as well as...”.</p>
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6	<p>Application for intellectual property rights not to be made without approval of National Biodiversity Authority</p> <p>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.</p> <p>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:</p> <p>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.</p> <p>(2) The National Biodiversity Authority may, while granting the approval under this section, impose benefit sharing fee or royalty or both or impose conditions including the sharing of financial benefits arising out of the commercial utilization of such rights.</p> <p>(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.</p> <p>(4) Where any right is granted under law referred to in sub section (3), the concerned authority granting such right shall endorse a copy of such document granting the right to the National Biodiversity Authority.</p>	<p><u>Dr.V.S.Vijayan</u> Para two of Section 6(1) may be deleted. This will lead to confusion and even irregularities, Delete the word <i>further</i> from the above para The fees to be levied should be fixed only after consulting and getting written approval of the concerned BMC and SBB</p> <p><u>Add Proviso:</u> Ms. Kanchi Kohli: No application for IPRs that interferes with the sui generis measures for protection of knowledge of local people relating to biological diversity will be permitted. All applications for IPRs to have public disclosure prior to decision before NBA and/or its committees to grant/reject (Rules need to reflect the procedure)</p> <p>Dr.Neelima Jerath:</p> <p>S.6 :All application to have public disclosure prior to decision before NBA to grant/reject(Rules need to reflect the procedure).</p>
7	<p>Prior intimation to State Biodiversity Board for obtaining biological resource for certain purposes</p>	<p>Dr.Vijayan: Prior <u>permission</u> of the State Biodiversity Board for obtaining biological resource for</p>

7. No person, who is a citizen of India or a body corporate, association or organization which is registered in India, shall obtain any biological resource for commercial utilization, or bio survey and bio utilization for commercial utilization except after giving prior intimation to the State Biodiversity Board concerned:

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

certain purposes.

This is a very important provision and, the state must have a definite say in this. Prior Intimation does not mean prior Approval. We must it unambiguously that it should be only after obtaining the written consent of the SBB.

Section 7 shall be altered to:

No person, who is a citizen or a body corporate, association or organization which is registered in India, shall obtain any biological resource for commercial utilization, or bio survey and bio utilization for commercial utilization without getting prior written consent of the concerned State Biodiversity Board, which in turn shall obtain the written consent of the concerned BMC:”

FICCI:

S.7. of the act stipulate that, the Indian citizen / Indian corporate /association are required to intimate to SBB before obtaining bio resources /bio survey/ bioutilisation for commercial utilization.

Shri.N.S.Yadav

In Section 7 of the act the word prior intimation is mentioned. What about the activity done between the period of intimation by party and decision by board under section 24? The provision of permission in place of intimation should be there. What about research done by Indian Scientist? Not covered in the Act. It is difficult to ensure the biosurvey and bioutilization for commercial utilization or not for commercial utilization. Hence any type of research biosurvey and bioutilization must need permission ,fee may be exempted if biosurvey or Research is not for C.U after taking agreement etc.

Smt. Kanchi Kohli:

Indian companies to be at par with foreign, seeking permission for access from SBBs etc (Rules too need to reflect this; in the relevant From we can ask for them to disclose all existing

		<p>biological resource uses)</p> <p>Dr.B.S. Burfal</p> <p>S.7 of the Act makes provision for the citizen of India or a body corporate, association or organization which is registered in India to give only prior intimation to the SBB concerned for commercial utilization, bio-survey etc of the biological resources. It needs reconsideration, because Indian industrial corporations or Indians should also shoulder the responsibility towards local communities and for conservation of biological resources. Moreover, there may be possibility of foreigners /foreign companies putting local companies in the front to have access to the biological resources. Therefore it is suggested that Indians including the local companies should also take permission from the SBB as in the case of foreigners who has to take permission from the NBA</p> <p>Smt. Thulika Sinha</p> <p>S.7. No person, who is a citizen of India or a body corporate, association or organization which is registered in India, shall obtain any biological resource for bio-survey and bio-utilization except after giving prior intimation to the State Biodiversity Board concerned</p>
3	CHAPTER - 3	
8	<p>Establishment of National Biodiversity Authority</p> <p>8.(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established by the Central Government for the purposes of this Act, a body to be called the National Biodiversity Authority.</p> <p>(2) The National Biodiversity Authority shall be a body corporate by the name aforesaid, having perpetual succession</p>	<p>Dr. V.S. Vijayan</p> <p>This has to be discussed in detail very much dispassionately, as it is a vital position that would play a crucial role in the conservation of biodiversity in the country, especially in the background of how NBA has been ignored by the central government while taking policy decisions on matters related to biodiversity.(Ex. Draft Notification on National Biotechnology Regulatory Authority Bill; the website on biodiversity hot spots hosted by the</p>

<p>and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.</p> <p>(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.</p> <p>(4) The National Biodiversity Authority shall consist of the following members,</p> <p>(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;</p> <p>(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;</p> <p>(c) seven ex officio members to be appointed by the Central Government to represent respectively the Ministries of the Central Government dealing with -</p> <p>(i) Agricultural Research and Education;</p> <p>(ii) Biotechnology;</p> <p>(iii) Ocean Development;</p> <p>(iv) Agriculture and Cooperation;</p> <p>(v) Indian Systems of Medicine and Homoeopathy;</p>	<p>Departments of Biotechnology of the Central Government.)</p> <p>The rank of the Chairperson must be equivalent to that of the Secretary to the Ministry and shall report directly to the Minister for Environment & Forest. He shall not be subordinate to the Secretary.</p> <p>Dr.V.S.Vijayan</p> <p>S.8(4)(a): May be modified to “a Chairperson, who shall be a committed, eminent conservationist having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing benefits, to be appointed by the Central Government”.</p> <p>S.8 (4)(c): Department of Fisheries, and Health should also be included, making the total to 9.</p>
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<p>(vi) Science and Technology;</p> <p>(vii) Scientific and Industrial Research;</p> <p>(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.</p>	<p><u>S.8(4).(d)</u></p> <p>There must be non official members representing local communities, including tribal communities, fisherman communities, representatives of NGOs working in the field such as conservation, agriculture, human welfare, and traditional ayurveda practitioners.</p> <p>There should also be representatives of the SBB. Since it is not possible to have representation of all the SBBs, it would be advisable to have representatives of three SBBs at any given time and it shall be on rotation.</p> <p>S.8(4)(d) may be altered to:</p> <p>(i) 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.</p> <p>(ii) One representative each of local communities, tribal communities, fisherman communities, NGOs committed to conservation, agriculture, health, ayurveda practitioners and industries. This would make the total non official members to 13.</p> <p><u>An additional provision may be given to include representatives of the SBBs:</u></p> <p>4(e) Representatives of three SBBs at a time, on a rotation for a three year period.</p> <p>Smt. Kanchi Kohli</p> <p>S.8(4)(d) Composition of NBA, SBBs, and expert committees to include community members and more civil society and community based organisation representatives.</p> <p>Dr. Bransdon Corrie</p> <p>S.8 (4) Five forest officers who are</p>
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		<p>knowledgeable and have worked in the field of biodiversity conservation.</p> <p>The secretary made be a member secretary. Rather than an appointed member secretary will be effective. The act need sustainable modification as this will strengthen the working of NBA.</p>
9	<p>Conditions of service of Chairperson and members</p> <p>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.</p>	<p>Dr.V.S.Vijayan</p> <p>The Act must specify the term of office of the Chairperson and the Members</p> <p><i>Section 9 may be altered</i> to: -“The Term of office of the Chairperson and other members other than ex officio members of the National Biodiversity Authority shall be three years. The conditions of Service of the Chairperson and other members of the National Biodiversity Authority shall be such as may be prescribed by the Central Government</p>
10	<p>Chairperson to be Chief Executive of National Biodiversity Authority</p> <p>10. The Chairperson shall be the Chief Executive of the National Biodiversity Authority and shall exercise such powers and perform such duties, as may be prescribed.</p>	
11	<p>Removal of members</p> <p>11. The Central Government may remove from the National Biodiversity Authority any member who, in its opinion, has-</p> <ul style="list-style-type: none"> (a) been adjudged as an insolvent; or (b) been convicted of an offence which involves moral turpitude; or (c) become physically or mentally incapable of acting as a member; or (d) so abused his position as to render his continuance in office detrimental to the public interest; or (e) acquired such financial or other interest as is likely to affect prejudicially his functions as a member 	<p>Dr.V.S.Vijayan</p> <p>It would be a healthier practice, if the NBA by itself, on a simple majority, expel It any member who is involved in any of the acts mentioned above. The NBA may constitute an enquiry committee to examine the allegations and if found true, action can be taken. The Rules should specify the procedures to be followed for the same. Also, action should be taken against any member who acted/worked against the interest of the Biodiversity of the nation.</p> <p>S.11 may be altered to: The NBA may remove from the National Biodiversity Authority any member who, according to an Enquiry Committee constituted by it has</p> <ul style="list-style-type: none"> a) been adjudged as an insolvent; or b) been convicted of an offence which

		<p>involves moral turpitude; or c) become physically or mentally incapable of acting as a member; or d) so abused his position as to render his continuance in office detrimental to the Public interest; or e) Acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or f) Acted/ worked against the interest of the biodiversity of the country”</p>
12	<p>Meetings of National Biodiversity Authority</p> <p>12. (1) The National Biodiversity Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be prescribed.</p> <p>(2) The Chairperson of the National Biodiversity Authority shall preside at the meetings of the National Biodiversity Authority.</p> <p>(3) If for any reason the Chairperson is unable to attend any meeting of the National Biodiversity Authority, any member of the National Biodiversity Authority chosen by the members present at the meeting shall preside at the meeting.</p> <p>(4) All questions which come before any meeting of the National Biodiversity Authority shall be decided by a majority of votes of the members present and voting and in the event of equality of votes, the Chairperson or, in his absence, the person presiding, shall have and exercise a second or casting vote.</p> <p>(5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after</p>	<p>Dr.V.S.Vijayan</p> <p>Minimum number of times it shall meet in a year and the quorum for a meeting shall be prescribed.</p> <p>S.12(1) May be altered to: “The National Biodiversity shall meet at such time and place, at least a minimum of once in every six months, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed. The quorum for such meetings shall be one third of the total members that Constitute the NBA”.</p>

	<p>such disclosure, the member concerned or interested shall not attend that meeting.</p> <p>(6) No act or proceeding of the National Biodiversity Authority shall be invalidated merely by reason of-</p> <p>(a) any vacancy in, or any defect in the constitution of, the National Biodiversity Authority; or</p> <p>(b) any defect in the appointment of a person acting as a member; or</p> <p>(c) any irregularity in the procedure of the National Biodiversity Authority not affecting the merits of the case.</p>	
13	<p>Committees of National Biodiversity Authority</p> <p>13. (1) The National Biodiversity Authority may constitute a committee to deal with agro biodiversity.</p> <p>Explanation; For the purposes of this sub section, "agro biodiversity" means biological diversity, of agriculture related species and their wild relatives.</p> <p>(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.</p> <p>(3) A committee constituted under this section shall co-opt such number of persons, who are not the members of the National Biodiversity Authority, as it may think fit and the persons so co opted shall have the right to attend the meetings of the committee and take part in its proceedings but shall not have the right to vote.</p> <p>(4) The persons appointed as members of the committee under sub section (2) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.</p>	<p>Dr.V.S.Vijayan</p> <p>Such committees will be more effective with the presence of farmers and NGOs working in the field of agriculture.</p> <p>S. 13 (1) may be altered to: “The National Biodiversity Authority may constitute a committee consisting of agriculture experts, economists, representatives of farmers and, NGOs working in the field of agriculture and biodiversity, to deal with agro biodiversity. And, all the members will have equal right to take part in the meetings and vote”.</p> <p>The Committees constituted should have apart from the members of the NBA, representatives of NGOs working in the related fields, farmers, forest dwellers, fisherman communities as the case may be. And all of them have the right to vote, as otherwise the final decision would be that of the members of the NBA and the very purpose of including them in the discussion will be defeated.</p> <p>S.13 (3): A Committee constituted under this section shall co-opt representatives of NGOs working in the consent field and farmers, forest dwellers, fisherman communities as the case may be who are not the members of NBA as it may think fit and the persons so co-opted shall have equal rights as those of members of NBA to attend the meeting of the community and to take</p>

		<p>part in its proceedings and to vote</p> <p>Dr.Bransdon Corrie</p> <p>Recommend that under S.8(1)a to constitute a committee to deal with forest biodiversity at the NBA</p> <p>Under Sub-Sec.3 a committee for conservation and sustainable use of biodiversity and a committee for equitable sharing of resources.</p>
14	<p>Officers and employees of National Biodiversity Authority</p> <p>14. (1) The National Biodiversity Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.</p> <p>(2) The terms and conditions of service of such officers and other employees of the National Biodiversity Authority shall be such as may be specified by regulations.</p>	<p>Dr. V.S.Vijayan</p> <p>S.14(1): It is better to specify the authority who would formulate the regulations as otherwise it would lead to complications later. To keep the independence of the NBA, such regulations should be formulated by the NBA itself. The terms and conditions of the services of the members of the NBA are to be prescribed in the Act itself.</p> <p>S.14(2): The terms and conditions of service of such officers and other employees of the National Biodiversity Authority shall be such as may be specified by regulations framed by the NBA.</p>
15	<p>Authentication of orders and decisions of National Biodiversity Authority</p> <p>15. All orders and decisions of the National Biodiversity Authority shall be authenticated by the signature of the Chairperson or any other member authorized by the National Biodiversity Authority in this behalf and all other instruments executed by the National Biodiversity Authority shall be authenticated by the signature of an officer of the National Biodiversity Authority authorized by it in this behalf.</p>	
16	<p>Delegation of powers</p> <p>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</p>	

	conditions, if any, as may be specified in the order, such of the powers and functions under this Act (except the power to prefer an appeal under section 50 and the power to make regulations under section 64) as it may deem necessary.	
17	<p>Expenses of National Biodiversity Authority to be defrayed out of the Consolidated Fund of India</p> <p>17. The salaries and allowances payable to the members and the administrative expenses of the National Biodiversity Authority including salaries, allowances and pension payable to, or in respect of, the officers and other employees of the National Biodiversity Authority shall be defrayed out of the Consolidated Fund of India.</p>	
4	CHAPTER - 4	
18	<p>Functions and Powers of the National Biodiversity Authority</p> <p>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.</p> <p>(2) The National Biodiversity Authority may grant approval for undertaking any activity referred to in sections 3, 4 and 6.</p> <p>(3) The National Biodiversity Authority may-</p> <p>(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 utilization of biological resources;</p> <p>(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</p>	<p>Dr. V.S.Vijayan</p> <p>S.18(1) & 18(2) the shall inconformity with the modifications and suggested under sections 3,4 and 6 earlier, focusing on the vital issue that the NBA shall not grant any approval for any kind of use of the bio-resources without the written consent of the concerned BMC and SBB.</p> <p>S.18(4): Powers and Authority of NBA needs to be discussed in detail. NBA should be the custodian of biodiversity and should have the powers and mechanisms to execute or get executed any action that required for conservation of biodiversity in the country. The advice given by the NBA to the Central and state government as stated in section 3(a)and (b) respectively above, shall not be overlooked by either respective governments; on the contrary the respective government shall be made legally bound to accept such advices and implement them within a reasonable time frame.</p>

	<p>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.</p>	
5	CHAPTER - 5	
19	<p>Approval by National Biodiversity Authority for undertaking certain activities</p> <p>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 utilization or for bio survey and bio utilization 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.</p> <p>(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.</p> <p>(3) On receipt of an application under sub section (1) or sub section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to any regulations made in this behalf and subject to such terms and conditions as it</p>	<p>Dr.V.S.Vijayan</p> <p>S.19(3): The procedure to be followed for granting permission has to be changed by decentralizing the process of decision making, empowering the local communities to take decision on matters related to biodiversity conservation, especially on those on which the people are depended for livelihood. Also without the approval of the concerned BMC and SBB, no such permission shall be given. Such approval shall be non assignable and non transferable.</p> <p>S.19(3) may be altered to:</p> <p>“On receipt of an application under Sub-Section(1) or Sub-Section(2), the National Biodiversity Authority may forwarded the same to the concerned SBB to obtain their written comments and approval. The SBB in turn shall consult and obtain the written concurrence of the concerned BMC before formulating its views. The SBB, then, if find necessary consult an expert committee constituted for this purpose, recommend approval subject to any regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the impositions of charges by way of royalty to be shared with the local community or for the reasons to be recorded in writing, recommend rejection of the application. Provided such approval shall be non transferable and non</p>

	<p>may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:</p> <p>Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.</p> <p>(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section</p>	<p>assignable”.</p>
20	<p>Transfer of biological resource or knowledge</p> <p>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</p> <p>(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.</p> <p>(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:</p> <p>Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.</p> <p>(4) The National Biodiversity Authority shall give public notice of every approval</p>	<p>Dr.V.S.Vijayan: Such approval shall be non transferable and non assignable. It is given to one the particular individual/s, group, institutions.</p> <p>S.20(1): No person who has been granted approval under section19 shall transfer any bioresources or knowledge associated thereto which the subject matter of the said approval to a second party.</p> <p>S. 20(3). Section 19.(3) may be altered to :</p> <p>“On Receipt of an application under Sub-Section(1) or Sub-Section(2), The National Biodiversity Authority may forward the same to the concerned SBB to obtain their written comments and approval. The SBB in turn shall consult and obtain the written concurrence of the concerned BMC before formulating its views. The SBB, then, if find necessary consult an expert committee constituted for this purpose, recommend approval subject to any regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty to be shared with the local community or for the reasons to be recorded in writing recommend rejection of the application</p>

21	<p>granted by it under this section.</p> <p>Determination of equitable benefit sharing by National Biodiversity Authority</p> <p>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.</p> <p>(2) The National Biodiversity Authority shall, subject to any regulations made in this behalf, determine the benefit sharing which shall be given effect in all or any of the following manner, namely:</p> <ul style="list-style-type: none"> (a) grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers; (b) transfer of technology; (c) location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers; (d) association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio survey and bio utilization; (e) setting up of venture capital fund for aiding the cause of benefit claimers; (f) Payment of monetary compensation and non monetary 	<p>Dr.V.S.Vijayan</p> <p>NBA’s views should be a reflection of those of the local concerned communities, BMC and SBB</p> <p>S.21(1) may be altered to:</p> <p>“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 among the person/organization applying for such approval, the local bodies, BMC and SBB, and the benefit claimers.</p> <p>Joint ownership of intellectual property rights should be to the concerned local community or individuals(the benefit claimers) and when they could not be identified, it shall be to the BMC Concerned</p> <p>S.21(2)(a) shall be modified to:</p> <p>“grant of joint ownership of intellectual property rights to the concerned local community or individuals (the benefit claimers) and, when the benefit claimers could not be identified, it shall be to the BMC Concerned</p> <p>(b) shall be dropped; it is the same as (a) above</p> <p>(c) transfer of technology</p> <p>(d) location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;</p> <p>(e) association of Indian scientists, benefit claimers and the local people with research and</p>
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<p>benefits to the benefit claimers as the National Biodiversity Authority may deem fit.</p> <p>(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:</p> <p>Provided that where biological resource or knowledge was a result of access from specific individual or group of individuals or organizations, the National Biodiversity Authority may direct that the amount shall be paid directly to such individual or group of individuals or organizations in accordance with the terms of any agreement and in such manner as it deems fit.</p> <p>(4) For the purposes of this section, the National Biodiversity Authority shall, in consultation with the Central Government, by regulations, frame guidelines.</p>	<p>development in biological resources and biosurvey and bio utilization</p> <p>(f) Setting up of venture capital funds for aiding the cause of benefit claimers</p> <p>(g) Payment of monetary compensation and non monetary benefits to the benefit claimers as the NBA may deem fit.</p> <p>S.21(2)(g) may be modified to:</p> <p>“payment of monetary compensation and non monetary benefits to the benefit claimers shall be decided jointly by the concerned benefit claimers, BMC and SBB, and representative of the NBA.</p> <p>Such amount to be deposited in the Biodiversity Fund of the state concerned, a share should go to the specific individuals, local community / organization and another share should go to the BMC concerned to be sent exclusively for the conservation of the specific bio resource</p> <p>S.21(3) may be modified as:</p> <p>“Where any amount of money is accrued by way of benefit sharing, the National Biodiversity Authority may direct the amount to be deposited in the concerned State Biodiversity Fund: Provided that where biological resource or knowledge was a result of access from specific individuals, local community or organizations, the state Biodiversity Board may direct that not less than 50% of the amount shall be paid directly to such individuals, local community/s or organization/s in accordance with the terms of Agreement and 40% shall be spent for the conservation of the concerned natural resource and the remaining 10% kept apart by the SBB for monitoring the follow up activities related to conservation”</p> <p>S. 21(4) may be modified to:</p> <p>For the purpose of this section, the National</p>
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		<p>Biodiversity Authority in consultation with the State Biodiversity Boards shall formulate necessary regulations and guidelines and, intimate the same to the Central and State Governments</p> <p>Dr. Nandita Chandavarkar</p> <p>Draft Guidelines for Access and Benefit Sharing As per Section 21 and other provisions of the BD Act, the NBA is required to ensure fair and equitable sharing of benefits arising from use of biological resources and can direct the payment of monetary compensation to the benefit claimers. It is suggested that first, a permanent committee be constituted to look into only benefit sharing matter, and secondly, that any monetary compensation to be paid should be deposited with the said committee which can then ensure that the compensation reaches the actual benefit claimers. Additionally, the Central Government should also frame guidelines to regulate the procedure and method for benefit sharing.</p> <p>Smt.Thulika Sinha</p> <p>It is suggested that benefit should go to the State i.e. GoI alone. GoI may decide about distribution between local bodies and/or benefit claimers etc. Otherwise it will create ownership problem and litigation</p>
6	CHAPTER - 6	
22	<p>Establishment of State Biodiversity Board</p> <p>22.(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established by that Government for the purposes of this Act, a Board for the State to be known as the (name of the State) Biodiversity Board.</p> <p>(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</p>	<p>Dr.V.S. Vijayan</p> <p>Why the Union Territories are exempted from forming Biodiversity Board is not clear. Places like Andaman & Nicobar Islands with high endemism, species diversity and threatened species needs strong conservation measures and, deserve the highest priority for an authority like Biodiversity Board to further the interest of conservation and sustainable use of natural resources.</p> <p>S.22(1) may be altered to:</p> <p>With effect from such date as the State Government by notification in the official</p>

<p>Authority shall exercise the powers and perform the functions of a State Biodiversity Board for that Union territory:</p> <p>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.</p> <p>(3) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.</p> <p>(4) The Board shall consist of the following members, namely:</p> <p>(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;</p> <p>(b) not more than five ex officio members to be appointed by the State Government to represent the concerned Departments of the State Government;</p> <p>(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.</p> <p>(5) The head office of the State Biodiversity Board shall be at such place as the State Government may, by notification in the Official Gazette, specify.</p>	<p>Gazette, appoint in this behalf, there shall be established by that Government for the purposes of this Act, a board for the State or the Union Territory, as the case may be, to be known as the (name of the State/Union Territory) Biodiversity Board.</p> <p>S.22(2) shall be dropped.</p> <p>The Chairperson shall be a committed experienced conservationist who would be able to take up and pursue proactive roles in conservation activities.</p> <p>S.22.4(a) may be modified to:</p> <p>“a Chairperson who shall be an eminent, committed conservationists, having adequate knowledge and experience in issues related to conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the State Govt. representatives of forest dwellers, local communities ayurveda practitioners, industries, farmers, and NGOs, should also be present in the SBB for effective functioning. Also provision for appointing a Member Secretary for the SBB shall be given.</p> <p>Add as “22(4)(d):</p> <p>Eight non-official members of one each representing local communities, tribal communities, fisherman communities, ayurveda practitioners, and industries and, NGOs committed to conservation, agriculture and human welfare.”</p> <p>Add as “22.4(e):</p> <p>A Member Secretary to the Board, who shall be a senior level Biologist with proven experience in any branch of taxonomy and with administrative experience, shall be appointed by the State Government.</p> <p>Dr. Bransdon S. Corrie:</p>
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		S.22 The State Biodiversity Board should include Forest Officers on its Board. I suggest 3 Forest Officers who are knowledgeable and have worked in the field of biodiversity and conservation.
23	<p>Functions of State Biodiversity Board</p> <p>23. The functions of the State Biodiversity Board shall be to-</p> <p>(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 utilization of biological resources;</p> <p>(b) regulate by granting of approvals or otherwise requests for commercial utilization or bio survey and bio utilization of any biological resource by Indians;</p> <p>(c) perform such other functions as may be necessary to carry out the provisions of this Act or as may be prescribed by the State Government.</p>	<p>Dr.V.S.Vijayan:</p> <p>It is better to clearly say that to advise the State Government on all matters related to biodiversity conservation and sustainable use.</p> <p>S.23(a): may be modified as “Advise the State Government on all matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of Biological resources; Include requests from foreigners also permission by the SBB”.</p> <p>23(b) may be modified as “regulate by granting of approvals or otherwise requests for commercial utilization or bio survey and bio utilization of any biological resource by Indians and foreigners;</p> <p>Smt. Thulika Singh:</p> <p>S.23(b): This section may be deleted altogether as the said provision of SBB is already being addressed by NBA under sections 18,19 ,20 & 21.</p>
24	<p>Power of State Biodiversity Board to restrict certain activities.</p> <p>24.(1) Any citizen of India or a body corporate, organization or association registered in India intending to undertake any activity referred to in section 7 shall give prior intimation in such form as may be prescribed by the State Government to the State Biodiversity Board</p> <p>(2) On receipt of an intimation under sub section (1), the State Biodiversity Board</p>	<p>Dr.V.S.Vijayan</p> <p>S.24 (1): Include requests from foreigners also permission by the SBB consultation with the BMC and the local body concerned, the later if found necessary, and after making such inquiries as it may deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of the conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity:</p>

	<p>may, in consultation with the local bodies concerned and after making such enquires as it's conservation, may deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity:</p> <p>Provided that no such order shall be made without giving an opportunity of being heard to the person affected.</p> <p>(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...</p>	<p>The word <i>intimation</i> may be changed to <i>request; the forms for which would be prescribed by the SBB and not the State Govt.</i></p> <p>S.24(1) may be modified as :</p> <p>“Any citizen of India or a body corporate, organization or association registered in India intending to undertake any activity referred to in Section 7 shall give prior request in such form as may be prescribed by the State Biodiversity Board”.</p> <p>The word <i>intimation</i> may be changed to <i>application. The SBB should consult the BMC and then the local bodies, if found necessary depending on the seriousness of the issue.</i></p> <p>S.24(2) may be modified as:</p> <p>“on receipt of application under Sub-Section(1) the SBB may, in consultation with the BMC and the local body concerned, the later if found necessary, and after making such enquiries as it deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity:</p> <p>S.24 (3) The word <i>intimation</i> may be changed to <i>application.</i></p>
25	<p>Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board</p> <p>25. The provisions of sections 9 to 17 shall apply to a State Biodiversity Board and shall have effect subject to the following modifications, namely:</p> <p>(a) references to the Central Government shall be construed as references to the State Government;</p> <p>(b) references to the National Biodiversity</p>	

	<p>Authority shall be construed as references to the State Biodiversity Board;</p> <p>Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board.</p> <p>(c) reference to the Consolidated Fund of India shall be construed as reference to the Consolidated Fund of the State.</p>	
7	CHAPTER - 7	
26	<p>Grants of loans by the Central Government</p> <p>26. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the National Biodiversity Authority by way of grants or loans such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.</p>	
27	<p>Constitution of National Biodiversity Fund</p> <p>27.(1) There shall be constituted a Fund to be called the National Biodiversity Fund and there shall be credited thereto</p> <ul style="list-style-type: none"> (a) any grants and loans made to the National Biodiversity Authority under section 26; (b) all charges and royalties received by the National Biodiversity Authority under this Act; and (c) all sums received by the National Biodiversity Authority from such other sources as may be decided upon by the Central Government. <p>(2) The Fund shall be applied for-</p> <ul style="list-style-type: none"> (a) channeling benefits to the benefit claimers; (b) conservation and promotion of biological resources and development of areas from where such biological resources or 	<p>Dr.V.S.Vijayan</p> <p>S.27(2)(c): better to make it in consultation with the BMC and local bodies.</p> <p>S.27(2)(c) may be modified to : “socio economic development of areas referred to in clause (b) in consultation with the BMC and local bodies concerned”.</p>

	<p>knowledge associated thereto has been accessed;</p> <p>(c) socio economic development of areas referred to in clause (b) in consultation with the local bodies concerned.</p>	
28	<p>Annual report of National Biodiversity Authority</p> <p>28. The National Biodiversity Authority shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and furnish, to the Central Government, before such date as may be prescribed, its audited copy of accounts together with auditors report thereon.</p>	
29	<p>Budget accounts and audit</p> <p>29. (1) The National Biodiversity Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the National Biodiversity Fund) and prepare an annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.</p> <p>(2) The accounts of the National Biodiversity Authority shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the National Biodiversity Authority to the Comptroller and Auditor General of India.</p> <p>(3) The Comptroller and Auditor General of India and any other person appointed by him in connection with the audit of the accounts of the National Biodiversity Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and</p>	

	<p>Auditor General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the National Biodiversity Authority.</p> <p>(4) The accounts of the National Biodiversity Authority as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government.</p>	
30	<p>Annual Report to be laid before Parliament</p> <p>30. The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.</p>	
8	<p>CHAPTER - 8</p>	
31	<p>Grants of money by State Government to State Biodiversity Board</p> <p>31. The State Government may, after due appropriation made by the State Legislature by law in this behalf, pay to the State Biodiversity Board by way of grants or loans such sums of money as the State Government may think fit for being utilized for the purposes of this Act.</p>	
32	<p>Constitution of State Biodiversity Fund</p> <p>32.(1) There shall be constituted a Fund to be called the State Biodiversity Fund and there shall be credited thereto</p> <p>(a) any grants and loans made to the State Biodiversity Board under section 31;</p> <p>(b) any grants or loans made by the</p>	<p>Dr.V.S.Vijayan.</p> <p>(d) last line in consultation with the local bodies may be changed to <u>BMC and local bodies.</u></p> <p>S.32(2)(d) may be modified as:</p> <p>“socio economic development of areas from where such biological resources or knowledge associated thereto has been accessed subject to</p>

	<p>National Biodiversity Authority;</p> <p>(c) all sums received by the State Biodiversity Board from such other sources as may be decided upon by the State Government.</p> <p>(2) The State Biodiversity Fund shall be applied for</p> <p>(a) the management and conservation of heritage sites;</p> <p>(b) compensating or rehabilitating any section of the people economically affected by notification under sub section (1) of section 37;</p> <p>(c) conservation and promotion of biological resources;</p> <p>(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;</p> <p>(e) meeting the expenses incurred for the purposes authorized by this Act.</p>	<p>any order made under Section 24, in consultation with the BMC and local bodies concerned”;</p> <p>(f) meeting the expenses incurred for the purposes authorized by this Act.</p>
33	<p>Annual report of State Biodiversity Board</p> <p>33. The State Biodiversity Board shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government.</p>	
34	<p>Audit of accounts of State Biodiversity Board</p> <p>34. The accounts of the State Biodiversity Board shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the State Biodiversity Board shall furnish, to the State Government, before such date as may be prescribed, its audited copy of accounts together with auditor's report thereon.</p>	

35	<p>Annual Report of State Biodiversity Board to be laid before State Legislature</p> <p>35. The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the House of State Legislature.</p>	
9	<p>CHAPTER - 9</p>	
36	<p>Central Government to develop National strategies plans. etc., for conservation, etc., of biological diversity</p> <p>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.</p> <p>(2) Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect, it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.</p> <p>(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.</p> <p>4) The Central Government shall undertake measures,-</p>	<p>Dr.V.S.Vijayan:</p> <p>S.36(4)(i) It is very important point. It should be made mandatory to have Environmental Impact Assessment, Involving the SBB and BMC, of any project which will have adverse impact on biodiversity of the area.</p> <p>S.36(4)(i) may be modified as:</p> <p>“To conduct Environmental Impact Assessment (EIA) of all projects which are likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects and, all such EIA will be conducted with the participation of the SBB, BMC and the local communities”.</p> <p>(ii) By including this provision, the Act is giving an indirect approval of introduction of genetically modified organism. That the GM organisms genetically contaminate the local biodiversity is too well established that there is no need to undertake a trial. This is apart from other adverse impacts of GM organisms.</p> <p>S.36(4) (ii) must be dropped altogether.</p> <p>Dr. B.S.Burfal</p> <p>Section 36(2) of the Act makes provisions to take action by the Central Government for taking ameliorative measures for any overuse, abuse or neglect of biological resources and its habitat by directing the State Government. The Central Government does not have such a mechanism at local level to monitor these issues and take appropriate action in time. It is suggested that</p>

	<p>(i) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects and where appropriate provide for public participation in such assessment;</p> <p>(ii) to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.</p> <p>(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.</p> <p>Explanation:-For the purposes of this section,-</p> <p>a)"ex situ conservation" means the conservation of components of biological diversity outside their natural habitats;</p> <p>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.</p>	<p>provision should be made in the Act to authorize the SBB and the State Government to take the said action.</p> <p>S.36(3), 36(4) (i), 36(5) of the Act makes provisions to take various measures only by Central government, where as the State Government is also needed to take these measures.</p> <p>It is suggested that provisions should be made in the Act that Central Government and State Government both should undertake these measures</p> <p>Dr. Priyadarsanan Dharma Rajan <i>et al</i></p> <p>To conserve the traditional rights over biodiversity, rather than restricting the access to biological material, the traditional knowledge should be safeguarded by documenting and bringing such knowledge in to the public domain. So Section 36 (5) may be modified by including “include document and publish in public domain” as a measure for protecting the knowledge of the local people relating to biological diversity.</p>
37	<p>Biodiversity heritage sites 37.(1) Without prejudice to any other law</p>	<p>Dr.V.S.Vijayan:</p>

	<p>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.</p> <p>(2) The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the heritage sites.</p> <p>(3) The State Government shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.</p>	<p>S.37(1): If the provision is for the State Government in consultation with the local bodies to notify the biodiversity heritage site, no single Heritage site will be declared in the immediate future. The Section can be modified in such a way that the State Government should get a proposal to declare certain areas as biodiversity heritage site.</p> <p>S. 37(1) may be modified as: “Without prejudice to any other law for the time being in force, the State Government may from time to time, notify under this Act in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites on recommendations from local communities, local bodies, BMC, SBB or NGOs working in the locality on Conservation issues”.</p> <p>Smt. Kanchi Kohli:</p> <p>The law must mention that a process to identify and establish BHS, needs to include the local communities, conservation scientists as well as civic society organizations. The current compensation clause [Section 37(3)] needs to be clarified so as not to imply forced displacement or restriction of people’s livelihood or cultural rights</p> <p>The law must mention that a process to identify and establish BHS, needs to include the local communities, conservation scientists as well as civil society organization,</p> <p>The current compensation clause [Section 37(3)] needs to be clarified so as not to imply forced displacement or restriction of people’s livelihood or cultural rights.</p>
38	<p>Power of Central Government to notify threatened species</p> <p>38. Without prejudice to the provisions of any other law for the time being in force, the Central Government, in consultation</p>	<p>Dr.V.S.Vijayan:</p> <p>It is better to involve the SBBs in the process.</p> <p>S.38 may be modified as :</p>

	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.	“Without prejudice to the provisions of any other law for the time being in force, the Central Government, on recommendation of the SBB and in consultation with the concerned State Government, may from time to time notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species”
39	<p>Power of Central Government to designate repositories</p> <p>39. (1) The Central Government may, in consultation with the National Biodiversity Authority, designate institutions as repositories under this Act for different categories of biological resources.</p> <p>(2) The repositories shall keep in safe custody the biological material including voucher specimens deposited with them.</p> <p>(3) Any new taxon discovered by any person shall be notified to the repositories or any institution designated for this purpose and he shall deposit the voucher specimens with such repository or institution.</p>	
40	<p>Power of Central Government to exempt certain biological resources</p> <p>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</p>	
	CHAPTER - 10	
41	<p>Constitution of Biodiversity Management Committee</p> <p>41.(1) Every local body shall constitute a</p>	<p>Smt. Kanchi Kohli:</p> <p>Need to add in S.41(1):</p>

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.

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.

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

“Provided that it will not be mandatory for any local body to document, record or digitize information related to biological resources within their jurisdiction or the related knowledge, thereof.”

Changes in corresponding Rules:

In **Rule 22(6)**, Delete: “The main function of the BMC is to prepare People’s Biodiversity Register in consultation with local people”.

In **Rule 22(8)** change to: “The Authority shall merely play a facilitative role and shall not restrict the form and manner of documentation chosen by people”

Dr.V.S.Vijayan:

The NBA and SBB should get the consent of the BMC while taking any decision relating to bio-resource; mere consultation will not help.

S.41(2) may be modified as:

“The National Biodiversity Authority and the state Biodiversity Boards shall get the written consent of the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring with the territorial jurisdiction of the Biodiversity Management Committee.

Smt. Kanchi Kohli:

S.41(2): The National Biodiversity Authority and the State Biodiversity Boards shall take **prior informed consent** of the Biodiversity Management Committees while taking any decisions relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee

Where there are no Biodiversity Management Committees present the National Biodiversity and State Biodiversity Boards shall take prior informed consent of the relevant *gram Panchayat*/autonomous district councils or any other equivalent body. The formation of BMCs to be decided by gram sabha, including composition And with possibility of existing bodies recognised and designated as *people's biodiversity bodies*.

The National Biodiversity Authority shall issue a notification through which the process of seeking free, air and transparent procedure for seeking prior informed consent will be laid out.

Dr.V.S.Vijayan

Add the following sections to give clarity for benefit sharing.

S.41(4): The SBB concerned shall help the BMC in fixing the fees, based on the market demand.

S.41(5): Amount gained from any natural resource shall be shared among the individuals, involved in conservation of the species and, the BMC and SBB in the ratio of 50:40:10 respectively. The BMC shall use the funds for conservation of the species, while the SBB for monitoring the programme.

Shri. N.S.Yadav

As per Section 41, BMC may levy charges on collection of B.R. for Commercial Purpose (C.P) Enforcement mechanism is needed for this. More over C.P is not defined in the act. If C.P is taken same as C.U then role of most BMC will be very limited, as most B.M.C May not have B.R in their area for C.U as defined in the act. If commercial purpose is not same as commercial utilization and taken as commercial trade of B.R then most BMCs have very big role. To actively involve BMC and to generate considerable income C.P must be clearly defined as commercial trade and BMC may levy charge for any type of commercial trade of B.R by any agency including joint forest management Committees

Dr. Neelima Jerath:

S.41. Provided that it will not be mandatory for any for any local body to document record or digitize information related to biological resources within their jurisdiction or the related knowledge thereof.

In Rule 22(8) change to: “The Authority Shall merely play a facilitative role and shall not restrict the form and manner of documentation chosen by people themselves”.

S.41(2). Para 2 formation of BMC to be decided by gram sabha with the possibility of existing bodies being recognized and designated as peoples biodiversity bodies/BMCs.

Shri. Bala Prasad

S.41(1) of Biological Diversity Act, 2002 provides that every local Body shall constitute Biodiversity Management Committee (BMC) and Rules 22(6-11) of Biological Diversity Rules, 2004 outlines function of the BMCs. Thus BMC of village Panchayat, Block Panchayat Samiti and Zilla Parishad have same functions. The three committees may have different functions.

Section 41(2) of Biological Diversity Act, 2002 provides that Nation Biodiversity Board and State Bio-diversity Board would consult BMC while taking any decision. The Act needs a provision when local bodies do not exist.

Section 41(3) of Biological Diversity Act, 2002 provides that Local Bodies may charge fee. The fee to be charged by three levels of Local Bodies may turn out to be very high and may prove counterproductive.

Dr. Bransdon S. Corrie:

Section 41 “BMC have to have a strong technical foundation. The Act does not touch on this vital point further in case of forest areas. The BMC will be found totally lacking capability to

		address biodiversity issues. The Section needs to be modified to give teeth to the Act. There should be a scientific capability of BMC to deal with the areas outside forest and forest areas ideally the Chairman should be from a scientific background. The DFO / ACF / Range Officers may be the Chairman in case of Forest areas and an experience Researcher / Professor in case of other areas is suggested. I suggest having the Range Officer of the area on the Committee in case of forest areas and in case of outside forest areas having a biology professor of an institution of the locality on the BMC.
11	CHAPTER - 11	
42	Grants to Local Biodiversity Fund 42. The State Government may, after due appropriation made by State Legislature by law in this behalf, pay to the Local Biodiversity Funds by way of grants or loans such sums of money as the State Government may think fit for being utilized for the purposes of this Act.	
43	Constitution of Local Biodiversity Fund 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- a)any grants and loans made under section 42; b) any grants or loans made by the National Biodiversity Authority; c)any grants or loans made by the State Biodiversity Boards; d) fees referred to in sub section (3) of section 41 received by the Biodiversity Management Committees; e)all sums received by the Local Biodiversity Fund from such other	

	sources as may be decided upon by the State Government	
44	<p>Application of Local Biodiversity Fund</p> <p>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.</p> <p>(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.</p>	
45	<p>Annual Report of Biodiversity Management Committees</p> <p>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.</p>	
46	<p>Audit of accounts of Biodiversity Management Committees</p> <p>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.local body.</p>	
47	<p>Annual report, etc, of the Biodiversity Management Committee to be submitted to district Magistrate</p> <p>47. Every local body constituting a Biodiversity Management Committee</p>	

	<p>under sub section (1) of section 41, shall cause, the annual report and audited copy of accounts together with auditor's report thereon referred to in sections 45 and 46, respectively and relating to such Committee to be submitted to the District Magistrate having jurisdiction over the area of the</p>	
48	<p>National Biodiversity Authority to be bound by the directions given by Central Government</p> <p>48. (1) Without prejudice to the foregoing provisions of this Act, the National Biodiversity Authority shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.</p> <p>Provided that the National Biodiversity Authority shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub section.</p> <p>(2) The decision of the Central Government whether a question is one of policy or not shall be final.</p>	<p>Dr.V.S.Vijayan:</p> <p>S.48(1) This has to be discussed thoroughly, keeping in view of the drastic erosion of the biodiversity mainly because of the various development projects. The NBA's views on any major conservation issue formed after consulting/obtaining the views of the BMC, local bodies, and SBBs (views formed in a proper democratic way) shall not be sidelined by the Central Government. It should be made mandatory that the Central Government should accept the recommendations of the NBA on matters related to biodiversity conservation. It would be logistic, democratic and ideal if the Central Government consult the NBA before taking a policy decision on matters related to biodiversity conservation</p> <p>S. 48(1) and 48(2) may be modified as:</p> <p>The Central Government may seek the advice of the NBA for formulating any policy related to conservation and or sustainable use of biodiversity or for giving approval for any project which is likely to affect the biodiversity of the area and, the advice thus received, if not according to the Policy of the Government, may be sent back to the NBA for consideration. In case the NBA after careful examination find that the earlier recommendations cannot be changed and reconfirm the same for the reasons explained, the Central Government is bound to accept such recommendations.</p>
49	<p>Power of State Government to give Directions</p> <p>49.(1) Without prejudice to the foregoing provisions of this Act, the State Biodiversity Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions</p>	<p>Dr. V.S.Vijayan:</p> <p>S.49(1) and 49(2) may be modified as:</p> <p>The Central Government may seek the advice of the NBA for formulating any policy related to conservation and or sustain</p>

	<p>of policy as the State Government may give in writing to it from time to time:</p> <p>Provided that the State Biodiversity Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub section.</p> <p>(2) The decision of the State Government whether a question is one of policy or not shall be final.</p>	<p>S.49(1) and 49(2) may be modified as:</p> <p>The State Government may seek the advice of the SBB for formulating any policy related to conservation and or sustainable use of biodiversity or for giving approval for any project which is likely to affect the biodiversity of the area and, the advice thus received, if not according to the policy of the Government, may be sent back to the SBB for reconsideration. In case the SBB after careful examination find that the earlier recommendations cannot be changed and reconfirm the same for the reasons explained, the State Government is bound to accept such recommendations.</p>
50	<p>Settlement of disputes between State Biodiversity Boards</p> <p>50. (1) If a dispute arises between the National Biodiversity Authority and a State Biodiversity Board, the said Authority or the Board, as the case may be, may prefer an appeal to the Central Government within such time as may be prescribed.</p> <p>(2) Every appeal made under Sub-Section (1) shall be in such form as may be prescribed by the Central Government.</p> <p>(3) The procedure for disposing of an appeal shall be such as may be prescribed by the Central Government:</p> <p>Provided that before disposing of an appeal, the parties shall be given a reasonable opportunity of, being heard.</p> <p>(4) If a dispute arises between the State Biodiversity Boards, the Central Government shall refer the same to the National Biodiversity Authority.</p> <p>(5) While adjudicating any dispute under sub section (4), the National Biodiversity Authority shall be guided by the principles of natural justice and shall</p>	<p>Smt. Kanchi Kohli:</p> <p>Change in title to settlement of disputes related to BMCs, SBBs and NBA</p> <p>Need to recognize the disputes between two BMCs and also make provision for dispute resolution between two BMCs or BMC(s) with SBB and NBA in grant of access or benefit sharing.</p> <p>Dr. B.S.Burfal</p> <p>S.50(6) of the Act makes provisions that the NBA shall have the same power as are vested in a civil court for the purpose of discharging its function. The SBB has also to discharge its function under this Act.</p> <p>Therefore, it is suggested that under Section 50(6) the SBB should also be given power of civil court for discharging its function.</p>

	<p>follow such procedure as may be prescribed by the Central Government.</p> <p>(6) The National Biodiversity Authority shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely-</p> <ul style="list-style-type: none"> a) summoning and enforcing the attendance of any person and examining him on oath; b) requiring the discovery and production of documents; c) receiving evidence on affidavits; d) issuing commissions for the examination of witnesses or documents; e) reviewing its decisions; dismissing an application for default or deciding it ex parte; f) setting aside any order of dismissal of any application for default or any order passed by it ex parte; g) any other matter which may be prescribed. <p>(7) Every proceeding before the National Biodiversity Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code and the National Biodiversity Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXV1 of the Code of Criminal Procedure, 1973.</p>	
51	<p>Members, officers, etc., of National Biodiversity Authority and State Biodiversity Board deemed to be public servants</p> <p>51. All members, officers and other employees of the National Biodiversity</p>	

	<p>Authority or the State Biodiversity Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions, of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code</p>	
52	<p>Appeal</p> <p>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:</p> <p>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.</p>	
53	<p>Execution of determination or order</p> <p>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.</p> <p>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)</p>	

	of section 22 have been delegated under the proviso to that sub-section and the certificate relating to such person or group of persons under this section shall be issued by such person or group of persons, as the case may be.	
54	<p>Protection of action taken in good faith</p> <p>54. No suit, prosecution or other legal proceedings shall lie against the Central Government or the State Government or any officer of the Central Government or the State Government or any member, officer or employee of the National Biodiversity Authority or the State Biodiversity Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made there under.</p>	<p>Dr.V.S.Vijayan</p> <p>If anything goes wrong, will anyone say that it was not done on good faith?</p> <p>I think this provision should be dropped so that the officers would be more accountable.</p>
55	<p>Penalties</p> <p>55.(1) Whoever contravenes or attempts to contravenes 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 tend lakh rupees such fine may commensurate with the damage caused, or with both.</p> <p>(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.</p>	
56	<p>Penalty for contravention of directions or orders of Central government, State government, National Biodiversity Authority and State Biodiversity Boards</p> <p>56. If any person contravenes any direction given or order made by the</p>	<p>Shri Bala Prasad:</p> <p>S.56: needs to be modified as it provides for harsh penalty for contravention of the direction / order of Govt. of India, State Govt. and State Biodiversity Board. What should be done in case of contradictory direction. Priority of direction should also be provided in the Act. This offences</p>

	<p>Central Government, the State Government, the National Biodiversity Authority or the State Biodiversity Board for which no punishment has been separately provided under this Act, he shall be punished with a fine which may extend to one lakh rupees and in case of a second or subsequent offence, with fine which may extend to two lakh rupees and in the case of continuous contravention with additional fine which may extend to two lakh rupees everyday during which the default continues.</p>	<p>under this Act may be made non cognizable and bailable to avoid any harassment unless case is proved against the party.</p>
57	<p>Offences by companies 57.(1) Where an offence or contravention under this Act has been committed by a company, every person who at the time the offence or contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly:</p> <p>Provided that nothing contained in this sub section shall render any such person liable to any punishment provided in this Act, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.</p> <p>(2) Notwithstanding anything contained in sub section (1), where an offence or contravention under this Act has been committed by a company and it is proved that the offence or contravention has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence or contravention and shall</p>	<p>Dr.V.S.Vijayan</p> <p>S.57(1): This will only encourage corruption and malpractices.</p>

	<p>be liable to be proceeded against and punished accordingly.</p> <p>Explanation. For the purposes of this section,-</p> <p>"company" means any body corporate and includes a firm or other association of individuals; and</p> <p>"director", in relation to a firm, means a partner in the firm.</p>	
58	<p>Offences to be cognizable and non bailable</p>	<p>Smt.Thulika Sinha</p> <p>S.58. The offences under this Act shall be cognizable and non bailable.</p>
59	<p>Act to have effect in addition to other Acts</p> <p>59. The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or wildlife.</p>	
60	<p>Power of Central Government to give directions to State Government</p> <p>60. The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule or regulation or order made there under</p>	
61	<p>Cognizance of offences</p> <p>61. No Court shall take cognizance of any offence under this Act except on a complaint made by-</p> <p>(a) the Central Government or any authority or officer authorized in this behalf by that Government; or</p> <p>(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</p>	<p>Dr.V.S.Vijayan:</p> <p>Include: “Agricultural officer, Forest officers, and other field level staff of the various departments to take cognizance of offences”.</p> <p>Add S.61(c):</p> <p>“Field level officers of the Government Departments as authorised by the State Biodiversity Boards”.</p> <p>Smt. Kanchi Kohli:</p>

	<p>officer authorized as aforesaid.</p>	<p>S.61(1): Any person aggrieved by the violation of provisions of Sections 3,4,5,6,7 or by an approval granted by the National Biodiversity Authority prefer an appeal in the court (including District or High Courts)</p> <p>Grievance against an approval needs to be filed within 90 days of the Approval being granted.</p> <p>For the purposes of Sub-Section (1), “person” means-</p> <p>(a) any person who is likely to be affected by the grant of approval under the Act;</p> <p>(b) The Central Government or any authority or officer authorized in this behalf by the Government</p> <p>(c) any local body (including) but not restricted to district councils, Panchayats, BMCs, Forest Protection Committees) within whose jurisdiction the biological resource or related knowledge has been or is proposed to be accessed.</p> <p>(d) any association of persons (whether incorporated/registered or not) likely to be affected by such order and functioning in the field of conservation, environment, traditional knowledge and;</p>
62	<p>Power of Central Government to make rules</p> <p>62. (1) The Central Government may' by notification in the Official Gazette, make rules for carrying out the purposes of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for A or any of the following matters, namely:-</p> <p>a) terms and conditions of service of the Chairperson and members under section 9;</p> <p>b) powers and duties of the Chairperson under section 10;</p>	

- c) procedure under sub section (1) of section 12 in regard to transaction of at meetings,
- d) form of application and payment of fees for undertaking certain activities under sub-section (1) of section 19;
- e) the form and manner of making an application under sub section (2) of section 19;
- f) form of application and the manner for transfer of biological resource or knowledge under sub section (2) of section 20;
- g) form in which, and the time of each financial year at which, the annual report of the National Biodiversity Authority shall be prepared and the date before which its audited copy of accounts together with auditor's report thereon shall be furnished under section 28;
- h) form in which the annual statement of account shall be prepared under subsection (1) of section 29;
- i) the time within which and the form in which, an appeal may be preferred, the procedure for disposing of an appeal and the procedure for adjudication, under section 50;
- j) the additional matter in which the National Biodiversity Authority may exercise powers of the civil court under clause (h) of sub section (6) of section 50;
- k) the manner of giving notice under clause (b) of section 61;
- l) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this section and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session or a total period of

	<p>thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following. The session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.</p>	
63	<p>Power of State Government to make rules.</p> <p>63. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.</p> <p>(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:-</p> <ol style="list-style-type: none"> a) the other functions to be performed by the State Biodiversity Board under clause (c) of section 23; b) the form in which the prior intimation shall be given under sub section (1) of section 24; c) the form in which, and the time of each financial year at which, the annual report shall be prepared under section 33; d) the manner of maintaining and auditing the accounts of the State Biodiversity Board and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 34; e) management and conservation of national heritage sites under section 37; 	<p>Dr. B.S. Burfal</p> <p>S.63(1) of the Act makes provision that the State Government may make rules for the purpose of this Act. It is evident that about 22 States have constituted the SBB, but hardly four or seven States have made Rules, however, they are functioning. It appears that firstly there should be an UMBRELLA Rules which should be followed by the Central Government & NBA as well as by the State Government & SBB. However, provision should be made for the State government to frame its rules for discharging particular section of the Act. Otherwise, there are chances of dilution of the main Act through the State Rules. Moreover there may be lot of variation in the State Rules from State to State for implementing the same Act, i.e., The Biological Diversity Act.</p> <p>Therefore, it is suggested that a common rule should be framed for Central as well as State Governments. Meanwhile, provision should be made in the Act or Rules that till the State Government frames its Rules; the State Government can follow the Central Rules so that in the absence of the State Rules the State Governments and SBBs should not face any difficulty for discharging their function under the Biological Diversity Act.</p>

	<p>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;</p> <p>g) the form of annual report and the time at which such report shall be prepared during each financial year under section 45;</p> <p>h) the manner of maintaining and auditing the accounts of the Local Biodiversity Fund and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 46;</p> <p>i) any other matter which is to be, or may be, specified.</p> <p>(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.</p>	
64	<p>Power to make regulations</p> <p>64. The National Biodiversity Authority shall, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations for carrying out the purposes of this Act.</p>	
65	<p>Power to remove difficulties</p> <p>65.(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not</p>	

	<p>inconsistent with the provisions of this Act, remove the difficulty:</p> <p>Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.</p> <p>(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament</p>	
	<p>No Existing Clause Currently</p>	<p>Smt. Kanchi Kohli:</p> <p>Inbuilt system of Review in the Legislation; An independent review committee consisting of representatives from the NBA, SBBs, civil societies and community based organizations should review implementation of the Act and its various aspects once in every 3 years before the Report to the CBD secretariat is finalized. (Enabling Rule for the same needs to be issued).</p>

Comments on Biological Diversity Rules, 2004

Shri.Freddy Daruwala, Advocate

Section 2(l) defining ‘Intellectual Property Rights’ does not include a plant variety registered under the Plant Protection Varieties and Farmers Rights Act 2001 Section 2(q) dealing with ‘Misuse of Traditional Knowledge’ needs to specifically state non patentability or any similar IPR registration prohibition for traditional knowledge (this would make attempts to gain such IPR registration void *ab initio* unlike the long drawn out disputes to revoke patents relating to Neem and turmeric). Further the definition of the term traditional knowledge under section 2(v) needs to be enlarged into as broad a scope as possible so as to encompass all traditional knowledge even if such traditional knowledge may be restricted to a particular geographic location or traditional community. This stipulation needs to be specifically incorporated into the definition

Procedures for Opposition or revocation of any license for use of traditional knowledge need to be set out in further detail (with specific forms/formats) to avoid ambiguity

If any biological resource is modified in any manner whatsoever which may affect its inherent/replicating properties, the same must be mandatorily disclosed in full with the best method of such modification (in *pari materia* with the doctrine of best method in Patent law) both to the National/State Biodiversity authorities. Further if such biological resource is commercially exploited in any manner whatsoever(whether a value added product or a byproduct under the Act or not), the fact of such modification along with any methodology (eg. radiation) must be prominently mentioned on packaging /disclosed to an intending user /customer of such product derived from such modified biological resource.

Smt. Thulika Sinha.

Rule 11 (1) appointment of expert committee by the authority and their entitlements Add proviso to rule 11(1) provided that if it is expedient in the interest of quick and timely grant of approval or issue of NOC for (a) regulatory requirements on each type germplasm/ varieties/f1/lines (b) export or import of germplasm the authority shall constitute standing committees to deal with each such matter as a single window clearances.

Rule 12 (xiii): To take steps to build up data base and to create information and documentation system for biological resources and associated traditional knowledge through biodiversity registers and electronic databases to ensure effective management. Promotion and sustainable use and make private sector a partner in collecting, conserving and rejuvenating the germ plasm for crop improvement in the country. Rule 14(3):the authority shall after consultation with concerned local bodies and collecting such additional information from the applicant and other sources, as it may deem necessary dispose of the application as far as possible, within a period of three months from the date of its receipts.

The NBA shall after consultations with the concerned local bodies and collecting such additional information from the applicant and other sources as it may deem necessary, dispose of the application as far as possible, within a period of **3 months** from the date of receipts. NBA Should device proformas for those persons/organisations listed in clause -3(2) for accessing biological diversity for research Or for commercial utilization, as current formats are too specific to collaborative research activities associated with T.K. Normally traded commodities including germplasm should be allowed to be exchanged freely within organization across the globe and intra –institutional exchange under a SMTA. Institutions (public/ private) should have freedom to enter into MTA for the exchange of normally traded commodities including germplasm

Dr. Neelima Jerath:

Rule 22(8) to be changed to “The Authority shall merely play a facilitative role and shall not restrict the form and manner of documentation chosen by people themselves.”

Smt. Kanchi Kohli:

Need to add in S.41(1):

“Provided that it will not be mandatory for any local body to document, record or digitize information related to biological resources within their jurisdiction or the related knowledge, thereof.”

Changes in corresponding Rules:

In **Rule 22(6)**, Delete: “The main function of the BMC is to prepare People’s Biodiversity Register in consultation with local people”.

In **Rule 22(8) change to:** “The Authority shall merely play a facilitative role and shall not restrict the form and manner of documentation chosen by people”

GENERAL SUGGESTION FOR AMENDMENT IN THE BIOLOGICAL DIVERSITY ACT, 2002

Smt. Sristy Neelakandh:

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

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

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

(a) (i) a person who not a citizen of India;

(ii) a person who is a citizen of India except where biological resource is used for purposes other than commercial in nature_(emphasis added)

Prof. Narendran:

At present the biodiversity act is giving considerable impediments for perusing classical taxonomic research. For confirming identities, for studying the phenotypic variations existing in different zoological regions of a taxon and for several other necessary requirements bonafide taxonomists have to send/receive/exchange dead/preserved specimens between world specialists. The present biodiversity act prevents this freedom which the taxonomists were having before the present act came into existence and as result the taxonomists are in deep trouble for carrying out their research.(Refer Prathapan *et.al.* Current Science 94(2), 2008.). Hence I being a senior taxonomist request you to kindly amend the rule so that “Bonafide Professors/Emerius professors/Janaki Ammal National awardees / and other bonafide scientists of Universities and Bonafide Institutes who do research on pure classical taxonomy may be fully given freedom to send/exchange dead preserved specimens between world scientists for pure taxonomic research without applying for permission from NBA or any other agencies”. They should have the same freedom as in the past before the present biodiversity act came into existence. This will greatly benefit Indian scientists who work on pure classical taxonomy for improving the quality of their work and making correct identifications for biodiversity conservation etc

It is not at all practicable to get permission every now and then from NBA or any such agencies in time and without delay

Dr. Uma Malkania:

It is suggested that the suggested activities can be developed as a project activity or as interactive meetings to work out a mechanism to implement it through SBB, UK. Considering this the role of G.B.Pant University of Agriculture and Technology is important to give a scientific base through State Biodiversity Board Uttarakhand as per the mandate of Biological Diversity Act 2002.

Dr. Duggaraju Srinivasa Rao:

1. Please involve academic institutions in documenting the biodiversity of the area. One college in each district, where some amount of work on Biodiversity was already on, as a nodal centre for coordinating the schools and colleges in the district.

Teachers have confidence of students and local community who are holding the traditional information and knowledge about plants and animals and their use in human welfare and health.

2. It is my experience that most of the locals having knowledge on the medicinal use of plants are not sharing it because they don't have confidence on the govt machinery.
At the initial stage leave the job of collection of knowledge to the local teachers and lectures who are not researchers themselves but have some training in biological sciences.
3. My association with the children science congress as a state level resource person has given a chance to go round country side and see how people are using the biodiversity without actually knowing their contribution.
4. I am working on the Biodiversity of Nizampatnam Bay. So I visited many coastal villages and interacted with the fisherman and others. Given a chance I shall document the traditional knowledge and other diversity information in this area.
5. Please consider the role the academic institutions and students can play in documenting the traditional knowledge.

Shri. Mayur Parekh

- Stop Industries evolving in bio resources to access natural resources or take permission from concerned Government Authority.
- To preserve marine aquatic life of Gujarat Coastal Region and to stop Alang Port to eliminate waste from hazardous or toxic elements resulting from ship breaking.
- Use of Microorganism thoroughly for genetic by-products'.
- Set up of forums at ground level.
- Proper utilization of funds.
- Wild life protection to regulate life cycle.
- Present enactments like wildlife act, forest act are not proper and non effective.
- Security of local people.
- Traditional Community definition is not explanatory.
- Tribunal Courts and separate courts.
- Agreements with foreign party before using our traditional knowledge.
- Awareness of IPR regime and laws.

Dr. Bransdon Corrie

S.8 (4): Five forest officers who are knowledgeable and have worked in the field of biodiversity conservation.

The secretary made be a member secretary. Rather than an appointed member secretary will be effective. The act need sustainable modification as this will strengthen the working of NBA.

Dr. Sudhir Kochhar

1. SCOPE:

The Biological Diversity Act, 2002 fulfills India's commitment to the United Nations/world community through the Convention on Biological Diversity, 1992 (CBD). In this context, there is room to enlarge and define the enlarged scope of the Act, within the overall provisions of the said Convention. Let us consider the following:

1. The CBD recognizes sovereign rights of countries on their biological resources for determining their access to foreigners.
2. The interpretation of 'sovereign biological resources' is not provided in the definitions under the CBD.
3. The Act, so far, states that 'this extends to the whole of India'. Thus, the scope of 'sovereign biological resources' covered under this law is clearly left to arbitrary interpretation.

4. It would be more appropriate that the scope of the Act covers all biological resources occurring in India, including wild and domesticated or native and *bona fide* species/breeds/strains that are naturalized in India or any part thereof over the generations.

A proviso may be added, stating that the *bona fide* species/ breeds/ strains include the introduced and naturalized biological resources inherited by individuals and communities for a period of over five human generations or a century, whichever period is more. Also, another proviso may be added mentioning that the recently introduced biological species which were not known to previously occur in the country, shall not be covered under this scope.

2. INDIGENOUS/ TRADITIONAL KNOWLEDGE:

The Act may clearly define “Indigenous/ Traditional Knowledge”. In the definition it should also cover non-documented but certified and confirmable indigenous/traditional knowledge on the availability and use of a particular biological resource.

3. AGROBIODIVERSITY:

The Act should preferably include particular reference to the components of agrobiodiversity in order to remove doubts and difficulties related to regulation of their conservation and sustainable use, and equitable benefit sharing. Also a chapter/section on the conservation, management and sustainable use of biodiversity (Annex-I; for a rough initial draft only) may be desirable. The following points may need to be considered:

- (i) There is a particular need to highlight in the Act that there are areas of
- (ii) Agro biodiversity importance in the country, which may require regulatory framework, rules and guidelines for regulating/promoting the on-farm conservation and management of domesticated biological/genetic resource in such notified areas.

A proviso may be added that the protected areas, mostly defined under other acts, such as Wildlife Conservation Act in case of wild biodiversity, also harbor wild relatives of cultivated/domesticated species. The regulatory provisions made under this Act for the components of Agro biodiversity shall also be applicable to the wild relatives of cultivated/ domesticated species occurring in these notified areas.

Another proviso may be added to emphasize the authority of Central Govt. for the notification agro biodiversity-wise important areas in the country. This would be important to mention in the Act because the notification for protected areas, even the National parks, is being done by State Govts. At present

(ii) Under the provision to notify areas of agro biodiversity importance a sub clause may be added, highlighting the need to notify, within the agro biodiversity rich notified areas, particular cropping systems along with their pre-defined components such as the constituent crop plant species, their prevalent landraces/ traditional varieties, etc., under each of these systems, for determining the priority and regulating their on-farm conservation.

(iii) The invasive alien species threatening the particular agro-ecological and cropping systems as well as the threatened crop/animal species/endangered species/vulnerable species should also be notified, category-wise and in order of degree of threat, for determining/underlining and regulating the conservation of indigenous species and their components and systems, on a high priority.

(iv) The Act may have specific provisions to regulate and promote on-farm conservation of the components of agro biodiversity through participatory and contractual farming approaches with a view to promote incentives-linked private participation and funding investment for these activities.

Explanation: Unlike the protected areas, which are managed mainly through the Departments of Forests, there is possibility of managing on-farm conservation of crop varieties/landraces and cropping systems through private participation.

This provision may further be suitably construed to link the regulation of on-farm conservation with the protection of rights of communities (Article 8(j) of CBD).

(v) Regulation of the components of agro biodiversity may require vetting from the BMCs in the very first place.

vi. A bottom up approach for the documentation of agro biodiversity components, including those under both cultivated and semi-wild states, on local area basis could be helpful for their long term management, regulation, access and bio-prospecting. However, this may require microanalysis of the prevailing AgBD in the country. Based upon such overview information, as and when gathered, NBA may like to draw schemes to extend priority support to identified BMCs in the first place.

vii. Such identified BMCs could be assisted by grassroots NGOs or academic/research institutions in the vicinity for careful documentation, which may include documentation of the historical accounts, such as period of introduction of the source material, extent and range of its current spread, key passport, characterization and valuation information, known traditional uses, including processes and products, commercial use, if any, etc.

viii. Next to this, on-farm in-situ and/or ex situ conservation aspects can be documented for similar promotion for sustainable use, access and bioprospecting, etc.

ix. NBA has already done an exercise in collaboration with PPV&FRA of identifying the hot spots of agro biodiversity in the country. Keeping in mind the dynamic nature of AgBD, another view of this may be taken to further include diversity-rich areas covering the semi-wild to wild biodiversity spots that may of interest under AgBD (e.g. areas rich in wild relatives of particular cultivated/domesticated species).

4. Realization of Community Rights

Protection of rights of communities is a major obligation under Article 8(j) of CBD.

To give effect to the India's commitment under the CBD, the Biological Diversity Act, 2002 is in place. However, realization of community rights is rather provided under the PPV&FR Act, 2001. Thus, there is a need to review this provision and harmonize the two laws for the purpose.

It is obvious that the central object in the PPV&FR Act is a finished Intellectual Property Product whereas the purview of BDA includes both cultivated and wild biological/genetic resources. Therefore, BDA provisions for realization of community rights in respect of the conservation of biological/genetic resources of potential value should override the provisions of the PPV&FR Act.

In this context, it may be appropriate to uniformly address the provision for the identification of farmers/communities for recognition and reward for the conservation of biological resource having potential value for industrial use (under the BDA) and that for the conservation of genetic resources of potential value for crop/animal improvement (under the PPV&FR Act).

Thus, it would be more appropriate that the cases for conservation of genetic resources of potential value for crop improvement (genome saviour awards) are referred to NBA by PPV&FRA for seeking final recommendations.

5. Facilitated Access to Genetic Resources for Food and Agriculture The issues covered under ITPGRFA have not been expressly included under any national law so far. This may need urgent consideration along with the review of the BDA.

A major issue is the Designated Indian Genetic Resources beyond the custody of national repositories/gene banks/field banks/botanical gardens, etc. – their notification, access to foreigners and benefit sharing for the realization of farmers' rights.

In this context, India should be entitled to benefit sharing from the commercial use of the components of Indian biodiversity/designated germplasm held ex-situ for the international community under the custody of FAO in foreign locales, including the international gene banks and botanical gardens, etc., and governed under the ITPGRFA.

Therefore, BDA should have adequate provisions to encourage interested parties for transferring their research results (patents) arising from the use of designated germplasm of Indian origin, in India on the condition that transfer of technology including the industrial/commercial manufacturing through working of patent also takes place in India.

A provision should also be made in the BDA to ex-post facto regularize ownership and benefit sharing matters, in specific cases on the merit of the individual case, and on similar condition that transfer of technology including the industrial/commercial manufacturing through working of patent shall also take place in India.

As ITPGRFA is a harmonized outcome of the outstanding matters of the Nairobi Final Act, 1992 (which also endorsed the Final Text of CBD), there is a need to harmonize the legislative, regulatory as well as administrative provisions related to ex-situ germplasm and realization of farmers' rights with the overall provisions of the BDA. In this context, it is important to legally define and notify the Indian Designated Germplasm from the Notified Repositories/Gene Banks and Field Gene Banks/Botanical Gardens, etc. For this, there is a need to essentially make appropriate provision under the BDA.

6. APPELLATE AUTHORITY

Appellate Authority in respect of Biodiversity matters should be separate than the Environmental Appellate Authority.

Annex-I

CONSERVATION, MANAGEMENT AND SUSTAINABLE USE OF BIODIVERSITY

Management and sustainable use through appropriate access Access will be determined as per the provisions of Chapter II. The following measures taken in respect of the Indian Biodiversity will determine the terms of mutual agreement between holders and recipients of bioresources for access and benefit sharing:

- a) Survey, identification and database or Local Biodiversity Register;
- b) Characterization and evaluation of bioresources;
- c) Regulatory measures for domestic exchange of components of biodiversity, including agro biodiversity, for research and commercial purposes;
- d) Sanitary and phytosanitary, and quarantine measures;
- e) Regulation of exchange of genetically modified organisms (GMOs) and transgenics;
- f) Measures for environmentally safe trans boundary movement and biosafety.

***In situ* and on-farm Conservation and Management**

The following measures shall be institutionalized

- a) Determination of areas of biodiversity and agro biodiversity importance, including public/ non-governmental and private areas, as determined from availability of vital biological resource, endangered or vulnerable species as per degree of threat and sensitive agro-ecological niche traditionally holding specific crop species complex along with specific cropping practices:
Provided that the National Authority shall notify such areas of biological diversity and agro-biodiversity importance to develop and implement specific or general measures and issue guidelines for their *in situ* or on-farm conservation and sustainable management;
- (b) determination of components of biological diversity requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (c) determination of threatened, vulnerable or endangered species, sub-species, varieties, breeds or genes to prohibit or regulate their access under the terms of the Act and to reemphasize on their collection and *ex situ* conservation;
- (d) determination of processes and categories of activities which have or are likely to have significant adverse impact on conservation and sustainable use and to promote technology and develop expertise to minimize these;
- (e) cooperation in appropriate financial and other support to scheduled agencies notified for *in situ* and on-farm conservation measures outlined and notified under this Act.

***Ex situ* Conservation, Management and Repositories**

The following measures shall be regulated

- (a) strengthening the measures for *ex situ* conservation of components of agrobiodiversity through the Department of Agricultural Research and Education (DARE) of the Ministry of Agriculture (MOA) with the active involvement of the Indian Council of Agricultural Research (ICAR) and its Genetic Resources Bureaus of Plant, Animal, Fish, Microbes and Insects;
- (b) sustaining *ex situ* conservation facilities for plant species at the National Gene Bank, NBPGR and other established facilities for *ex situ* conservation of forest, animal, fish and microbial genetic resources with the active involvement of the ICAR, ICFRE and ICMR;

Provided that the National Gene Bank and other repositories designated under this Act shall keep in safe custody any genetic material including voucher specimens and basic data deposited with these banks/repositories;

- (c) notifying species, particularly indigenous species, important for *situ* conservation and the scheduled agencies to undertake such conservation activities;
- (d) regulating *ex situ* conservation at clonal repositories, arboreta and botanical gardens through appropriate notification of species, areas and agencies involved;
- (e) identification and strengthening of in-vitro conservation repositories through tissue culture;
- (f) regulating biotechnology products for safe conservation and sustainable use; (g) cooperation in financial and other support for *ex situ* conservation and management activities notified by the National Biodiversity Authority and other notified agencies under this Act.

ACCESS TO GENETIC RESOURCES

Further to the provisions made under Chapter II, the following measures shall be regulated:

- (i) Providing access to genetic resources for food and agriculture including animal husbandry, poultry and fishery to all applicants, including countries, international organizations, foreigners and non resident Indians, for all purposes, including research, bioprospecting, reference or commercial purposes from public, nongovernmental or private sector domains, on prior informed consent and on mutually agreed terms;

Provided that the regulation of the access to genetic resources for food and agriculture for the agreed list of crops under the International Treaty on Plant Genetic Resources for Food and Agriculture shall be accordingly harmonized.

(ii) Identification and notification of components of sovereign Indian biodiversity And agro biodiversity, including germplasm for determining access and benefit sharing. The samples of Indian sovereign genetic resources available in international and foreign repositories that may be copies having limited diversity range but not the true representatives of entire diversity range in the particular Indian germplasm. The provisions of benefit sharing from commercial use of germplasm under this Act shall extend to the FAO designated germplasm of Indian origin held in the custody of international and foreign gene banks.

(iii) Notification and regulation of terms and conditions for access to genetic resources held under the custody of non-governmental organizations or private Institutions, including companies or individuals.

K. D. Prathapan, Priyadarsanan Dharma Rajan, T. C. Narendran, C. A. Viraktamath, N. A. Aravind and J. Poorani (*Last paragraph of Article in Current Science Vol.94 No.2, 25 January, 2008 reproduced below*):

“It is rather perplexing to note that the rules framed to regulate commercial exploitation of biological resources are being irrationally and ruthlessly imposed on fundamental research. It may be noted that basic research has been excluded Brazil, which enacted tough legislation and a long and tedious licensing process for biological collections, but repealed those provisions that prevent the exchange of specimens for basic research following protests by the scientific community of that country, is noteworthy. We once again plead to all those concerned that classical disciplines like taxonomy may kindly be spared as they play the most vital role in building up a knowledge society that is intellectually self-reliant. A report of the Select Committee of the British House of Lords on Science and Technology underscores the importance of taxonomy and a healthy systematic biology community in fulfilling a country’s commitments to various international treaties and conventions on biological diversity and its conservation, to which it is a party. We would also like to remind that legislations like the present Biological Diversity Act are anachronisms in this flat liberalized world where India seeks foreign collaboration even in strategic areas like atomic research. Above all, putting hackles on intellectual freedom and scientific enquiry is against the basic tenets of democracy as well as the values and ethos to be upheld by a modern civic society.”