

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 5th February, 2003/Magha 16, 1924 (Saka)

- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

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.

2. Definitions

In this Act, unless the context otherwise requires,—

- (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;
- (b) "biological diversity" means the variability among living organisms from all sources and the ecological complexes of which they are part, and includes diversity within species or between species and of eco-systems;
- (c) "biological resources" means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material;
- (d) "bio-survey and bio-utilization" means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterization, inventorisation and bioassay;
- (e) "Chairperson" means the Chairperson of the National Biodiversity Authority or, as the case may be, of the State Biodiversity Board;
- (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 used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping;
- (g) "fair and equitable benefit sharing" means sharing of benefits as determined by the National Biodiversity Authority under section 2 1;
- (h) "local bodies" means Panchayats and Municipalities, by whatever name called, within the meaning of clause (1) of article 243B and clause (1) of article 243Q of the Constitution and in the absence of any Panchayats or Municipalities, institutions of self-government

constituted under any other provision of the Constitution or any Central Act or State Act;

- (i) "member" means a member of the National Biodiversity Authority or a State Biodiversity Board and includes the Chairperson;
- (j) "National Biodiversity Authority" means the National Biodiversity Authority established under section 8;
- (k) "prescribed" means prescribed by rules made 1 under this Act;
- (l) "regulations" means regulations made under this Act;
- (m) "research" means study or systematic investigation of any biological resource or technological application, that uses biological systems, living organisms or derivatives thereof to make or modify products or processes for any use;
- (n) "State Biodiversity Board" means the State Biodiversity Board established under section 22;
- (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) "value added products" means products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form.

CHAPTER - II

Regulation of Access to Biological Diversity

Certain persons not to undertake Biodiversity related activities without 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) a person who is not a citizen of India;
 - (b) a citizen of India, who is a non-resident as defined in clause (30) of section 2 of the Income-tax Act, 196 1;

- (c) a body corporate, association or organization-
 - (i) not incorporated or registered in India; or
 - (ii) incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management.

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

4. No person shall, without the previous approval of the National Biodiversity Authority, transfer the results of any research relating to any biological resources occurring in, or obtained from, India for monetary consideration or otherwise to any person who is not a citizen of India or citizen of India who is non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961 or a body corporate or organization which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management.

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.

Sections 3 and 4 not to apply to certain collaborative research projects

- 5.(1) The provisions of sections 3 and 4 shall not apply to collaborative 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).
- (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 (a) of sub-section (3), be void.
- (3) For the purposes of sub-section (1), collaborative research projects shall-
- (a) conform to the policy guidelines issued by the Central Government in this behalf;
 - (b) be approved by the Central Government.

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

- 6.(1) No person shall apply for any intellectual property right, by whatever name called, in or outside India for any invention based on any research or information on a biological resource obtained from India without obtaining the previous approval of the National Biodiversity Authority before making such application.

Provided that if a person applies for a patent, permission of the National Biodiversity Authority may be obtained after the acceptance of the patent but before the seating of tile patent by the patent authority concerned:

Provided further that the National Biodiversity Authority shall dispose of the application for permission made to it within a period of ninety days from the date of receipt thereof.

- (2) The National Biodiversity Authority may, while granting the approval

by the Central Government for the purposes of this Act, a body to be called the National Biodiversity Authority.

- (2) The National Biodiversity Authority 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

Conditions of service of Chairperson and members

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.

Chairperson to be Chief Executive of National Biodiversity Authority

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.

Removal of members

11. The Central Government may remove from the National Biodiversity Authority any member who, in its opinion, has-
 - (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.

Meetings of National Biodiversity Authority

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.
- (2) The Chairperson of the National Biodiversity Authority shall preside at the meetings of the National Biodiversity Authority.
- (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.
- (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.

- (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 such disclosure, the member concerned or interested shall not attend that meeting.
- (6) No act or proceeding of the National Biodiversity Authority shall be invalidated merely by reason of-
 - (a) any vacancy in, or any defect in the constitution of, the National Biodiversity Authority; or
 - (b) any defect in the appointment of a person acting as a member;
or
 - (c) any irregularity in the procedure of the National Biodiversity Authority not affecting the merits of the case.

- (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.

Authentication of orders and decisions of National Biodiversity Authority

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.

Delegation of powers

16. The National Biodiversity Authority may, by general or special order in writing, delegate to any member, officer of the National Biodiversity Authority or any other person subject to such conditions, if any, as may be specified in the order, such of the powers and functions under this Act (except the power to prefer an appeal under section 50 and the power to make regulations under section 64) as it may deem necessary.

Expenses of National Biodiversity Authority to be defrayed out of the Consolidated Fund of India

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.

CHAPTER - IV

Functions and Powers of the National Biodiversity Authority

Functions and powers of National Biodiversity Authority

- 18.(1) It shall be the duty of the National Biodiversity Authority to regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing.
- (2) The National Biodiversity Authority may grant approval for undertaking any activity referred to in sections 3, 4 and 6.
- (3) The National Biodiversity Authority may-

- (a) advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources;
 - (b) advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites and measures for the management of such heritage sites;
 - (c) perform such other functions as may be necessary to carry out the provisions of this Act.
- (4) The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource which is derived from India.

CHAPTER - V

Approval by the National Biodiversity Authority

Approval by National Biodiversity Authority for undertaking certain activities

- 19.(1) Any person referred to in sub-section (2) of section 3 who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial 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.
- (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.
- (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 may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

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

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

Transfer of biological resource or knowledge

20.(1) No person who has been granted approval under section 19 shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval except with the permission of the National Biodiversity Authority.

- (2) Any person who intends to transfer any biological resource or knowledge associated thereto referred to in sub-section (1) shall make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

- (3) On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

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

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

Determination of equitable benefit sharing by National Biodiversity Authority

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

- (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 benefits to the benefit claimers as the National Biodiversity Authority may deem fit.
- (3) Where any amount of money is ordered by way of benefit sharing, the National Biodiversity Authority may direct the amount to be deposited in the National Biodiversity Fund:

Provided that where biological resource or knowledge was a result of

- (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.
- (4) The Board shall consist of the following members, namely:
 - (a) a Chairperson who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the State Government;

making such enquires as it 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:

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

- (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.

Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board

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:

- (a) references to the Central Government shall be construed as references to the State Government;
- (b) references to the National Biodiversity Authority shall be construed as references to the State Biodiversity Board;

Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board.

- (c) reference to the Consolidated Fund of India shall be construed as reference to the Consolidated Fund of the State.

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- (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.

(2) The Fund shall be applied for–

- (a) channeling benefits to the benefit claimers;
- (b) conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed;
- (c) socio-economic development of areas referred to in clause (b) in consultation with the local bodies concerned.

(4) The accounts of the National Biodiversity Authority as certified by the

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.

Audit of accounts of State Biodiversity Board

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.

Annual Report of State Biodiversity Board to be laid before State Legislature

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.

CHAPTER - IX

Duties of the Central and the State Governments

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

- 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.
- (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.
- (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.
- 4) The Central Government shall undertake measures,-

purpose and take appropriate steps to rehabilitate and preserve those species.

Power of Central Government to designate repositories

- 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.
- (2) The repositories shall keep in safe custody the biological material including voucher specimens deposited with them.
- (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.

Power of Central Government to exempt certain biological resources

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.

CHAPTER - X

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

may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the concerned local body.

Audit of accounts of Biodiversity Management Committees

46. The accounts of the Local Biodiversity Fund shall be maintained and audited in such manner as may, in consultation with the Accountant-General of the State, be prescribed and the person holding the custody of the Local Biodiversity Fund shall furnish, to the concerned local body, before such date as may be prescribed, its

Provided that the State Biodiversity Board shall, as far as practicable, be given an opportunity to express its views before any direction is

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.

Members, officers, etc., of National Biodiversity Authority and State Biodiversity Board deemed to be public servants

51. All members, officers and other employees of the National Biodiversity 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.

Appeal

52. Any person, aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, may file an appeal to the High Court within thirty days from the date of communication to him, of the determination or order of the National Biodiversity Authority or the State Biodiversity Board, as the case may be:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal-within the said period, allow it to be filed within a further period not exceeding sixty days.

Execution of determination or order

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 thereunder.

Penalties

- (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 be liable to be proceeded against and punished accordingly.

Explanation. -For the purposes of this section,–

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

Offences to be cognizable and non-bailable

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

Act to have effect in addition to other Acts

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.

Power of Central Government to give directions to State Government

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 thereunder.

Cognizance of offences

61. No Court shall take cognizance of any offence under this Act except on a complaint made by–
- (a) the Central Government or any authority or officer authorized in this behalf by that Government; or
 - (b) any benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

Power of Central Government to make rules

- 62.(1) The Central Government may' by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
- (a) 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;
 - (f) the manner of management and custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied under sub-section (1) of section 44;
 - (g) the form of annual report and the time at which such report shall be prepared during each financial year under section 45;
 - (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;

SUBHASH C. JAIN
Secretary to the Government of India