

**SALIENT FEATURES OF THE BIODIVERSITY ACT  
WITH SPECIAL REFERANCE TO OFFENCES AND  
REMEDIES**

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**INDEX**

Sr . no.	Topic	Pg. no.
1.	Introduction	3
2.	Convention on biodiversity	4
3.	Biodiversity act 2002	8
4	Offences and penalties under the Act	15
5	Developments in biodiversity act	18
6	Conclusion	24

## **INTRODUCTION**

Biodiversity is the variety and differences among living organisms from all sources, including terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are a part. This includes genetic diversity within and between species and of ecosystems. Thus, in essence, biodiversity represents all life. India is one of the mega biodiversity centres in the world and has two of the world's 18 'biodiversity hotspots' located in the Western Ghats and in the Eastern Himalayas (Myers 1999). The forest cover in these areas is very dense and diverse and of pristine beauty, and incredible biodiversity.

According to an MoEF Report (1996), the country is estimated to have over 45,000 plant species and 81,000 animal species representing 7% of the world's flora and 6.5% of its fauna. The 1999 figures are 49,219 plant species representing 12.5% and 81,251 animal species representing 6.6%.

The sacred groves of India are some of the areas in the country where the richness of biodiversity has been well preserved. The Thar desert and the Himalayas are two regions rich in biodiversity in India. There are 89 national parks and 504 wildlife sanctuaries in the country, the Chilika Lake being one of them. This lake is also an important wetland area. Learn more through map on biodiversity in India.

Over the last century, a great deal of damage has been done to the biodiversity existing on the earth. Increasing human population, increasing consumption levels, and decreasing efficiency of use of our resources are some of the causes that have led to overexploitation and manipulation of ecosystems. Trade in wildlife, such as rhino horn, has led to the extinction of species. Consequences of biodiversity loss can be great as any disturbance to one species gives rise to imbalance in others. In this the exotic species have a role to play.

To prevent such loss, the Government of India is setting up biosphere reserves in different parts of the country. These are multipurpose protected areas to

preserve the genetic diversity in different ecosystems. Till 1999, ten biosphere reserves had been set up, namely Nilgiri, Nandadevi, Nakrek, Great Nicobar, Gulf of Mannar, Manas, Sunderbans, Similipal, and Dibru Saikhowa. A number of NGOs are being involved in the programme to create awareness. But legal protection is provided only to national parks and sanctuaries, which cover about 4.5% of India's land area.<sup>1</sup>

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<sup>1</sup> <http://edugreen.teri.res.in/explore/life/what.htm> as visited on 26/5/2014 at 10:41a.m.

## CONVENTION ON BIO DIVERSITY 1992

### **objectives**

The overall objectives of the Convention were to establish a means for the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.

### ***Scope***

The Convention has global coverage. Each signatory has responsibility for the conservation and sustainable use the biological diversity with in its own nation. Signatories also have a responsibility to manage their national processes and activities which may threaten biological diversity, regardless of where their effects occur.

Signatories must co-operate in the implementation of the Convention, particularly on matters of mutual interest, for example shared ecosystems and areas beyond national jurisdiction such as the oceans.

### ***National action***

A fundamental aspect of the Convention is the requirement for implementation through national strategies, plans and programs, and the integration of conservation and sustainable use of biological diversity into plans, programs and policies for sectors such as agriculture, fisheries and forestry and for cross-sectoral matters such as land use planning and decision making.

### ***Identification and monitoring***

Enhancing knowledge and understanding of biological diversity and the impacts on it are important measures addressed in the Convention. Signatories are required to identify (for example, through surveys) and monitor important ecosystems, species and genetic components of biological diversity, as well as processes and activities that have or are likely to have significant adverse impacts on biological diversity. Countries are then able to determine their priorities with regard to conservation and sustainable use measures which need to be undertaken.

### ***In-situ & Ex-situ conservation***

*In-situ* conservation is the conservation of ecosystems, natural habitats and species in their natural surroundings. Signatories are required to give emphasis to *in-situ* conservation through a broad range of actions, including the establishment and management of protected areas; conservation and sustainable use of biological resources within and outside protected areas; promotion of environmentally sound and sustainable development in areas adjacent to protected areas; rehabilitation and restoration of degraded ecosystems; control of alien species and genetically modified organisms; protection of threatened species and populations; and regulation of damaging processes and activities.

While the Convention emphasised the importance of *in-situ* conservation, it also acknowledges that *ex-situ* measures also have an important role to play. *Ex-situ* conservation means conservation outside natural habitats, for example in zoos, botanic gardens and seed banks. Parties are to take *ex-situ* measures, while ensuring that ecosystems and natural populations of species are not threatened.

### ***Sustainable use***

Various measures are to be undertaken by signatories to promote sustainable use of biological diversity. These include integrating consideration of the conservation and sustainable use of biological resources into national decision-making; adopting measures for the use of biological resources which avoid or minimise adverse impacts on biological diversity; supporting local populations to develop and implement remedial action in degraded areas; and encouraging co-operation between governmental authorities and the private sector in developing methods for the sustainable use of biological resources.

### ***Minimising adverse impacts***

Signatories must introduce appropriate procedures for environmental impact assessment of projects, programs and policies that are likely to have significant adverse effects on biological diversity. The Convention also provides for the notification of activities which are likely to significantly damage biological diversity and the promotion of emergency response arrangements.

### ***Capacity building***

Effective global action requires the expansion of national capacities, particularly in developing countries, for the conservation and sustainable use of biological diversity. In this regard the Convention provides for national and international action on research, training, the exchange of public information, and scientific and technical co-operation with emphasis on building national capabilities through human resource development and institution building. Provisions for encouraging public understanding of the significance of biological diversity and the measures required for its conservation are also included. Technology transfer of this and other pertinent information is an important aspect of ensuring the convention meets its objectives.

### ***Institutional arrangements***

The Convention establishes a number of institutional arrangements necessary to ensure effective implementation. The Conference of the Parties is the key decision-making body responsible for monitoring the implementation of the Convention and has a major role in funding matters. Signatories are required to submit reports on measures taken for the implementation of the Convention and their effectiveness in meeting the objectives of the Convention. The Subsidiary Body on Scientific, Technical and Technological Advice is to provide the Conference of the Parties with advice relating to the implementation of the Convention, including the status of biological diversity and the effectiveness of measures taken to give effect to the Convention. It also has a major role in identifying technologies for the conservation and sustainable use of biological diversity suitable for transfer to developing countries.<sup>2</sup>

***India being a signatory to this convention has incorporated the above guidelines by the enactment of Biological Diversity Act of 2002.***

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<sup>2</sup> [http://en.wikipedia.org/wiki/Convention\\_on\\_Biological\\_Diversity](http://en.wikipedia.org/wiki/Convention_on_Biological_Diversity), as visited on 30/5/2014 at 5:43 p.m.

## The Biological Diversity Act, 2002

The *Biological Diversity Act 2002* was born out of India's attempt to realise the objectives enshrined in the United Nations Convention on Biological Diversity (CBD) 1992 which recognizes the sovereign rights of states to use their own Biological Resources. The Act aims at the conservation of biological resources and associated knowledge as well as facilitating access to them in a sustainable manner and through a just process For purposes of implementing the objects of the Act it establishes the National Biodiversity Authority in Chennai.<sup>3</sup>

The Biodiversity Act is a [federal legislation](#) enacted by the [Parliament of India](#) for preservation of [biological diversity](#) in India, and provides mechanism for equitable sharing of benefits arising out use of traditional biological resources and [knowledge](#). The Act was enacted to meet the obligations under [Convention on Biological Diversity](#) (CBD), to which India is a party.

The Biodiversity Act was passed by the Lok Sabha on 2<sup>nd</sup> December 2002 and by the Rajya Sabha on 11<sup>th</sup> December 2002.

### Relevant definitions under the Act :

**Biodiversity** has been defined under Section 2(b) of the Act as "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](#)".

**Biological resources** as "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."

**Bio-survey and bio-utilization:** means survey or collection of species, sub-species, genes, components and extracts of biological resources for any purpose including for characterisation, inventories and bioassay.

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<sup>3</sup> <http://envfor.nic.in/division/biodiversity>, as visited on 29/5/2014 at 9:30a.m.

**Benefit claimers:** means conservers of biological resources and their by-products and creators and holders of knowledge relating to the use of such biological resources.

**Commercial utilization:** means using biological resources as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention.<sup>4</sup>

**Some salient features of the Act are :**

- 1) To regulate access to biological resources of the country with equitable share in benefits arising out of the use of biological resources.
- 2) To conserve and sustainably use biological diversity.
- 3) To set up National Biodiversity Authority (NBA) , State Biodiversity Board (SBB) and Biodiversity Management Committees (BMC's)
- 4) To create National , State and local biodiversity fund and its use for conservation of biodiversity.
- 5) To respect and protect knowledge of local communities and traditional knowledge related to biodiversity.
- 6) To conserve and develop areas of importance from the stand point of biological diversity by declaring them as biological diversity heritage sites.<sup>5</sup>

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<sup>4</sup> <http://nbaindia.org/text/12//TheBiologicalDiversityAct2002.html>, as visited on 30/5/2014 at 4:35 p.m.

<sup>5</sup> [http://www.academia.edu/242307/Critical\\_Review\\_of\\_Biodiversity\\_Act\\_2002](http://www.academia.edu/242307/Critical_Review_of_Biodiversity_Act_2002) , as visited on 30/5/2014 at 11:39 a.m.

## **National Biodiversity Authority and State Biodiversity Boards**

The National Biodiversity Authority (NBA) is a statutory autonomous body, headquartered in [Chennai](#), under the [Ministry of Environment and Forests, Government of India](#) established in 2003 to implement the provisions under the Act. State Biodiversity Boards (SBB) has been created in 28 States along with 31,574 Biological management committees (for each local body) across India.

The National Biodiversity Authority (NBA) was established in 2003 to implement India's Biological Diversity Act (2002). The NBA is Autonomous body and that performs facilitative, regulatory and advisory function for Government of India on issue of Conservation, sustainable use of biological resource and fair equitable sharing of benefits of use.

The Biological diversity Act (2002) mandates implementation of the act through decentralized system with the NBA focusing on advice 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; advice the State Government 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;

The state Biodiversity Board (SBBs) focusing on advice 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;

Regulate by granting of approvals or otherwise request for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians; and Local Level Biodiversity Management committees (BMCs) responsible for promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivators, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity.

The NBA with its Headquarters in Chennai, India delivers its mandate through a structure that comprises of the Authority, secretariat, SBBs, BMCs and Expert Committees.

Since its establishment, NBA has supported creation of SBBs in 28 States, facilitated establishment of around 32,131 BMCs, advised notification.<sup>6</sup>

- To implement this Act central government established a body called as National Biodiversity Authority, under the power conferred by section 8 of CBD Act. It started functioning from 1st October 2003. The NBA is an Autonomous body .The main functions of the Authority are, according to Ministry of environment and forest.
- 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.
- The National Biodiversity Authority may grant approval for undertaking any activity referred to in sections 3, 4 and 6.
- The National Biodiversity Authority may 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;
- The National Biodiversity Authority may 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;
- The National Biodiversity Authority may perform such other functions as may be necessary to carry out the provisions of this Act.
- 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.

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<sup>6</sup> <http://nbaindia.org/content/16/14/1/introduction.html>, as visited on 30/5/2014 at 5:11 p.m.

## It is a 3 tier system

At national Level: National Biodiversity Authority (NBA)

At State Level: State Biodiversity Boards (SBB's) – Advise the State Governments, subject to guidelines issued by the Central Government, on matters relating to conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of utilization of biological resources.

On local Level: Biodiversity Management Committees (BMC's) – Prepare, maintain and validate People's Biodiversity Register (PBR) in consultation with the local people. T Advice on any matter referred to it by the State Biodiversity Board or Authority for granting approval.

Currently there are SBBs in 26 States, and around 33,426 BMCs. BMC's can be a major tool for implementation this whole system but actually it is not working. There are not all areas of country which have proper BMC's working there and this register maintenance is these days is just a matter of formality. Current chairman of authority is Dr. Balakrishna Pisupati , and office is situated at Chennai.<sup>7</sup>

## Functions

- Regulation of acts prohibited under the Act
- Advise the Government on conservation of biodiversity
- Advise the Government on selection of biological heritage sites
- Take appropriate steps to oppose grant of intellectual property rights in foreign countries, arising from the use of biological resources or associated traditional knowledge.

## Regulations

A foreigner, non-resident Indian as defined in clause (30) of section 2 of [The Income-tax Act, 1961](#) or a foreign company or [body corporate](#) need to take permission from the NBA before obtaining any biological resources or associated knowledge from India for research, survey, commercial utilisation. Indian citizens

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<sup>7</sup> <http://www.simplydecoded.com/2013/01/14/national-biodiversity-authority-introduction/>, as visited on 30/5/2014 at 5:15 p.m.

or body corporates need to take permission from the concerned State Biodiversity Board.

Result of research using biological resources from India cannot be transferred to a non-citizen or a foreign company without the permission of NBA. However, no such permission is needed for publication of the research in a journal or seminar, or in case of a collaborative research made by institutions approved by Central Government.

No person should apply for patent or other form of [intellectual property](#) protection based on the research arising out of biological resources with out the permission of the NBA. The NBA while granting such permission may make an order for benefit sharing or royalty based on utilisation of such protection.

### **Heritage sites**

The State Government may with the consultation of local bodies , notify areas of biodiversity importance as biodiversity heritage sites under this Act. In consultation with Central Government frame rules for this management and conservation of heritage sites , and framing of schemes and compensating or rehabilitating people economically affected by such notification (sec.37)<sup>8</sup>

### **Benefit sharing**

Benefit sharing out of usage of biological resources can be done in following manner:

- Joint ownership of intellectual property rights
- transfer of technology
- location of production, research development units in the area of source
- payment of monetary and non-monetary compensation
- setting up of venture capital fund for aiding the cause of benefit claimers

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<sup>8</sup> Dr. Myneni S.R. , Law of Intellectual Property , Asia Law House, 4<sup>th</sup> edition , pg no 547,

## **Biodiversity Management Committee (BMC)**

"Every local body shall constitute a BMC 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 micro-organisms and chronicling of knowledge relating to biological diversity"

1. Every local body (i.e. Panchayat, Mandal, Municipality etc.) shall constitute a **Biodiversity Management Committee (BMC)** within its area of jurisdiction in I.
2. The main function of the BMC is to prepare People's Biodiversity Register in consultation with local people. The Register shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them.
3. The other functions of the BMC are to advise on any matter referred to it by the State Biodiversity Boards or Authority for granting approval, and to maintain data about the local *vaidya's* and practitioners using the biological resources.
4. People's Biodiversity Registers, and the particulars it shall contain and the format for electronic database will be according to the guidelines of the **National Biodiversity Authority (NBA)**.
5. The State Biodiversity Boards shall provide guidance and technical support to the Biodiversity Management Committees for preparing People's Biodiversity Registers.
6. The People's Biodiversity Registers shall be maintained and validated by the Biodiversity Management Committees.

The Committee shall also maintain Register giving information about the details of the access to biological resources and traditional knowledge granted, details of the collection fee imposed and details of the benefits derived and the mode of their sharing

## **OFFENCES AND PENALTIES UNDER THE BIO DIVERSITY ACT**

The offences under the biological diversity act are cognizable and non bailable.(sec 58)

No court shall take cognizance of any offence under this Act or rules and regulations made thereunder save on a complaint made by the National Biodiversity Authority or State Bio diversity board, as the case may be . (sec 61)

No suit , prosecution or other legal proceedings shall lie against the Central 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 Sate Biodiversity Board for anything which is done in good faith or intended to be done under this Act or the rules or regulations made thereunder. (sec 54)

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. (sec 59)

- I. the following shall be punishable with imprisonment for a term which may extend to five years or fine which may extend to ten lakh rupees or both:
  - (i) a non-citizen and an Indian who is an individual or a body corporate having non- Indian participation shall if he undertakes biodiversity related activities without prior approval of the National Biodiversity Authority.(contravention of the provisions of section 3)
  - (ii)any person whether a citizen or not . transfers results of any research relating to any biological resources for monetary consideration to any person who is not a citizen of India.(contravention to the provision of section 4)and
  - (iii) any person who makes an application for an Intellectual Property Right on an invention based of any research or information on a biological resource obtained from India without previous approval of the National Biodiversity Authority before making such application.(contravention of the provision of sec.6).

II. the following 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 both.

(i) Any citizen of india excluding Vaidis and Hakims who are practicing indigenous medicines ,who obtains any biological resource for commercial utilization or bio survey without giving prior intimation to the State Biodiversity Board..(contravention to the provision of section 7)and

(ii)Any citizen of india or a body corporate , organization or association registered in India intending to undertake any activity of obtaining biological resources for commercial utilization violates the order that he shall give prior intimation in such forms as may be prescribed by the State Government to the State Biodiversity Board.(contravention of any order made under sub-section (1) of sec 24)

III. If a person contravenes any direction given or order made by the 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 a subsequent offence , with fine which may extend to two lakh rupees and in the case of a continuous contravention with additional fine which may extend to two lakh rupees everyday during which the default continues.(sec.56)

### **OFFENCES BY COMPANIES :-**

where the company is accused every time who at the time of offence was incharge or responsible to the company aswell as the company shall be deemed to be guilty and shall be punished unless such person proves that the offence or contravention was committed without his knowledge and inspite of due diligence to prevent the commission of such an offence or contravention. Where in the case of person in charge of the conduct of business of the company he is deemed to be guilty unless he proves that he has no knowledge of the committal of the offence or it has occurred notwithstanding his due diligence to prevent

the same , in the case of a person who is a director , manager, secretary or other officer of the company , it shall be proved that the offence has been committed with his consent or his connivance or is attributed to his neglect to bring home his guilt.(sec 57)<sup>9</sup>

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<sup>9</sup> Pgs, 548, 549 and 550 of Law of Intellectual Property , by Dr. S.R.Myneeni, 4<sup>th</sup> edition , Asia Law House Hyderabad

## **Developments in Biodiversity Act 2002**

Any kind of development is always welcomed if it's a fruitful one on the whole. But sometimes development becomes signified in such a crude manner that it apparently conceals the disdainful consequences to follow. One of the consequences which are not a scarce sight these days is the adverse effects to biodiversity. There is no denying the fact that development is very important for any country to prosper but not at the stake of destroying its very own ecology. The Government has become highly ignorant of the fact that this sprawling spree of development measures is actually ruining the very genesis of ecology and hence the biodiversity. Recently not so welcomed "nod" has been given to a bounty of projects which readily disparages the importance and value of ecosystem. There are actually many events which have had happened lately and which can be enlisted but I have enlisted a few relevant ones. These events will essentially illustrate the sorry state of our biodiversity. They are as follows:

### **1. The Mosanto/Mahyco Case:**

In The [High Court](#) of Karnataka At Bangalore

Environment Support Group, Represented By Ms. Bhargavi S. Rao and Mr. Leo F. Saldanha

Vs.

Respondent: National Biodiversity Authority, Represented By its Chairman and Ors

### **Facts of the case:**

1. The petitioners have drawn attention of the court to the continuing failure on the part of regulatory authorities against various public agricultural universities that are involved in criminal bio piracy of local varieties of eggplant.
2. The petitioners have also highlighted that one of the notifications issued in 2009 by Ministry of Environment and Forest has got 18 critically endangered plants among its 190 plants as normally traded communities.
3. The petition also argues that Section 40 of the Biodiversity Act, 2002 which arbitrarily allows such unfettered trade in India's biological wealth to label something as normally traded communities and hence paves the way for rampant

bio piracy.

Section 40 Biodiversity Act, 2002: Power of Central Government to exempt certain biological resources.

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.

4. Environment Support Group had raised the contention that the entire process by which the proprietary product had been developed was in comprehensive violation of the Biological Diversity Act, 2002. They have constituted an outrageous act of bio piracy of India's endemic eggplant varieties.

5. The Environment Support Group initiated public interest litigation before The Karnataka [High Court](#) seeking directions to compel the regulatory agencies to move against Monsanto/Mahyco for bio piracy and to strengthen the regulatory processes to prevent any further act of bio piracy. It was done to ensure that the Biological Diversity Act was implemented in its letter and spirit.

#### **Status of the case:**

It may be recalled that National Biodiversity Board and Karnataka Biodiversity Board filed a criminal complaint of bio piracy before the [High Court](#) of Karnataka. However the petition filed for criminal proceedings was stayed for an unprecedented period of 6 months in January 2013. But in a significant ruling the [High Court](#) of Karnataka dismissed on 11th October, 2013 petitions that sought quashing of criminal prosecution against Monsanto /Mahyco who have been accused by the National Biodiversity Authority and Karnataka State Biodiversity Board of committing serious criminal acts of bio piracy as of now.

#### **2. National Green Tribunal orders Status Quo on activities of DRDO, BARC, ISRO, IISCS in Challakere, Chitradurga (Karnataka):**

In recent years, a variety of industrial, defense, infrastructure and institutional investments have been proposed in the Amrit Mahal Kaval of Challakere Taluk of Chitradurga district, Karnataka. The Government of Karnataka has systematically

diverted these Kaval grasslands for the establishment of a massive weaponized drone testing and manufacturing facility by DRDO( Defence Research & Development Organization), a major nuclear fuel enrichment plant by BARC( Bhabha Atomic Research Centre), a synchrotron by IISc(Indian Institute of Science), a space applications centre by ISRO(Indian Space Research Organization), and also a massive solar power plant by an unknown company called Sagitaur. In addition, there are various other associated industrial and infrastructure developments proposed, both Indian and foreign, especially in the defense manufacturing sector which has recently been opened up for foreign direct investment. The 10,000 acres of Kaval land is a destination of rich bio diversity and ecosystem. It consists of endangered species of plants and animals.

It was contended that the area that has been diverted to various environmentally risky projects are Amrit Mahal Kaval grassland ecosystems. This as per the Karnataka Forest Act are deemed District Forests. Thereby, the entire diversion is in blatant contravention of the Forest Conservation Act. In addition, the project proponents have commenced project activities without securing any clearance under any environmental and pollution control laws of India.

In an unprecedented decision, the Hon'ble National Green Tribunal (South Zone), Chennai ordered status quo on all project activities proposed in the Amrit Mahal Kaval grassland ecosystems of Challakere Taluk, Chitradurga, Karnataka with immediate effect. The directions were issued on the interim prayers filed in Applications by the undersigned which complained that Defence Research Development Organisation, Indian Institute of Science, Indian Space Research Organisation, Bhabha Atomic Research Centre, Karnataka Small Scale Industries Development Corporation, Karnataka Housing Board, Sagitaur Pvt. Ltd. have commenced project activities in these ecologically sensitive areas in comprehensive violations of laws protecting the environment, wildlife, forests, people's rights, etc.

### **3. Colva Lake Fields, Goa:**

Pursuant to an application filed by CCCF( Colva Civic and [Consumer](#) Forum) to GSBB( Goa State Biodiversity Board) to protect low lying fields in Colva Lake, located opposite to the Colva church. The Goa State Biodiversity Board has issued directions prohibiting the reclamation of the fields.

The board ordered officials from Goa State Biodiversity Board along with the officials from Department of Agriculture, Water Resources Department, Town and Country Planning Department and South Goa District Collect orate to carry out an inspection of the said field(Colva Fields).

The report of the inspection established that the reclamation or filing of the plot could interfere with the hydro-dynamics and may also result in habitat loss for seasonal biodiversity.

Following the report the Goa State Biodiversity Board said that “until such time that the biodiversity of the area is not documented across the seasons, no decisions to reclaim the area is to be taken at any level. The board further clarified that “ a seasonal inventory of flora and fauna of the site must be carried out before any decision of reclamation is arrived at to rule out the possibilities of any species with conservation concern occurring here”.

#### **4. The Goa State Biodiversity Board and Nuvem bypass:**

The Goa State Biodiversity Board prepared a brief report on the construction of the road through the wetland at Rumder, Nuvem and made some significant observations relating to various aspects.

The wetland through which the road is being cut through is a habitat for migratory and residents. The proposed bypass road also reduces the area foraging. The wetland is known for its apple snail (pila ghobasa) , locally known as konge and for its rich biodiversity. The tenants association of Nuvem had approached the Goa State Biodiversity Board, as their occupations, including farming and fishing had been affected by the project.

The National Green Tribunal (NGT) has directed that notices be issued to the chief conservator of forests, South Goa, public works department and the state government in connection with the construction of the Nuvem bypass along the banks of River Sal. PWD (Public Works Department) authorities had stated that the bypass is a necessity due to congestion on the Nuvem stretch of the highway and limited scope for widening the NH 17.

### **5. Soil Oil Extraction Case in Bhopal, Madhya Pradesh (Section 7 and 57 Biodiversity Act, 2002):**

In a bid to wider the net on imposing benefit sharing levy on corporate houses that use locally available bio-resources, the Madhya Pradesh Government is still considering finer points of State Biodiversity Act, 2002.

According to the provisions of the Act, it is mandatory for all the soya bean oil extracting companies to register themselves with their State Biodiversity Boards and share two per cent of their income for environmental protection.<sup>10</sup>

#### **The said provision comes under Section 7 of the Biodiversity Act, 2002:**

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.

Madhya Pradesh is the first Indian state to implement these kinds of provisions in consultation with Madhya Pradesh State Biodiversity Board for levying or sharing the profit. The State Biodiversity Board has already issued notices to various companies that use bio-resource to inform the State Biodiversity Board or else face penal actions which may be imprisonment to an extent of three years. It is mandatory on their part to follow the guidelines issued by the State Biodiversity Board. The provision of Biodiversity Act, 2002 under which a company can be held liable is:

#### **Section 57 Biodiversity Act, 2002:**

(1) Where an offence or contravention under this Act has been committed by a company, every person who at the time of the offence or contravention was

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<sup>10</sup> <http://www.legalservicesindia.com/article/article/developments-in-biodiversity-act-2002-1640-1.html>, as visited on 30/5/2014 at 4:44 p.m.

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:

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.

(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.<sup>11</sup>

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<sup>11</sup> ibid

## CONCLUSION

With the introduction of the Biodiversity Act which curtails availability of genetic material from India to the rest of the world is bound to influence free scientific exchange of valuable research. The NBA whose main objective is equitable sharing of benefits , even after several years of establishment is neither known to have delivered any benefit to stakeholders of biodiversity in the country nor have contributed to conservation of biodiversity. It is high time we realize that commercial benefits that can be derived through the sharing of biodiversity and the associated traditional knowledge is insignificant and irrelevant compared to vital issues such as food security and sustenance . benefit sharing professed as a shortcut to economic development , can neither be a substitute for innovation , invention or industrialization nor a sustainable source of supplementary income to rural communities .