

Analysis of The Biological Diversity (Amendment) Bill, 2022

Background

The 1992 Rio Summit (or United Nations Conference on Environment and Development), to which India is a signatory, made it obligatory to ensure legal compliance with the Convention on Biological Diversity (CBD) that aims at conservation, sustainable use, and equitable sharing of biological resources¹. Subsequently, India enacted the Biological Diversity Act in 2002 to establish necessary statutory and administrative mechanisms at the national level to realize the above objectives². The primary objectives of the 2002 Act comprise safeguarding biological diversity along with traditional knowledge, promoting sustainable use of biodiversity, and ensuring equal distribution of benefits deriving from biological diversity³.

To oversee this, National Biodiversity Authority (NBA), State Biodiversity Boards (SBBs), and Biodiversity Management Committees (BMCs) are constituted under the Act at the national, State, and local levels, respectively.

To amend certain provisions of the 2002 Act to facilitate trade in biological resources⁴, a Bill was proposed in Parliament in 2021 and was later referred to the joint parliamentary panel for further deliberations on the provisions⁵. After consultations with the joint committee, Biological Diversity (Amendment) Bill, 2022 is to be tabled in the Monsoon session of 2023 in Parliament.

Significance of the 2022 Bill

- The 2022 Bill is expected to promote the cultivation or ex-situ conservation of medicinal plants. Since 90% of the medicinal plant species are currently being extracted from the wild, and

¹ FAQ : National Biodiversity Authority. Accessed at: <http://nbaindia.org/content/19/16/1/faq.html>

² India accounts for 7-8 per cent of Earth's total biodiversity, MoEFCC, PIB Oct 2004, Accessed at: <https://pib.gov.in/newsite/erecontent.aspx?relid=4475>

³ FAQ : National Biodiversity Authority. Accessed at: <http://nbaindia.org/content/19/16/1/faq.html>

⁴ House Panel accepts changes proposed to biodiversity Bill, Hindustan Times, Aug 2022, accessed at: <https://www.hindustantimes.com/india-news/jpc-accepts-several-clauses-of-biodiversity-amendment-bill-2021-101659437404214.html>

⁵ Centre ready with new Biodiversity Bill, The Economic Times, Dec 2022, Accessed at: [Centre ready with new Biodiversity Bill - The Economic Times](#)

allegedly 69% of the material is collected through destructive harvesting⁶, the existing **pressure on the wild medical plants will be minimized** with the new Bill.

- The Bill has exempted local people and communities of the area, *vaid*s, *hakim*s, and registered AYUSH practitioners from obtaining approvals for accessing biological resources and their associated knowledge. This enables individuals who practice traditional Indian medicine to continue their operations without having to seek permission from the National Biodiversity Authority (NBA). Further, this will be **expanding the scope and reach of AYUSH** (Ayurveda, Yoga and Naturopathy, Unani, Siddha, and Homeopathy) centers.
- The new Bill has expanded the administrative purview of the NBA by adding ex-officio members from various central government ministries⁴. This is a remarkable development since this collaboration **integrates biodiversity into national policymaking**.
- By simplifying the provisions of the 2002 Act, **fast-tracking of research, patent application processes**, and transferring research results is facilitated. This provides a favorable climate for investments in indigenous medicine, and aims to broaden the scope of Research and Development (R&D) in the country.

What's in the 2022 Bill?

The new Bill is expected to shift its focus from the conservation and sustainable use of biodiversity to improving the use, access, and sharing of bio-resources⁷. The major amendments in the 2022 Bill are as follows:

- According to the 2002 Act, any transfer of research results on biological resources to non-Indian citizens/corporate/organizations for monetary benefits need prior approval from the NBA. This mandate has been broadened in the new 2022 Bill; any transfer of research results on biological resources and associated traditional knowledge (except codified traditional knowledge⁸) for monetary benefits to Non-Resident Indians (NRI), non-Indian

⁶ Research reveals over-exploitation of medicinal plant habitats in Himachal, Times of India, April 2019, accessed at: <https://timesofindia.indiatimes.com/city/chandigarh/research-reveals-over-exploitation-of-medicinal-plant-habitats-in-himachal/articleshow/68755375.cms>

⁷ Biodiversity Act Amendments Shift Focus From Conservation To Commercial Exploitation: Experts, Indiaspend, Accessed at: [Biodiversity Act Amendments Shift Focus From Conservation To Commercial Exploitation: Experts](#)

⁸ Codified traditional knowledge yet has not been defined by the Bill. However, the general understanding of codified traditional knowledge refers to documented traditional knowledge from existing literature related to disciplines of AYUSH. Reports say that the Joint Parliamentary Committee has asked the ministry to define "Codified traditional knowledge" as the knowledge derived from authoritative books specified in the First Schedule to the Drugs and Cosmetics Act (DCA), 1940.

citizens, and foreign-controlled companies are now mandated to get prior written approval from NBA.

- For any biological resource accessed from India (including associated traditional knowledge and resources deposited in repositories outside India), the foreign person/foreign controlled entities shall need prior approval for applying for Intellectual Property Rights (IPR). Even entities that have already received IPR within or outside India, shall consult and obtain prior approval of the NBA at the time of commercialization.
- The 2002 Act states that approval from the NBA is necessary before sealing a patent and before applying for Intellectual Property Rights (IPR) related to biological resources obtained from India. However, the 2022 Bill proposes a change in the approval process; approval will now be only needed before granting of IPR, and not before applying. The Bill also suggests the approval process based on the origin of the entity, where foreign entities must obtain approval from NBA, while domestic entities are required to just register with NBA. Additionally, the Bill extends the requirement of approval to IPR for associated knowledge as well.
- The 2002 Act had barred any Indian citizen/ domestic entities from obtaining biological resources for bio-survey and bio-utilization for commercial utilization without giving prior intimation to the SBB. With the new Bill, no person other than non-citizens of India, NRI, and foreign-controlled entities shall access any biological resource and its associated knowledge for commercial utilization, without giving prior intimation to the concerned SBB. However, codified traditional knowledge, cultivated medicinal plants and its products, local communities, vaid, hakims and registered AYUSH practitioners are exempted from taking prior approvals.
- The new Bill also empowers the NBA to take any measures necessary to monitor and regulate the access and utilization of biological resources obtained from a foreign country. Further, State Governments are granted the responsibility to devise strategies to identify and monitor areas rich in biological resources, and concurrently devise sectoral policies or cross-sectoral programmes to integrate conservation and sustainable use of biodiversity into State's policy.
- The Bill also empowers the Central Government to exempt notified agricultural wastes, cultivated medicinal plants and their products from the purview of the 2002 Act, if and when required, in consultation with the NBA.

- Under Section 41, the new Bill has mentioned about setting up BMCs at intermediate or district Panchayat level, in addition to BMCs at Gram Panchayat and Nagar Panchayat level. This is expected to increase the efficiency within the BMCs, which are currently inept⁹.
- The 2002 Act has allowed NBA to establish terms of benefit sharing with benefit claimers¹⁰ and local people, even in domains including findings of research, bio-surveys, and commercial utilization. But the 2022 Bill has removed bio-utility, research, and bio-survey findings from the purview of benefit-sharing, and the approval of the same will be decided by the SBB.
- The Bill through amending Section 62 of the Act, empowers the Central Government in making rules pertaining to the manner of issuance of certificates of origin for cultivated medicinal plants, the form of application and payment of fees for approving the transfer of results of any research on biological resources, and other powers required for carrying out inspection or survey.
- Under the 2002 Act, certain offenses such as not obtaining approval or providing prior intimation for various listed activities were punishable with imprisonment of up to five years, a fine, or both. However, the 2022 Bill proposes to decriminalize violation of Act, and has withdrawn the NBA's authority to file FIR against violators¹¹. The Bill proposes changes to decriminalize these offenses, and now imposes a monetary penalty ranging from one lakh rupees to Rs 50 lakh. In case of continued violations, an additional penalty of up to one crore rupees may be imposed. A new section is inserted in the 2022 Bill to empower the Central Government to appoint adjudicating officers not below the rank of Joint Secretary to the Government of India or a Secretary to the State Government, to hold inquiry and impose penalties there as required.

Areas that might require further deliberation

- The main issue with the amendment Bill is that corporate or international interests might exploit traditional medicine permits to utilize it for commercial reasons without sharing gains with biodiversity conservationists¹². The original act required prior approval from the NBA for certain categories of corporate bodies to access biological resources, which included

⁹ The threat to India's biodiversity becomes more acute as parliamentary panel endorses changes to law, Scroll, September 2022, accessed at: <https://scroll.in/article/1032027/the-threat-to-indias-biodiversity-becomes-more-acute-as-parliamentary-panel-endorses-changes-to-law>

¹⁰ Benefit claimers refers to people/entities that conserve biodiversity, or produce or hold associated traditional knowledge

¹¹ Monsoon session of Parliament to decide fate of Biological Diversity (Amendment) Bill, Down To Earth, July 2023, accessed at: [Monsoon session of Parliament to decide fate of Biological Diversity \(Amendment\) Bill](#)

¹² Monagabay (December, 2021), *What is the significance of the Biological Diversity Amendment Bill and why did it face opposition?*, accessed at : <https://india.mongabay.com/2021/12/video-explainer-what-is-the-significance-of-the-biodiversity-amendment-Bill/>

individuals who were not citizens of India and bodies that were not registered or incorporated in India, essentially any kind of "foreign presence." However, the new Bill limits this to "foreign-controlled companies" formed outside of India, implying that no firm incorporated or registered in India is needed to seek the National Biodiversity Authority's clearance. As a result, it **increases the chances of 'Biopiracy'**^{13, 14}

- As the new Bill exempts codified traditional knowledge from benefit-sharing, local communities will be displaced from their rights to claim benefits as directed by the Nagoya Protocol¹⁵. The Bill also fails to define codified traditional knowledge, which may lead to misinterpretations of this term, and if this term is used broadly, **all traditional knowledge might be exempted from benefit-sharing requirements**. Moreover, majority of the traditional knowledge used by AYUSH disciplines is codified, and any claims of the local community or conservers of biological resources on the same shall be thereafter denied¹⁶. i.e, **local traditional knowledge holders will not get the benefits**. This provision also gives a total exemption to Ayurvedic pharmaceutical companies¹⁷.
- Previously, NBA had mandated that approval of activities using biological resources required consultations with applicants, concerned local bodies, and benefit claimers. But as the new Bill has excluded benefit claimants from the approval process of various activities, this will **take away the say and rights of the local communities**. This is in contradiction with the Nagoya Protocol, which directed that prior consent should be obtained and benefits derived from biological resources should be shared with local communities.
- All offenses against the 2002 Act were deemed criminal offenses. By way of the new Bill, the ministry proposes to **reduce violations of the biodiversity act to mere civil offenses**. This might create an impression among the research entities and pharmaceutical companies that any unauthorized exploitation of biological resources is not beyond mere fine. It might provide a free pass to organizations that would want to utilize biodiversity resources in an illegal way.
- In the new Bill, the NBA will be constituting 16 ex officio members to be appointed by the Central Government (earlier it was 8), 4 representatives from SBBs (on rotational basis), and a

¹³ Biopiracy occurs when organizations or researchers utilize indigenous biological resources for commercial goals without authorization or government approval, frequently based on people's traditional knowledge.

¹⁴ Monagabay (December, 2021), *What is the significance of the Biological Diversity Amendment Bill and why did it face opposition?*, accessed at : <https://india.mongabay.com/2021/12/video-explainer-what-is-the-significance-of-the-biodiversity-amendment-Bill/>

¹⁵ Nagoya Protocol is a legal framework for fair & equitable sharing of benefits arising out of the utilization of genetic/biological resources.

¹⁶ The threat to India's biodiversity becomes more acute as parliamentary panel endorses changes to law, Scroll, September 2022, accessed at: <https://scroll.in/article/1032027/the-threat-to-indias-biodiversity-becomes-more-acute-as-parliamentary-panel-endorses-changes-to-law>

¹⁷ Ibid

member-secretary appointed by Central Government. Since representatives from SBBs are added on a rotational basis and their representation is meager, the demands of the members from SBBs might not be discussed with due consideration, unless any added weightage is given to members from SBBs. As the power is unduly directed toward the Central Government in the NBA, this might not at times align with the interests of State Boards.

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