

Biological diversity act, 2002 – An analysis

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Abstract

‘Biodiversity’ is defined as the variability among living organisms and the ecological complexes of which they are part, including diversity within and between species and ecosystems. In the context of environment, the study of all living organisms and their ecological effects is known as ‘biodiversity’.

Presently conservation of biodiversity has gained worldwide momentum. Among the environmental issues which need protection on priority basis, the conservation of biodiversity comes to the forefront. In India, one of the most important enactment is passed by the parliament i.e. Biological Diversity Act, 2002, which would be an effective one in conservation of biodiversity of the country, if implemented adequately. Here an attempt has been made to analyse the vital provisions of the Act.

Keywords: Biodiversity, conservation, convention, sustainable, resource, habitat

1. Introduction

India is a party to the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992. The said convention came into force on the 29th December, 1993. The convention reaffirmed the sovereign rights of the states over biological resources.

India being signatory to the said Convention found it necessary to give effect to the same. The convention has the main objective of conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of utilization of genetic resource.

In the view of international commitment and India being rich in bio-diversity, The Biological Diversity Bill was introduced in Lok Sabha on 15th May, 2000. Report of the Standing Committee on science and Technology, Environment and Forests was laid on the table of Lok Sabha on the 4th December, 2001. It was passed by the Lok Sabha on 11th December, 2002 and received the assent of the President on 28/12/2002 and became an Act which came into force on 18/01/2003.

2. Objective(s)

The main objective of the study is to analyse the vital provisions of the legislation and to put forward some constructive suggestions for effective implementation thereof to the greatest possible extent.

3. Methodology

The study is an analytical one, based on secondary data consisting of allied sources such as books, Government reports, enactment, internet etc.

4. A Detailed Discussion on the Topic

The preamble itself of the Biological Diversity Act, 2002 says that this is an Act to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of

biological resources, knowledge and for matters connected therewith or incidental thereto.

Thus, the Act was promulgated to regulate access to genetic resources and associated knowledge and ensure benefit sharing agreements, apart from developing policies and programmes on long term conservation and protection of biological resources and associated knowledge.

The legislation has been brought by the Central Government after an extensive and intensive consultation process with the following salient features –

- (i) to regulate access to biological resources of the country with the purpose of securing equitable share in benefits arising out of the use of biological resources and associated knowledge relating to biological resources;
- (ii) to conserve and sustainably use biological diversity;
- (iii) to request and protect knowledge of local communities related to biodiversity;
- (iv) to secure sharing of benefits with local people as conservers of biological resources and holders of knowledge and information relating to the use of biological resources;
- (v) conservation and development of areas important from the standpoint of biological diversity heritage sites;
- (vi) protection and rehabilitation of threatened species;
- (vii) involvement of institutions of self-government in the board scheme of the implementation of the Act through constitution of Committees.

The legislation primarily addresses the issue concerning access to genetic resources and associated knowledge by foreign individuals, institutions or companies and equitable sharing of benefits arising out of the use of these resources and knowledge to the country and the people.

Sec. 3(1) of the Act provides that no person 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 or bio-utilization.

Sec. 4 of the Act prohibits the transfer of any result of research with respect to any biological resource for monetary

consideration and the prohibition extends to transferring the results to a non-citizen, a nonresident Indian a body corporate or organization not registered or incorporated in India or without any participation in its share capital or management. However, any collaborate research project approved by the Central Government and drawn as per the policy guidelines specified by the central Government are exempted from such prohibition, as provided by the Act under Sec. 5.

Sec. 6 of the Act provides for the prior permission of the National Biodiversity Authority for any person seeking any kind of intellectual property right in or outside India for any invention based on any biological research or information.

Under the Act, there are provisions for the establishment of a National Biodiversity Authority [Sec. 8(1)] and State Biodiversity Authority [Sec. 22(1)] by the respective State Governments and also for constitution of Biodiversity Management Committees [Sec. 41(1)] in local bodies. The head office of National Biodiversity Authority shall be in Chennai. The national Biodiversity Authority shall consist of a Chairperson and ten *ex-officio* members to be appointed by the Central Government representing various Ministries of the Government of India as prescribed in the Act who will perform the following functions as laid down under Sec. 18 of the Act—

- (a) rendering advice to the Central Government on the matters pertaining to the conservation of biodiversity and sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources;
- (b) advice the State Governments in the selection of areas of biodiversity;
- (c) any other functions for the purpose of implementing the provisions of the Biological Diversity Act, 2002.

The head office of the State Biodiversity Board will be decided by the concerned State Government there shall be no State Board for any Union Territory and the National Biodiversity Authority shall exercise the powers and perform the functions of a State Biodiversity Board for that Union Territory. The State Board shall consist of a Chairperson and not more than five *ex-officio* members to be appointed by the State Government to represent the concerned departments of the State Government and five non-official members to be appointed from amongst experts in matters relating to conservation of biological diversity etc.

As like as the National Biodiversity Authority, State Biodiversity Board shall have to exercise certain powers and performs certain functions prescribed under Sec. 23 of the Act. Besides the National Authority and the State Board, there is a provision for constitution of Biodiversity Management Committee under Sec. 14 of the Act by every local body 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 cultivators, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity, as provided under Sec. 41 (1) of the Act.

Sec. 41 (2) and (3) of the Act lays down that the National Biodiversity Authority and State Biodiversity Board shall consult the Biodiversity Management Committee while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Committee and such

Committee may impose collection fees for collecting biological resources from their territory.

Sec. 36 (1) & (2) of the Act provides that the Central Government shall develop national strategies, plans and programmes for conservation and sustainable use of biodiversity, issue directions to State Governments to take immediate ameliorative measures if it has the reasons to believe that any area rich in biological diversity abuse or neglect and as far as practicable the conservation and sustainable use of biodiversity into relevant sectoral, cross sectoral plans, programmes and policies. Further, Sec. 36(4) and (5) of the Act provides that the Central Government is required to take the following measures –

- (i) for the assessment of environmental impact of projects, wherever necessary and with public participation where appropriate and
- (ii) to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology and endeavour to respect and protect knowledge of local people relating to biodiversity through measures such as registration and *sui generis* system as per the recommendation of the National Biodiversity Authority.

As per the provision of Sec. 37 of the Act, the State Government may in consultation with the local bodies, notify areas of biodiversity importance as biodiversity heritage site, in consultation with the rules framed by the Central Government for the management and conservation of heritage sites and framing of schemes for compensating or rehabilitating people economically affected by such notification.

Besides, under Secs. 38 and 39 of the Act, the Central Government has been empowered to notify threatened species, prohibit or regulate their collection and take steps to rehabilitate and preserve this species and also in consultation with the National Biodiversity Authority designate institutions as Repositories for different categories of biological resources. Sec. 55 of the Act provides penalties for the contravention of the provisions of Secs. 3, 4 and 6 and the punishment prescribed for such contravention is imprisonment for a term which may extend to five years or with fine extending upto rupees ten lakhs or with both. Further, for contravening the provisions of Sec. 7 or any order made under Sec. 24 (2) of the Act, the penalty shall be imprisonment for a term which may extend to three years or fine which may extend to rupees five lakhs or with both.

Sec. 56 of the Act lays down that where a person contravenes any direction given or order made by the Central Government, the State Government the National Biodiversity Board for which no punishment has been separately provided under the Act, he shall be punished with a fine extending up to rupees one lakh. In case of second or subsequent offence the fine may extend to rupees two lakhs and for continuous contravention an additional fine extending to rupees two lakhs per day may be imposed during which the default continues.

Sec. 57 of the Act contains provisions for offences by companies. Where a person committing offence is a company every person responsible in the company for the conduct of its business will be liable unless it is proved that the offence has been committed with the consent or connivance or is attributable to the neglect of any director, manager, secretary or any other officer of the company, he shall be deemed to be

guilty of the offence and shall be proceeded against and punished accordingly.

Sec. 61 lays down that 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 authorised.

Sec. 62 of the Act empowers the Central Government to make rules to carry out the provisions of this legislation and also enumerates the various matters in respect of which such rules may be made, provided that every rule made shall be laid before the Parliament.

Under Sec. 63 of the Act State Government is also empowered to make rules for carrying out the provisions of the Act and the various matters are enumerated in respect of which such rules made should laid before the State Legislature. Besides, Sec. 64 of the Act empowers the National Biodiversity Authority to make regulations consistent with revisions of the legislation and rules made thereunder. Such regulations are required to be made with previous approval of the Central Government and should be notified in Official Gazette.

5. Conclusion

We have the legislation to preserve the rich biodiversity which our country possesses. But, with the passage of time, gradually the rare and important species are under threat of extinction. The reason attributed to such a situation is that these kind of species could not adapt to the changing conditions. In fact, there are many factors which affected the eco-system and ultimately threatens some of the eco-friendly components on the earth.

Biological diversity plays a significant role in the nature which ultimately is associated with the human society. Therefore, all our efforts should be made to protect and preserve this great biodiversity which India possesses. For this, the Government should come forward to take the leading role with the active participation of other sectors of the society, because preservation of bio-diversity is our self-interest.

6. References

1. Hansari AH, Jamal Parveen. The Constitution of Biological Diversity: A critical Appraisal with Special Reference to Malaysia, IJIL, 2000, 40.
2. Nanda, Sukanta K. Environmental Law, Central Law Publications, Allahabad, 2009.
3. Tripathi SC. Environmental Law, Central Law Publications, Allahabad, 2010.
4. Biological Diversity Act, 2002.
5. Annual Report 2002-03, Ministry of Environment and Forests, Government of India.
6. www.bamu.ac.in, 15 June, 2016
7. www.wbbb.gov.in, 15 June, 2016
8. www.envfor.nic.in, 18 June, 2016