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Biodiversity Amendment Act, 2023: A Catalyst to Safeguard India's Indigenous Resources

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ABSTRACT

The Bio-Diversity Act, is a 20-year-old law that is meant to preserve the country's biological diversity and to ensure its sustainable consumption. Biodiversity encompasses a wide variety of life forms that live on the planet. The Convention on Biological Diversity called for two protocols namely, Cartagena Protocol on biosafety (2003), and Nagoya Protocol on access and benefit sharing (2014). The Cartagena Protocol was ratified by India in 2003 and the Biological Diversity Act, 2002 was passed by Parliament. The Act confines the access to biological resources and related traditional knowledge.

The present article aims to examine the evolution of Bio Diversity Act in 2002 and series of amendments, of which the latest was the Biodiversity Bill, 2023

Biological Diversity Act (BDA), 2002 was amended as the Biological Diversity (Amendment) Act, 2023. Basically, originated from the United Nations Convention of Biological that India signed at Rio de Janeiro. The Act was intended to safeguard India's diverse biological resources, ensuring their conservation and sustainable utilization.

the Biodiversity Act was further strengthened to streamline access to the resources. This enables the Indian biodiversity to enhance its potential in sectors like agriculture, forestry, fisheries, and biopharmaceuticals. potentially propelling India towards its ambitious \$300 billion bioeconomy target by 2030. These changes also simplify processes, and also ensure the conservation of biological resources, sustainable utilisation, targeting the Indian bioeconomy to reach the \$300 billion by 2030 as envisaged in the Sustainable Development Goals.

Keywords: *Bioeconomy, Derivative, Codified traditional Knowledge, Benefit sharing fees.*

I. INTRODUCTION

India is culturally rich country possessing ancient systems of medicine like Ayurveda. This helps to attract more foreign investment through preservation and commercial utilisation of India's biological resources. The Bio-Diversity Act, is a 20-year-old law that is meant to

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preserve the country's biological diversity and to ensure its sustainable consumption. Biodiversity encompasses a wide variety of life forms that live on the planet. It is an undebatable fact that human actions have posed many threats and challenges in the form of loss of habitat, deterioration of ecological systems, and major threat of extinction for species.

The Convention on Biological Diversity called for two protocols namely, Cartagena Protocol on biosafety (2003), and Nagoya Protocol on access and benefit sharing (2014). The Cartagena Protocol was ratified by India in 2003 and the Biological Diversity Act, 2002 was passed by Parliament. The Act confines the access to biological resources and related traditional knowledge. The provisions in the Act are sharing of benefits with conservers of biodiversity and creators of associated knowledge. It also stipulates that benefits may be shared forms of monetary compensation, sharing of intellectual property rights, and technology transfer. the Nagoya Protocol in 2014.

The Biological Diversity Act, 2002 was intended to amend for the following reasons

- (i) to encourage the Indian system of medicine and cultivation of wild medicinal plants,
- (ii) facilitate fast-tracking of processes for research, patent application, and transfer of research results,
- (iii) decriminalise offences, and
- (iv) encourage foreign investment in the sector. The Bill also amends the Act to include references to the Nagoya Protocol.

Table:

Approval/Intimation requirement for accessing biological resources or associated knowledge

The Biological Diversity Act, 2002	Changes made by the Bill
<p>Approval required from NBA (for certain foreign entities)</p> <p>Entities: (i) foreign individuals, (ii) non-resident Indians, (iii) companies not registered in India, and (iv) companies registered in India and having non-Indian participation in share capital or management</p>	<p>Approval from NBA</p> <p>Entities: changes the last category to companies registered in India which are “foreign-controlled” companies as under the Companies Act, 2013.</p>

<p>Activities: obtaining biological resources occurring in India or associated knowledge for: (i) research, (ii) commercial utilisation, or (iii) bio-survey and bio-utilisation</p> <p>Prior intimation required to SBB (for certain domestic entities)</p> <p>Entities: (i) Indian citizens, and (ii) companies registered in India except those which require NBA approval</p> <p>Activities: obtaining biological resources occurring in India for commercial utilisation</p> <p>Exemptions: use by local people and communities including growers and cultivators of biodiversity, and vaidas and hakims practising indigenous medicine</p>	<p>Activities: access to associated knowledge for commercial utilisation will also require prior intimation</p> <p>Prior intimation to SBB</p> <p>Exemptions: adds exemptions for:(i) codified traditional knowledge, (ii) cultivated medicinal plants and their products, (iii) AYUSH practitioners; limits the exception to vaidas and hakims, and AYUSH practitioners to use for sustenance and livelihood</p>
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**Sources: The Biological Diversity Act, 2002; The Biological Diversity (Amendment) Bill, 2021; PRS.

The present article attempts to present the evolution of the Bio-Diversity Act and successive amendments, of which the latest amendment being is Bio Diversity Bill 2023, and also the new amendments from one over the other.

II. AN OVERVIEW OF THE ACT

1. There was ambiguity in the exemption for codified traditional knowledge since The Bill has not defined the term 'codified traditional knowledge'. The Convention on Biological Diversity and Nagoya and Cartagena protocols also have not interpreted this term. This led to the deficiency in meeting the benefit sharing requirements.
2. According to the World Intellectual Property Organisation (WIPO) traditional knowledge was defined as "which is in some systematic and structured form, in which the knowledge is ordered, organised, classified and categorised in some manner". The

Act imposes that every local body in India should create a Biodiversity Management Committee (BMC). This definition might have enabled to ensure that local traditional knowledge would be exempt from benefit sharing provisions.

3. Another challenge is that this Bill eliminates the role of local bodies and benefit claimers in mutual agreements. Also, there is no clause that includes the mechanism for obtaining prior informed consent of the indigenous communities. This was against the framework under Nagoya Protocol.
4. The Bill legitimizes the offences and makes them punishable with a penalty. offences are punishable with imprisonment of up to five years or a fine, or both. Further, there is lack of considerable legislative guidance on adjudging the penalty.
5. There are certain inconsistencies and omissions in the drafting of the Bill like Section 7 that covers the ambiguity regarding intimation to State Biodiversity Board.

Biological Diversity Act (BDA), 2002 was amended as the Biological Diversity (Amendment) Act, 2023. Basically, originated from the United Nations Convention of Biological that India signed at Rio de Janeiro. The Act was intended to safeguard India's diverse biological resources, ensuring their conservation and sustainable utilisation.

III. BIODIVERSITY AMENDMENT BILL 2023

Biological Diversity Amendment) Bill, 2023 aims to:

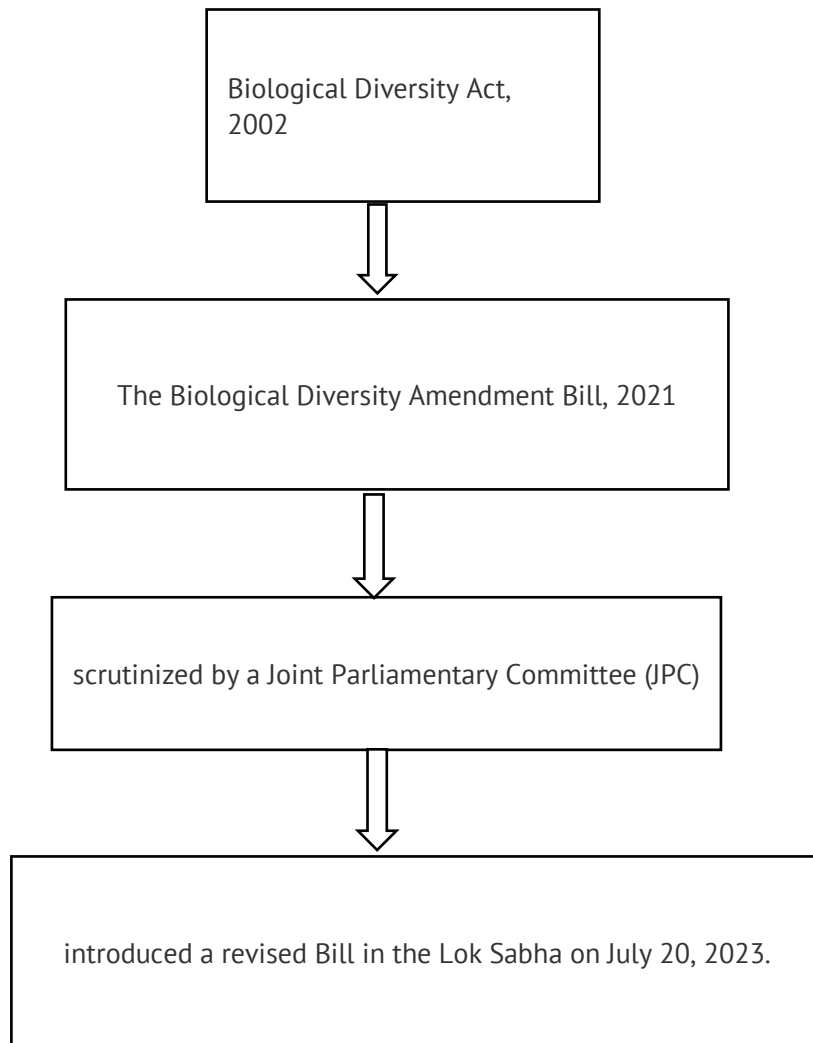
- (i) Encourage cultivation of medicinal plants;
- (ii) encourage Indian system of medicine;
- (iii) fast-tracking of research and patent application process, transfer of research results by utilising the abundant biological resources available in India according to the objectives of United Nation Convention on Biological Diversity and Nagoya Protocol.

The amendments hold significance in India as they influence research and innovation in various sectors dependent on biodiversity like agriculture, pharmaceuticals, cosmetics, and traditional medicine. This may strengthen the domestic endeavours in this domain, aiming India to reach its aiming target of a \$300 billion bio-economy.

These dynamics affect wide range of sectors, ranging from domestic and international biotech, pharma corporations to traditional medicine arenas. This enables the coordination in the utilization of indigenous resources and thus, also encompasses AYUSH disciplines, related

research institutes, and indigenous societies with resourceful knowledge. This will also enable Intellectual Property Right to focus on the rational utilization of biological assets.

IV. TIMELINE OF BIODIVERSITY AMENDMENT ACT, 2023



V. AMENDMENTS IN THE BIODIVERSITY BILL 2023

1. The definition of "access" in Section 2 covers a wider array of activities, the definition of "benefit claimants" has been clarified.
2. The term "derivative" has been introduced, to broaden the scope of by-products derived from primary biological resources.
3. Act now also recognises "codified traditional knowledge", as inclusion of protected established practices in sectors like AYUSH, where traditional practices as documented in ancient texts are safeguarded, thus promoting their authentic use and preventing misappropriation.

4. Section 6 defined the procedure for Intellectual Property Rights on biological resources and associated traditional knowledge.
5. the amendments under Section 7 ensures Indian entities to pay Access and Benefit Sharing fees, and Section 20 regarding the transfer of research results does not need dual approval but only prior approval need to be considered.
6. Penalties have been revised under section 55, with a shift from imprisonment to increase in financial penalty.

Thus, the recent amendments to the Biodiversity Act were further strengthened to streamline access to the resources. This enables the Indian biodiversity to enhance its potential in sectors like agriculture, forestry, fisheries, and biopharmaceuticals. potentially propelling India towards its ambitious \$300 billion bioeconomy target by 2030. These changes also simplify processes, and also ensure the conservation of biological resources, sustainable utilisation, targeting the Indian bioeconomy to reach the \$300 billion by 2030 as envisaged in the Sustainable Development Goals.

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