

(i) Important Definitions

- (a) Biological diversity [Section 2(b)].-** "Biological diversity" means the variability among living organisms from all sources and ecological complexes of which they are part and includes diversity within species or between species and of eco-system.
- (b) Biological Resources [Section 2(c)].-** "Biological resources" means plants, animals and micro-organisms or part 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.
- (c) Benefit Claimers [Section 2(a)].-** "**Biological claimers**" means the conservers of biological resources, their by-products, creator and holders of knowledge and information relating to use of such biological resources, innovations and practices associated with such use and application.

Regulation and Access to Biological Diversity

- (a) Restriction on undertaking Biodiversity related activities without prior approval of National Biodiversity Authority (Section 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 non-resident as defined in clause (30) of Section 2 of the Income-tax Act, 1961;
 - (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.
- (b) Application for Intellectual Property Rights not to be made without prior approval of National Biodiversity Authority (Section 6).

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 sealing of the patent by the Patent Authority concerned.

Further the Act also requires that any person who is obtaining biological resources for commercial utilization or bio-survey shall give prior intimation to State Biodiversity Board constituted under the Act. But local people and communities of the area, including growers and cultivators and Vaidis and Hakims are exempted from this requirement.

(iii) Establishment of National Biodiversity Authority (Section 8)

- (1) With effect from such date as the Central government may, by notification in the Official Gazette, appoint, there shall be established 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 contract and shall by the said name sue and be sued.

- (3) The head office of the National Biodiversity Authority shall be at Chennai and the National Biodiversity Authority may, with the previous approval of the Central Government, establish offices at other places in India.
- (4) The National Biodiversity Authority 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 Central Government;
 - (b) three ex officio members to be appointed by the Central Government, one representing the Ministry dealing with Tribal Affairs and two representing the Ministry dealing with Environment and Forests of whom one shall be the Additional Director General of Forests or the Director General of Forests;
 - (c) seven ex officio members to be appointed by the Central Government to represent respectively the Ministries of the Central Government dealing with-
 - (i) Agricultural Research and Education;
 - (ii) Bio technology;
 - (iii) Ocean Development;
 - (iv) Agricultural and Cooperation;
 - (v) Indian Systems of Medicine and Homoeopathy;
 - (vi) Science and Technology;
 - (vii) Scientific and Industrial Research;
 - (d) five non-official members to be appointed from amongst specialists and scientists having special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of

biological resources and equitable sharing of benefits arising out of the use of biological resources representatives of industry, conservers, creators and knowledge0holders of biological resources.

Dr.Vinita Kacher
Associate Professor
LAW