
Role of the National Biodiversity Authority in providing Access to Biological Resources in India

Shova Devi

Abstract

Access to bioresource in India for commercial utilisation is regulated via the three tier system specified in the Biological Diversity Act 2002. This includes the National biodiversity Authority (NBA), the State Biodiversity Authority (SBBs) and the Biodiversity Monitoring Committees (BMCs). The NBA has a crucial role in the implementation of access mechanism. Access of bioresources is not only about economic considerations but it has wider reflections. Hence, the regulating of activities in relation to bio-survey, bio-utilisation or commercialization of bioresources is vital for protecting and sustaining bioresources. In this regard, the role of the National Biodiversity Authority is imperative.

Keywords: *Biodiversity, Bio-resource, Biological Diversity Act 2000, National Biodiversity Authority*

Introduction

A rich heritage of biological diversity (biodiversity) is spread throughout India. The vast stretch of different zones of biodiversity and endemism is what makes India a mega biodiverse nation. The utilization of Biological resources (bioresources) is integral to the economic development and livelihood sustenance, specifically for the rural population and the indigenous communities. In return, the communities have been the protectors of biodiversity and preservers of bioresources and

associated traditional knowledge (TK). India is a party to key multilateral agreements on environmental issues, including the Convention on Biological Diversity (CBD).¹ Pursuant to the CBD, following a widespread process and program, the Biological Diversity Act 2002 was promulgated. The objective of the Act includes conservation of biological diversity, sustainable utilisation of its components and fair and equitable sharing of benefits arising out of the utilisation of biological resources and associated knowledge

The Biological Diversity Act 2002 (Act), the Biological Diversity Rules 2004 (Rules) and the Guidelines on Access to Biological Resources and associated Knowledge and Benefit Regulation 2014 (ABS Guidelines 2014), together provides the legal framework for the access of bioresources in India.

The objectives of the National Biodiversity Authority (NBA) is to implement the Act and thus conserve India's biodiversity and associated knowledge, facilitate its sustainability and ensure the benefits arising out of the utilization of the bio resources are fair and equitably shared with the concerned communities who are involved in

¹ India is a party to the following conventions: Ramsar Conservation on Wetlands, 1971, Convention for the Protection of World Cultural and Natural Heritage, 1972, Convention on International Trade of Endangered Species of Wildlife Fauna and Flora, 1973, Convention on the Conservation of European Wildlife and Natural Habitat, 1979, World Conservation Strategy, 1980, Convention on Biological Diversity, 1992

conservation, use and management.² The Act mandates the implementation through a decentralized system with National Biodiversity Authority at the national level, the State Biodiversity Boards (SBB) at State level and the Biodiversity Management Committees (BMC) at the local body level. In India, the National Biodiversity Authority is the one that regulates commercial utilization, access of resources and matters related to the Intellectual Property regime. To assist the NBA in the access mechanism, SBBs and BMCs have been established. This research study identifies the role of the NBA in providing access to bioresources. It also highlights the change in access mechanism after the announcement of the ABS Guidelines, 2014. The study shall assist in understanding the whole access procedure and implementation mechanism in relation to access of bioresources in India from the legal standpoint.

Access to Bio-resources under the Biological Diversity Act, 2002

The Biological Diversity Act 2002 (Act) envisages the access and use of bioresources and knowledge associated thereto for certain specific purposes; classified as (i) commercial utilization; (ii) research; and (iii) bio-survey and bio-utilization. All these purposes require the access of bioresources and statutory permission for the same. In this regard, the role of NBA has been elucidated.

Access to Bio-resource and Intellectual Property Rights

Approval from the NBA is an important step to initiate certain biodiversity related activities in

² Annual Report (2017-2018)-National Biodiversity Authority, http://nbaindia.org/uploaded/Annual_report_2017-18_english.pdf.

India. In this regard, Section 3 of the Act discusses on the eligibility of certain persons, who can not undertake biodiversity related activities without the approval of the NBA.³

Any person who is not a citizen of India, or who is a citizen but a non-resident, shall have to seek approval of the NBA. Further, a body corporate, association or organization not incorporated in India, or incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management, shall also have to seek the approval of the NBA. The approval shall be in regard to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilisation or for bio-survey and bio-utilisation. The provision is a very important provision and works as a restriction for foreign entities. And, the NBA is the sole authority with the power to provide the approval.

Determination of Equitable Benefit Sharing

In relation to application regarding approval under 19 and 20 of the Act, the NBA ensures that the terms and conditions subject to which approval is granted secures equitable sharing of benefits arising out of the use of accessed biological resources, their by-products innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers. The NBA, subject to any regulations made in this behalf,

³ Section 3; Biological Diversity Act, 2002; <http://nbaindia.org/>.

determine the benefit sharing. It can be in the various manners, as provided;

- In the form of grant of joint ownership of intellectual property rights to the National Biodiversity Authority or identified benefit claimers.
- It can be in the form of transfer of technology.
- A location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers.
- Any association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilisation.
- By setting up of venture capital fund for aiding the cause of benefit claimers.
- Or, in the form of payment of monetary compensation and other non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.

The amount of money ordered by way of benefit sharing, can either be deposited in the National Biodiversity Fund, or directly be paid to such individual or group of individuals or organizations in accordance with the terms of any agreement. In this regard, the NBA has been provided with authority to frame guidelines and regulations. The NBA has executed this provision and published the ‘Guidelines on Access to Biological Resources and

Associated Knowledge and Benefits Sharing Regulations, 2014’⁴.

Regulation of Access to Biological Resources and / or Associated Knowledge

The National Biodiversity Authority is mandated to regulate access to biological resources and or associated knowledge for research, bio-survey and bio-utilization, commercial utilization, obtaining Intellectual Property Rights, transfer of results of research and transfer of accessed biological resources. However, the process involves the due permission of the NBA which can be obtained by the specified application forms (as per the Act and the Rules).

The details of application forms for specific activities are given below:

APPLICA TION FORM	PURPOSE OF APPLICA TION	WHO SHALL APPLY	APPLICA TION FEE
FORM I	Access of Bioresources occurring in or obtained from India and /or associated knowledge for research,	Non-Indian, NRI, Foreign Entity or Indian Entity having non-Indian Participation in	INR 10,000

⁴http://nbaindia.org/uploaded/pdf/Gazette_Notification_of_ABS_Guidelines.pdf.

	commercial utilisation, bio survey or bio-utilisation	share capital or management	
FORM A	If the application is a Trader/ Manufacturer/ Company, he shall submit along with the form I, as per Regulation 2 of the ABS Guidelines, 2014	Trader/ Manufacturer/ Company ,	
FORM II	Transfer of Result of research	Any Indian, Non-Indian or Entity to any Non-Indian, NRI, Foreign Entity or Indian Entity having non-Indian	INR 5,000

		Participation in share capital or management	
FORM III	Application for Intellectual Property Rights for Inventions based on any research or information on bioresources obtained from India	Any Indian, Non-Indian or Entity	INR 500
FORM IV	Transfer of bioresources, knowledge already accessed to a third party.	Any person who obtained approval of NBA in Form I, Indian, Non-Indian or Entity	INR 10,000

Access to bio resources and Penalties

The Biological Diversity Act, 2002 pronounces it mandatory to follow the access procedure, as mentioned the Act. However, if anyone contravenes

or abets to contravention of the provisions of Section 3 ;Section 4 or Section 6,⁵ shall be punished with the imprisonment of a term which may extend to 5 years or with fine which may extend to 10 lakh Rupees and above (considering the damage caused).

Access Measures and ABS Guidelines 2014

In 2014 the Access and benefit sharing Guidelines were announced by the Indian Government, which provided the new perception for access mechanism in India. The Guidelines provided for payment of a prescribed fee to the BMC for the access of the bioresources. The fee is to be paid by the companies who are using the bioresources and the SBB are the main link that bridges the process of access. The guidelines mainly focus on the commercial aspect of the access of the bioresources and provide a context in which financial obligation of the user is to be determined, in terms of details on process and amount to be shared. The commencement of the guidelines was a huge change that helped in invoking the role of the SBB and BMC in getting involved in levying charges on the companies.

Conclusion

This study provides a transitory of the Access Mechanism available under the Biological Diversity Act 2002. Wherein, the NBA is designated to provide the approval for activities related to bioresources. Provision, namely section 3, section 6 and section 21 are the vital provisions that deal with the access of bioresource in India. And, in case the mentioned procedure is not followed it shall be subjected to penalties. These provisions on access

measures are more centric to the NBA, whereas, the SBBs and the BMCs have considerable role in the process. The NBA is the authority for providing approval/ access to bioresources available in India and has been significantly working towards implementing the true objectives of the Act.

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Shova Devi is a Doctoral student at Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur (W.B.), India.

⁵ Section 55- Penalties ; Biological Diversity Act, 2002; <http://nbaindia.org/>.