



# Biodiversity Conservation in India Within The Purview of The Biological Diversity Act, 2002: A Critical Analysis

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## ABSTRACT

Conservation of biological diversity, which is also called Bio-diversity, is a common concern of humankind as an integral part of the development process. It involves protection and sustainable use of various plants, species, and flora-fauna. There is an onerous obligation, which we owe to posterity, is clean air, clean water, greenery and open spaces. These ought to be elevated to the status of birthright of every citizen. India is a treasure trove of biodiversity. It has been identified as one of the 12 mega-centres of biological diversity in the world. Survey conducted by the botanical and zoological surveys of India have revealed that there are about 45000 species of plants and 81000 species of animals in this country covering 10 bio geographic zones and 25 biotic provinces. India incorporates an exceptional range of biodiversity, including the entire world's major ecosystem. As one of the oldest and largest agricultural societies, India boasts an impressive variety of at least 166 species of crop plants and 320 species of wild relatives of cultivated crops. Its known fact that India is rich in biological diversity and associated traditional and contemporary knowledge system relating biodiversity. India contains a great wealth of biological diversity in its Forests, its wetlands and its marine areas. This richness is shown in absolute numbers of species and the proportion they represent of the world total. With the passage of time, the Protection of biodiversity in India is quite challenging as it is highly enriched with traditional and indigenous resources. The most challenging situation is of rights indigenous people living in a particular area, their respective right of benefit sharing, specific prior-informed consent. It is important to understand to introspect the obligation of local administration in protecting biodiversity and how so far they are successful in managing the proper commercial utilization of indigenous resources by providing proportionate monetary right to indigenous biological diversity people. The Biological Diversity Act, 2002 is a major legislative intervention in this context.

**Keywords :** Biodiversity Conservation, Critical Analysis, Biological Diversity, Biological Resources, UNESCO, NBA, BMC

## I. INTRODUCTION

### Meaning of Biological Diversity & Biological Resources

The term "Biological Diversity" is commonly used to describe the number and variety of living organism on the planet. "Biological Diversity" means the Variability among living organisms from all sources and the ecological complexes of which they are part, and includes diversity within species or between species and of eco-system.

"Biological Resources" means plants, animals and micro- organisms or parts 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.

### Importance of Biodiversity/ Why should we preserve Biodiversity

Biodiversity is closely dependent on climate and climate change. This is evident from the fact that the tropical regions of the world have better Biodiversity conditions as compared with the Polar Regions where animal and plant life rare, leaving little scope for Biodiversity. Conversely, Biodiversity also affects the climatic conditions and conservation and sustainable use of Biodiversity can reduce adverse impact of climate change. Therefore, conservation of Biodiversity assumes

importance as it affects the functioning of the ecosystem as a whole apart from maintaining climatic stability, without which sustainable development is not possible. It is well-recognized fact that the Biodiversity forms an integral part of life for all individuals. It is widely estimated that more than 70,000 plants species are used in traditional and modern medicines. Furthermore, food and energy are obtained from the biosphere we live in. A loss of Biodiversity would not only cause loss of raw materials but would also have ramifications for global food security and nutrition. Biodiversity loss would not only have negative implications on the lives of the human beings but also on the lives of other species in the ecosystem. Leading to the imbalance in the ecosystem and making it difficult for all the organisms to thrive in their natural environment.

### **Threats to the Biodiversity**

The threat to the Biodiversity includes man-made destruction of the ecosystem and the natural causes which causes damage to the Biodiversity. The following are the major reasons for Biodiversity loss.

1. **Habitat loss and degradation:** one of the major threats to the Biodiversity is the habitat loss caused due to human development in the sensitive biological areas. Habitat loss affects 86% of the threatened amphibians.
2. **Overexploitation of natural resources.**
3. **Pollution can be considered to be another factor.**
4. **Climate change affecting changes in the Biodiversity.**

## **II. INTERNATIONAL CONVENTIONS OF BIODIVERSITY**

The necessity and urgency of conservation of Biodiversity has always been a subject of primary concern for international regime and the issue has been addressed in several international conventions.

**1. The Antarctic Treaty, 1959:** The treaty ensures protection to Antarctic environment and consideration of Biodiversity in the Polar Regions. It entered into force on 23rd June 1961 & India acceded to the treaty on August 9, 1983, as it also wanted to carry on some scientific studies in that region.

**2. The Ramsar Convention, 1971:** This convention focused on impact of wetland on Biodiversity and acknowledges the importance of wetland as the most productive ecosystems in the world-providing habitat for birds and other aquatic species. India rectified the Convention on February 11, 1982.

**3. UNESCO Conversation, 1972:** It has declared that the need for preservation of unique natural sites and objects which are of “outstanding universal value from the aesthetic or scientific point of view.

**4. Washington Convention, 1973:** It is on International Trade in Endangered species of World Flora-Fauna, 2973 aimed at the protection of endangered species.

**5. Bonn Convention, 1979:** It was confined to protection of migratory species, which cyclically and periodically cross the national boundaries for habitat and survival. India ratified the convention in November 1, 1983.

**6. UN (RIO) Convention on Biodiversity, 1992:** It was for the first time recognized through this Convention that “Biodiversity” Is “a common concern of mankind” and therefore, it’s an integral part of the development process. It was adopted in Rio- de-jenerio in June 1992. It has three main objectives:

- a. Conservation of biological diversity (bio-diversity)
- b. Sustainable use of components; and
- c. Fair and equitable sharing of benefits arising out of genetic resources.

The Convention was accepted on May 22, 1992 and came into force with effect from December 29, 1993. That for the first time introduced an international norm recognizing the need to protect and promote traditional knowledge associated with biological Resources. The said convention recognized the sovereign right of Nation States over their biological Resources and left it to them to device a method to safeguard and implement this right. India participated in the United Nations Conversation on Biological Diversity and signed it at Rio-de-Janeiro on the 5th day of June 1992.

### III. SCENARIO IN INDIA

India has several Acts in Force, which have a bearing on the conservation of Biodiversity; They Are

1. The Wild Birds & Animal Protection Act, 1912
2. The Forest Act, 1927 which deals with the setting up and management of reserved, protected and village forests, and controls how selected products from the forest can be sold and at what price;
3. The Wildlife Protection Act, 1972; the Wildlife Protection (Amendment) Act, 1991 & 2002 deal with the restriction and prohibition of the hunting of animals and with the protection of specified plants;
4. The Forest Conservation Act, 1980; primarily focused on prohibiting of regulating non-forest use of forestlands;
5. India became a party to Conservation of International Trade in Endangered Species (of Wild Flora and Fauna) in 1976 etc.

### IV. CONSTITUTIONAL PROVISIONS

The Indian Constitution is among few in the world that contains specific provisions on environmental protection. The Directive Principles of State Policy and fundamental duties chapters expressly enunciate the national commitment to protect and improve the environment. Judicial interpretation has strengthened the constitutional mandate. However, part III of the Constitution does not contain any provision to provide right to pollution free environment as a fundamental right, but in view of the liberal interpretation given to article 21 coupled with articles 48-A and 51-A(g), the Supreme Court interpreted the right life and personal liberty to include the right to wholesome environment.

#### **The Biological Diversity Act, 2002**

India, being a signatory to the UN Biodiversity Convention, 1992 and subsequent International meets on Biodiversity conservation, decided to adopt a comprehensive law on Biodiversity. The Parliament, therefore, enacted the Biological Diversity Act, 2002. The Act consists of 65 Sections spread over 12 Chapters. It came into force w.e.f. 5th February 2003 and is applicable resources to whole of India. The Biological Diversity Act, 2002 is a major legislative intervention in this context. The Act creates a three – tiered structure to facilitate the conservation, sustainable use and equitable sharing of benefits accruing out of all biological

Resources and knowledge, viz. a National Biodiversity Authority (NBA), State Biodiversity Boards, and Biodiversity Management Committee to achieve the main objects of the said Act.

#### **Some salient features of the act are:**

- ✓ 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 the biological resources.
- ✓ To conserve and sustainable use of biological diversity.
- ✓ To set up National Biodiversity Authority (NBA), State Biodiversity Board (SBB) and Biodiversity Management Committees (BMCs).
- ✓ To create National, State and Local Biodiversity Fund and its use for conservation of biodiversity and benefit-sharing;
- ✓ To respect and protect knowledge of local communities' traditional knowledge related to biodiversity.
- ✓ To conserve and develop the areas of importance from the standpoint of biological diversity by declaring them as biological diversity heritage sites.
- ✓ Measures for sharing of benefits from the use of biodiversity, including transfer of technology, monetary returns, joint research & development, joint IPR ownership, etc.;
- ✓ Protection and rehabilitation of threatened species;

#### **Critical Analysis of Biological Diversity Act 2002**

- ✓ **National Biodiversity Authority:** In accordance with the Section 8 of the Biological Diversity Act, a National Biodiversity Authority (NBA) was established in the year 2003, which is responsible for its implementation. It also performs functions such as laying down the procedures and guidelines to govern the activities such as access and benefit sharing and Intellectual Property Rights, in accordance with the Article 8 of the Convention on Biological Diversity (CBD). The authority also coordinates the activities of the State Biodiversity Boards (SBB) and Biodiversity Management Committees (BMC) by providing them with technical assistance and guidance. However, it has been criticized that the NBA has not been able to perform satisfactorily. One of the factors responsible for this seems to be the government apathy. The

central government retains the power to remove the chairperson and members of NBA (sec.9).The NBA shall be bound by the directions given by Central Government (sec.38).The NBA is neither an autonomous & independent body. The indigenous and local communities – the real custodians of the biological knowledge – are not adequately represented in the NBA.

✓ **State Biodiversity Boards:** SBB is a body corporate set up by the State Government in accordance with the provisions of Section 22 of the Biological Diversity Act. The main functions of the State Biodiversity Boards are to advise the State Governments on matters relating to biodiversity, and to regulate by granting approval for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians. However, like NBA, the indigenous and local communities will not be adequately represented in SBB because the Act does not make their representation mandatory.

✓ **Biodiversity Management Committees:** Every local body is required to constitute a Biodiversity Management Committee (BMC) within its area for promoting conservation, sustainable use and documentation of biological diversity. The local level BMC comprises maximum seven members to be nominated by the local body of which not less than one third would be women and not less than 18% belonging to SC/ST. It is mandatory for the NBA to consult the Biodiversity Management Committees (BMC) before taking decision relating to the use of Biological resources. However, the NBA is under no obligation to follow the suggestion or the decision of the BMC.

Thus, while the BMC has the responsibility to conserve biological resources and knowledge, the NBA has the exclusive power to deal with it even against the wishes of the BMC. Rule 7 is clearly biased, as it gives BMC only an advisory role in the of grant approvals.

✓ **Peoples' Biodiversity Registers (PBRs):** An important function of BMC is to prepare Peoples' Biodiversity Registers (PBR) in consultation with the local people. As on date, there is no legal protection available for the knowledge recorded in the PBR.

✓ **Access to biological resources and associated traditional knowledge:** The Act stipulates norms for access to biological resources and traditional

knowledge in three ways (i) Access to biological resources and traditional knowledge to foreign citizens, companies and non-resident Indians (NRIs) based on 'prior approval of NBA' (Section 3, 4, 6 of the Act and Rule 14-20). (ii) Access permits to Indian citizens, companies, associations and other organizations registered in India on the basis of 'prior intimation to the State Biodiversity Board' concerned (Section 7 of the Act). (iii) Exemption of prior approval or intimation for local people and communities, including growers and cultivators of biodiversity, and Vaidis and Haqims, practicing indigenous medicines (Section 7 of the Act). The Act centralizes property rights either in the hands of the state through sovereign appropriation or in the hands of private inventors through monopoly intellectual property rights. It does not, however, provide a framework for the rights of all other holders of biological resources and related knowledge.

✓ **Efficacy of the policy in practice in reality at government and community level and lacunae:** The Biological Diversity Act provides for regulatory system by which access of knowledge relating to Biodiversity can be granted. However, it does not prohibit IPRs and therefore it facilitates the privatization of India's traditional knowledge. It is only prohibit an application for any IPRs in or outside India without prior approval of the NBD. Neither NBD Rules, 2004 nor the Form III lays down any procedure for seeking approval in consultation with concerned communities. Hence, it is clearly violation of 73<sup>rd</sup> and 74<sup>th</sup> amendment to the Constitution of India, as it has upheld the need for decision making at the village Level.

✓ Making prior Informed consent of benefit claimers mandatory is recognition of their stake in the resources and the knowledge associated with them. However, at the same time, the Act seeks to make the NBA the final authority in the grant of access to resources and the knowledge associated them.

✓ Exclusion of traditional practices from the ambit of commercial utilization would enable foreign industries to take away biological Resources without prior informed consent. (sec.3) and obligation to share benefits. It will have a serious impact on resource generation for the conservation of India's depleting biological resource.

- ✓ The indigenous and local communities, which are the traditional custodian of biological resources, have the obligation to conserve the resources and knowledge, however, the NBA can, without their consent, enter into any commercial or other agreement with any foreign agency. It means it is taking away the ownership and control of the biological resources and knowledge, which traditionally held by them.
- ✓ Neither Act nor the Rules has defined the term “Conservation” of biological Diversity.
- ✓ The Act exempts those plants, which are registered under the Protection of Plant Varieties and Farmer’s Rights Act, 2001. Once these resources are taken out, there is no way to ensure that benefits are shared equitably to the communities that generated and conserved these resources.
- ✓ According to the section 32 and 37 of the Act the State Biodiversity Fund shall be applied for compensating or rehabilitating any section of the people economically affected by the notification understand said section of the Act. In this regard it may be stated that the Provision for compensation made in the State Biodiversity Fund be applied only where there is a mutually agreed to dislocation or curbing of Rights.
- ✓ Section 7 stated that the Indian corporate and other entities have to require only prior intimation to state Biodiversity board for the commercial use of Bio-resources, rather than permission from NBA like foreigners. Without any legal Compliance, they will not be necessarily responsible towards the environment or towards local communities and they maybe could just be local fronts for foreign Enterprise.
- ✓ The Act is silent on imposing liability for the offence committed by Research Institute as well as the foreign enterprises by the Indian research institute or the person related to this.(sec.57)
- ✓ The Act is silent on the use of pesticides which results in depletion of biological resources.

#### **The Biological Diversity Rules, 2004**

On 15 April 2004, the Union Ministry of Environment and Forests (MoEF) notified the Biological Diversity Rules under the BD Act. The Act mandated the establishment of Biodiversity Management Committees (BMC), which could have enabled local communities to

have some voice in the conservation, sustainable use, and equitable benefit sharing of biological resources.

## **V. CONCLUSION**

“Bio-diversity is India’s real wealth and its resource base determines and ensures this country’s survival and growth. Therefore, conserving and protecting this natural endowment is our primary necessity. This Act is the first step of India in its journey of a thousand miles to conserve and sustainable develop its Biodiversity. A marathon has to be run and let us all join it, if not for us, let it be at least for the sake of our posterity. Though this Act is affected by some lacunas and shortcomings, is still the opening of a new door for India to show its real potential and grow as an economic power of this country of this century, as it has the provisions to educate and enlighten the masses at grass root levels and seek their participation in the conservation and sustainable use of the natures gifts. Thus, an awareness campaign has to be properly launched to make the implementation Act successful. If this Act is properly implemented, it has the potential to take India to reach new economic heights with sound ecological balance and improve the per capita income of the ‘poor Indians’ and improve their standard of living.

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