

LOK SABHA

**REPORT OF THE JOINT COMMITTEE ON
THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021**

SEVENTEENTH LOK SABHA



LOK SABHA SECRETARIAT

NEW DELHI

AUGUST, 2022 / SRAVANA 1944 (SAKA)

LOK SABHA

**REPORT OF THE JOINT COMMITTEE ON
THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021**

(SEVENTEENTH LOK SABHA)

Presented to Lok Sabha on the 2nd August 2022

Laid in Rajya Sabha on the 2nd August 2022



सत्यमेव जयते

LOK SABHA SECRETARIAT

NEW DELHI

AUGUST, 2022 / SRAVANA 1944 (SAKA)

JCBDB 2022 No.01

Price : Rs.

© 2022 BY LOK SABHA SECRETARIAT

**Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha
(____Edition) and Printed by**

<u>INDEX</u>		
PART	CONTENT	PAGE No.
	Composition of the Joint Committee	iv-v
	Introduction	vi-vii
REPORT		
Chapter I	Genesis and features of Biological Diversity Act, 2002 and its Amendment Bill,2021	1-8
Chapter II	Process followed by the Ministry of Environment, Forest and Climate Change while drafting the Bill and the process followed by the Joint Committee while examining the Bill.	9-34
Chapter III	Clause by clause examination on “Joint Committee on the Biological Diversity (amendment) Bill, 2021”	35-126
APPENDICES		
I.	Motion in Lok Sabha for reference of the Bill to the Joint Committee.	127-128
II.	Motion in Rajya Sabha for reference of the Bill to the Joint Committee.	129
III.	Motion dated 04.02.2022 regarding the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021- Extension of Time	130
IV.	Motion dated 14.03.2022 regarding the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021- Extension of Time.	131
V.	Motion dated 18.07.2022 regarding the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021- Extension of Time.	132
VI.	Motion dated 22.07.2022 regarding the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021- Extension of Time.	133
VII.	List of stakeholders who submitted memoranda.	134-145
VIII.	Details of the sittings of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021.	146-148
IX.	List of Official/ Non-official witnesses who tendered oral evidence before the Committee.	149-151
X.	Minutes of the sittings.	152-190
ANNEXURE		
BILL AS REPORTED BY THE JOINT COMMITTEE		1-23

LIST OF ABBREVIATIONS

ABS	Access and Benefit Sharing
ADR	Alternate Dispute Resolution
AYUSH	Ayurveda, Yoga and Naturopathy, Unani, Siddha And Homeopathy
BD Act	The Biological Diversity Act, 2002
BD (Amendment) Bill 2021	Biological Diversity (Amendment) Bill, 2021
BH	Biodiversity Heritage
BMC	Biodiversity Management Committee
BR	Biological Resources
CBD	Convention on Biological Diversity
CII	Confederation of Indian Industry
CPCB	Central Pollution Control Boards
DARE	Department of Agricultural Research and Education
DBT	Department of Biotechnology
DST	Department of Science and Technology
EEZ	Exclusive Economic Zone
FAO	The Food and Agriculture Organization of the United Nations
FAQ	Frequently Asked Questions
FDI	Foreign Direct Investment
FEBS	Fair and Equitable Benefit Sharing
FPI	Foreign Portfolio Investors
FRA	Forest Rights Act
GST	Goods and Services Tax
IBBI	India Business & Biodiversity Initiative
ICAR	Indian Council of Agricultural Research
IPR	Intellectual Property Rights
IRCC	Internationally Recognized Certificate of Compliance
ITPGRFA	The International Treaty on Plant Genetic Resources for Food and
IUCN	International Union for Conservation of Nature
JCBDB	Joint Committee on the Biological Diversity (Amendment) Bill, 2021
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
MAT	Mutually Agreed Terms

MoEFCC	Ministry of Environment, Forest and Climate Change
MoU	Memorandum Of Understanding
MNCs	Multi-national Corporations
MSME	Micro, Small & Medium Enterprises
MTA	Material Transfer Agreement
MTS	Multi-Tasking Staff
NBA	National Biodiversity Authority
NGT	National Green Tribunal
NTCA	National Tiger Conservation Authority
NTFPs	Non-timber forest products
NP	Nagoya protocol
NRIs	Non-Resident Indian
NTAC	Normally Traded as Commodities
PBRs	People's Biodiversity Register
PCT	Patent Cooperation Treaty
PESA Act	Panchayat Extension to Scheduled Areas Act
PPVFRA	Protection of Plant Varieties and Farmers 'Rights Authority
PPVRA,2001	Protection of Plant Varieties and Farmers' Rights Act, 2001
PVC	Plant Varieties Registration Certificate
SBB	State Biodiversity Board
TK	Traditional Knowledge
UN	United Nations
VAP	Value Added Product

**COMPOSITION OF JOINT COMMITTEE ON THE
BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021**

Dr. Sanjay Jaiswal - Chairperson

MEMBERS

Lok Sabha

2. Ms. Diya Kumari
3. Dr. Heena Vijaykumar Gavit
4. Smt. Aparajita Sarangi
5. Shri Raju Bista
6. Shri Pallab Lochan Das
7. Shri Santosh Pandey
8. Shri Prathap Simha
9. Shri Jugal Kishor Sharma
10. Shri Brijendra Singh
11. Shri Ajay Tamta
12. Shri Jagdambika Pal
13. Shri Gaurav Gogoi
14. Ms. S. Jothi Mani
15. Sh. A. Raja
16. Dr. Kakoli Ghosh Dastidar
17. Shri Kotagiri Sridhar
18. Shri Prataprao Jadhav
19. Shri Sunil Kumar Pintu
20. Shri Achyutananda Samanta
21. Shri Ritesh Pandey

Rajya Sabha

22. vacant^
23. Dr. Anil Agrawal
24. Shri Neeraj Shekhar
25. Smt. Ramilaben Becharbhai Bara
26. vacant*
27. Shri Jawhar Sircar
28. Shri Tiruchi Siva
29. Dr. Amar Patnaik
30. Prof. Ram Gopal Yadav
31. Shri Ram Nath Thakur

^ vice retirement of Shri Shiv Pratap Shukla from Rajya Sabha on 4 July 2022

* vice retirement of Shri Jairam Ramesh from Rajya Sabha on 30 June 2022

SECRETARIAT

1.	Shri Vinod Kumar Tripathi	Joint Secretary
2.	Dr. Vatsala Joshi	Director
3.	Shri C. Kalyanasundaram	Director
4.	Shri Sumesh Kumar	Deputy Secretary
5.	Ms. Maya Menon	Under Secretary
6.	Shri Bharat Lal Meena	Research Officer

Representatives of Ministry of Environment, Forest and Climate Change

1.	Ms. Leena Nandan	Secretary
2.	Dr. V.B. Mathur	Chairman, National Biodiversity Authority
3.	Shri J Justin Mohan	Secretary, National Biodiversity Authority
4.	Shri Naresh Pal Gangwar	Additional Secretary
5.	Dr. Rita Khanna	Scientist G, Adviser
6.	Dr. Achuta Nand Shukla	Scientist-E , Additional Director
7.	Ms. Swarupama Chaturvedi,	Legal Consultant

Representatives of Ministry of Law & Justice(Legislative Department)

1.	Ms. Veena Kothavale	Joint Secretary & Legislative Counsel
2.	Smt. Arti Chopra	Deputy Legislative Counsel

Representatives of Ministry of Law & Justice(Department Of Legal Affairs)

1.	Dr. Rajiv Mani	Additional Secretary
----	----------------	----------------------

INTRODUCTION

I, the Chairperson of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021 to which 'The Biological Diversity (Amendment) Bill, 2021' was referred, having been authorized to submit the Report on their behalf, present this Report with the Bill, as reported by the Joint Committee annexed thereto.

2. The Biological Diversity (Amendment) Bill, 2021 was introduced in Lok Sabha on 16 December, 2021. The Motion for reference of the Bill to a Joint Committee of both the Houses of Parliament was moved in Lok Sabha by Shri Bhupender Yadav, the Minister of Environment, Forest and Climate Change (*Vide Appendix-I*) and concurred by the Rajya Sabha on 20 December, 2021 (*Vide Appendix-II*).

3. Initially, the Joint Committee has been given time till last day of the first week of next session i.e. Budget Session, 2022 of Parliament to present Report to the House. However, considering the importance of Bill, the Committee has decided to comprehensively examine various aspects and consult stakeholders to elicit their views. Therefore, the Committee have sought extension of time on four occasions for presentation of the Report. The first extension of time for presenting the report by one month was granted by the Lok Sabha as per the Motion moved and adopted on 4 February 2022 (*Vide Appendix-III*). Motion for second extension of time to present the Report up to 03 June 2022 was moved and adopted in the Lok Sabha on 14 March 2022 (*Vide Appendix-IV*). The third extension of time to present the Report upto the first week of Monsoon Session 2022 of Parliament was granted as per the motion adopted by the Lok Sabha on 18 July 2022. (*Vide Appendix V*). The fourth extension of time for presentation of Report upto last week of Monsoon Session 2022 of Parliament was granted as per the motion adopted on 22 July 2022. (*Vide Appendix VI*).

4. Keeping in view the importance of the Bill and its wide ranging implications, the Committee decided to call memoranda to obtain the views from public in general and Non Governmental Organisations/experts/stakeholders and institutions in particular and from Ministries/Government agencies concerned on the provisions of the aforesaid Bill for a comprehensive and in-depth examination of the legislation. Accordingly, a press communiqué inviting memoranda was issued on 16 January, 2022 in national and regional newspapers through the Bureau of Outreach & Communication (earlier DAVP). The Committee has received 206 memoranda from public (*Vide Appendix VII*). All the memoranda were circulated to the Members of the Committee, they were also sent to the Ministry of Environment, Forest and Climate Change and their comments were obtained on each of them. Points raised by the stakeholders were suitably incorporated in the Report and the comments of the nodal Ministry were also incorporated. The Committee has also requested State Governments /Union Territories to provide suggestions on various provisions of Bill. Accordingly, comments were received from the State Governments of Goa, Haryana, Himachal Pradesh, Odisha, Tripura, West Bengal and Govt. of NCT of Delhi. In addition to this, ten State Biodiversity Boards, each from the states of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Karnataka, Kerala,

Maharashtra, Meghalaya, and Uttarakhand and Biodiversity Management Committees from the States of Goa, Gujarat Madhya Pradesh, Uttarakhand and West Bengal furnished their written submissions to the Committee.

5. The Committee held 15 sittings wherein, they heard the views of various Union Ministries, National Biodiversity Board, State Biodiversity Boards, Biodiversity Management Committees and other stakeholders and completed Clause by Clause consideration of all Clauses and the amendments proposed on each Clause of the Bill. The Bill as reported by the Joint Committee is appended after the Report. Details of the sittings are at **Appendix-VIII**.

6. The Committee heard the views/ suggestions of 47 stakeholders. Sitting wise list of witnesses who appeared before the Joint Committee for oral evidence is enclosed (Vide **Appendix-IX**).

7. The Committee, in their 15th sitting held on 27 July, 2022, considered and adopted draft report and authorized the Chairperson to present the report on their behalf. The Committee also decided that one copy of the proceedings of the sittings of the Committee and two copies each of the memoranda received by the Committee on the Bill from various quarters may be placed in the Parliament Library after the Report has been presented to Parliament, for reference of the Members of Parliament.

8. The Committee wish to express their thanks to the representatives of the Ministry of Environment, Forest and Climate Change, National Biodiversity Authority and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) who appeared before the Committee and placed their considered views to the points raised by the Committee during the sittings held in connection with the examination of the Bill. The Committee would also like to express their sincere thanks to the representatives of other Union Ministries, State Biodiversity Boards, Biodiversity Management Committees, Non Governmental Organizations, Industrial/Manufacturers Associations, Organizations and experts who appeared before the Committee and candidly presented their views before the Committee about the impact of the various provisions of Bill on them and biodiversity. The Committee would also like to acknowledge the sincere and devoted efforts made by the Officers of Lok Sabha Secretariat by facilitating conductance of all the sittings of the Committee smoothly and for preparing the draft Report of the Committee.

DR. SANJAY JAISWAL
CHAIRPERSON,
JOINT COMMITTEE ON THE
BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021.

NEW DELHI;
27th JULY, 2022 / SRAVANA 1944 (SAKA)

CHAPTER I

Genesis and features of Biological Diversity Act, 2002 and its Amendment Bill,2021

Need for Regulation of Biodiversity

1.1 Biodiversity is the variety of different forms of life on earth, including the different plants, animals, micro-organisms, the genes they contain and the ecosystem they form. It refers to genetic variation, ecosystem variation, species variation (number of species) within an area, biome or planet. Human activities are reshaping biological communities and impacting ecosystem functioning across the Earth. Human activities on the planet have created challenges for biodiversity such as loss of habitat, deterioration of naturally occurring ecological systems and extinction or threat of extinction for many species. In this regard, the Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services (IPBES) estimated in 2019 that only 13% of the wetland present in 1700 AD remained by 2000 AD. It also observed that out of an estimated eighty lakh animal and plant species, around ten lakh are threatened with extinction, and more than five lakh terrestrial species have insufficient habitat for long-term survival. These developments highlight the need for biodiversity conservation and its sustainable use. Local communities have an important role in the conservation of biological resources. Many species of plants, as well as animals, are unique to certain geographical areas or climatic conditions. Owing to their co-existence with species unique to their area for generations, communities also acquire unique knowledge about these species and their applications for humans. Historically, biological resources were considered common heritage and were free for exchange. However, an imbalance was observed where provider and conserver countries and communities did not benefit from the commercial exploitation of their biological resources. At times, the associated traditional knowledge about biological resources, often a common belonging of a community, was prone to appropriation by individuals through the filing of patents. These developments led to concerns about equity as well as the need to establish sovereign control and community rights over biological resources.

Convention of Biological Diversity:

- 1.2 India is a signatory to the Convention on Biological Diversity and the Nagoya Protocol, which are concerned with the trade in bioresources and the use of traditional knowledge. In 1992 at the United Nations Conference on Environment and Development held at Rio de Janeiro, Brazil, the Convention on Biological Diversity (CBD), the first global agreement on the conservation and sustainable use of biological diversity was signed by over 150 governments and since then more than 196 countries have ratified the agreement.
- 1.3 The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding. India became a signatory to CBD in 1994. CBD recognizes sovereign rights over biological resources and permits countries to regulate access to these resources as per their national legislation. It recognizes contributions of local and indigenous communities to conservation and sustainable use through traditional knowledge, practices, and innovations. It provides for equitable sharing of benefits with such people arising from the utilisation of knowledge, practices, and innovations. As per CBD, main threats to biodiversity include: (i) habitat fragmentation, degradation, and loss, (ii) reduction in genetic diversity, (iii) declining forest resource base, and (iv) impact of development projects and pollution.
- 1.4 India is one of the 17 recognised mega biodiversity countries and hosts 7-8% of recorded species of the world. As of 2021, 1,03,258 of fauna and 55,048 species of flora have been documented in the country. It also has a vast repository of traditional knowledge associated with biological resources. India hosts four out of 35 globally identified biodiversity hotspots. In pursuance of India's commitments under CBD, the Biological Diversity Bill was passed by Parliament in 2002 and received the assent of the President on 5th February, 2003.

The Biological Diversity Act, 2002

- 1.5 The Biological Diversity Act, 2002 (BDA) was enacted to provide for the 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.

- 1.6** The said Act seeks to fulfill India's obligations under the Convention of Biological Diversity and to ensure that the benefits derived from the use of biological resources and associated traditional knowledge are shared in a fair and equitable manner among the indigenous and local communities. BDA provides for a decentralised three-tiered mechanism comprising the National Biodiversity Authority (NBA), the State Biodiversity Board (SBB) or Union territory Biodiversity Councils (UTBCs), as the case may be, and the Biodiversity Management Committees (BMCs). BMCs are integral part of the local self-governing bodies, including Panchayats and Municipalities. Each BMC prepares People's Biodiversity Registers which keep a record of all flora and fauna including details of traditional knowledge available in their region. BDA also provides a mechanism for accessing and sharing of biological or genetic resources and fair and equitable benefits arising therefrom, with the Biodiversity Management Committees. The NBA, SBB or UTBC and the BMCs are inter-connected and ensure access and benefit sharing while accessing biological resources for research, patents, transfer of results and commercial utilisation of biological resources. The Principal Act of 2002 consist of 12 Chapters and 65 Sections. While Chapters III and IV provides for National Biodiversity Authority and its functions and powers, Chapter VI provides for State Biodiversity Board. Duties of the Central and the State Governments have been covered in Chapter IX and Regulation of Access to Biological Diversity, approvals, etc. are provided in Chapters II and V. Finance, accounts, audit, etc. have been provided in Chapters VII and VIII. Biodiversity Management Committees and Local Biodiversity Fund are provided in Chapters X and X.

Regulation of Access to Biodiversity:

- 1.7** BDA prohibits certain persons from accessing biological resources occurring in India and associated knowledge without approval from NBA. Such persons include individuals who are not Indian citizens, companies not registered in India, and companies registered in India but having foreign participation in share capital or management. The restriction applies to access for survey, research, and commercial utilisation. Indian citizens and domestic companies are required to intimate respective SBB before accessing the domestic biological resources for such purposes. NBA and SBBs may

revoke or refuse access if certain activities would be detrimental to biodiversity conservation or its sustainable use. Any application for intellectual property rights involving biological resources occurring in India or associated traditional knowledge requires prior approval of NBA. The Act also restricts the transfer of research results or biological resources to third parties or outside India.

Access and Benefit Sharing:

- 1.8 Access and benefit-sharing (ABS) is a system under public international law that aims to fairly distribute benefits arising from genetic resources between the users of genetic resources (such as universities and biotech companies) and provider countries (regulatory authorities in biodiversity-rich countries) so as to both open the doors for innovation and create incentives for biodiversity conservation. It is a system that finds its basic principles within the Convention on Biological Diversity (CBD). These principles are further specified within the Nagoya Protocol. Access to genetic resources is crucial for research related to conservation of plant genetic resources as well as R&D for agricultural products and evolved crops that can attain to the new weather conditions climate change brings. Therefore, access to genetic resources in general as well as benefit-sharing from that access is a key element for sustainable development in order to secure research as well as environmental sustainability and resource availability. ABS is a rapidly evolving field that is shaped by the implementation of the Parties to the CBD and the Nagoya Protocol. This means that the national implementation of these countries determines how ABS goals are realized and how ABS principles find form within regulatory mechanisms. These principles have to be implemented by the Parties when drafting their ABS laws by means of putting regulatory mechanisms in place which are in line with the international ABS goals. In other words, how provider countries regulate ABS directly shapes the way ABS principles are implemented.
- 1.9 The entities using biological resources or associated knowledge are required to share the benefit arising out of such activities with the conservers of such biological resources or holders or creators of associated traditional knowledge termed as Benefit Claimers (often a specific tribe or a village), Benefit sharing could include payment of monetary compensation. Joint ownership of intellectual property rights, transfer of technology, etc.. NBA and SBBs are required to ensure a fair and equitable access and benefit

sharing mechanism for benefit claimers and local people while granting approval. Concerned BMCs need to be consulted during this process.

Exemptions under BDA;

- 1.10 The Act exempts certain activities and use cases from regulation, These include: (i) use of biological resources by local people and community of the area, growers and cultivators of biodiversity, and vaidis and hakims who practice indigenous medicine, (ii) biological resources notified as normally traded commodities under the Act, and (iii) collaborative research through government-sponsored, or government-approved institutions subject to guidelines and approval of the central government (the exemption is only from approval requirement and restrictions on the transfer of results of research). Also, the definition of commercial utilisation excludes activities such as conventional breeding and traditional practices in agriculture, horticulture, and animal husbandry.

Funds for Promotion and Conservation of Biodiversity:

- 1.11 The Act sets up National Biodiversity Fund, State Biodiversity Fund, and Local Biodiversity Fund. Purposes for which these funds are to be utilised include: (i) conservation and promotion of biodiversity, (ii) socio-economic development of areas from which biological resources are accessed, and (iii) compensation and rehabilitation of people affected from orders under the Act. These funds receive money by way of grants and loans from governments and charges, fees and royalties received under the Act.

Nagoya Protocol

- 1.12 The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity is a supplementary agreement to the Convention on Biological Diversity. It provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD viz. the fair and equitable sharing of benefits arising out of utilization of genetic resources. The Nagoya Protocol on ABS was adopted on 29 October 2010 in Nagoya, Japan and entered into force on 12 October 2014. Its objective is the fair and equitable sharing of benefits arising from the utilization of genetic resources, thereby

contributing to the conservation and sustainable use of biodiversity. The Nagoya Protocol applies to genetic resources that are covered by the CBD, and to the benefits arising from their utilization. The Nagoya Protocol also covers traditional knowledge (TK) associated with genetic resources that are covered by the CBD and the benefits arising from its utilization. The Nagoya Protocol aims at creation of greater legal certainty and transparency for both providers and users of genetic resources by:

- 1.13 Establishing more predictable conditions for access to genetic resources.
- 1.14 Helping to ensure benefit-sharing when genetic resources leave the country providing the genetic resources
- 1.15 By helping to ensure benefit-sharing, the Nagoya Protocol creates incentives to conserve and sustainably use genetic resources, and therefore enhances the contribution of biodiversity to development and human well-being.
- 1.16 Utilization includes research and development on the genetic or biochemical composition of genetic resources, as well as subsequent applications and commercialization. Sharing is subject to mutually agreed terms. Benefits may be monetary or non-monetary such as royalties and the sharing of research results. The Nagoya Protocol addresses traditional knowledge associated with genetic resources with provisions on access, benefit-sharing and compliance. It also addresses genetic resources where indigenous and local communities have the established right to grant access to them. Contracting Parties are to take measures to ensure these communities' prior informed consent, and fair and equitable benefit-sharing, keeping in mind community laws and procedures as well as customary use and exchange.

Implementation of the Bio Diversity Act, 2002

- 1.17 Some key statistics suggest that there have been issues with the implementation of BDA. As per the requirements under the Act, around 2.75 lakh BMCs are to be formed. As of July 2016, only 9,700 BMCs were constituted. Each BMC is required to prepare a Peoples Biodiversity Register (PBR) containing details of local biodiversity and associated traditional knowledge. As of July 2016, only 1,388 PBRs were prepared. These numbers improved only after the intervention of the National Green Tribunal. As of July 2022, 2.76 lakhs BMCs have been constituted, and 2.67 lakh PBRs have been prepared. As of December 2018. NBA, and SBBs on aggregate had realised about Rs 80 crore, and Rs 14 crore, respectively. by way of access and benefit sharing

mechanisms. These funds are to be utilised for various purposes including channelling benefits to benefit claimers, conservation and promotion of biological resources, Between 2006-07 and 2021-22, NBA has approved 2982 applications. Of these, 426 were for access to biological resources for research or commercial purpose, and 2344 were for obtaining intellectual property rights.

- 1.18 In regard to the developments after the enactment of BDA, NBA has stated that the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014 (Guidelines 2014) were notified under the Biological Diversity Act, 2002 in accordance with the provisions of the Nagoya Protocol adopted under Convention that came into force in 2014. Thus, Biological Diversity Act, 2002 and Guidelines 2014 together fulfil India's obligations under CBD and Nagoya Protocol on Access and Benefit Sharing to ensure that the benefits derived from use of biological resources are shared in a fair and equitable manner among the indigenous and local communities that possess the traditional knowledge regarding its use.

The Biological Diversity (Amendment) Bill, 2021

- 1.19 In this background, concerns were raised by the stakeholders representing Indian system of medicine sector, seed sector, industry sector and research sector urging to simplify, streamline and reduce compliance burden in order to encourage conducive environment for collaborative research and investments, simplify patent application process, widen the scope of levying access and benefit sharing with local communities and for further conservation of biological resources. The Biological Diversity (Amendment) Bill, 2021 was introduced in Lok Sabha on 16 December, 2021 and was subsequently referred to the Joint Committee on Biological Diversity (Amendment) Bill, 2021 through motions adopted in Lok Sabha and Rajya Sabha on 20 December, 2021 for detailed examination and report. The Biological Diversity (Amendment) Bill, 2021, inter alia, seeks to— (i) reduce the pressure on wild medicinal plants by encouraging cultivation of medicinal plants; (ii) encourage Indian system of medicine; (iii) facilitate fast-tracking of research, patent application process, transfer of research results while utilising the biological resources available in India without compromising the objectives of United Nation Convention on Biological Diversity and its Nagoya Protocol; (iv) decriminalise certain provisions; (v) bring more foreign investments in the chain of

biological resources, including research, patent and commercial utilisation, without compromising the national interest. Important amendments made in the proposed in the Bill are as follows:

- i. The companies registered in India and controlled by Indians however having foreign shares are now treated as Indian companies. [Section 3 (2) (ii)]
- ii. Indian entities accessing raw materials derived from cultivated medicinal plants are now exempted from payment of access and benefit sharing (Section 7).
- iii. Indians accessing codified knowledge are exempted from the purview of payment of access and benefit sharing (Section 7).
- iv. Indian entities have to register with National Biodiversity Authority, instead of approval, while applying for patents. (Section 6)
- v. Agriculture waste would be exempted under Section 40 of the Act except for patenting.
- vi. Decriminalisation provisions are incorporated in the section on penalties for effective regulation and implementation of the provisions of the Act. (Section 55)
- vii. To facilitate fast-tracking research, patent application processing, transfer of research results while utilising the biological resources available in India without compromising the objectives of United Nation Convention on Biological Diversity and its Nagoya Protocol (Section 6)

(Sources: Background note of NBA, CBD website and memoranda submitted by PRS Legislative Research

Background note of LARRDIS,

Original Research article:

Front. Plant Sci., 01 October 2019 | <https://doi.org/10.3389/fpls.2019.01175>

CHAPTER II

Process followed by the Ministry of Environment, Forest and Climate Change while drafting the Bill and the process followed by the Joint Committee while examining the Bill

A. Process followed by the Ministry of Environment, Forest and Climate Change while drafting the Bill

2.1 Ministry of Environment, Forest and Climate Change (MoEF&CC) is the nodal Ministry responsible for implementation of laws relating to Bio Diversity. However, the Ministry of AYUSH, Department of Biotechnology, Department of Science and Technology, Ministry of Agriculture and Farmers Welfare and other stake holders raised concerns over the implementation of provisions contained in the Biological Diversity Act, 2002 and made certain suggestions for amendments in the Act particularly for the promotion of research and innovation, ease of doing business , promotion of cultivation of medicinal plants, obligations under international treaties/protocols, etc. The Ministry of Environment, Forests and Climate Change constituted a few Committees for the consideration of various suggestions and to make recommendations thereon. In this regard, the following details have been provided by MoEF&CC.

1. Justice Jyothimani Committee – December 2017 - Held two meetings and submitted its recommendations during January, 2020.
2. Ms. Amarjeet Ahuja, IAS (Retd.) Committee - January 2019 – Held five meetings and submitted its recommendations during February, 2019.
3. Shri A.K. Goyal, IFS (Retd.) Expert Committee - May 2019 - Held thirty two meetings and submitted its recommendations during May 2020.
4. Committee of Secretaries discussed the Bill on 24 July 2020
5. Inter-Ministerial Working Group – August 2020 - Held five meetings and submitted its recommendations during January, 2021.
6. Committee of Secretaries discussed the matter on 11 February, 2021.

2.2 Various Ministries and Departments were also consulted by MoEF&CC before preparation of draft Biological Diversity(Amendment) Bill. The details of suggestions made by various Ministries/Departments and the status of incorporation of those suggestions in the Bill are given in subsequent paragraphs.

Ministry of Agriculture and Farmers Welfare

2.3 Ministry of Agriculture and Farmers Welfare in its submission to the Committee stated that in order to provide for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants, it has been considered necessary to recognize and to protect the rights of the farmers in respect of their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties. “The Protection of Plant Varieties and Farmers’ Rights (PPV&FR) Act, 2001” was enacted for adopting *sui generis* system. The legislation recognizes the contributions of both commercial plant breeders and farmers in plant breeding activity and also provides to implement TRIPs in a way that supports the specific socio-economic interest of all the stakeholders including private, public sectors and research institutions, as well as resource-constrained farmers. To implement the provisions of the Act, this Department established the Protection of Plant Varieties and Farmers Rights Authority on 11.11.2005. Following are the objectives of PPV&FR ACT, 2001:

1. To establish an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.
2. To recognize and protect the rights of farmers in respect of their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties.
3. To accelerate agricultural development in the country, protect plant breeders’ rights; stimulate investment for research and development both in public & private sector for the development of new plant varieties.
4. Facilitate the growth of seed industry in the country which will ensure the availability of high quality seeds and planting materials to the farmers.

2.4 Benefit to the Farming Communities:-

1. Farmers who has bred or developed a new variety shall be entitled for registration and other protection under PPV&FR Act, 2001 in the same manner as a breeder of a

variety and farmers are exempted from any fee in any proceeding under the Act.

2. Farmers who are engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled for recognition and reward from the Gene Fund.
3. Farmers shall be entitled to save, use, sow, re-sow, exchange and share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.
4. Farmers are entitled for compensation if the registered variety fails to give expected performance under the given conditions. Farming Communities are entitled for compensation if their contribution is significant in the evolution of registered variety.

2.5 In this regard, the Ministry of Agriculture and Farmers Welfare has stated that its representatives were participated in the Expert Committee to recommend the amendments in the Biological Diversity Act, 2002 and meeting of National Biodiversity Authority, a meeting of Committee of Secretaries held under the chairmanship of Cabinet Secretary on 24th July, 2020 on revision of the Biological Diversity Act, 2002 as well as Working Group under the chairmanship of Additional Secretary, Ministry of Environment, Forest and Climate Change (MoEF&CC) for addressing the issues / gaps in the proposed amendments to the Acts and its Rules & Guidelines and meeting of Technical Working Group for amendment of the Biological Diversity Act, 2002 and suggested some changes the draft Biological Diversity (Amendment) Bill, 2021. In this regard, a representative of the Ministry stated during the oral evidence as below:-

“The Ministry of Agriculture and Farmers Welfare had suggested some changes to the Biodiversity Act, that will facilitate acceleration of the agricultural sector in terms of plant varieties. We looked at some of the overlapping provisions between the Biodiversity Act 2002 and the Act that we have in the Ministry which is the Protection of Plant Varieties and Farmers’ Right Act 2001.... We have participated in the Expert Committee deliberations. We also participated in the Committee of Secretaries meetings. We also participated in the deliberations of the Working Group which is organised by the Ministry of Environment, Forest and Climate Change. We also participated in the deliberations of the Technical Working Group. Whatever suggestions

we had made on behalf of the Ministry of Agriculture & Farmers Welfare, they have been accepted.”

(page Nos.24/25 Ver Pro dt.21/01/22)

2.6 During oral evidence, another representative of the Ministry further informed the Committee regarding proposals made by the Ministry as under:-

“ India is a signatory to the Convention on Biological Diversity. There is a similarity between the Biological Diversity Act and the Protection of Plant Varieties and Farmers’ Rights Act. I will explain what are the seven or eight points which we have recommended to the Ministry of Environment, Forest and Climate Change. We have requested to exempt rights i.e. breeders rights, research rights, farmers rights, community rights etc. which are already covered under the Protection of Plant Varieties and Farmers’ Rights Act. So, that has been exempted in the present Biodiversity Act also. We have also sought exemption of varieties registered under Protection of Plant Varieties and Farmers’ Rights Act as similar right has been given under the PPV&FR Act, 2001 for protection of plant varieties. It has been accepted by the Ministry of Environment. To enhance the export of seeds and planting materials and also for sustaining the Indian seed sector, seeds and planting materials should be declared as normally traded commodities under Section 40. It has also been done. We have requested to exempt crop species under the International Treaty on Plant Genetic Resources for Food and Agriculture from Section 40. There are 64 crops which are under the International Treaty and are exempted as per the recommendation. We have requested that the definition of ‘folk variety’ should be replaced with farmers’ variety which has been used in the PPV&FR Act, 2001. It has also been accepted. We also have requested to exempt biological resources such as pests and pathogens used as testing tools as these are not patented. These have been exempted. We have also proposed a definition for exclusion of information in any form as a biological resource. It has been accepted.

There were two more issues. Modification of phrases ‘intellectual property right’ mentioned under Section 6(1) as the Section 6(1)(a) must be limited to patents only and cannot include all intellectual property rights as it would include trademarks, copyrights. It has been accepted. We have also requested to exclude conventional breeding from the definition of commercial utilization to help activities related to selection of variants in traditional varieties by farmers/communities but also on those

by plant breeders who simply re-combine existing diversity in a new variety by breeding without involving artificial means such as cellular or protoplasmic fusion, transgenic or hybrid rescue in intergeneric crosses. So, these should be exempted”.

2.7 The details of issues raised and suggestion incorporated in the in the draft Biological Diversity (Amendment) Bill, 2021 are as under:

Sl. No.	Issue raised by the MoAFW	Outcomes of the Technical Working Group meeting held on 09.03.2021	The suggestion of DA&FW incorporated in draft Biological Diversity (Amendment) Bill, 2021
1	Definition of biological resources in the proposed amendments includes bio-information as biological resources. “information in any form” should be deleted from the definition.	Agreed to maintain the <i>“Status Quo” on Section 2(c) of the BD Act, 2002.</i>	There is no change made in <i>Section 2(c) of the BD Act, 2002.</i>
2	Delete the phrases in Section 6 (3) as the provisions under the PPV &FR Act, 2001 related to the protection of plant varieties prevail over the Biological Diversity Act in case of inconsistency between the two. The Authority granting such right shall secure a declaration from the applicant that the biological resources have been lawfully acquired as prescribed under this Act.	Agreed to maintain the <i>“Status Quo” on Section 6(4) of the Biological Diversity Act, 2002.</i>	There is no change made in <i>6(4) of the Biological Diversity Act, 2002.</i>

3	<p>The varieties registered under Protection of Plant Varieties & Farmers' Rights Act, 2001 are totally exempted from the applicability of all the provisions of Biological Diversity Act as long as these varieties are used as source of seed or seeding material for use in any commercial activity. This may be cleared by incorporating in the preamble to the amended Biological Diversity (Amendment) Act 2021.</p>	<p>Agreed. The concerns are already addressed in the existing Act. Further, it has been agreed to explicitly mention the rights accorded under the PPVFR Act.</p> <p>Accordingly the revised text as follows:</p> <p><i>6(3) The provisions of this section shall not apply to any person making an application for any right under any law including PPVFR Act, 2001 relating to protection of plant varieties enacted by Parliament.</i></p>	<p>There is no change made in Section 6(3) <i>of the BD Act, 2002.</i></p>
---	--	--	--

Ministry of AYUSH

2.8 Ministry of AYUSH in its background note stated that AYUSH systems, particularly Ayurveda, Siddha and Yoga being indigenous to India, are regarded as the oldest healthcare systems in the world. These systems constitute both products and services. The Department of Indian Systems of Medicine and Homoeopathy (ISM&H) established in the Ministry of Health & Family Welfare in 1995, was rechristened as Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy in November, 2003. The Department of AYUSH was accorded the status of a Ministry with effect from 09.11.2014. The formation of an independent Ministry has resulted in increased visibility of the AYUSH Systems and a more focused attention on the promotion and development of Indian traditional system of medicine. The Ministry is responsible for policy formulation, regulation and development and implementation of

programs for the growth, development and propagation of AYUSH systems of healthcare, education and scientific research nationally and globally. In executing its mandate, the Ministry works with a multipronged strategy encompassing effective human resource development, provision of quality AYUSH services to the public, dissemination activities emphasizing information, education and communication, quality research in AYUSH, effective drug administration for ensuring the development of AYUSH drugs and ensuring growth of the medicinal plants sector.

AYUSH Drug Manufacturing Industry for production and distribution of AYUSH medicines:

- 2.9 According to the Ministry of AYUSH, there are 9,056 licensed Ayurvedic, Siddha, Unani and Homeopathic drug manufacturing units which are mainly micro and small scale enterprises, using bio-resources from the wild and cultivated sources. The AYUSH industry is currently undergoing a significant transition. Buoyed by the growing global and domestic demand and enabled by a strong support to regulatory, R&D and backend infrastructure by the Ministry of AYUSH, the sector has shown tremendous growth in the last few years. With the current turnover of US\$ 18.1 billion, the market size of Indian AYUSH industry as a whole has grown by 17 per cent during 2014-2020. During the same period, different product segments have grown at much higher rate than the overall industry. Plant derivatives experienced 21 per cent growth in the period 2014-2020 followed by nutraceuticals (20.5 per cent), pharmaceuticals (15.8 per cent), plant extracts 14.7 per cent and herbal plants (14.3 per cent). Despite a slump in economic activity in 2020 due to the pandemic, the industry is projected to reach US\$ 20.6 billion in 2021 and US\$ 23.3 billion in 2022.

Impact of Biological Diversity Act on AYUSH Industries:

- 2.10 It was further submitted by the Ministry of AYUSH in its background note that AYUSH Drug Industry Associations have represented to Ministry to address the issues regarding adverse implications on the AYUSH industry from the implementation of Biological Diversity Act, 2002 and regulatory guidelines thereunder. They also approached the National Biodiversity Authority to resolve their concerns. Ministry of AYUSH has taken up the concerns of AYUSH Drug Industries since 2017 with the Ministry of Environment, Forest and Climate Change (MoEF&CC) and National Biodiversity Authority for amendment of the legal provisions of BDA, 2002 and

exemption to the AYUSH drug manufacturers from the provisions of the BDA,2002. Minister to Minister level meetings were also held to resolve the issues. As such, Ministry of AYUSH is convinced with the problems being faced by AYUSH drug industries due to ABS payment issues, show cause notices, cultivation and transportation of raw material, court cases etc. and feels the necessity of making amendment in the BDA,2002 and exempting the AYUSH industry from its purview

Follow up Action:

2.11 In regard to the follow up action taken, the Ministry of AYUSH in its background note has further stated that National Biodiversity Authority set up an Expert Group on 18.12.2017 chaired by a retired judge of National Green Tribunal to examine the procedural issues of implementation of Biological Diversity Act & Rules vis-a-vis impact on AYUSH industry. Two Senior Officers of the Ministry of AYUSH participated in the two meetings of the Expert Group held in January, 2018 and June, 2018 and recommended for avoiding coercive actions on the AYUSH drug manufacturers in the name of implementation of the Biodiversity Act by the State Biodiversity Boards. However, the report of the Expert Group received in the AYUSH Ministry after almost two years of its inception in January, 2020 did not spell out any mechanism or made any recommendation to address the procedural issues of implementation of Biological Diversity Act & Rules for AYUSH industries. To resolve the issues, the following meetings were held regularly:-

- (i) In an Inter- Ministerial Round Table organized by Invest India on 10th December, 2019 attended inter-alia by the Chairman and Secretary NBA, the issue was discussed in detail and Chairman, NBA assured in this meeting that issues raised by the Ministry on behalf of AYUSH drug industries would be resolved very soon.
- (ii) A Virtual meeting was held on 06.08.2020 under the Chairmanship of Secretary, Ministry of Environment, Forest & Climate Change (MoEF&CC). It was decided to constitute Inter-Ministerial Working Group under the Chairmanship of Additional Secretary, MoEF&CC.
- (iii) A one-to-one meeting was held with the Secretaries of relevant Ministries on 4th February, 2021 under the Chairmanship of Secretary, Ministry of Environment, Forest & Climate Change (MoEF&CC). During the meeting, Secretary, AYUSH mentioned about certain suggestions regarding amendment to Biodiversity Act and Regulations thereunder.

- (iv) The report of the Working Group on revision of Biological Diversity Act was discussed in the meeting of the Committee of Secretaries under the Chairmanship of Cabinet Secretary on 11th February, 2021. During the meeting, it was decided to constitute a Technical Committee. The Committee of Secretaries recommended that wherever possible, rules may be amended to give effect to the recommendations of the Working Group and this can be done expeditiously.
- (v) A Technical Committee was constituted by MoEF&CC on 24th February, 2021 with Shri P.K. Pathak, the then Additional Secretary and CEO, National Medicinal Plant Board as members of the Committee from Ministry of AYUSH. The Technical Committee held a number of meetings during which the representatives from Ministry of AYUSH gave various suggestions clause by clause for amendment to Biodiversity Act as well as Regulations.
- (vi) The final meeting of Technical Committee was held on 15th March, 2021 for preparation of the final document. Comments on the Draft Note for the Cabinet on Biological Diversity Amendment Act, 2021: The draft Cabinet Note for the Cabinet on Biological Diversity Amendment Act, 2021 was received by Ministry of AYUSH for comments by 3rd December, 2021. Ministry of AYUSH sent its comments to MoEF&CC on 3rd December, 2021. It is requested that consequential amendments in the “Guidelines on Access to Biological resources and Associated Knowledge and Benefits Sharing Regulations, 2014” should also be carried out simultaneously so as to address the grievances of AYUSH Drug Manufacturers.
- 2.12 During oral evidence of the representatives of the Ministry of AYUSH, the Committee pointed out that the bill also exempts cultivated medicinal plants from the purview of the Act, therefore, it is practically impossible to detect which plants are cultivated and which are from the wild, and this provision could allow large companies to evade the requirement for prior approval or share the benefit with local communities under the access and benefit-sharing provisions of the Act. In this regard, the representatives of Ministry of AYUSH furnished their written comments as under:-
- “Exclusion of cultivated medicinal plants and their products outside the forests and community owned land is needed since the farmers get direct benefit from this cultivation under the supervision of National Medicinal Plants Board (NMPB), State Medicinal Plants Board (SMPBs), Central institute for Medicinal and Aromatic Plants (CIMAP) units etc. [This falls under Non-monitory Benefit Sharing activity under

Access and Benefit Sharing (ABS) guidelines-2014 (based on Nagoya Protocol)]. Most importantly, this exemption will encourage the industry to venture into more cultivation activities which in turn reduces burden on wild collections. For example, Asvagandha, Isabgol, Stevia, Tulsi etc., cultivation reduces burden on wild collections. These MAPs (Medicinal & Aromatic Plants) have emerged as new cash crops for the farmers and livelihood is improved while income is doubled. As per the proposed Bill, the method of issuing certificate of origin for cultivated plants shall be prescribed in the rules to be framed under the proposed Bill. Excluding medicinal plants under the cover of cultivation (for ABS) will improve the livelihood opportunities for the communities and increase their income. It is worth to mention that NMPB is already conserving more than 700 medicinal plant species at 103 sites covering more than 1,00,000 hectare of conservation area spread among 18 states. Apart from conservation, it encourages cultivation through its various schemes. If any additional tax /ABS is imposed on Cultivated Herbal Raw Material, it will be detrimental to the livelihood plans for the farmers and local communities. Six major AYUSH industry bodies have signed MoU with NMPB to undertake cultivation of Medicinal & Aromatic Plants to an extent of- 10 lakh ha. The entire activity will be linked with a buy-back mechanism by the industry and provides market price directly to the farmers/communities”.

- 2.13 Further during the oral evidence, when the representatives of the Ministry of AYUSH was asked to elaborate on the key benefits for the AYUSH Industry of these amendments in the Biological Diversity Act, 2002. Further it was observed by the Committee that with the proposed amendments the AYUSH Practitioners will no longer need to take approvals, therefore, it could potentially pave the way for ‘biopiracy’. Ministry was asked to elaborate the strategy to be adopted to deal with the situation. In this regard, the Ministry of AYUSH in its written reply commented as follows:-

“There are about 9055 licensed AYUSH industries as on date (8954 till Dec 2019 + 101 Dec 19 to Oct.20) across India. Majority of them are falling under the new definition of MSME’s (Micro =<Rs.5 Cr turnover; Small=<Rs.50 Cr turnover; Medium=<100 Cr turnover). Ayush industry faced difficulties ub the enforcement of Biological Diversity Act, 2002 particularly the coercive actions for Access Benefit Sharing(ABS) fee payment, show cause notices, cultivation and transportation of raw material, court cases etc. Proposed amendments will promote ease of doing business for industry.

The existing provisions of the said Act already provide exemption to Vaid and Hakims. The proposed amendment is to cover the present generation of the traditional AYUSH practitioners in line with exemption provided to Ayush practitioners defined under Drugs & Cosmetics Rules 1945 from obtaining manufacturing license when they use the medicines for their dispensing in practice. The Ayush practitioners are recognized under the National Commission for Indian System of Medicine Act, 2020 (erstwhile Homeopathy Central Council Act, 1973), hence biopiracy is not likely to be foreseen. "

Ministry of Tribal Affairs

2.14 Ministry of Tribal Affairs in its background note has stated that concerns were raised by the stakeholders urging to simplify and streamline the process, reduce compliance burden since 2015 to encourage conducive environment for collaborative research, patents approvals and encourage investments. On examination of the concerns raised by the stakeholders, the concerns were classified into four sectors (i) AYUSH Sector; (ii) Seed Sector; (iii) Industry Sector and (iv) Research Sectors. The Ministry has expressed following views on the objectives of the proposed amendments in the Bill:-

(1) The objective of the Biological Diversity (Amendment) Bill, 2021 is to facilitate fast-tracking research, patent granting, transfer of research results while utilising the biological resources available in India without compromising the objectives of United Nation Convention on Biological Diversity and its Nagoya Protocol.

(2) On examination of the concerns received from various stakeholders, need emerged to relook, revisit, assess and evaluate the implementation of the Biological Diversity Act 2002 as these cannot be addressed by amending sub-ordinate legislations or by an executive order.

(3) The proposed amendment will promote research. Earlier, not only foreign companies but Indian companies also with even 1% foreign share holdings accessing biological resources were required to seek permission from National Biodiversity Authority for research and commercial utilisation, whereas the revised Biological Diversity Act facilitates the companies registered in India and controlled by Indians to take approvals only for Commercial utilisation from the State Biodiversity Boards.

(4) The proposed amendment would help in promoting cultivation of medical plants

in India as Indians cultivating medicinal plants are exempted from levying of ABS, resulting in reducing pressure on wild plants from Indian forests. However, rules should ensure that material sourced from wild is not passed on as cultivated by ensuring tractability.

(5) The proposed amendment exempts AYUSH Medical Practitioners from the purview of the Biological Diversity Act on par with Hakims and Vaidys, thus encourages AYUSH Medical Practitioners to continue Indian system of medicine.

(6) The proposed amendment encourages research collaborations and partnerships with foreign entities as presently foreign entities are required to obtain approval of NBA for doing research, now with the revised act, foreign entities are to only register at NBA portal before conducting research.

(7) The proposed amendment facilitates simplified patent permissions to Indians. As per existing provisions prior approval of NBA was required while making an application to patents office if biological resources are involved. With the revised Act, only registration is required at the time of application and approval is required only at the time commercialization.

(8) The revised Act facilitates exemption of agriculture waste from the purview of Act except for patenting.

(9) The proposed amendment exempts Indians using codified traditional knowledge associated with biological resources of India and access and benefit sharing would be levied only while accessing un-codified traditional knowledge which helps in inviting more research collaborations in codified traditional knowledge of India and abroad.

(10) The proposed amendment eliminates overlapping provision of Protection of Plant Varieties and Farmers' Rights Authority (PPVFRA) as the revised Act exempts the plant varieties that are registered under PPVFRA.

(11) Decriminalisation provisions are incorporated in the section on penalties for effective regulation and implementation of the provisions of the Act .

2.15 During oral evidence, the Secretary, Ministry of Tribal Affairs informed the Committee as follows about the proposals of the Ministry on the provisions made in the Bill:-

“Biological Diversity Act, 2002 seeks to provide for conservation of biological

diversity, sustainable use of its components, and fair and equitable sharing of the benefits from the use of biological resources and knowledge. This Amendment Bill has the objective to facilitate fast tracking research, patent granting, and transfer of research results. With a ST population of 10.4 crore in 2011 Census, amounting to 8.6 per cent of country's population, the Scheduled Tribes community may be one of the biggest sources of traditional knowledge in respect of the biological diversity as most of them have been living for generations in natural environment of forest. Therefore, they are likely to be benefit claimers under the Act as holders of such traditional knowledge. With this broad objective of protecting the interest of such ST communities, Ministry of Tribal Affairs submits the following points for the consideration of the hon. Committee.

(a) Comments on Section 27 (2)(c) at page 9 of the Bill

Clause 23 of the Bill proposes to amend Section 27 of the Principal Act. The proposed clause in 27(2)(c) says, socio-economic development of areas from where the biological resources are associated, traditional knowledge have been accessed in consultation with the Biodiversity Management Committee or local bodies concerned. Our suggestion is that instead of the word 'or' it should be 'and', so that it will read as 'in consultation with the Biodiversity Management Committee and local bodies concerned'. This will allow participation of the wider local bodies in such cases.

It is further suggested that local bodies should include Gram Sabha as defined in the Forest Rights Act, 2006. As the hon. Committee is kindly aware that the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is an Act of Parliament to recognize and vest the forest rights and occupation of forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers, who have been residing in such forests for generations. Under Section 5 of the Forest Rights Act, Gram Sabhas in areas where there are holders of any forest right under the Act is empowered to protect the wildlife, forest and biodiversity.

(b) General Comments on Section 36 and 36B at pages 10 – 11 of the Bill

Clause 26 of the Bill proposes to insert in Section 36 of the Principal Act about developing strategies and plans for conservation and sustainable use of biological diversity. Here, it is only a suggestion. We suggest that Ministry of Tribal Affairs may be

consulted while formulating rules and regulations to enable the provisions of the FRA and the concerns of the Scheduled Tribes, FDSTs and the OTFDs to be suitably reflected in such strategies.. This is a general suggestion. Ministry of Environment, Forest and Climate Change has also broadly agreed that during the rule making, they will consult Ministry of Tribal Affairs.

(c) Comments on functions of BMC contained in Proviso 1(a) to Section 41(1) at pages 11 -12 of the Bill

Clause 30 of the Bill proposes to amend Section 41 of the Principal Act by inserting a sub-Section stipulating that every local body at the gram panchayat level in rural area shall constitute a Biodiversity Management Committee. FR rules 4(1)(e) mandates that the Gram Sabha shall constitute committees for the protection of wildlife, forest and biodiversity in accordance with Section 5 of the Forest Rights Act. Therefore, our suggestion is that Biodiversity Management Committee under the proposed amended Section 41(1) should have representation from Gram Sabha so as to avoid duplication or divergence. We also suggest that under proposed Section 41(1) on this subject of documentation on biological diversity, the consent of the traditional knowledge bearer should be taken and that such chronicling of knowledge should not be a public document till the issue of benefit sharing is resolved. It is because if such documentation is allowed to become a public document, there is a possibility that knowledge may get categorized as codified knowledge and hence it will go outside the purview of the Biological Diversity Act denying the benefit to the traditional knowledge holders. This important aspect may be covered in rule making by including this under Section 62 of the principal Act which empowered Central Government to make rules.

(d) New Amendment proposed / recommended by MOTA to Section 59 (page 14 of the Bill) for inclusion in the Bill

It is not proposed for any amendment, but this is our suggestion. Section 59 of the principal Act stipulates that provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, but it qualifies saying that relating to forests or wildlife. We suggest that along with forest and wildlife, the term `forest dwellers` should also be included so as to recognize the significance of

2.16 In addition to the above, Ministry of Tribal Affairs have also furnished the following in their background note:-

- (i) It may be noted that the FRA was notified in 2007 and the Biological Diversity Act came into existence in 2003. Under Section 59, the Act states that the ‘provisions of the Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or wildlife’. Since the FRA is a later Act, it is essential that its provisions are not affected due to the amendments proposed now. Therefore, this Ministry proposes that an additional amendment may be added as an appropriate Section in the Act as follows:

Act to have effect in addition to Other Acts

The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or forest dwellers and their rights or wildlife.

- (ii) The Scheduled Tribe communities are likely to be one of the biggest sources of traditional knowledge as well as preservers and conservers of the bio-diverse resources. With a population of more than 10 crores, amounting to more than 8% of the Indian population, the STs are known to live in symbiotic relationship with their natural environment, comprising mostly of forests. Therefore, they are also likely to be benefit claimers under the Act. Therefore, to ensure that their interests are protected, it is requested that the MoTA may be consulted while formulating the Rules/Regulations/Guidelines under the Act.

Ministry of Science & Technology (Department of Biotechnology)

2.17 Department of Biotechnology (DBT) stated in its background note that the Biological Diversity Act, 2002 is being implemented by National Biodiversity Authority (NBA), Chennai, a statutory autonomous body under the administrative control of Ministry of Environment, Forests and Climate Change (MoEF&CC). Due to the rapidly changing scenario of National and International Research cooperation including active participation by private sector in R&D, several concerns were raised by the stakeholders

urging to simplify and streamline the process; reduce compliance burden for collaborative research, patents approvals and encourage investments. Considering the concerns raised by the various stakeholders, the MoEF&CC and NBA initiated the process of amendment of Biological Diversity Act, 2002.

2.18 According to the Department of Biotechnology, draft Amendments to the Biological Diversity Act, 2002 and the observations made by it were discussed in detail during various meetings of the National Biodiversity Authority and thereafter, subsequent meetings of the Working Group constituted by the MoEF&CC, wherein, DBT participated as one of the members of the Working Group. Subsequently, The Biological Diversity (Amendment) Bill, 2021, was tabled in the Parliament on December 9, 2021 by MoEF&CC. The objective of the proposed amended Biological Diversity Act, 2021 is to facilitate fast-tracking research, patent granting, transfer of research results while utilizing the biological resources available in India.

2.19 The Department of Biotechnology is promoting and supporting research, innovation and product development programmes in Biological sciences. The amendments suggested by DBT alongwith their current status are summarized below:

Sl. No.	Relevant provisions suggested and amended in the proposed Biodiversity (Amendment) Bill 2021	Current Status
1	Section 2 (c): Under definition of Biological Resources Section 2 (c) - “Information in any form” needs to be deleted in the definition of the Biological Resources .	Suggestion Accepted The definition of Biological Resources has been modified in the Section 2 (c) of the principal Act [S.N. 3, Page 2 of the proposed Biodiversity (Amendment) Bill 2021].
2	Section 3(2) (C) (ii) incorporated or registered in India under any law for the time being inforce, which is a foreign controlled company.”	Suggestion Accepted Incorporated in the subclause (ii) of Section 3(2) of the principal Act [S.N. 5, Page 3 of the proposed Biodiversity (Amendment) Bill 2021].
3	Section 4: No person or entity shall share or transfer any result of the research on any biological resource occurring in, or obtained or accessed from, India or associated traditional knowledge thereto, from monitory consideration or otherwise to a person referred to in sub-section (2) of section 3,	Suggestion Accepted Incorporated in the Section 4 of the principal Act [S.N. 6, Page 3 of the proposed Biodiversity (Amendment) Bill 2021].

	<p>without the prior written approval of the National Biodiversity Authority, except the codified traditional knowledge which is only for Indians.</p>	
4	<p>Section 6: (a) for sub-section (1), the following subsections shall be substituted, namely: — “(1) Any person or entity applying for an intellectual property right, covered under subsection (2) of section 3, by whatever n called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority before grant of such intellectual property rights. (1A) Any person applying for any intellectual property right, covered under section 7, by whatever name called, in or outside India, for any invention on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall register with the National Biodiversity Authority before grant of such intellectual property rights. (1B) Any person covered under section 7 who has obtained intellectual property right, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority at the time of commercialization.</p>	<p>Suggestion Accepted Incorporated in the Section 6 of the principal Act [S.N. 8, Page 4 of the proposed Biodiversity (Amendment) Bill 2021]</p>

5	<p>Section 40 Notwithstanding anything contained in this Act, the Central Government may, in consultation with the National Biodiversity Authority, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall not apply to biological resources when normally traded as commodities or to the items derived from them, including agricultural wastes, as notified and cultivated medicinal plants and their products for entities covered under section 7.</p>	<p>Suggestion Accepted Incorporated in the Section 40 of the principal Act [S.N. 29, Page 11 of the proposed Biodiversity (Amendment) Bill 2021].</p>
---	--	--

2.20 During oral evidence, the Secretary DBT also stated in regard to the submission made by the Department at Serial No.6 above had further stated as below:-

“This corresponds to Section 3(1) of the BD Act. It is on overreaching importance of understanding, accessing Indian bioresource deposited in the repositories outside India by foreign researchers exclusively for research purposes only..... Otherwise they may stop giving us access to their own material also.... All these will be deposited in the repositories. It is not like that you can take from any laboratory. It is mandatory to deposit in repository. You can actually take it from them by making an MTA. That is what we are requesting. Otherwise, this will create a little bit of an international hiccup because they will not be able to access.”

Ministry of Rural Development

2.21 The Committee also called the representatives of Ministry of Rural Development for discussion on the Bill. While appearing before the Committee, the Secretary, Rural Development stated as follows:-

“As far the Department of Rural Development is concerned, the provisions of Bills are not of the type which are administered or have concerns which are being handled by the Department of Rural Development. We broadly support the provisions of the amendments in the Bill. There might have been one Committee which is concerned with the Biological Diversity Management Committee, but that is related to Ministry of Panchayati Raj. We do not have much to say on that regard”.

Ministry of Panchayati Raj

2.22 During oral evidence with the representatives of the Ministry of Panchayati Raj, it was transpired that the Ministry of Panchayati Raj was not part of the consultation processes held before the circulation of Cabinet note on the Bill. In this regard, when it was specifically enquired by the Committee during oral evidence, the Secretary, Ministry of Panchayat Raj informed the Committee as under:-

“ Sir, when the Cabinet Note was circulated, only at that point of time, we got an opportunity. Prior to that, whatever discussions were being held at various levels, there the Panchayati Raj Ministry was not a party”.

2.23 Ministry of Panchayati Raj furnished the following proposals to the Committee for incorporation in the Bill :-

Para No	Line No	Draft Bill	Proposed changes	Reason for the proposal
1	2	3	4	5
3		(aa) “benefit claimers” means the conservers of biological resources, their by-products, creators or holders of associated traditional knowledge thereto (excluding codified traditional knowledge only for Indians) and information relating to the use of such biological resources, innovations and practices associated with such use and application;’;	(aa) “benefit claimers” means the conservers of biological resources, their by-products, creators or holders of associated traditional knowledge thereto (excluding codified traditional knowledge only for Indians) and information relating to the use of such biological resources, innovations and practices associated with such use and application;’;	By excluding the codified traditional knowledge, the entire TK goes outside the purview of the act which is in a way contradicts the CBD article 8j. Moreover, under the BD Act, the traditional knowledge has also been chronicled by the Biodiversity Management Committees in the form of Peoples’ Biodiversity Register. Thus, such knowledge will also go out of the purview of the act which goes against the interest of the holders of traditional knowledge and the community. It gives a free hand to the users of the TK at the cost of the communities.

				CTK – out of section 6 as well? (Haldi and Neem)
3 (fa)	31-33	“derivative” means a naturally occurring biochemical compound or metabolism of biological resources, even if it does not contain functional units of heredity;’;	“Derivative” means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.	The Nagoya Protocol on ABS defines Derivatives, as proposed in Column 4.
6		“4. No person or entity shall share or transfer any result of the research on any biological resource occurring in, or obtained or accessed from, India or associated traditional knowledge thereto, for monetary consideration or otherwise, to a person referred to in sub-section (2) of section 3, without the prior written approval of the National Biodiversity Authority, except the codified traditional knowledge which is only for Indians:	“4. No person or entity shall share or transfer any result of the research on any biological resource occurring in, or obtained or accessed from, India or associated traditional knowledge thereto, for monetary consideration or otherwise, to a person referred to in sub-section (2) of section 3, without the prior written approval of the National Biodiversity Authority; except the codified traditional knowledge which is only for Indians:	By excluding the codified traditional knowledge, the entire TK goes outside the purview of the act which is in a way contradicts the CBD article 8j. Moreover, under the BD Act, the traditional knowledge has also been chronicled by the Biodiversity Management Committees in the form of Peoples’ Biodiversity Register. Thus, such knowledge will also go out of the purview of the act which goes against the interest of the holders of traditional knowledge and the community.

	30-31	Provided further that where the results of research are used for further research, then, the registration with National Biodiversity Authority shall be necessary:		The process of registration is not apparently provided anywhere in Sec 20 which governs the procedure on the transfer of results of research and thus there is some contradiction.
		(1) Any person or entity applying for an intellectual property right, covered under sub-section (2) of section 3, by whatever name called, in or outside India, for any invention based on any research or information on a 10 biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority before grant of such intellectual property rights.	(1) Any person or entity applying for an intellectual property right, covered under sub-section (2) of section 3, by whatever name called, in or outside India, for any invention based on any research or information on a 10 biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority before grant of such intellectual property rights.	The act defines associated knowledge and by referring to associated traditional knowledge the scope is restricted.
		(1A) Any person applying for any intellectual property right, covered under section 7, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories	(1A) Any person applying for any intellectual property right, covered under section 7, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or	The act defines associated knowledge and by referring to associated traditional knowledge the scope is restricted.

		outside India, or associated traditional knowledge thereto, shall register with the National Biodiversity Authority before grant of such intellectual property rights.	associated traditional knowledge thereto, shall register with the National Biodiversity Authority before grant of such intellectual property rights.	
		(1B) Any person covered under section 7 who has obtained intellectual property right, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority at the time of commercialisation.”.	(1B) Any person covered under section 7 who has obtained intellectual property right, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority at the time of commercialisation.”.	The act defines associated knowledge and by referring to associated traditional knowledge the scope is restricted. Mandatory registration/approval at the time of filing for IPR. Once IPR granted, monitoring the use and the implementation of ABS thereof due to the communities will be difficult.
9	30-34	“7. (1) No person, other than the person covered under sub-section (2) of section 3, shall access any biological resource and its associated knowledge for commercial utilisation, without giving prior intimation to the concerned State Biodiversity Board, subject to the provisions of clause (b) of section 23 and sub-section (2) of section 24:	“7. (1) No person, other than the person covered under sub-section (2) of section 3, shall access any biological resource and its associated knowledge for commercial utilisation, without the prior approval of the concerned State Biodiversity Board, subject to the provisions of clause (b) of section 23 and sub-section (2) of section 24:	Clause (b) of section 23 refers to approval or rejection. So to keep the language and the spirit of the clause consistent with the procedure proposed in Sec 23 and the functions of SBB in Sec 24. Sec 24(2) mandates the consultation with the local bodies. (Mere intimation is likely to undermine the powers originally vested with the local communities – You may articulate appropriately. It is a very important change that should be

				incorporated)
	35-39	Provided that the provisions of this section shall not apply to the codified traditional knowledge, cultivated medicinal plants and its products, local people and communities of the area, including growers and cultivators of biodiversity, <i>vaid</i> s, <i>hakim</i> s and registered AYUSH practitioners who have been practicing indigenous medicines, including Indian systems of medicine for sustenance and livelihood.		The exemptions listed have massive ramifications to the local communities. "Codified TK" is a huge basket. Practitioners of AYUSH should be distinct from manufacturers. The cultivators will be deprived of fair and equitable benefits for their efforts as they will be deprived of the benefit sharing arising out of the utilisation of their resources. There is a provision under Section 40 to exempt by notification certain biological resources including cultivated resources. Hence, it should be deleted here.
16	39-43	(4) The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource which is found in or brought from India, including those deposited in repositories outside India, or associated traditional knowledge thereto accessed."	(4) The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource which is found in or brought from India, including those deposited in repositories outside India, or associated traditional knowledge thereto accessed."	By including "traditional" it is limiting the scope of the section. The knowledge associated with the biological resources deposited in repositories outside India are generally of contemporary knowledge.
17	13-17	(2A) Any person referred to in sub-section (1A) of section 6 shall register with National Biodiversity Authority at the time of	(2A) Any person referred to in sub-section (1A) of section 6 shall register with National Biodiversity Authority at the time of making application under	Word "commercialization" is not defined and hence is vague

		making application under sub-section (2), and persons referred to in sub-section (1B) of section 6 shall obtain prior approval from National Biodiversity Authority at the time of commercialisation.”;	sub-section (2), and persons referred to in sub-section (1B) of section 6 shall obtain prior approval from National Biodiversity Authority at the time of commercialisation .”;	
22	10-14	“(1) Any person other than the person referred to in sub-section (2) of section 3, intending to undertake any activity covered under section 7, shall give prior intimation to the State Biodiversity Board in such form as may be prescribed by the State Government.”;	“(1) Any person other than the person referred to in sub-section (2) of section 3, intending to undertake any activity covered under section 7, shall seek the prior approval from the State Biodiversity Board in such form as may be prescribed by the State Government.”;	Intimation in Sub section 1 and approval in subsequent sub sections. It should be approval in sub section 1 as well.
29		<p>“40. Notwithstanding anything contained in this Act, the Central Government may, in consultation with the National Biodiversity Authority, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall not apply to biological resources when normally traded as commodities or to the items derived from them, including agricultural wastes, as notified and cultivated medicinal plants and their products for entities covered under section 7, registered as per the regulations made or as prescribed:</p> <p>Provided that no exemption shall be made</p>		“Agricultural waste” is a broad term which is not defined.

		for the activities referred to in sub-sections (1) and (2) of section 6.”		
--	--	---	--	--

B. The process followed by the Joint Committee while examining the Bill

2.24 After the Bill was referred to the Committee, the Committee took the oral evidence of the representatives of the Ministry of Environment, Forest and Climate Change, National Bio diversity Authority, Ministry of AYUSH, Department of Biotechnology, Department of Science and Technology, Ministry of Agriculture and Farmers Welfare, Ministry of Tribal Affairs, Ministry of Panchayati Raj and Ministry of Food Processing Industries with respect to various amendments proposed in the Bill. The Committee also held discussions with the representatives of the State Biodiversity Boards of Andhra Pradesh, Assam, Gujarat, Karnataka, Kerala, Maharashtra and Uttarakhand on the provisions contained in the Bill. At the first sitting held on 04 January, 2022, the Committee decided to invite suggestions/views of various stakeholders on the provisions contained in the Bill. In response, the Committee received 206 memoranda containing suggestions/views of various stake holders including individuals, NGOs and Industrial Associations. After scrutinizing the memoranda received from various stake holders, the Committee heard the views of 12 NGOs, 11 Industrial Organizations and 08 experts on the provisions contained in the Bill. The Committee also interacted with the Members of BMCs from Uttarakhand and Madhya Pradesh in regard to the provisions contained in the Bill. Moreover, all the 206 memoranda were sent to the Ministry of Environment, Forest and Climate Change for their comments on the suggestions made in those memoranda. Being the nodal Ministry, the representatives of the Ministry of Environment, Forest and Climate Change were requested to be present during all the above mentioned meetings of the Committee.

2.25 **The Committee note that Ministry of Environment, Forest and Climate Change initiated the process of amendment of the Biological Diversity Act, 2002 based on the concerns and suggestions made by various Ministries/Departments of the Government of India viz. the Ministry of AYUSH, Department of Biotechnology, Department of Science and Technology, Ministry of Agriculture and Farmers Welfare, Ministry of Tribal Affairs, etc. in regard to the implementation of provisions contained in the Biological Diversity Act, 2002. The suggestions for**

amendment of the Act were made by these Ministries/Departments keeping in view the promotion of research and innovation, ease of doing business, promotion of cultivation of medicinal plants, obligations under international treaties/protocols, etc. The Ministry of Environment, Forests and Climate Change constituted a few Committees for the consideration of various suggestions and to make recommendations thereon for incorporation in the Bill. In the next Chapter, the Committee will deal with the Clause-by-Clause examination of the amendments proposed in the Bill.

CHAPTER-III
CLAUSE BY CLAUSE EXAMINATION ON
THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

Clause 1: Short title and commencement.

3.1 Clause 1 of the Biological Diversity (Amendment) Bill, 2021 states as under:

"1.(1)This Act may be called the Biological Diversity (Amendment) Act, 2021.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. "

Gist of suggestions received from stakeholders

3.2 A transition period of 6 months may be given to the industry for compliance in the light of the amended provisions

Comments of MoEFCC

3.3 NBA is granting prior approval for the users of the biological resources with a set of terms and conditions. The users are obligated to pay the benefit-sharing amount as long as they utilize the biological resources. If amendments are in place, modalities to deal with the old applications needs to be evolved and the SBBs are also required to be sensitized about it. Minimal transition period may be provided for smooth and effective implementation of the amended Act.

Observation/ Recommendation of the Committee

"1.(1)This Act may be called the Biological Diversity (Amendment) Act, 2022.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. "

(Recommendation No.1)

Clause 2: Amendment of preamble.
(Preamble)

Provision in the Principal Act

3.4 " 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.

WHEREAS India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto;

AND WHEREAS India is a party to the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992;

AND WHEREAS the said Convention came into force on the 29th December, 1993;

AND WHEREAS the said Convention reaffirms the sovereign rights of the States over their biological resources;

AND WHEREAS the said 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 resources;

AND WHEREAS it is considered necessary to provide for conservation, sustainable utilization and equitable sharing of the benefits arising out of utilization of genetic resources and also to give effect to the said Convention.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-”

Amendment Proposed in the Bill

3.5 " 2. In the Biological Diversity Act, 2002 (hereinafter referred to as the principal Act), in the preamble,—

a) for the word “party”, the word “Party” shall be substituted;

b) for the words beginning with “AND WHEREAS it is considered necessary”, and ending with “give effect to the said Convention”, the following shall be substituted, namely:—

“AND WHEREAS India is a Party to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity which was adopted

on the 29th October, 2010 in Nagoya, Japan;

AND WHEREAS it is considered necessary to provide for conservation, sustainable utilisation, fair and equitable sharing of the benefits arising out of utilisation of biological resources and also to give effect to the said Convention.”

Rationale behind the proposed amendment

3.6 The MoEFCC has provided the rationale behind the insertion of Nagoya Protocol in the preamble stating that India has ratified the Nagoya Protocol on Access to genetic resources and the fair and equitable sharing of benefits arising from their utilization on 4 October 2012.

Gist of suggestions received from stakeholders

3.7 The amendment puts commercial exploitation above conservation.

3.8 The amendment has priority to foreign commercial interests.

3.9 The original provision may be retained.

3.10 The proposed amendments substantially dilute the core principle that benefits derived from the use of biological resources should be shared in a fair and equitable manner among the indigenous and local communities.

3.11 In second Para of the 2002 Act, the prefix UNITED NATIONS is incorporated before the CBD. The CBD 1992 does not contain the words “United Nations”.

3.12 To reflect interest with other protocols, the commitment may be as under-

“AND WHEREAS India is a Party to various protocols developed under the Convention of Biological Diversity (and may ratify other protocols of Nation’s Interest in future) such as but not limited to, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Benefit Sharing of Benefits Arising out of their Utilization.

Gist of suggestion received from SBB

3.13 Bihar State Biodiversity Board has stated that in the Preamble of the Bill itself, the need to implement the provisions of the Nagoya protocol has been emphasized as India is a party to the protocol. Likewise, the term equitable sharing has been replaced with the words fair and equitable

sharing" in the entire draft of the bill, whereas, in the proposed bill, the FEBS (Fair and Equitable Benefit Sharing), the main component of the Nagoya protocol has been minimized, limited and diluted in all possible ways.

Comments of MoEFCC

- 3.14 Nagoya Protocol is already implemented in India through Guideline 2014 notified under the Biodiversity Act, 2002, therefore adding Nagoya Protocol does not make any such change as apprehended.
- 3.15 No relaxation is proposed to the foreign entity in the bill. The definition of foreign entity is aligned with companies act.
- 3.16 India is currently implementing Nagoya Protocol through its ABS Guidelines, 2014 and no amendment in the Amendment Bill 2021 has diluted Nagoya Protocol's implementation in India.
- 3.17 The Convention on Biological Diversity is working under the aegis of UNEP (United Nations Environment Programme), which is a UN body, therefore, keeping UNITED NATIONS before the CBD is justified.

Clause 3 - Insertion of new sub section 2(a) (Access)

Provision in the Principal Act

- 3.18 Presently there is no provision. A new section 2(a) is proposed to be incorporated (Definition of Access).

Amendment Proposed in the Bill

- 3.19 '(a) "access" means collecting, procuring or possessing any biological resource occurring in or obtained from India or associated traditional knowledge thereto, for the purposes of research or bio-survey or commercial utilisation;

Rationale for the proposed amendment

- 3.20 To bring more clarity, the definition of access has been added in the Bill.

Gist of suggestions received from stake holders

- 3.21 Inclusion of word "procurement" removes the differentiation between 'obtaining directly from forest or farm' and 'purchase from open market'. The appropriate term is "obtain".
- 3.22 Section 3 (1) of the Act, does not comprise of the word "access" and instead comprises the term "obtain".
- 3.23 Inclusion of the term "possessing" in the definition of access would require prior intimation to SBBs by Indian companies before the possession of any biological resource. In what manner the companies which are already in possession of any biological resource on the date of enactment of this Bill, will give prior intimation to SBB.
- 3.24 Possession denotes already having. It is not clear as to how could a person obtain prior intimation for a biological resource that is already in their possession.
- 3.25 Definition is beyond the scope of CBD/Nagoya Protocol. It can result in undue harassment. Procurement and should be changed as obtain.

- 3.26 Amendments are attempt to grant unregulated access and violates sovereignty of local community and thereby, are violation of article 5,6,7 and 12 of Nagoya protocol which requires prior consent to access by local communities.
- 3.27 To strengthen the proposed amendment of Section 6, this additional line needs to be included - any biological resources obtained from repositories outside India.

Comments of MoEFCC

- 3.28 Procurement, possession and collection are forms of access as mentioned in the definition of access.
- 3.29 These terms have been included for covering cases of recovery of biological resources from illegal possessions.
- 3.30 Inclusion of term ‘procurement’ and possession in the definition of accesses will help in effective tracking of biological resources usage and tackling of biopiracy.
- 3.31 For cases where the companies already have possession of biological resources on the date of enactment of the Bill, specific provisions will be made in the rules.
- 3.32 In section 3(1) of the proposed Bill, term “obtain” is to be replaced by term “access”.
- 3.33 In the proposed amendments, prior approval of NBA is required for access to biological resources and associated knowledge for commercial utilization or for patents in the event of company falling under foreign controlled company category. Otherwise, if they fall under category of company referred under Section 7, they have to seek prior approval of the State Biodiversity Board for commercial utilization of biological resources and associated knowledge. The approval of NBA would be granted only after obtaining consent from providers of the bioresources through Biodiversity Management Committees as required under Section 41(2) of the Act. Hence, Bill does not violates sovereignty of local community and Article 5, 6, 7 and 12 of Nagoya protocol.
- 3.34 Any biological resources obtained from repositories outside India may be considered for inclusion as the Biological Diversity Act, 2002 regulates the biological resources, which are obtained from, or occurring in India. The inclusion of these words would cover the biological resources, which were accessed from India but presently are lying outside India e.g. microorganisms deposited with the repositories. This will also help in controlling bio-piracy.
- 3.35 MoEFCC further clarified in the matter as follows:-
- 3.36 Mere possession of the biological resource is not a regulated activity until it is used for research or commercial utilization. There can be commercialisation of already possessed research outcome where the provision may get attracted at the time of commercialisation. clarificatory provision would be made in Rules and Regulations of the Biological Diversity Act.
- 3.37 Further in regard to the suggestion that the use of word ‘possession’ in the definition of the word “Access” will lead to undue harassment in the form of raids, notices etc. and that the word ‘obtain’ word should be used in place of term ‘possession’, MoEFCC has stated in its written reply that the the definition of access is covering the term, “obtain” and hence inclusion of word “obtain” may not be required. Further, the mere possession of the biological resource is not a regulated activity until it is used for research or commercial utilization. Further clarification would be provided in Rules and Regulations of the Biological Diversity Act, 2002.

Suggestion of the Ministry of Law and Justice (Legislative Department)

3.38 MoEFCC has stated in a written submission to the Committee that it accepted the following suggestion of the Ministry of Law and Justice(Legislative Department)

“In 2(a) for the words associated traditional knowledge thereto the words“traditional knowledge associated thereto” shall be substituted”.

Observations/ Recommendations of the Committee

3.39 The Committee note that Procurement, possession and collection are forms of access which have been mentioned in the definition of access. In this regard, the stake holders have sought clarifications as to how the companies, which are already in possession of any biological resource on the date of enactment of this Act, will give prior intimation to SBB. In its response to such doubts, the Ministry of Environment, Forests and Climate Change has stated that mere possession of the biological resource is not a regulated activity until it is used for research or commercial utilization and that specific provisions will be made in the rules in cases of companies which are already in possession of biological resources on the date of enactment of the Act. In this regard, the Committee hope that the relevant rules will be framed within six months of the enactment of the law.

3.40 In view of the suggestion made by the Ministry of Law and Justice, definition of the term “access” may be read as under:-

2(a) “access” means collecting, procuring or possessing any biological resource occurring in or obtained from India or traditional knowledge associated thereto, for the purposes of research or bio-survey or commercial utilisation;

(Recommendation No.2)

Clause 3 : Substitution of sub-section 2(a) of the Principal Act - Insertion of sub-section 2(aa)

(Modification of the definition of "benefit claimers")

Provision in the Principal Act

3.41 Clause as per the Principle act is as under:-

a) “benefit claimers” means the conservers of biological resources, their by-products, creators and holders of knowledge and information relating to the use of such biological resources,innovations and practices associated with such use and application;

Amendment Proposed in the Bill

b) (aa) “benefit claimers” means the conservers of biological resources, their by-products, creators or holders of associated traditional knowledge thereto (excluding codified traditional

knowledge only for Indians) and information relating to the use of such biological resources, innovations and practices associated with such use and application”.

Rationale for the proposed amendment

- 3.42 On the request of AYUSH Ministry, excluded codified traditional knowledge only for Indians from the purview of Act for Indians only to encourage Indian medicine system

Gist of suggestions received from SBBs/ State Governments/ BMCs

State Government of Goa

- 3.43 "BMCs have objected to the exemption to traditional knowledge/wisdom from purview of the act, exemption of cultivated medicinal plants (it will be difficult to track the origin of resources whether wild or cultivated)"

Bihar Biodiversity Board:

- 3.44 "In the existing BD Act 2002, access to traditional knowledge is regulated without any distinction of being codified or otherwise. However, Section 2(aa) of the proposed Bill provides for certain exemptions concerning 'codified traditional knowledge only, for Indians'. In the preamble of the bill itself, it is 'benefit claimers' clarified about the need to implement the FEBS whereas, the Nagoya Protocol 2010 does distinguish between codified and uncoded traditional knowledge. Such traditional knowledge can be particularly valuable to companies who can use it to guide them to plants, animals and microbes that are already known to indigenous and local communities for having useful properties. If holders of codified traditional knowledge are no longer seen as benefit claimers, it can lead to situations where this knowledge is used for developing commercial products, without obtaining consent or sharing the benefits of such utilisation with the local communities. Under the proposed authorisation from the relevant SBB is not required if the traditional knowledge in question is codified. So, if these amendments come into force, companies registered in India will be able to use such traditional knowledge for manufacturing high valued drugs without seeking prior authorisation from the state boards and also companies won't share any benefits to the traditional communities arising out of such utilization. amendments, prior For codification, it may be necessary that such traditional knowledge is translated into all languages in the eighth schedule of the Constitution. Also, the Bill must provide a list of ancient literature where the traditional knowledge is codified along with a translation of such literature in English. Even then there is scope for ambiguity given the Country's existing Written/codified in diverse formats. The traditional knowledge is codified and preserved for centuries by the concerned and they are supposed to be benefitted from the FEBS instead of taking away the FEBS. Moreover, if excluded citing the reason of codified knowledge under section 7, then it gets excluded from sections also and there is no need to share the benefits under diverse traditional knowledge FEBS. Also, a mere entry in PBR qualifies under the "codified term traditional knowledge" the resources/ knowledge gets automatically exempted from FEBS. Hence it is requested that the term "excluding codified traditional knowledge" may be deleted"

Chattisgarh Biodiversity Board:

- 3.45 "Several amendments proposed in the BD (Amendment) Bill, 2021 directly impact the powers of the SBBs to regulate Indian entities. In particular, we would like to point to amendments to the definition of "benefit-claimers" (introduction of definition as 'aa'), Section 4, and the proviso in

Section 7 (1). These sections directly impinge on powers of the SBBs that have led the process of bringing a large body of AYUSH and other manufacturers of commercial products through the access of codified traditional knowledge under the legal obligations of ABS

- 3.46 In the present Act, State Governments, through the SBBs, have the powers to appraise and monitor this access and lay down terms and conditions, keeping conservation and sustainable use in mind. The SBBs also facilitate fair and equitable benefit sharing (FEBS) agreements. This is very important for a state like Chhattisgarh, where knowledge related to the use of medicinal plants, seeds, and even nutrition, even though codified, can be directly attributed to tribal and other local communities. There is absolutely no justification for a complete exemption of any sector from the purview of the BD Act, 2002, as the law does not prohibit any use. Its only aim is to ensure that the access does not cause undue stress on a resource and does not disenfranchise the holders or associated knowledge. Therefore, the regulatory and monitoring role of the SBBs is essential in the case of AYUSH and other industries using biodiversity and associated knowledge."

Tripura Forest department:

- 3.47 "Every codified knowledge will be outside the purview of Act. All users of Ayurvedic and Unani knowledge will be out of purview of Act and they don't require to pay any charges as it exist presently. If we extend the definition of codification, Everything mention in Peoples Biodiversity Register may also be considered as codified and in this way, everyone will be exempted. If so, question of benefit sharing may not arise in future. Ministry may reconsider exclusion"

Maharashtra State Biodiversity Board

- 3.48 Benefit claimers" should not exclude codified traditional knowledge, either for Indians or foreign companies. Access Benefit Sharing (ABS) is as miniscule as 0.1% to 0.3% of the current gross ex-factory sale of product. This monetary incentive to (codified traditional knowledge) Biodiversity Management Committees, who are custodians of Peoples Biodiversity Register (PBR) facilitated. conservation and sustainable management. biodiversity Traditional included Peoples Biodiversity Register which captured indigenous wisdom of tribals of and local villages. Distributed justice, therefore warranted them their fundamental entitlement on account of their contribution towards preservation of traditional knowledge.

Assam State Biodiversity Board

- 3.49 The inclusion of the sentence "excluding codified traditional knowledge only for Indians" needs more clarity. It may be noted that most of all traditional knowledge use in the AYUSH systems of medicines are codified. If they are excluded from claiming benefits, majority of local traditional knowledge holders will be denied their benefits, which will impact the mandate of the Act in terms of fair and equitable sharing of benefits arising out of the use of biological resources and associated traditional knowledge. And, if a TK is registered in the PBR, then it may also be taken as 'codified' and thus will be exempt from the purview of the Act. These anomalies are required to be addressed.

Andhra Pradesh State Biodiversity Board

- 3.50 In section 2(i)(a) the substitution of the word "access" means collecting, procuring or possessing any biological resource occurring in or obtained from India or associated knowledge there to, for the purpose of research or bio survey or commercial utilization is essential and helpful in implementation of the provisions of the Act more effectively.

Madhya Pradesh BMC

- 3.51 The proposed amendment in the definition of “benefit claimer” excludes codified traditional knowledge (TK). provision 'aa' added under section 2 in the Bill, the available benefits will not be transferred to the benefit claimers. As Ayurveda in India is a codified traditional knowledge and most of the companies using herbs make medicines related to Ayurveda. In such circumstances the people who are supplying biological resources to them will no longer be considered as benefit claimers and will no longer be a part of the equitable sharing of benefits that arise out of the section 21 of the Act.

Uttrakhand BMC

- 3.52 In the definition of "access" after the words "**commercial utilisation**", the words "**or personal use**" should be included
- 3.53 Definition for the word "**codified traditional knowledge**" should be inserted.
- 3.54 It should be explained when codified, by whom, where codified and how codified.
- 3.55 Currently, as mandated by the Act, traditional knowledge is being registered in the People's Biodiversity Registers which entitles the people to claim a share of any benefits accrued out of it. It should not be regarded as codified. This is in consonance with the spirit of the Act and the objectives of the Biodiversity Convention to which India is a proud signatory.

Gist of suggestions received in the form of Memoranda

- 3.56 'Codified traditional knowledge only for Indians' is scientifically and legally vague. The amendment discriminates between codified and oral traditional knowledge.
- 3.57 The exclusion of codified traditional knowledge is meant to have unchecked commercialisation, without even having to engage in benefit sharing.
- 3.58 It is unclear if the documented traditional knowledge from the years of implementation of the Biological Diversity Act in the form of PBRs or Traditional Knowledge Digital Libraries is being equated with codified traditional knowledge or not.
- 3.59 Amendment may lead to loss of traditional knowledge, traditional medicine and medical practice and healing as it undermines as well as overrides the traditionally existing codified systems of healing and medication such as Ayurveda, Unani, Sidda and other indigenous/tribal tradition rooted codification/ registration of biodiversity. Disempower, disincentivise and circumvent ongoing processes of documentation of endangered traditional knowledge.
- 3.60 The Exclusion of Codified Traditional Knowledge (only for Indians) from the definition of ‘benefit claimers’ is detrimental to the interest of farmers, forest dwellers and conservers
- 3.61 The expression ‘holders of knowledge’ has been replaced by ‘associated traditional knowledge’. The Bill or the Act does not mention as to what constitutes associated traditional knowledge.
- 3.62 The exceptions extended towards AYUSH practitioners should ideally be extended to the AYUSH industry too which sustains the reach and practice of this traditional system of medicines in its true essence.

Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) is as under-

- 3.63 The Amendment Bill 2021 exempts Hakims, Vaidis, registered practitioners etc., from the purview of act but not the AYUSH industry because the industrial profit cannot be permitted without

ensuring fair and equitable sharing in terms of ABS as the objective is conservation and sustainable use of the biodiversity.

3.64 MoEFCC also furnished the following written comments in regard to queries on the suggestions made by various stake holders:-

- a. “The Codified Traditional Knowledge has been proposed for exclusion from the definition of benefit claimers to benefit AYUSH Industry. Codified Traditional Knowledge would be defined in the Act itself as “The Codified Traditional Knowledge are those listed in First Schedule of the Drugs & Cosmetics Act, 1940 and Traditional Knowledge Digital Library, only.” In the proposed amendments, “The Codified Traditional Knowledge” has been proposed for exclusion from the definition of “benefit claimers” under section 2.
- b. The Act intends to enhance livelihood of the tribal /local communities who are preserving the traditional knowledge over centuries by transferring a small portion of benefits that are gained by the industries who use such traditional knowledge. AYUSH industry would be benefited by granting exemption to Codified Traditional Knowledge”.
- c. Further during Clause by Clause consideration of the Bill by the Committee, MoEFCC submitted that the definition of ‘Codified Traditional Knowledge will be defined as below in the Bill:-
“2(ea) codified traditional knowledge means the knowledge derived from authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940)”.

Suggestion of the Ministry of Law and Justice(Legislative Department)

3.65 MoEFCC has stated in a written submission to the Committee that it accepted the following suggestion of the Ministry of Law and Justice(Legislative Department)

2(aa) for the words associated traditional knowledge thereto the words “traditional knowledge associated thereto” shall be substituted

Observation/recommendation of the Committee

3.66 The Committee note that the “benefit claimers” mean the conservers of biological resources, their by-products, creators or holders of associated traditional knowledge thereto (excluding codified traditional knowledge only for Indians). In this regard, the Committee note the observations made by the State Bio diversity Boards that most of all the traditional knowledge being used in the AYUSH systems of medicines are codified. If they are excluded from claiming benefits, majority of local traditional knowledge holders will be denied their benefits. Moreover, if a Traditional Knowledge is registered in the People Biodiversity Register, then it may also be taken as 'codified' and thus will be exempted from the purview of the Act. In this regard, the Committee note that the Ministry proposes to incorporate a definition of “Codified Traditional Knowledge” in the Act itself as “ Codified traditional knowledge means the knowledge derived from authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940”’. In this regard, the Committee recommend that another

clause (ea) containing the above definition on 'Codified Traditional Knowledge' may be incorporated after the clause (e) in section 2 of the principle act on "definitions".

3.67 In view of the suggestion made by the Ministry of Law and Justice, definition of the term "benefit claimers may be as under:-

2(aa) "benefit claimers" means the conservers of biological resources, their by-products, creators or holders of traditional knowledge associated thereto (excluding codified traditional knowledge only for Indians) and information relating to the use of such biological resources, innovations and practices associated with such use and application;"

(Recommendation No.3)

Substitution of sub-section 2(c) of the Principal Act

Provision in the Principal Act

3.68 Clause 2 (c) of the Principal Act read as under:

- a) "(c) "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

3.69 **Amendment Proposed in the Bill:**

'(c) "biological resources" include plants, animals, micro-organisms or parts of their genetic material, derivatives (excluding value added products), with actual or potential use or value for humanity, but does not include human genetic material;

Rationale for the proposed amendment

3.70 Most of the by-product does not attract ABS, however if such by-products are used as raw material for deriving a molecule or unrecognisable derivative, then ABS is applicable. Therefore, the by-product is replaced with derivative. Further, the 'derivative' is clearly defined in the Nagoya protocol and has broad meaning including by-products.

A gist of suggestions received from SBBs/ Sate Governments/ BMCs is as under-

Maharashtra State Biodiversity Board

3.71 "By-products" should not be excluded, even though, Derivatives' of bio products may be added. Exclusion of By products would limit the extent of application of Act'

Assam State Biodiversity Board

- 3.72 The substitution of the word '*derivative's* in place of '*by-products*' is not feasible as the term '*By-products*' is more commonly used and easily understandable by local people.

Madhya Pradesh BMC

- 3.73 In the proposed amendment clause 'c' added under section 2 to the Bill, 'by-product' has been change with 'derivatives'. The term derivatives which has been defined as naturally occurring biochemical compound or metabolism of biological resources even if does not contain functional units of heredity is more complex and can create ambiguities.

Uttrakhand BMC

- 3.74 There should be both words by products and derivatives.

A gist of suggestions received in the form of Memoranda on clause 2 (c)

- 3.75 The proposed amendment introduced the term “derivative” in the definition of “Biological Resources”, instead of “by-product”, which is well acceptable.
- 3.76 Value Added Product(VAP) have been excluded from the definition of biological resources (Sec 2 (c)), thus exempted from provisions of the Act. However, NBA/SBB are not considering oleoresins, spice oils and products as value added products, whereas these should be treated as VAPs and are to be exempted from levying of ABS.
- 3.77 NBA has not provided an exhaustive list of Value Added Products for exemption under Sections 2(c) and 2(p) of the Act.
- 3.78 Alongwith the word “derivatives”, the word “and by products” may be included.
- 3.79 Value Added Product(VAP) have been excluded from the definition of biological resources (Sec 2 (c)), thus being exempted from provisions of the Act. Oleoresins and spice oils, which are value added products are not being considered as VAP and are being subjected to the BD Act. These need to be treated at par with the other spice products as long as this comes from normally cultivated crops exempted as per Section.

Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC)

- 3.80 The definition is aligned with CBD/Nagoya Protocol
- 3.81 The word 'derivatives' is a broad term, which also includes by-products and therefore it is more appropriate, which is not having any negative effect on by-products which is used in the Act. There is confusion amongst the stakeholders about the interpretation of the Value Added Product (VAP). The use of biological resources either individually or combination of more than one biological resources for commercial utilization would also require approval of NBA. However, the stakeholders had their perception in other way around on Section 2(p) of the Act and claiming exemption from the Act. Considering these, the retaining of VAP in the definition of biological resources would lead to further confusion to the stakeholders and hence, it has been replaced with the term 'derivative'.
- 3.82 Further clarification on benefit sharing/exemptions of various biological products such as oleoresins, spice oils and spices products would also be explained in Rules/ Guidelines.
- 3.83 The exemption of Normally Traded as Commodities would be done in Section 40 of the Amendment Bill and would also be clarifying on benefit sharing of various biological products in Rules/ Guidelines, especially on final value-added finished product.

Suggestion of the Ministry of Law and Justice(Legislative Department)

3.84 MoEFCC has stated in a written submission to the Committee that it accepted the following suggestion of the Ministry of Law and Justice(Legislative Department)

“In clause 3, In Section 2 of the principal Act in clause (c) after the words “or parts of their genetic material, for the punctuation (,) the words “and” be substituted”.

Observation/recommendation of the Committee

3.85 In view of the suggestion made by the Ministry of Law and Justice, definition of the term “biological resources may be as under:-

“(c)“biological resources” include plants, animals, micro-organisms or parts of their genetic material and derivatives (excluding value added products), with actual or potential use or value for humanity, but does not include human genetic material”.

(Recommendation No. 4)

Insertion of new sub section 2(fa) (derivative)

Provision in the Principal Act

3.86 A new sub section 2(fa) on derivative was inserted.

3.87 **Amendment Proposed in the Bill:**

a) (iv) after clause (f), the following clause shall be inserted, namely:—

b) ‘(fa) “derivative” means a naturally occurring biochemical compound or metabolism of biological resources, even if it does not contain functional units of heredity”

Rationale for the proposed amendment

3.88 Adopted the definition of derivative as defined in the Nagoya protocol

Gist of suggestions received from SBBs

Bihar State Biodiversity Board

3.89 The new section 2 (fa) proposed defines the derivative as "derivative means a naturally occurring biochemical compound of a biological resource, even if it does not contain functional units of heredity

3.90 The NGT has clarified that the presence of heritable genetic material is essential to the makeup of a biological resource. Inclusion of the term "even if it does not contain functional units of heredity" may enlarge the scope of the Act, diluting its primary focus. So, the definition of derivative as given in the Nagoya protocol may be substituted with."

West Bengal State Biodiversity Board

3.91 Word 'derivative' should be defined as per Nagoya Protocol

Gist of suggestions received in the form of Memoranda

3.92 The word "derivatives" needs to be redefined to make it clear that products obtained after value addition are excluded from this definition

Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC)

3.93 As the word 'derivatives' is a broader term, it also includes by-products therefore the amendment does not change the position of the by-product

Substitution of sub-section 2(d) of the Principal Act

3.94 **Clause as per the Principal Act**

(d) "bio-survey and bio-utilisation" means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterisation, inventorisation and bioassay;

3.95 **Amendment Proposed in the Bill:**

a) (d) "bio-survey" means survey or collection of any taxa, varieties, genes, components and extracts of biological resource for any purpose;'

Rationale for the proposed amendment

3.96 Included the taxa and varieties, along with species to bring more biodiversity under bio-survey

Gist of suggestions received from SBBs

Maharashtra State Biodiversity Board

3.97 'Bio-utilisation should not be excluded, as that would practically exclude all the commercial enterprises utilizing biological resources' Indirectly that would lead to deregulated utilization of biological resources, which would be detrimental to the conservation of biological diversity.

Bihar State Biodiversity Board

3.98 In Section 2 (d) the term bio utilisation has been removed which includes characterisation, inventorisation and bioassay. Hence this may be included in the definition along with the sub-section Bio survey and Bio utilisation or with the subsection research and should be retained.

Assam State Biodiversity Board

3.99 The word "Bio utilization" is dropped from the sentence. This omission will give exclusion to the bio technology industries which are also major commercial users of biological resources.

Odisha Biodiversity Board

- 3.100 Bio survey and Bio-utilization may include "characterization, inventory and bioassay".
- 3.101 Any scientific research on Biodiversity includes inventory, assessment and characterization of organisms which may lead to commercial utilization. Various individuals, institutions/organizations conduct scientific research including publication and marketing of their products or findings.

Madhya Pradesh BMC

- 3.102 In the proposed amendment clause 'd' added under section 2 the term “bio-utilization” has been removed. ‘Bio utilization’ is an important term for the Act because most of the Bio tech companies and bioresource based manufacturers use bio resources for the ultimate aim of bio-utilization to create a product, therefore removing it might reduce the ambit of the Act.

Gist of suggestions received in the form of Memoranda

- 3.103 The word "bio utilization" should be deleted from the Bill wherever it is mentioned as the same has been removed from the definition of “bio-survey”.
- 3.104 Removal of bio-utilization implies that anyone who makes use of bio resources for bio-utilization would not need to comply with the Act.
- 3.105 Gene should be changed to genome.
- 3.106 Definition of ‘bio-survey’ be amended as follows: (d) “biosurvey” means survey or collection of any taxa, varieties of in situ origin (including populations of both wild and domesticated species), genes, components and extracts of biological resources for any purpose.
- 3.107 Amendment creates an ambiguity whether access of biological resources (or associated traditional knowledge) for the purposes of characterisation, inventorisation and bioassay, as originally included in the Act, would be regulated anymore. We recommend including the terms characterisation, inventorisation and bioassay in definition of research in 2(m)-

Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC)

- 3.108 Bio-survey definition is already given in 2 (d) and it will be retained status-quo, which also includes the word bioutilisation, therefore, characterisation, inventorisation and bioassay, as originally included in the Act would also be retained in the form of bio-utilization.
- 3.109 Initially Department of Biotechnology had requested exemption to approvals for research conducted by foreigners while accessing India’s bio-resources outside country. However, the exemption was not accepted by Cabinet meeting held in December 2021. This is the reason why bio-utilization was retained without amending in Section 3 of the present Act. The definition of bio-utilization may be retained and *status quo* and modified 19 (1) as “Any person referred to in sub-section (2) of section 3 who intends to access biological resource or associated traditional knowledge thereto for **bio-survey, bio-utilization and** commercial utilization, shall make an application to the National Biodiversity Authority, in such form and on payment of such fee, as may be prescribed” to bring more clarity.
- 3.110 Gene is a basic unit of heredity and genome is the complete chromosomal set of the species. Therefore, the word gene should be retained.
- 3.111 During oral evidence of the representatives of the Ministry of Environment, Forest and Climate Change on 19 April, 2022, they submitted the following information to the Committee:-

3.112 Bio-utilisation is a kind of high end research which includes isolation of components, characterization, inventerisationetc, generally used in biotechnology and agriculture sectors. Whereas “commercial utilization” is a process of using biological resources for commercial purposes.

3.113 As Sec 7 - Indian entities do not require approvals for research, only, 3 (2) entities has to take approvals for research from NBA.

3.114 Therefore, for more clarity the term bio-utilisation may be retained in the definition in 2 (d) along with bio-survey and terms “bio-survey and bio-utilization” may also be retained in Section 19 (1) (Chapter V) along with term “commercial utilization”, since 3 (2) entities any how has to take approval of NBA for research as per Bill. (Chapter V is “Approval by NBA”)

Observation/recommendation of the Committee

3.115 **The Committee note the submission of the Ministry that bio-utilisation is a kind of high end research which includes isolation of components, characterization, inventerisation etc, generally used in biotechnology and agriculture sectors. Whereas “commercial utilization” is a process of using biological resources for commercial purposes. Moreover, as per Sec 7 - Indian entities do not require approvals for research, only, Section 3 (2) entities have to take approvals for research from NBA. The Committee, therefore, recommend that the term bio-utilisation may be retained in the definition in sub section 2 (d) along with bio-survey and terms “bio-survey and bio-utilization” may also be retained in Section 19 (1) (Chapter V) along with term “commercial utilization”, since 3 (2) entities any how have to take approval of NBA for research as per Bill.**

(Recommendation No. 5)

**Insertion of new clauses after clause (g)
(sub-clause (ga) - folk variety,
sub-clause (gb) - India and
sub-clause (gc) - landrace)**

Provision in the Principal Act

3.116 New sub clauses (ga), (gb) and (gc) were inserted.

3.117 Insertion of new clauses after clause (g)

Amendment Proposed in the Bill:

3.118 a(v) after clause (g), the following clauses shall be inserted, namely:—

‘(ga) “folk variety” means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;

(gb) “India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory;

(gc) “landrace” means primitive cultivar that was grown by ancient farmers and their successors;’

Rationale for the proposed amendment

- 3.119 (ga) New definition added which was initially defined in Section 41 (2) of original act.
- 3.120 (gb) Definition of India has been adopted as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, and the air space above its territory. With this there is a provision to designate conservation areas in EEZ also
- 3.121 (gc) New definition added which was initially defined in Section 41 (2) of original act.
- 3.122 Based on the proposal of the Ministry of Agriculture, definition of folk variety and landrace has been included in order to have consonance with Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPV&FRA, 2001).

Suggestion by Odisha Biodiversity Board

- 3.123 "Folk varieties" may include "Domesticated Many animals" also.
- 3.124 Many individuals/farmers/cultivators etc. also breed domesticated animals conventionally to develop new varieties and breeds of domesticated animals (Cows, Dogs, Fowls, Buffaloes, etc.). Hence Animals may be included in Folk varieties.

Gist of suggestions received in the form of Memoranda

- 3.125 The addition of (ga) and (gc) are colonial constructs that allow the Seed Corporations to pirate the varieties farmers have bred, deny farmers breeding, and claim the traits that farmers have bred as "invented" by the Corporations. The Amendment is naturalizing Biopiracy, instead of preventing it.
- 3.126 Amendment seems to include with a view to extend the enforceability of BD Act to Exclusive Economic Zone and the air space.

Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) is as under-

- 3.127 The rights that are already covered under PPVFRA are not dealt within this Act.
- 3.128 The definition of "India" is taken as per the Constitution of India.
- 3.129 The rights that are already covered under PPVFRA are not dealt within this Act.

Insertion of new clause after clause (i) (Member Secretary)

- 3.130 **Clause as per the Principle act is as under:-**

Insertion of new clause after clause (i)

- 3.131 **Amendment Proposed in the Bill:**

(vi) after clause (i), the following clause shall be inserted, namely:—

“(ia) “Member-Secretary” means the full time Secretary of the National Biodiversity Authority, or of the State Biodiversity Board, as the case may be.

Rationale for the proposed amendment

3.132 Administrative matter – the Secretary of NBA has been included in the Act in line with CPCB

A gist of suggestions received in the form of Memoranda on the clause is as under-

- 3.133 There isn't any convincing reason to insert Section 2(ia) in the law that deals with "Member-Secretary", a new position.
- 3.134 It will create a conflict with the powers of the Chairperson as Chairperson is generally a Scientist and Secretary is a bureaucrat posted by Government.
- 3.135 Authorization of two officers for authentication of orders may lead to complications, especially if there is any difference of opinion in any given case.
- 3.136 Signature of the Member Secretary would be enough to pass which will give more importance to the position of the Secretary of the NBA and could put to rest the constant tug-of war between the Chairman and Secretary positions.
- 3.137 Giving statutory recognition to the post of the Member Secretaries could allow the Central Government to wield more power in the functioning of the NBA with its own appointees.

Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) is as under

- 3.138 The Secretary of NBA has been included in the Act on par with Central Pollution Control Board.
- 3.139 Member Secretary, apart from discharging the functions of a Secretary, he/she is an important regulatory and administrative functionary of NBA and hence has been made part of decision making by the Authority by incorporating in the Bill.
- 3.140 Other Central Regulatory Bodies like Pollution Control Boards, Commission for Air Quality Management and National Tiger Conservation Authority has the concept of specifying the role of Secretary in the rules and this is not the new concept.

Clause 4-Amendment of heading of Chapter II

Chapter heading in the principal Act

“REGULATION OF ACCESS TO BIOLOGICAL DIVERSITY”

Amendment Proposed in the Bill

- 3.141 “In chapter II of the principal Act, in the Chapter heading, for the word “Diversity”, the word “RESOURCES” shall be substituted.”

Rationale for the amendment

3.142 The Act regulates the access to biological resources and hence the said change has been proposed being the most appropriate term in accordance with the scope of the Act.

Clause 5-Amendment of section 3

(Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority)

Provision in the principal Act

3.143 " (2) The persons who shall be required to take the approval of the National Biodiversity Authority under sub-section (1) are the following, namely:-
(c) a body corporate, association or organisation:-
(ii) 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."

Amendment proposed in the Bill

3.144 " (a) in sub-section (2), in clause (c), for sub-clause (ii), the following sub-clause shall be substituted, namely:—
“(ii) incorporated or registered in India under any law for the time being in force, which is a foreign controlled company.”;
(b) the following Explanation shall be inserted, namely:—
Explanation.—For the purposes of this section,—
a) “associated knowledge” shall include traditional knowledge or contemporary knowledge in any form relating to the biological resources;
b) “foreign controlled company” means a foreign company within the meaning of clause (42) of section 2 of the Companies Act, 2013 which is under the control of a foreigner"

Rationale for the amendment

3.145 According to the Ministry the amendment has been proposed to align the Act with the definition already given in the Companies Act, 2013 which was formed much later than the Biological Diversity Act, 2002 and promotion of Research and investments.

Gist of suggestions received from stakeholders

3.146 “Foreign Controlled Company” is not defined as per Companies Act, 2013.

3.147 “ Not foreign controlled company. It should be foreign company”

Gist of suggestions received from SBBs

Maharashtra State Biodiversity Board:

3.148 "*foreign controlled company*" would give leeway to foreign companies, thereby safely distancing themselves from mandated ABS obligation. No change therefore should be made.

Bihar State Biodiversity Board

- 3.149 "For the term "*foreign-controlled company*" the definition of section 2(42) of the Companies Act, 2013 is given as an explanation. This section defines the foreign company as the one which is incorporated outside India. So, the concerned section of the proposed Bill will have the definition with both the opposite meaning like "incorporated or registered in India as well as incorporated outside India". Hence it needs to be deleted."

Assam State Biodiversity Board:

- 3.150 "The inclusion of the '*foreign controlled company*' needs better clarity."

Andhra Pradesh State Biodiversity Board

- 3.151 The explanation incorporated on the term 'foreign controlled company' makes it clear regarding the application of this clause and enables the implementation more effectively.

Madhya Pradesh BMC

- 3.152 In the proposed amendment in sub-section (ii) of clause (c) of sub-section (2) of section 3, a foreign controlled company has been added. "foreign controlled company" means a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 which is under the control of a foreigner, in such a situation, if a foreign company using biological resources gets itself incorporated / registered in India, then it will not need to take the approval of NBA as well as an Indian company in which non-Indian partnership or have a non-Indian participation in its share capital and management will also not require approval. This will make it easier for MNCs to access India's biological resources as all companies will claim to be 'Non-Foreign Companies' as long as they are registered in India and will not require any prior approval, for this they will have to deal with foreign management and Even though the shareholders will have to be registered only in India. This amendment will defeat the very purpose of Section-3 because such multinational companies will exploit India's biological resources with the help of Make in India program.

Uttarakhand BMC

- 3.153 This distinction between the "**foreign Controlled companies**" and other companies should be omitted.
- 3.154 The corresponding sections of the original act may be retained.
- 3.155 There are good numbers of Indian companies with foreign participation in share capital and management besides the "foreign controlled companies" as defined in the proposed amendment.
- 3.156 The requirement of not being able to directly seek prior consent of the National Biodiversity Authority enhances the difficulties of the former because this entails approaching the various State Biodiversity Boards and will necessitate the State Boards to frequently contact the other State Boards within the area of operation of the concerned companies.
- 3.157 The National Biodiversity Authority being the chief coordinating agency at the national level can do the job of according the prior consent more effectively and swiftly.

Comments of MoEFCC

3.158 The objective of changing the definition of foreign entity is to bring uniformity with the Companies Act, 2013, which was formed much later than the Biological Diversity Act, 2002 and to maintain uniformity across the legislations. It is stated that under the proposed amendment bill, as far as the patents are concerned, only registration process has been introduced for Indian entities, to encourage local companies while making the process comparatively simpler for them than the foreign companies.

3.159 MoEFCC in its written reply to questions raised on the matter furnished the following information:-

a) “The objective of changing the definition of foreign entity is to bring uniformity with the Company Act 2013, which was formed much later than Biological Diversity Act, 2002. It is stated that under the proposed amendment bill, as far as the patents are concerned; only registration process has been introduced for Indian entities, to make the process simpler. The proposed change in the definition of foreign entity does not waive any approvals in the Act. According to their status under Companies Act, prior approval of NBA is required for access to biological resources and associated knowledge for commercial utilization or for patents in the event of company falls under foreign controlled company category. Otherwise, if they fall under category of company referred under Section 7, they have to seek prior approval of the State Biodiversity Board for commercial utilization of biological resources and associated knowledge. Change in the definition of foreign entity has been proposed to synchronize the Biological Diversity (Amendment) Bill, 2021 with the Companies Act, 2013 and to maintain uniformity across the legislations. Therefore, companies with foreign shareholding would be regulated and monitored, as appropriate”.

3.160 The Committee also brought to the attention of the Ministry to the observation of the stake holders that Companies Act, 2013 does not define “Foreign Controlled Company” and that the correct term is “Foreign Company” defined under Section 2(42) of The Companies Act, 2013. Further, the Ministry was also requested to clarify whether the following Companies are required to take previous approval from the NBA under Section 3 (1) for obtaining any biological resources for research, commercial utilization and bio-survey:

- a. a company registered in India which has foreign shareholders;
- b. a company registered in India which has foreigners in its management;
- c. Foreign Company controlled by Indian

3.161 In regard to the above, MoEFCC in a written reply stated that according to the foreign shareholding pattern as per the Companies Act, 2013, companies would be termed as Foreign Controlled Company and such companies would come under the Regulatory Framework of NBA for commercial utilization and obtaining patent and rest of the companies would be regulated by the State Biodiversity Board (s). Foreign Controlled Company is well defined under Section 2 (27) and 2 (42) of the Companies Act, 2013.

3.162 2 (27) - “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

3.163 During oral evidence of the representatives of the Ministry of Environment, Forest and Climate Change on 19 April, 2022, the representatives of the Ministry informed the Committee as follows in regard to their response to the public comments that “Foreign Controlled Company” is not defined in Companies Act, 2013:

3.164 “The term “foreign controlled company” has been explained in the explanation given in the Bill. The term “foreign company” is defined in Section 2(42) of Companies Act, 2013. The term control is defined in Section 2(27) of Companies Act, 2013”.

Suggestion of the Ministry of Law and Justice(Legislative Department)

3.165 _MoEFCC has stated in a written submission to the Committee that it accepted the following suggestion of the Ministry of Law and Justice(Legislative Department)

In sub-section (2), in clause (c), for sub-clause (ii) , the following subclause shall be substituted, namely:- “(ii) incorporated or registered in India under any law for the time being in force, which is foreign controlled within the meaning of clause (27) of section 2 of the Companies Act, 2013 (18 of 2013).”

Observation/Recommendation of the Committee

3.166 **Since the Ministry of Environment, Forest and Climate Change has explained that the term “foreign company” is defined in Section 2(42) of Companies Act, 2013 and the term control is defined in Section 2(27) of Companies Act, 2013, which is also agreed to by the Ministry of Law and Justice, the Committee recommend that the clause 5 of the Bill, under Section 3, sub-clause 2(c)(ii) of the Principal Act, shall be substituted as follows:-**

“(ii) incorporated or registered in India under any law for the time being in force, which is controlled by any foreigner within the meaning of clause (27) of section 2 of the Companies Act, 2013 (18 of 2013).”

(Recommendation No. 6)

Clause 6- Substitution of new section for Section 4

(Results of research not to be transferred to certain persons without approval of National Biodiversity Authority)

Provision in the Principal Act

3.167 "No person shall, without the previous approval of the National Biodiversity Authority, transfer the results of any research relating to any biological resources occurring in, or obtained from, India for monetary consideration or otherwise to any person who is not a citizen of India or citizen of India who is non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961 or a body corporate or organisation which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management.

Explanation - For the purposes of this section, “transfer” does not include publication of research papers or dissemination of knowledge in any seminar or workshop, if such publication is as per the guidelines issued by the Central Government."

Amendment Proposed in the Bill

- 3.168 For section 4 of the principal Act, the following section shall be substituted, namely:—
“4. No person or entity shall share or transfer any result of the research on any biological resource occurring in, or obtained or accessed from, India or associated traditional knowledge thereto, for monetary consideration or otherwise, to a person referred to in sub-section (2) of section 3, without the prior written approval of the National Biodiversity Authority, except the codified traditional knowledge which is only for Indians:
a. Provided that the provisions of this section shall not apply if publication of research papers or dissemination of knowledge in any seminar or workshop involving financial benefit is as per the guidelines issued by the Central Government:
b. Provided further that where the results of research are used for further research, then, the registration with National Biodiversity Authority shall be necessary:
c. Provided also that if the results of research are used for commercial utilization or for obtaining any intellectual property rights, within or outside India, prior approval of National Biodiversity Authority shall be required to be taken in accordance with the provisions of this Act.”

Rationale for the amendment

- 3.169 As per the Ministry, the abovementioned amendments have been proposed to ensure that the local community and the society at large is fairly benefited if any outcome of any research, which has used India bio diversity resource, is used for the commercial purpose or for benefits by anyone.

Gist of suggestions received from stakeholders

- 3.170 The term “obtained or accessed” used in the section is not consistent with the definition of term “access” in Section 2(aa).
3.171 Transfer of codified traditional knowledge to foreign controlled companies and foreigners (as per Section 3 (2)(c)) should be permitted.
3.172 Explanation of the term “results of research” should be given.
3.173 There should be a definition of “results of research”
3.174 Requirement of registration with NBA for using results of research for further research will hamper research and innovation.
3.175 No Guidelines have been issued by the Central Government exempting publications.

Gist of suggestions received from SBB

- 3.176 In their comments to the Committee, the Bihar State Biodiversity Board have inter-alia submitted that the term 'codified traditional knowledge' either needs to be clarified or altogether deleted.

Gist of suggestions received from Uttrakhand BMC

- 3.177 It should be explained when codified, by whom, where codified and how codified.

Comments of MoEFCC

- 3.178 The term “obtained” is included in the definition of access in Section 2(aa).
3.179 Prohibition of transfer of result of research on codified traditional knowledge to foreigners/foreign controlled companies has been included for stopping biopiracy of Indian system of medicine.

3.180 Till date, NBA has not notified /issued any guidelines for publication of research papers or dissemination of knowledge in any seminar or workshop.

3.181 On being asked to clarify whether the transfer of result of research mentioned in Section 4 of the Bill, would include transfer of associated biological resources with the research, the Ministry submitted that the transfer of result of research would include transfer of associated biological resource and same will further be clarified in the rules.

Suggestion of the Ministry of Law and Justice(Legislative Department)

3.182 _MoEFCC has stated in a written submission to the Committee that it accepted the following suggestion of the Ministry of Law and Justice(Legislative Department) :-

“In Section 4 of the Bill for the words associated traditional knowledge thereto the words “traditional knowledge associated thereto” shall be substituted”.

Observation/recommendation of the Committee

3.183 **In view of the suggestion made by the Ministry of Law and Justice, the words ‘associated traditional knowledge’ may be read as under :-**

“No person or entity shall share or transfer any result of the research on any biological resource occurring in, or obtained or accessed from, India or traditional knowledge associated thereto, for monetary consideration or otherwise, to a person or body corporate referred to in sub-section (2) of section 3, without the prior written approval of the National Biodiversity Authority, except the codified traditional knowledge which is only for Indians:”

(Recommendation No. 7)

Clause 7- Amendment of section 5

(Section 3 and 4 not to apply to certain collaborative research projects)

Provision in the Principal Act

3.184 " 5 (1) The provisions of sections 3 and 4 shall not apply to collaborative research projects involving transfer or exchange of biological resources or information relating thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in sub-section (3)."

Amendment Proposed in the Bill

3.185 " In section 5 of the Principal Act, in sub-section (1): -

in marginal heading, for the words and figures “Sections 3 and 4”, the words “Certain provisions” shall be substituted.

(ii) for subsection (1), the following subsection shall be substituted, namely: -

“(1) The provisions of Section (a) of sub section (1) of section 3 shall not apply to non-commercial Collaborative research projects involving transfer or exchange of biological resource or associated traditional knowledge thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries. The National Biodiversity Authority can exempt non-commercial collaborative research projects, through notification from time to time.”

Rationale for the amendment

3.186 As per the Ministry there is a need to promote our knowledge, which will put India in better position at international platform. The amendment seeks to encourage collaborative research projects across Countries.

Gist of suggestions received from stakeholders

3.187 In section 5 of the Principal Act, in sub-section (1): -
in marginal heading, for the words and figures “Sections 3 and 4”, the words “Certain provisions” shall be substituted.

(ii) for subsection (1), the following subsection shall be substituted, namely:

“(1) The provisions of Section (a) of sub section (1) of section 3 shall not apply to non-commercial Collaborative research projects involving transfer or exchange of biological resource or associated traditional knowledge thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries. The National Biodiversity Authority can exempt non-commercial collaborative research projects, through notification from time to time.”

Gist of suggestions received from SBB

3.188 West Bengal Biodiversity Board has pointed out that this is not understood as there is no mention of Clause(a) of Sub-section (1) of Section 3 in the Principal Act.

Comments of MoEFCC

3.189 No need to substitute the change proposed by the stakeholder in the Section 5 of the Bill as the existing Guidelines for International Collaboration Research Projects involving Transfer or exchange of Biological Resources or information relating thereto between institutions including Government sponsored Institutions and such institutions in other countries, would be addressing the non-commercial collaborative research. Further these issues would be explained in rules and regulations.

Observation/ Recommendation of the Committee

3.190 **The Committee note that there is no clause (a) of sub-section (1) of section 3. The Committee recommend that the error in this regard may be looked into by the Ministry and suitable correction may be carried out in the Bill.**

(Recommendation No. 8)

Clause 8- Amendment of section 6

(Application for intellectual property rights not to be made without approval of National Biodiversity Authority)

Provision in the Principal Act

- 3.191 "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.
- a. 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:
 - b. Provided further that the National Biodiversity Authority shall dispose of the application for permission made to it within a period of ninety days from the date of receipt thereof."

Amendment Proposed in the Bill

- 3.192 "In section 6 of the principal Act,—
- a) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) Any person or entity applying for an intellectual property right, covered under sub-section (2) of section 3, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority before grant of such intellectual property rights.

c. (1A) Any person applying for any intellectual property right, covered under section 7, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall register with the National Biodiversity Authority before grant of such intellectual property rights.

d. (1B) Any person covered under section 7 who has obtained intellectual property right, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority at the time of commercialisation.”.

Rationale for the amendment

- 3.193 As per the Ministry the proposed amendments have been brought about on the request from the Department of Biotechnology, Ministry of Science & Technology as they felt that approval for research is creating delay in progressing research for Indian entities. They further submitted that the changes have been included to incorporate the changes made under Section 3 (2) of the Act. The Ministry further clarified that for Indian entities, approval of NBA is necessitated prior to commercial production also.

Gist of suggestions received from stakeholders

- 3.194 The bill is trying for legalising biopiracy by exempted NBA approval while applying for patents by Indian entities;
- 3.195 Intellectual Property Rights applications are processed without approval of local communities in the Bill.
- 3.196 The amendments are allowing global corporations and their Indian partners to establish monopoly and ownership through patents and Intellectual Property Rights on our local and national biodiversity and intellectual commons.
- 3.197 The amendments focus more on legalising and facilitating Biopiracy and promoting Intellectual Property Rights of Global Corporations based on our biodiversity and knowledge than protecting the Sovereign rights of India to her sovereign biodiversity wealth and intellectual heritage, and the rights of local communities who have conserved and regenerated this wealth.
- 3.198 Not only are the amendments giving away our national heritage to global corporations and their Indian partners, it is allowing them to establish monopoly and ownership through patents and Intellectual Property Rights on our local and national biodiversity and intellectual commons without approval and participation of local communities.
- 3.199 Materials in repositories outside India are governed under local laws of that country. So, NBA has no jurisdiction.
- 3.200 NBA does not have any jurisdiction outside India, which has been defined in Section 2(gc), besides it is not compliant with the preamble of the Act or the CBD or the Nagoya Protocol. The amendment shall only impede the campaigns like “Make in India” and “Ease of Doing Business.”

Comments from (MoEFCC)

- 3.201 The apprehensions are baseless and would be explained in rules and regulations. However, as per Guidelines for International collaboration, such transfer or approvals are exempted.
- 3.202 The exemption mentioned in Section 5(1) speaks of exemption for collaborative research only, where MoU between Indian institutes are entered. The Guidelines for International Collaboration Research Projects involving Transfer or exchange of Biological Resources or information relating thereto between institutions including Government sponsored Institutions and such institutions in other countries, would resolve the issues raised.
- 3.203 The Ministry of Environment, Forest and Climate Change further stated as follows to the suggestions/comments on the proposed amendment:-
- 3.204 As per the Nagoya Protocol, the user country measures insist the users to comply with the requirements of the provider country. The BD Act regulates the biological resources which are occurring in or obtained from India. Hence, access to materials in repositories outside India which has Indian origin is well within the scope of the BD Act. Permitting free access of Indian Biological Resources like microorganism obtained from India but have been deposited in foreign repositories would lead to biopiracy and hence cannot be accepted. NBA being the Competent National Authority should know the movement of Indian biological resources. For patents, Indian entities or scientists or local people can obtain patents by only registering with the NBA. However, approval is needed at the time of commercializing the patent. But the foreign company is required to get the approval of the NBA before grant of such patents. Hence, the amendment neither has any negative impact on research nor the same is against make in India etc., it is only to ensure that no one can access resources without knowledge so whenever anyone start use of such research output for commercial purpose, the sharing with local community can be ensured.

3.205 With respect to a query as to whether waiving off the time limit will lead to delay in processing of applications that may delay the process of grant of patent applications, the Ministry clarified that the timeline for granting approval for research, commercial utilization and third party transfer of biological resources have been provided in the Rules only. However, in the case of concerned patent, same timeline (90 days) has been provided in both Act and Rules. Hence, the timeline for granting approval to Patent has been deleted in the Act in order to have uniformity by keeping timeline for granting all approvals.

Provision in the Principal Act

3.206 6 (3) The provisions of this section shall not apply to any person making an application for any right under any law relating to protection of plant varieties enacted by Parliament.

Amendment Proposed in the Bill

3.207 In sub-section (3), the words “enacted by the Parliament” shall be omitted.

Rationale for the amendment

3.208 As per the Ministry the legal provision has been made clearly in line with PPVFRA Act

Gist of suggestions received from stakeholders

3.209 The Amendment in section 6(3) omitting “enacted by Parliament” is erosion of parliamentary democracy and Constitutional safeguards.

3.210 Deletion of the phrase ‘enacted by the parliament’ will mean that approval under BD Act will not be required for any person.

3.211 Entities which apply for PVC registration under the PPV&FR Act using Indian resources, can also apply for patents elsewhere without having to obtain prior approval from NBA. In the absence of such gate-keeping from NBA, and in the absence of any active surveillance mechanisms over the Patent Offices in other countries, this could lead to biopiracy of farmers’ varieties.

Comments of MoEFCC

3.212 In case of Indian entities, approval from NBA/SBB at the time of commercialization is required. They are required only to register with the NBA before grant of patent rights. The actual approval for patents would be given by the Patents office. If the Patent Office feels the need for further information, the same can be facilitated by NBA/SBBs.

3.213 All the Acts in the Country are enacted by the Parliament only and the phrase “enacted by Parliament’ is not required and thereby the same has been proposed for deletion and there is neither any legal implication nor the same is to undermine the esteemed highest institution which make all laws for the Nation.

3.214 Section 6 (3) of the existing BD Act has provided for exemption to persons who have taken approval under any law relating to the protection of plant varieties enacted by Parliament. The Section 3(2) persons are required to get prior approval of the NBA for obtaining patents outside India on inventions relating to biological resources including varieties as per section 6(1) of the BD Act and it would safeguard the bio-piracy issue. Under Section 18(4) of the BD Act, NBA on behalf of the Central Government is empowered to oppose the patent which are filed outside India without the approval of the NBA.

Clause 9- Amendment of section 7

(Prior intimation to State Biodiversity Board for obtaining biological resource for certain purposes)

Provision in the Principal Act

3.215 "No person, who is a citizen of India or a body corporate, association or organisation which is registered in India, shall obtain any biological resource for commercial utilisation, or bio-survey and bio-utilisation for commercial utilisation except after giving prior intimation to the State Biodiversity Board concerned:

Provided that the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and vaidas and hakims, who have been practising indigenous medicine."

Amendment Proposed in the Bill

3.216 "7. (1) No person, other than the person covered under sub-section (2) of section 3, shall access any biological resource and its associated knowledge for commercial utilisation, without giving prior intimation to the concerned State Biodiversity Board, subject to the provisions of clause (b) of section 23 and sub-section (2) of section 24:

Provided that the provisions of this section shall not apply to the codified traditional knowledge, cultivated medicinal plants and its products, local people and communities of the area, including growers and cultivators of biodiversity, vaidas, hakims and registered AYUSH practitioners who have been practicing indigenous medicines, including Indian systems of medicine for sustenance and livelihood.

(2) The manner of issuing certificate of origin for cultivated medicinal plants shall be such as may be prescribed."

Rationale for the amendment

3.217 According to the Ministry, the proposed amendments have been brought about to incorporate the orders of the Uttarakhand High Court in M/s Divya Pharmaceuticals. The Ministry have further stated that to protect farmer's interest and exempt people who have been practicing Ayurveda locally the exemptions were necessary but for rest the regulation is to continue to ensure the sustainable use of biodiversity.

3.218 On the issue of exemptions being granted to AYUSH Practitioners and cultivated medicinal plants the Ministry have stated that the same has been brought about on the request received from the AYUSH Ministry and that it will encourage locals to take up profession based upon their local knowledge and locally available resources, which will consequently improve their economic condition.

3.219 With respect to proviso regarding issuing certificate of origin for cultivated medicinal plants, the Ministry have submitted that this amendment has been proposed to help in tracking the origin of biological resources.

Gist of suggestions received from stakeholders

- 3.220 Indian controlled companies' cannot access or commercialise Indian BR without "prior intimation" and subsequent "approval" from State Biodiversity Board (Section 24). This will take a long time to get approval for commercialization and make business uncompetitive.
- 3.221 Proviso 1: One of the most significant changes in the new bill is that registered AYUSH practitioners who are performing indigenous medicine can now use any biological resource and its allied knowledge for commercial gain without notifying the state biodiversity board first. Allowing AYUSH medical practitioners to use biological resources without notifying SBB will help AYUSH industry. However, not safeguarding biodiversity loosening industry regulations could be harmful to the environment and go against the notion of sharing business rewards with indigenous populations.
- 3.222 Proviso 2: This will be an unnecessary burden on Industry as Traders treats the sources of bioresources a trade secret. Eventually, industry may have to pay ABS even on cultivated bio-resources.
- 3.223 Amendment undermines the regulation of commercial activities as specified in the first para. "Registered Ayush Practitioners" introduced in this amendment does not differentiate between body corporate engaged in commercial activities that needs approval from the State Biodiversity Board, and the local vaid and hakims, the practitioners of traditional medicine, who are exempted because they are part of a local community and they do not over exploit local biodiversity.
- 3.224 Exclusion of cultivated plants will lead to over exploitation of wild medicinal plants as it will be impossible to ascertain if a medicinal plant is cultivated or wild grown.
- 3.225 90 to 95 percent of bio-resources are not cultivated but forest produce procured from traders. Traders are out of purview of the Act but not AYUSH manufacturers.
- 3.226 The exemption being granted to cultivated medicinal plants will allow corporations to bypass the requirement for prior approval or share the benefit with local communities under the access and benefit-sharing provisions of the Act.

Gist of suggestions received from SBBs

(a) Maharashtra State Biodiversity Board:

- 3.227 "Codified traditional knowledge" should not be excluded. It would be impossible to distinguish cultivated medicinal plants from naturally available medicinal plants in forest, tribal areas, PESA, FRA, (IFR-CFR). in the absence of credible certification by the competent authority. Therefore, cultivated medicinal plants their products should not be excluded. 'Sustenance' and livelihood terms being vague could be subject to misinterpretation. They needed to be co-related to the annual income of registered practitioner. Therefore, Appropriate explanatory note should be provided to clarify."

(b) Bihar State Biodiversity Board

- 3.228 "The Amendment Bill exempts permission to obtain biological resources to those practising Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH). However, the Bill does not specify whether this exemption applies to individual practitioners or a company, or both.
- 3.229 The entire AYUSH Industry is dependent on medicinal plants, as it constitutes their primary raw material, hence giving such blanket exemption without specifying any qualitative as well as quantitative criteria does no good for the Act.
- 3.230 They have further submitted as under:

"Under the proposed amendments prior authorisation from the relevant SBB is not required if the traditional knowledge in question is codified. So, if these amendments come into force,

companies registered in India will be able to use such traditional knowledge for manufacturing high valued drugs without seeking prior authorisation from the state boards and also companies won't share any benefits to the traditional communities arising out of such utilization. For codification, it may be necessary that such traditional knowledge is translated into all languages in the eighth schedule of the Constitution. Also, the Bill must provide a list of ancient literature where the traditional knowledge is codified along with a translation of such literature in English. Even then there is scope for ambiguity given the Country's existing Written/codified in diverse formats.

3.231 The traditional knowledge is codified and preserved for centuries by the concerned and they are supposed to be benefitted from the Fair and Equitable Benefit Sharing (FEBS) instead of taking away the FEBS. Moreover, if excluded citing the reason of codified knowledge under section 7, then it gets excluded from sections 23 & 24 also and there is no need to share the benefits under diverse traditional knowledge FEBS.

3.232 Also, a mere entry in PBR qualifies under the term "codified traditional knowledge" the resources/ knowledge gets automatically exempted from FEBS.

3.233 Hence it is requested that the term "excluding codified traditional knowledge" may be deleted from the Bill."

(c) Assam State Biodiversity Board

3.234 "As pointed out earlier. exclusion of '*codified traditional knowledge*' will allow commercial users to exploit the existing traditional knowledge for their benefit without the obligation of benefit sharing mechanism with the local communities as envisage in the Act.

3.235 Exemption of cultivated medicinal plants and its products will allow the commercial users to exploit the biological resources without any obligation to pay the benefit to local people who are conserving the local resources. At present, there are no concrete systems in India to check on Companies accessing bioresources for commercial utilization whether they are using cultivated or NTFPs as the supply chains is mostly unorganized and unregulated. These companies are major contributors of 'Local Biodiversity Fund' of Biodiversity Management Committees, which will be used for conserving the local biodiversity. Exclusion of registered AYUSH Practitionery may also be looked into.

(d) Andhra Pradesh State Biodiversity Board

3.236 Incorporation of the following paragraph to Section 7 of the principal Act may be considered for its effective implementation.

3.237 "No manufacturer or trader located in the State can utilize bioresources for manufacturing a product or selling bioresources without prior permission from the State Biodiversity Board."

(e) Karnataka State Biodiversity Board

3.238 Exclusion of Codified Traditional Knowledge will allow users to exploit the rich traditional knowledge without any obligation to share the benefits. Exclusion of cultivated medicinal plants will lead to decrease of substantial chunk of ABS to benefit claimers.

(f) Odisha Biodiversity Board

- 3.239 May incorporate this clause:
- 3.240 Whether any individual/firm/company/institute/organization coming under section 3, 4, 5 and 6, seeking approval of NBA, should first intimate the respective SBB for accessing any bioresources for any purpose.
- 3.241 This will help the respective SBB to have a database of such entities and bioresources being accessed from the State.

(g) Madhya Pradesh BMC

- 3.242 In the proposed amendment sub-section (1) of section 7 that the provisions of this section shall not apply to the local person and community of the codified traditional knowledge, cultivation of medicinal plants or its produce area in which those growing biodiversity and Agriculturists, Vaidyas, Hakims and Registered AYUSH practitioners engaged in the business of indigenous medicines, including the Indian system of medicine for livelihood. As such it is practically impossible to ascertain which plants are cultivated and which are wild or forest products so that one can collect and use the bio-resources obtained from the forest under the guise of cultivated plants. Because in this proposed amendment exemption has been given to cultivated medicinal plants and its products from which

(h) Uttarakhand BMC

- 3.243 The word "**codified traditional knowledge**" should be omitted.
- 3.244 The word "**cultivated medicinal plants and its products**" should also be omitted or modified to safeguard the interests of the local communities.
- 3.245 About the "codified traditional knowledge" it is re-iterated that traditional knowledge even if codified does not lose its character of being traditional.
- 3.246 Excluding "**cultivated medicinal plants and its products**" may lead to the false claims by the traders/manufacturers that the major chunk of the bio-resources is cultivated. This exclusion may also open gates for other manipulative techniques to co-opt members of local communities into the trading/manufacturing units as their agents.
- 3.247 Exemption can be obtained by Ayurvedic manufacturing units using the term 'products of medicinal plants'. In the proposed amendment, the codified traditional knowledge has been exempted from the Act, whereas the medicines used in Ayurveda, Unani, Homeopathy and Naturopathy by the entire AYUSH based industry are manufactured according to the codified traditional knowledge written in the books. Apart from this, any traditional knowledge that is recorded in the People Biodiversity Register can also be claimed as codified traditional knowledge. Due to which manufacturing units making profit from biological resources may be out of the purview of equitable sharing of arise benefits. In such a situation, those local communities will not get any benefit who are conserve biological resources from centuries.

Comments of MoEFCC

- 3.248 Access Benefit Sharing is also applicable to Indian Companies and that the details regarding would be indicated in the Rules and Guidelines. The Ministry further submitted that the Indian Entities are not required to take approvals for research and must register at the time of applying for patents. Foreign controlled entities under Section 3 must take approvals.

3.249 Further, registered AYUSH Practitioners were exempted only for individual practitioners and not the companies.

3.250 foreign companies as per the Companies Act, 2013 are required to get approval of NBA for access to cultivated medical plant for commercial utilization and they have to share the benefits with the local communities. However, Indian companies alone are exempted from taking approval of the State Biodiversity Board for using the cultivated medicinal plants subject to obtaining the certificate of origin

3.251 Further when it was asked to furnish details of categories which will be covered under the definition of 'Registered AYUSH Practitioners' and the manner the term 'Registered Ayush Practitioners' is defined, the Ministry in a written reply stated, "As per Proviso clause of Section 7 of the Act, local people and communities of the area, including growers and cultivators of biodiversity, and vaid and hakims and registered AYUSH practitioners who have been practicing indigenous medicine including Indian systems of medicine for sustenance & livelihood are exempted from seeking approval under the Act. The clarification would be provided in the Bill itself as below:

- a. The word "only" would be added after the "Registered AYUSH Practitioners"
- b. The certificate of origin for cultivated medicinal plants shall be obtained through making an entry of details of cultivated medicinal plants into the books of concerned Panchayat Body/Biodiversity Management Committee.
- c. The Codified Traditional Knowledge is those listed in First Schedule of the Drugs &Cosmetics Act, 1940 and Traditional Knowledge Digital Library, only."

3.252 On further being asked about the criteria to define cultivated Medicinal Plants and the Authority which will be empowered to issue notifications regarding issue of certificate of origin for cultivated Medicinal Plant, MoEFCC stated the clarification would be provided in the Bill itself as follows:-

"The certificate of origin for cultivated medicinal plants shall be obtained through making an entry of details of cultivated medicinal plants into the books of concerned Panchayat Body/Biodiversity Management Committee. The "books" is meant for governing instruments of the Panchayat Body. (Handbook for Sarpanch& Gram Panchayat Functionaries or State Specific Biological diversity Rules or state specific Panchayati Raj Rules)"

Suggestion of the Ministry of Law and Justice(Legislative Department)

3.253 MoEFCC has stated in a written submission to the Committee that it agreed to the following suggestion of the Ministry of Law and Justice(Legislative Department) :-

"In clause 9 for Section 7 of the Principal Act After the word commercial utilisation punctuation mark(,) be deleted ; and After the words concerned state Biodiversity Board the Punctuation mark(,)be deleted and the words "but such access shall be" inserted".

Observation/ Recommendation of the Committee

3.254 In view of the suggestion made by the Ministry of Law and Justice and agreed to by MoEFCC, the proposed Section 7(1) under Clause 9 may be read as under :-

“No person, other than the person covered under subsection (2) of section 3, shall access any biological resource and its associated knowledge for commercial utilisation without giving prior intimation to the concerned State Biodiversity Board but such access shall be subject to the provisions of clause (b) of section 23 and sub-section (2) of section 24:

Provided that the provisions of this Section shall not apply to the codified traditional knowledge, cultivated medicinal plants and its products, local people and communities of the area including growers and cultivators of biodiversity and to vaid, hakims & registered AYUSH practitioners only who have been practicing indigenous medicines including Indian systems of medicine as profession for sustenance and livelihood

(Recommendation No. 9)

3.255 The Committee note that a new amendment (sub-section (2)) is proposed under Section 7 of the Principal Act. According to this amendment, the manner of issuing certificate of origin for cultivated medicinal plants shall be such as may be prescribed. Subsequently based on suggestions from stakeholders, the Ministry has now decided to incorporate the following clarification regarding certificate of origin for cultivated medicinal plants in the bill itself :-

“The certificate of origin for cultivated medicinal plants shall be obtained through making an entry of details of cultivated medicinal plants into the books of concerned Panchayat Body/Biodiversity Management Committee. The “books’ is meant for governing instruments of the Panchayat Body. (Handbook for Sarpanch& Gram Panchayat Functionaries or State Specific Biological diversity Rules or state specific Panchayati Raj Rules)”

(Recommendation No.10)

3.256 The Committee hope that the above clarification would be provided by replacing the proposed amendment in sub-section (2) of Section 7.

(Recommendation No.11)

Clause 10- Amendment of section 8

(Establishment of National Biodiversity Authority)

Provision in the Principal Act

3.257 " (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."

Amendment Proposed in the Bill

3.258 " (a) for sub-section (3), the following sub-section shall be substituted, namely:—

3.259 “(3) The Head office of the National Biodiversity Authority shall be at Chennai and the Central Government may, by notification in the Official Gazette, establish regional offices in other places in India.”

Rationale for the amendment

3.260 As per the Ministry of Environment, Forest and Climate Change the amendment proposes to give easy accessibility to all persons/ entities conducting their work in the area of biodiversity in all areas to ensure watch on compliances as well as speedy disposal of compliance related formalities such as registration and approval granting process. They have further stated that the amendment will be necessary to improve ease of doing business.

Gist of suggestions received from stakeholders

3.261 Suggestions were received from various stakeholders stating that the Office of the National Biodiversity Authority should be in New Delhi so that they can work in close coordination with MoEFCC and NGT.

Comments of MoEFCC

3.262 The Establishment of Regional offices would be considered on need basis and as per new developments and the same will be decided at the time of establishment.

Provision in the Principal Act

3.263 " 8 (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) Biotechnology;
 - (iii) Ocean Development;
 - (iv) Agriculture and Cooperation;
 - (v) Indian Systems of Medicine and Homeopathy;
 - (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 knowledge-holders of biological resources."

Amendment Proposed in the Bill

3.264 " (b) in sub-section (4),—

for clauses (a), (b) and (c), the following clauses shall be substituted, namely:—

- “(a) a Chairperson, who shall be an eminent person having adequate knowledge, expertise and experience in the conservation and sustainable use of biological diversity and in matters relating to fair and equitable sharing of benefits, to be appointed by the Central Government;
- (b) Sixteen ex officio members to be appointed by the Central Government, representing the Ministries dealing with—
 - (i) Agricultural Research and Education;
 - (ii) Agriculture and Farmers Welfare;
 - (iii) Ayurveda, Unani, Siddha, Sowa Rigpa, Yoga and Naturopathy and Homoeopathy;
 - (iv) Biotechnology;
 - (v) Environment and Climate Change;
 - (vi) Forests and Wildlife;
 - (vii) Indian Council of Forestry Research and Education;
 - (viii) Earth Sciences;
 - (ix) Panchayati Raj;
 - (x) Science and Technology;
 - (xi) Scientific and Industrial Research;
 - (xii) Tribal Affairs;
- (c) four representatives from State Biodiversity Boards on rotational basis;

(ii) in clause (d),—

for the word “specialists”, the words “specialists, legal experts” shall be substituted;

for the word “equitable”, the words “fair and equitable” shall be substituted;

(iii) after clause (d), the following clause shall be inserted, namely:—

“(e) a Member-Secretary, who shall have experience in matters relating to biodiversity conservation, to be appointed by the Central Government.”

Rationale for the amendment

3.265 As per the Ministry increasing the number of members who are from different areas, which has interface with the functioning of the Act will make it better functional & more effective in its implementation.

Gist of suggestions received from State Biodiversity Boards/BMCs

Uttrakhand BMC

3.266 16 members are mentioned but names of only 12 Ministries are given.

3.267 Clause (c) where 4 members from State Biodiversity Boards have been mentioned should be clubbed with Clause (b).

3.268 Another Clause can be added to include

3.269 4 additional members from State Governments on rotational basis.

Gist of suggestions received from stakeholders

- 3.270 Ex-officio members should include Chairperson of PPVFRA and GPDTM.
- 3.271 Non-official members” should be changed to “Independent Members”. Inclusion of Legal expert could raise issues of Conflict of interest.
- 3.272 Member Secretary post is not required since it will conflict with the powers of the Chairperson causing even more confusion than is already /Cultivating etc.

Comments of MoEFCC

- 3.273 The Amendment Bill, 2021 has exempted PPVFRA Act. Therefore, PPVFRA has no further role
- 3.274 The meaning of non-officials means independent members only so no need to change the word “Non-Official members” with “Independent Members”
- 3.275 Member Secretary, apart from discharging the functions of a Secretary, he/she is an important regulatory and administrative functionary of NBA and hence has to be part of decision making by the Authority. Other Central Regulatory Bodies like Pollution Control Boards, NTCA and State Biodiversity Boards also have the post of Member Secretary and this is not the new concept.

Observation/ Recommendation of the Committee

- 3.276 **The Committee note that the word ‘experts’ has been used in sub-section 4(c) Section 22 of the Principal Act for non-official members of State Biodiversity Board. But in sub-section (d) of Section 8 of the Principal Act, word “specialists” has been used for non-official members of National Bio-diversity Authority. Specialist is some one who devotes his work or practice to a particular aspect of a field. However, an expert have an extensive knowledge or skills. A person who specializes in something may not be an expert. The Committee, therefore, feel that the word “expert” may be more appropriate than the word “specialist”. The Committee, therefore, recommend that the proposed amendment in sub-section (d) of Section 8 may read as follows:-**

"(d) five non-official members to be appointed from amongst experts including legal experts and scientists having special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge-holders of biological resources."

(Recommendation No. 12)

Clause 11- Amendment of section 9

(Conditions of service of Chairperson and Members)

Provision in the Principal Act

3.277 " (9) The term of office and conditions of service of the Chairperson and the other members other than ex officio members of the National Biodiversity Authority shall be such as may be prescribed by the Central Government."

Amendment Proposed in the Bill

3.278 "In section 9 of the principal Act,—
d) in the marginal heading, for the words "Chairperson and members", the words "Chairperson, members and Member-Secretary" shall be substituted;
e) after the words "National Biodiversity Authority", the words "and of Member-Secretary" shall be inserted."

Clause 12: Insertion of new section 10 A (Member-Secretary)

Provision in the Principal Act

3.279 There was no provision in the Principal Act. It is a new proposal in the Bill.

Amendment Proposed in the Bill

3.280 After section 10 of the principal Act, the following section shall be inserted, namely:—
"10A. (1) The Member-Secretary shall be the chief coordinating officer and the convener of the National Biodiversity Authority and shall assist that Authority in the discharge of its functions under this Act.
(2) The Member-Secretary shall perform such other functions as may be prescribed."

Gist of suggestions received from stakeholders

3.281 A gist of suggestions received in the form of Memoranda on clause 12 is as under-

3.282 The proposed amendments intend to turn the autonomous institution into an executive appendage of the Ministry.

3.283 Giving statutory recognition to the post of the Member Secretary could allow the Central Government to wield more power in the functioning of the NBA with its own appointees.

3.284 It may lead to complications, especially if there is any difference of opinion in any given case and it is not clear with this amendment that whose decision will prevail.

3.285 The Sections 10A (1) and (2) may be deleted as it is covered in Section 9.

3.286 Inclusion of a member Secretary and 16 officials representing different ministries as members will bring NBA under bureaucratic control and a more powerful Member Secretary, (being coordinator, convener, and signing authority) can supersede the Chairperson, eventually.

Gist of suggestions received from SBBs

3.287 A gist of suggestions received from SBBs/ State Governments/ BMCs on clause 12 is as under-

3.288 Chhattisgarh State Biodiversity Board suggested that the introduction of this clause enables greater central government control of the functioning of the NBA and undermines the powers of the Chairperson, who is a domain expert.

Comments of MoEFCC

3.289 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 12 is as under-

3.290 The post of Member Secretary gives strength to the National Biodiversity Authority. Many of the officers from organized services have administrative experience and experience in handling legal and policy matters which is required for the successful functioning of a statutory authority such as NBA. Since 2009, the post of Secretary has been held by senior Indian Forest Service Officers in the rank of Chief Conservator of Forests. Upgrading the post of Secretary to Member Secretary would attract more high-quality officers from different organized services and their experience would benefit the NBA, because they can bring more administrative skills and experience in handling legal and policy related matters to the Authority. Therefore, upgrading the post of Secretary to Member Secretary would immensely benefit the NBA.

3.291 Apart from discharging the functions of a Secretary, s/he is an important regulatory and administrative functionary of NBA and hence has to be part of decision making by the Authority. Other Central Regulatory Bodies like Pollution Control Boards, NTCA and State Biodiversity Boards also have the post of Member Secretary.

Clause 13: Amendment of section 13

Provision in the Principal Act

3.292 13(2) without prejudice to the provisions of sub-section (1), the National Biodiversity Authority may constitute such number of committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act.

Amendment Proposed in the Bill

3.293 In section 13 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The National Biodiversity Authority may also constitute such number of Committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act.”

Gist of suggestions received from stakeholders

3.294 A gist of suggestions received in the form of Memoranda on clause 13 is as under-

3.295 Progressive provisions that can lead to India’s biodiversity being conserved and used sustainably have not been effectively operationalised in all these years, under this Act.

Comments of MoEFCC

- 3.296 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 13 is as under-
- 3.297 The National Biodiversity Authority facilitated issuance of Internationally Recognized Certificate of Compliance (IRCC) and presently more than 70% of IRCCs issued globally are from India. Therefore, NBA facilitated sustainable utilization of natural resources. Further, India addresses the issues of biodiversity conservation through Wild Life Protection Act and Forest Acts which preserved 23% of India's territory as forests, which is rich in biodiversity.
- 3.298 Full powers to NBA were given for constituting committees.

Clause 14: Amendment of section 15

Provision in the Principal Act

- 3.299 All orders and decisions of the National Biodiversity Authority shall be authenticated by the signature of the Chairperson or any other member authorized by the National Biodiversity Authority in this behalf and all other instruments executed by the National Biodiversity Authority shall be authenticated by the signature of an officer of the National Biodiversity Authority authorized by it in this behalf.

Amendment Proposed in the Bill

- 3.300 In section 15 of the principal Act,—
After the words “signature of the Chairperson”, the words “or Member-Secretary” shall be inserted;
(ii) For the words “signature of an officer”, the words “signature of Member- Secretary or an officer” shall be substituted.

Gist of suggestions received from stakeholders

- 3.301 A gist of suggestions received in the form of Memoranda on clause 14 is as under-
- 3.302 Signature of the Member Secretary would be enough to pass any order, which will give more importance to the position of the Member Secretary of the NBA and would create a constant tug-of-war between these two positions.
- 3.303 The Chairperson is generally a scientist of national and international reputation. His position should not be equated with the power enjoyed by the secretary in the Authority.

Comments of MoEFCC

- 3.304 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 14 is as under-
- 3.305 Most of the institutions created under different statutes have the post of Member Secretary and upgrading the post of Secretary to Member Secretary will help in better functioning of the NBA. In crucial decision making by the NBA, the Member Secretary and Chairperson can play a major role together. Institutions having similar positions have not faced any such administrative difficulties apprehended by the stakeholders.

Clause 15: Amendment of section 16

Provision in the Principal Act

- 3.306 The National Biodiversity Authority may, by general or special order in writing, delegate to any member, officer of the National Biodiversity Authority or any other person subject to such conditions, if any, as may be specified in the order, such of the powers and functions under this Act (except the power to prefer an appeal under section 50 and the power to make regulations under section 64) as it may deem necessary.

Amendment Proposed in the Bill

- 3.307 In section 16 of the principal Act, after the words “delegate to any member”, the words “or Member-Secretary” shall be inserted.

Gist of suggestions received from stakeholders

- 3.308 A gist of suggestions received in the form of Memoranda on clause 15 is as under-
- 3.309 Bureaucratization of implementing agency
- 3.310 Being the Nodal Department of the regulatory powers and functions on agro biodiversity, these components may be delegated to the Secretary Department of Agricultural Research and Education (DARE) & DG ICAR for expediting exchange of agro biodiversity under Section 16 (Delegation of Powers) of the BD Act.

Gist of suggestions received from SBBs

- 3.311 A gist of suggestions received from SBBs/ State Governments/ BMCs on clause 15 is as under-
- 3.312 Chhattisgarh State Biodiversity Board have suggested that over the years, the SBBs have gained from the independence and technical knowledge of the Chairperson and have allowed SBBs to develop a functional and enabling working relationship with the NBA. Since the proposed amendments to Section 16 of the Act allow for powers of the NBA to be delegated to Member Secretary, this may lead to serious confusions and conflicts that will impair the enforcement of the Act.

Comments of MoEFCC

- 3.313 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 15 is as under-
- 3.314 CBD is being implemented through BD Act in India and cannot be delegated. This is already addressed through existing Guidelines for International Collaboration Research Projects involving Transfer or exchange of Biological Resources or information relating thereto between institutions including Government sponsored Institutions and such institutions in other countries, which are framed under existing Act. Further, it is clarified that DARE is a member of Authority.
- 3.315 The Member Secretary of the Authority will continue to remain the head of the NBA Secretariat and would execute the decisions of the 15 member Authority which is headed by the Chairperson of NBA. With administrative skills and decision-making capability from the experience gained by working in Government departments, the Member Secretary has to be part of the decision making in the Authority which is a regulatory body. Other Central Regulatory Bodies like Pollution Control Boards, National Tiger Conservation Authority and State Biodiversity Boards have the post of Member Secretary. Hence this amendment is very crucial for the successful functioning of NBA.

Clause 16: Amendment of section 18

Provision in the Principal Act

3.316 18(1) It shall be the duty of the National Biodiversity Authority to regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing.

18(2) The National Biodiversity Authority may grant approval for undertaking any activity referred to in sections 3, 4 and 6.

18(3)(a) advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources;

18(3)(b) advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites and measures for the management of such heritage sites;

18(4) The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource which is derived from India.

Amendment Proposed in the Bill

3.317 In section 18 of the principal Act,—

- f) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—
- “(1) The National Biodiversity Authority shall, with the approval of the Central Government, make regulations to provide for access to biological resources and associated traditional knowledge thereto, and for determination of fair and equitable sharing of benefits.
 - (2) It shall be the duty of the National Biodiversity Authority to regulate any activity referred to in sections 3, 4 and 6 by granting or rejecting approvals.”;
 - (b) in sub-section (3),—
 - in clause (a), for the word “equitable”, the words “fair and equitable” shall be substituted;
 - (ii) in clause (b), for the words “heritage sites”, the words “biodiversity heritage sites” shall be substituted;
 - (iii) after clause (b), the following clause shall be inserted, namely:—
 - “(ba) advise the State Biodiversity Boards on any matter relating to the implementation of the Act;”;
 - (c) for sub-section (4), the following sub-section shall be substituted, namely:—
 - “(4) The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological

resource which is found in or brought from India, including those deposited in repositories outside India, or associated traditional knowledge thereto accessed.”

Gist of suggestions received from stakeholders

- 3.318 A gist of suggestions received in the form of Memoranda on clause 16 is as under-
- 3.319 Scope of NBA’s power has been expanded unreasonably. NBA is being authorized to frame regulations for each activity covered in the Act.
- 3.320 Inclusion of bioresources accessed from repositories outside of India within the purview of the act and thereby entrusting NBA with additional powers which shall only impede the government initiatives such as “ Make in India’ and “ Ease of doing Business”.
- 3.321 ABS collection system should be like GST collection or it can be subsumed in GST as surcharge. Aforesaid provisions would smoothen ABS collection and make it free from hassles.
- 3.322 Monoculture of plants must be avoided in order to have diversity in plant varieties specifically to conserve the native plants.

Comments of MoEFCC

- 3.323 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 16 is as under-
- 3.324 Under Section 18 (1) Role of central Government was introduced while NBA is making guidelines.
- 3.325 Under Section 18 (2) the approval is replaced by registration in view of changes made in Section 6, wherein Indian has to only register while applying for patent.
- 3.326 Under Section 18 (3) Adding “fair and equitable” is necessary in all referred Sections in the light of Nagoya Protocol on Access to Genetic resources and the fair and equitable sharing of benefits arising from their utilization.
- 3.327 Under Section 18 (3) (a) only added the word "fair and " before equitable, in line with Nagoya Protocol
- 3.328 Under Section 18 (3) (b) Biodiversity word is added before Heritage, to bring more clarity on Biodiversity Heritage Sites.
- 3.329 Under Section 18 (4) Incorporation of Indian origin resources deposited in repositories outside India in the act helps to control bio piracy.
- 3.330 Conservation of biodiversity and sustainable use is the main objective of the CBD treaty and is already indicated in the preamble of the Act. As, NBA is a Statutory Body established under BD Act, 2002 for regulating the activities enshrined therein. It shall be the duty of the NBA to issue regulation for effective implementation of the Act. Further the ministry clarified that there is no scope for arbitrariness on part of NBA as these regulations shall be issued with the approval of the Central Government. Incorporation of Indian origin resources deposited in repositories outside India in the act helps to control bio piracy. The Guidelines on Access to Biological Resources and

Associated Knowledge and Benefit Sharing Regulations, 2014 is the basis for the levying of ABS. upper limit of ABS is as under-

<i>Particulars</i>	<i>Upper limit of ABS</i>
If ABS is on the annual gross ex-factory sale price of the product minus government taxes	0.5%
If ABS is on purchase price of the biological resources	5.0%
Royalty or license fee if there is a transfer of IPR	5.0%

Clause 17: Amendment of section 19

Provision in the Principal Act

3.331 Clause as per the Principle act is as under-

19(1) Any person referred to in sub-section (2) of section 3 who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization or transfer the results of any research relating to biological resources occurring in, or obtained from, India, shall make application in such form and payment of such fees as may be prescribed, to the National Biodiversity Authority.

19(2) Any person who intends to apply for a patent or any other form of intellectual property protection whether in India or outside India referred to in sub-section (1) of section 6, may make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

19(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

Amendment Proposed in the Bill

3.332 In section 19 of the principal Act,—

g) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

“(1) Any person referred to in sub-section (2) of section 3 who intends to access biological resource or associated traditional knowledge thereto for commercial utilisation, shall make an application to the National Biodiversity Authority, in such form and on payment of such fee, as may be prescribed.

(2) Any person referred to in sub-section (2) of section 3 who intends to apply for a patent or any other form of intellectual property rights, whether in India or outside India, referred to in sub-section (1) of section 6, may make an application to the National Biodiversity Authority in such form, on payment of such fee, and in such manner, as may be prescribed.

(2A) Any person referred to in sub-section (1A) of section 6 shall register with National Biodiversity Authority at the time of making application under sub-section (2), and persons referred to in sub-section (1B) of section 6

shall obtain prior approval from National Biodiversity Authority at the time of commercialisation.”;

(b) After sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) The National Biodiversity Authority shall, while granting approval under this section, determine the benefit sharing in such manner as may be specified by regulations made in this behalf: Provided that if the National Biodiversity Authority is of the opinion that such an activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or fair and equitable sharing of benefits arising out of such activity, it may, by order, for reasons to be recorded in writing, prohibit or restrict any such activity:

Provided further that no such order for rejection shall be made without giving an opportunity of being heard to the person concerned.”

(c) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The National Biodiversity Authority shall place in public domain details of every approval granted or rejected under this section.”

Gist of suggestions received from stakeholders

3.333 A gist of suggestions received in the form of Memoranda on clause 17 is as under-

3.334 This provision indicates that Section 3(2) persons only need to obtain approval for commercial utilization, however the unamended Section 3(1) states that prior approval for Section 3(2) persons is needed additionally for research and bio-survey and bio utilization.

3.335 Clause 17 of the Bill is inconsistent with the Act regarding the activities requiring approval of NBA. Section 3 of the Act as amended by the Bill requires specified persons to seek approval from NBA for accessing biological resources occurring in India or associated knowledge thereto for: (i) research, (ii) commercial utilisation, or (iii) bio-survey and bio-utilisation. However, Clause 17 of the Bill specifies the manner of application to NBA only for accessing a biological resource or associated traditional knowledge for commercial utilisation, Research, and bio-survey: and bio-utilisation activities have not been covered under this clause.

3.336 It is suggested that the sub-section 2A to be consistent with Section 6(1A)

3.337 Section 19 (3) (A) would imply that foreign individuals and entities applying to the NBA and Indian IP right applicants could face rejections, if the NBA finds that the activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or fair and equitable sharing of benefits arising out of such activity. This power was already vested on the NBA under Rule 16 of the Biological Diversity Rules 2004 and Regulation 16 of the ABS Regulations.

3.338 Section 19(4) can be seen as a positive development since public intimation about rejections could aid in improving transparency of the process of approvals and rejections.

3.339 Disclosures of details of business approvals are detrimental to industry where most of such prior approvals, etc. are confidential information and a trade secret.

3.340 Publication of details of approvals/rejections will be detrimental to industry. It will dissuade industry from investing in India.

3.341 Deemed approval of NBA may be granted if cases are not disposed in three months in general and two weeks for export related cases by adding a new sub-section 19(5) for this purpose. Similarly deemed approval of State Biodiversity Board may also be provided. Therefore, following new sub-section 19(5) may be inserted:

“19(5) NBA shall dispose all applications within three month from date of receipt and applications related to export within two weeks, failing which it would be deemed to be approved”.

The above provision shall apply to State Biodiversity Board. Corresponding provision may be inserted in Section 25 of the Act.

- 3.342 It is suggested to retain sub-section 4 of section 19 of the unamended Act, for reasons of confidentiality and to be in compliance with Internationally Recognized Certificate of Compliance (IRCC).

Gist of suggestions received from SBBs

- 3.343 A gist of suggestions received from SBBs/ State Governments/ BMCs on clause 17 is as under-
- 3.344 The wording of the existing sub section 1 of section 19 of the Principal Act may be retained.
- 3.345 The State Biodiversity Board should not be bypassed in such cases. Bihar State Biodiversity Board suggested that Section 19(1) of the Bill reiterates the need for NBA approval only for commercial utilisation and not for the transfer of research results. NBA's approval should be mandatory not only for commercial utilisation but also for bio-survey and bio-utilisation.

Comments of MoEFCC

- 3.346 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 17 is as under-
- 3.347 Under Section 19 (1), while making the provision for obtaining mandatory approval for “access” of any biological resource which is to be used for commercial utilization, we ensure that no one can get monetary benefit from use of resources without assurance of fair and equitable share from the beginning itself and Under Section 19 (2) Application process of IPR is elaborated.
- 3.348 The words “obtained from India” are replaced with “which is found in or brought from India, including those deposited in repositories outside India” to expand the scope of the application of this provision. The new provision not only covers biological resources obtained from India but also the biological resources that are found in India and includes the biological resources that are deposited in the repositories outside India. Hence, even if a possession of biological resources in India whose origin is not known and if an intellectual property rights is claimed on such resources, the new provision extends the scope of opposition and other measures that can be taken by the National Biodiversity Authority against the grant of intellectual property rights outside India.
- 3.349 Clarifying regarding language consistency of the term "associated knowledge", the MoEFCC stated that different sections are regulating different activities under the Act according to which the term has been used in order to secure the rights and ensure that benefits are shared with the local communities. However to bring uniformity in the act term ‘**knowledge associated thereto**’ may be used throughout the Act. This will benefit both the communities and scientific institutions who provide knowledge associated with biological resources for corporate entities.
- 3.350 Ministry further clarified that under the proposed Bill, all foreign entities have to obtain approval of NBA for while accessing the biological resources for undertaking research and bio-survey and bio-utilisation.
- 3.351 On being asked about the objective behind the disclosure of details of approvals and rejections, the ministry stated that under section 19 (4) the approval or rejection except in case of confidential information like trade secrets and other trade related information would be published. As per Regulations 16(4) of the ABS regulations, 2014, any information specified in the application as confidential shall not be disclosed, either intentionally or unintentionally, to any person not

concerned thereto. NBA is obtaining the consent from the applicant about the information which is to be kept confidential or non- confidential and based on the consent received from the applicant, the details of approval or rejection would be published to bring more transparency.

3.352 During oral evidence of the representatives of the Ministry of Environment, Forest and Climate Change on 19 April, 2022, they submitted the following information to the Committee:-

3.353 Bio-utilisation is a kind of high end research which includes isolation of components, characterization, inventerisation etc, generally used in biotechnology and agriculture sectors. Whereas “commercial utilization” is a process of using biological resources for commercial purposes.

3.354 As Sec 7 - Indian entities do not require approvals for research, only, 3 (2) entities have to take approvals for research from NBA.

3.355 Therefore, for more clarity the term bio-utilisation may be retained in the definition in 2 (d) along with bio-survey and terms “bio-survey and bio-utilization” may also be retained in Section 19 (1) (Chapter V) along with term “commercial utilization”, since 3 (2) entities any how has to take approval of NBA for research as per Bill. (Chapter V is “Approval by NBA”)

3.356 Further, during the clause by clause examination of the Bill, MoEFCC has submitted to the Committee that it proposes to retain Section 19(1) of the Principal Act without any change.

Observations/ Recommendations of the Committee

3.357 The Committee note that the Ministry has decided to retain the Section 19(1) of the principal Act without any change and hope that this will be carried out in the Bill.

(Recommendation No. 13)

Clause 18: Amendment of section 20.

Provision in the Principal Act

3.358 Clause as per the Principle act is as under-

(20) Transfer of biological resource or knowledge.

20(1) No person who has been granted approval under section 19 shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval except with the permission of the National Biodiversity Authority.

20(2) Any person who intends to transfer any biological resource or knowledge associated thereto referred to in sub-section (1) shall make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

20(3) On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

20(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

Amendment Proposed in the Bill

3.359 In section 20 of the principal Act,—

- e. in the marginal heading, for the words “biological resource or knowledge”, the words “results of research” shall be substituted;
- f. for sub-section (1), the following sub-section shall be substituted, namely:—
“(1) Any person or entity who intends to transfer the results of any research on biological resources, which are found in or brought from India, including those deposited in repositories outside India or associated traditional knowledge thereto, to persons referred to under sub-section (2) of section 3 for monetary consideration or otherwise, he shall make an application to the National Biodiversity Authority in such form and on payment of such fee, as may be prescribed.”;
- g. in sub-section (2), for the words “any biological resource or knowledge associated thereto”, the words “the results of research” shall be substituted;
- h. for sub-sections (3) and (4), the following sub-sections shall be substituted, namely:—
“(3) On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquiries, as it deems fit, by order, grant approval, subject to such terms and conditions, as it may deem fit, including benefit sharing or otherwise, as per the guidelines or for reasons to be recorded in writing, or reject the application:
Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person concerned.
(4) The National Biodiversity Authority shall place in public domain the details of every approval granted or rejected under this section.”

Gist of suggestions received from stakeholders

3.360 A gist of suggestions received in the form of Memoranda on clause 18 is as under-

- 3.361 The word biological resource or knowledge should not be substituted with transfer of results. “Transfer of results” can be an additional term and the clause should be like-
 - i. “Transfer of results as well as biological resource and traditional knowledge”
- 3.362 The proposed amendment would dissuade investments and development in Ayush sector.
- 3.363 It is not clear whether the proposed amendments to Section 4 and 20 when read together would also cover within its scope the transfer of biological resources *per se*. this amendment will create a needless interpretation issues.
- 3.364 Entire Section 20 which now stands deleted must be retained in original to ensure there is clarity for companies that merge or acquire new companies.
- 3.365 The transfer of results of research is covered under Section 19(1) of the present BD Act.
- 3.366 It is suggested to retain sub-section 4 of section 20 of the unamended Act, for reasons of confidentiality and to be in compliance with IRCC.
- 3.367 “Results of research that are used for further research” and “materials accessed in India or those deposited in repositories outside India”, do not have a time from when applicable. This will lead to never ending process of dependency and track and tracing”

Comments of MoEFCC

- 3.368 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 18 is as under-
- 3.369 The amendment ensures protection to the actual results of research and development rather than a transfer of biological resources and knowledge, as “biological resource” is a broad term.
- 3.370 Under section 20(1) Approval of NBA is required while transfer of research results to track biological resources from biopiracy. Making necessary changes to give the option of marketability of the research outcome will encourage more research but the same has to be regulated to ensure fair and equitable sharing. In the proposed amendments, no person/entity can transfer the accessed biological resources to any third party. As per the proposed amendment, the third party should register or obtain approval of NBA and access the material from the desired source. The third party (who needs biological resources) has to get approval of NBA as per section 3 of the Act if he is a section 3(2) person and from the State Biodiversity Board if he is a Section 7 person or entity.
- 3.371 20(2) to avoid any use of biodiversity resources without knowledge of the authority.
- 3.372 20(3) making provision regarding “profit sharing” is in accordance with the provisions of Nagoya Protocol.
- 3.373 20(4) to bring more transparency.
- 3.374 Article 15 (3) of the CBD states that each Contracting Party shall take legislative, administrative or policy measures in accordance with Articles 16 and 19 through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party on a mutually agreed terms. In consonance with the CBD and also to ensure clarity to those companies who merge or acquire new companies, the change is proposed.

Clause 19: Amendment of section 21

Provision in the Principal Act

- 3.375 Clause as per the Principle act is as under-

(21) Determination of equitable benefit sharing by National Biodiversity Authority

21(1) The National Biodiversity Authority shall while granting approvals under section 19 or section 20 ensure 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.

21(3) Provided that where biological resource or knowledge was a result of access from specific individual or group of individuals or organizations, the National Biodiversity Authority may direct that the amount shall be paid directly to such individual or group of individuals or organizations in accordance with the terms of any agreement and in such manner as it deems fit.

Amendment Proposed in the Bill

- 3.376 In section 21 of the principal Act,—
- a) in the marginal heading, for the word “equitable”, the words “fair and equitable” shall be substituted;
- b) for sub-section (1), the following sub-section shall be substituted, namely:—
“(1) The National Biodiversity Authority shall, while determining benefit sharing for the approval granted under this Act, ensure that the terms and conditions subject to which the approval is granted secures fair and equitable sharing of benefits arising out of the use of accessed biological resources, their derivatives, 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, and the Biodiversity Management Committee represented by the National Biodiversity Authority.”;
- (c) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—
“Provided that where biological resource or associated knowledge was a result of access from an individual or group of individuals or organisations, the National Biodiversity Authority may direct that the amount shall be paid directly to such benefit claimer or organisation in accordance with the terms of any agreement and in such manner as it deems fit.”

Gist of suggestions received from stakeholders

- 3.377 A gist of suggestions received in the form of Memoranda on clause 19 is as under-
- 3.378 Section 21 allows the NBA to usurp the power of BMCs by stating that the “Biodiversity Management Committee represented by the National Biodiversity Authority” will get into determination of fair and equitable benefit sharing.
- 3.379 The amendment if enacted will therefore, lead to communities losing out whatever little they may get in the name of ‘benefit sharing’. At the same time it will also halt the process of much needed documentation of this knowledge.
- 3.380 The explicit mention of Biodiversity Management Committee represented by the National Biodiversity Authority and the exclusion of benefit claimers seems to imply that the benefit claimers who are in fact conservers and creators of biological resources and associated knowledge would have no role to play in negotiating the terms and conditions of access and benefit transfers. Further, the Amendment Bill provides that the BMC represented by the NBA would arrive at the mutually agreed terms. This in essence would mean the NBA Deciding on behalf of the BMC, which could completely suppress the voice of the local community from where the biological resources are sourced and diluting the role of the BMCs. This is in contravention of the principles of the Nagoya Protocol which recognizes the importance of promoting equity and fairness in negotiation of mutually agreed terms between providers and users of genetic resources.
- 3.381 The terms ‘derivatives’ and ‘innovations’ to be removed. Requirement of sharing of benefits even for accessing the derivatives of biological resources is ultra vires to the present Act and the Convention on Biological Diversity (CBD).
- 3.382 Almost the entire industry, Indian or Non-Indian, purchases bio-resources for research and commercialization from traders and do not approach BMCs. The traders generally do not provide the

source information, as it is their trade secret. Therefore, NBA cannot represent BMC for executing MAT Agreement as BMC shall not be identifiable.

- 3.383 If at all local bodies & BMCs are to be empowered the State Government may notify “Collection Fee” mentioned in S.41 (3) and Section 43(1) of the BD Act. Notification of Collection Fee for each bioresource available in that State or a district of that State will ensure that the trader pays to the BMC which collecting the bioresource. This amount can be by way of direct benefit transfer through Bharat Kosh which will also avoid any corrupt practices.
- 3.384 It is to be noted that Benefit Sharing is computed on audited accounts of annual sales and therefore takes about 18 months to be determined, which Collection Fee is instant and goes directly to that Local Biodiversity Fund of the BMC.
- 3.385 Removal of reference to Section 19 and 20 is detrimental and expanding the scope of the Act beyond CBD. The original section must be reinstated.
- 3.386 Extreme expansion of the scope of powers of NBA under Section 21 of the Act entrusting them to virtually include everything remotely related to bio-resources within the purview of requirement of payment of Access and Benefit Sharing Fee (ABS).
- 3.387 The removal of “benefit claimers” (i.e. local and indigenous communities) from Section 21 of the Act. Undermines Prior Informed Consent (PIC) Procedure and approval of the involvement of indigenous and local communities.
- 3.388 The Bill may be diluting the role of local communities in arriving at access and benefit sharing agreements for use of biological resources and associated knowledge. Article 6(2) of the Nagoya Protocol requires a signatory country to ensure that prior informed consent or approval and involvement of indigenous and local communities are obtained for access to genetic resources. Article 7 of the Protocol requires that traditional knowledge associated with genetic resources held by the local and indigenous communities should be accessed with “their prior informed consent or approval and involvement”. It should be ensured that “mutually agreed terms have been established”.
- 3.389 The Bill does away with the direct role of local bodies and benefit claimers in determining mutually agreed terms. Instead, NBA has been given a representative role for deciding terms for access, Neither the Act nor the Bill provides for a mechanism or manner for obtaining prior informed consent of the Local and indigenous communities. Instead, the Act provides that NBA and SBBs will consult the BMCs while taking decisions relating to the use of biological resources of associated traditional knowledge occurring within the territorial jurisdiction of the BMC.

Gist of suggestions received from SBBs

- 3.390 A gist of suggestions received from SBBs/ State Governments/ BMCs on clause 19 is as under-
- 3.391 In regard to the proposed amendment to Sub-section (3) of Section 21 of the Principal Act, West Bengal State Biodiversity Board has suggested that the SBBs should not be by passed in such cases.

Comments of MoEFCC

- 3.392 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 19 is as under-

3.393 The ministry clarified that the word “fair” is inserted in line with Nagoya Protocol and adopted the changes made in 19 and 20 of the Act. Also involved BMCs while determining ABS and Now ABS will go directly to benefit claimers

3.394 On being asked about the undermining of BMCs in the amended provision, the MoEFCC stated that the National Biodiversity Authority and State Biodiversity Boards have to consult the BMCs before granting approval [Section 41 (2)]. After consultation, NBA, on behalf of the BMC/ benefit claimers shall grant approval in the form of agreement to the users. The benefits received by the NBA/ SBB would be passed-on to the BMC/ benefit claimers concerned. As per the Constitution of India, the State (Central / State Government) shall be responsible to protect the environment and natural resources in the country on behalf of the people of the country. It may be noted that the users of biological resources are Corporate entities and many are from outside India foreigners/ entities and it would be difficult for the BMCs/ local communities to safeguard their rights and interest against these entities. Hence, NBA/ SBB have been entrusted to grant approval and determine benefit sharing component in consultation with BMC/ benefit claimers and there is no exclusion of the BMC/ benefit claimer in the decision making process.

Clause 20: Amendment of section 22

Provision in the Principal Act

3.395 Clause as per the Principle act is as under-

22(2) Provided that in relation to any Union territory, the National Biodiversity Authority may delegate all or any of its powers or functions under this sub-section to such person or group of persons as the Central Government may specify.

22(4)(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 State Government;

22(4)(b) not more than five ex officio members to be appointed by the State Government to represent the concerned Departments of the State Government;

22(4)(c) not more than five members to be appointed from amongst experts 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.

Amendment Proposed in the Bill

3.396 In section 22 of the principal Act,—

in sub-section (2), in the proviso, after the words “group of persons”, the words “or body” shall be inserted;

(ii) in sub-section (4), for clauses (a), (b) and (c), the following clauses shall be substituted, namely:—

- “(a) a Chairperson, who shall be an eminent person having adequate knowledge, expertise and experience in the conservation and sustainable use of biological diversity and in matters relating to fair and equitable sharing of benefits, to be appointed by the State Government;
- (b) not more than seven *ex officio* members to be appointed by the State Government to represent the concerned departments of the State Government, including departments dealing with Panchayati Raj and tribal affairs;
- (c) not more than five non-official members to be appointed from amongst specialists, legal experts, scientists having special knowledge in matters relating to conservation of biological diversity, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources.”.

Gist of suggestions received from stakeholders

3.397 No Suggestions received on this clause

Comments of MoEFCC

3.398 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 20 is as under-

3.399 Incorporated “body” also for delegation of powers and more details would be explained in Rules/ Guidelines.

Observations/ Recommendations of the Committee

3.400 **The Committee note that the word ‘experts’ in sub-section 4(c) Section 22 of the Principal Act is proposed to amended as “specialists, legal experts and scientists”. A specialist is someone who devotes his work or practice to a particular aspect of a field. However, an expert has an extensive knowledge or skills. A person who specializes in something may not be an expert. The Committee, therefore, feels that the word “expert” used in the Principal Act is more appropriate than the word “specialist”. The Committee, therefore, recommends that the proposed amendment in sub-section 4(c) of Section 22 may read as follows:-**

“not more than five non-official members to be appointed from amongst experts including legal experts and scientists having special knowledge, expertise and work experience in matters relating to conservation of biological diversity, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources.”

(Recommendation No. 14)

Clause 21: Amendment of section 23

Provision in the Principal Act

3.401 Clause as per the Principle act is as under-

(a) advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of biological resources;

(b) regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians;

Amendment Proposed in the Bill

3.402 In section 23 of the principal Act, for clauses (a) and (b) the following clauses shall be substituted, namely:—

“(a) advise the State Government on matters relating to the conservation of biodiversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the utilization of biological resources or associated traditional knowledge thereto, in conformity with the regulations or guidelines, if any, issued by the Central Government or the National Biodiversity Authority;

(b) regulate any activity referred to in section 7 by granting or rejecting approvals;

(ba) determine the fair and equitable sharing of benefits as provided under the regulations made in this behalf by the National Biodiversity Authority while granting approvals;”.

Gist of suggestions received from stakeholders

3.403 A gist of suggestions received in the form of Memoranda on clause 21 is as under-

3.404 The amount fixed for benefit sharing, a mere 0.1 percent, is nothing short of a mockery of the right to life and heritage of the indigenous communities. In our opinion primary collector and conservers must get 25 percent of the profit of seed companies, corporates based on traditional medicine, companies and research institutes supporting traditional medicine companies.

3.405 We propose the role of State Biodiversity Boards should remain unchanged and remoulding State Biodiversity Boards to be ‘Revenue Collectors’ has never been an intention of the BD Act or its inspiration from Convention of Biodiversity and Nagoya Protocol. This zealous bend towards ‘revenue’ and ‘collection’ needs to be curbed

3.406 It is to be clarified that SBBs cannot levy or demand ABS and Section 7 entities are exempted from the purview of the Act. AYUSH industry must be excluded entirely.

3.407 The term ‘Codified Traditional Knowledge’ has not been defined. This may lead to ambiguity regarding the extent of exemption. The World Intellectual Property Organisation defines Codified Traditional Knowledge as “traditional knowledge which is in some systematic and structured form, in which knowledge is ordered, organised, classified, and categorised in some manner.” This raises the question whether traditional knowledge compiled in the People's Biodiversity Register as per the mandate of the Biodiversity Rules, 2004 will be treated as Codified Traditional Knowledge.’ If so, this might leave the traditional knowledge of almost all communities of the country outside the ambit of prior intimation requirement, and fair and equitable benefit sharing agreements. This is because under the 2004 Rules every BMC has to create a People's Biodiversity Register which will contain information of availability and knowledge of local biological resources. Their medical or any other use or any other traditional knowledge associated with them. In the field of medicine, the World Health Organisation distinguishes Codified Systems of Traditional Medicines as systems which have been disclosed in writing in ancient scriptures and

are fully in the public domain," This includes Ayurveda disclosed in ancient Sanskrit scriptures, or traditional Chinese medicine disclosed in ancient Chinese medical texts, However, note that the exemption for codified traditional knowledge under the Bill is not limited to the field of medicine.

- 3.408 Proposed amendments are against Ease of doing Business. Indian entities should be allowed to provide only prior intimation for common species and not to wait for approvals. The approval should be limited to rare/endangered species only and The State Biodiversity Boards should prepare such negative list of plant species of conservation concern. The SBB cannot grant approvals except under Section 24(2), when Indian entities are using endangered species.
- 3.409 It is suggested that Section 23 (b) be amended as follows: *“(b) upon receipt of intimation under Section 7, the State Biodiversity Board may, in consultation with the local bodies concerned and the intimating person or organisation, after making enquiries as it may deem fit, advise the central government to prohibit or restrict any activity, which is detrimental to or contrary to the objectives of conservation and sustainable use of biodiversity.”*
- 3.410 It is unclear whether certain activities involving access to biological resources or associated knowledge under Section 7 require only prior intimation to SBB or its approval, While Section 7 of the Act as amended by the Bill requires prior intimation, Sections 23 and 24 empower SBB to grant or reject approvals in matters of activities covered under Section 7.
- 3.411 23(ba) is completely beyond the scope and object of CBD as the CBD and Nagoya Protocol promulgated under CBD, both provides for sharing of benefits only in case of access by parties from a foreign country. This amendment shall destroy the competitive power of domestic industry. SBB are not to levy ABS on Indians. Only foreigners be requires to pay ABS (S.3 (2) to be harmonized with the Companies Act).
- 3.412 To maintain consistency with Section 7 and Guidelines for ABS, it is suggested that Section 23 (ba) may be amended as follows: *“(ba) determine the fair and equitable sharing of benefits as provided under the regulations made in this behalf by the National Biodiversity Authority.”*
- 3.413 it would cause hassles in inter- state movements of bio-resources for Indian companies where as foreign companies would transport their material smoothly as they would take permission from NBA directly and permission given by NBA has to be accepted by every SBB. The above proposed Amendment of Section 23 of the original Act would create serious problems for farmers, tribal people and Indian companies.

Comments of MoEFCC

- 3.414 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 21 is as under
- 3.415 As per the stand of the Ministry, “Codified Traditional Knowledge is to be defined in the Act itself. “The Codified Traditional Knowledge” are those listed in the First Schedule of the Drugs & Cosmetics Act, 1940 and Traditional Knowledge Digital Library only”. The existing legal position of PBRs remains unchanged.
- 3.416 Further clarifying regarding the legal status of the traditional knowledge documented in the PBR the nodal ministry submitted that the information recorded in the People Biodiversity Registers is not exempted from the Act. If anyone wants to use information from the Peoples Biodiversity Registers, they have to obtain prior approval from the NBA/ SBB and therefore the rights of the local / tribal communities are secured as they are in the existing Act. Tracking of biological resources help on levying Access Benefit Sharing and control bio piracy.
- 3.417 AYUSH Manufacturers are not treated as “benefit claimers”. ABS is also applicable to Indian entities while commercial utilization, and would be mentioned in the Guidelines. This will

give more clarity on levying ABS and approval of SBBs is mandated for commercial utilization by linking section 7 with Sections 23 and 24

3.418 The benefit sharing amount would be calculated based on the ABS Regulations, 2014. The Guidelines prescribes the ABS amount up to 0.5% of annual gross ex-factory sale price of the product and 95% of the Amount would be passed on to the local communities. In response to the demand by stakeholder to increase the share of benefit, MoEFCC stated that the enhancement of the ABS amount would require wider consultation with stakeholders and SBBs. After passing the amendments to the BD Act, it would be considered, as appropriate, while revising the ABS regulations, 2014.

3.419 As per the Section 7 (1) of the Bill, 2021, No person other than the person under sub-section (2) of Section 3, shall access any biological resources and its associated knowledge for commercial utilization, without giving prior intimation to the concerned State Biodiversity Boards, subject to the provision of clause (b) of section 23 and sub-section (2) of section 24. Therefore, prior intimation as well as approval of SBB is required while accessing biological resources from State Biodiversity Board while accessing resources for commercial utilization. NBA/SBB would grant approval in the form of Agreement by signing two parties (the NBA/SBB and the applicant) on Mutually Agreed Terms. For this purpose, NBA has developed a Model agreement for all activities which are regulated under the Act.

Clause 22: Amendment of section 24

Provision in the Principal Act

3.420 Clause as per the Principle act is as under-

24(1) Any citizen of India or a body corporate, organization or association registered in India intending to undertake any activity referred to in section 7 shall give prior intimation in such form as may be prescribed by the State Government to the State Biodiversity Board.

24(3) Any information given in the form referred to in sub-section (1) for prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.

Amendment Proposed in the Bill

3.421 In section 24 of the principal Act,—

c) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any person other than the person referred to in sub-section (2) of section 3, intending to undertake any activity covered under section 7, shall give prior intimation to the State Biodiversity Board in such form as may be prescribed by the State Government.”

(b)for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) If the State Biodiversity Board is of the opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or fair and equitable sharing of benefits arising out of such activity, it may by order, restrict or reject such activity:

Provided that no such order of rejection shall be made without giving an opportunity of being heard to the person concerned.

(4) The State Biodiversity Board shall place in public domain the details of every approval granted or rejected under this section.”

Gist of suggestions received from stakeholders

3.422 A gist of suggestions received in the form of Memoranda on clause 22 is as under-

3.423 Proposed amendments are against Ease of doing Business. Indian entities should be allowed to provide only prior intimation for common species and not to wait for approvals. The approval should be limited to rare/endangered species only. The State Biodiversity Boards should prepare such negative list of plant species of conservation concern.

3.424 The Companies Act does not define “Foreign Controlled Company” the correct terms is “Foreign Company” defined under Section 2(42) of that Act. It should be corrected or will cause many problems.

3.425 There is to be no approval from SBB since Section 7 entities are required to give only prior intimation and any order under Section 24(2) is only for restricted or threatened species.

3.426 Amendment of Section 23 and 24 of the Bill to allow State Biodiversity Boards to demand and levy ABS fee from Indian entities is completely beyond the scope and object of CBD as the CBD and Nagoya Protocol promulgated under CBD, both provides for sharing of benefits only in case of access by parties from a foreign country. This amendment shall destroy the competitive power of domestic industry.

3.427 The information provided to NBA under various bona fide disclosures is business critical and therefore confidential. The existing practice of providing information regarding approvals granted by NBA and maintaining confidentiality through IRCC is adequate since this protects business interests of the applicants. For reasons of confidentiality and to be in compliance with IRCC, the National Biodiversity Authority shall only give public notice of every approval granted by it and NOT put in public domain all details of every approval granted or rejected under this section.

Gist of suggestions received from SBBs

3.428 Amendment suggested in sub-section (3) is already covered in sub-section (2) of the 2002 act, but there is no amendment suggested for sub-section (2) of the 2002 act. So, there will be duplicity of matter in sub-section (2) and (3).

3.429 Besides this sub-section (3) of 2002 act is not taken for consideration, the matter in that subsection is entirely different than the proposed amendment in sub-section (3). So, the matter of sub-section (3) of 2002 act is getting left out for consideration.

3.430 Section 24 (3) provides for keeping the information secret, but it shall be necessary to report the same to the local body.

3.431 Environment Department, government of West Bengal has suggested that the sub-section (3) as mentioned in the draft bill should be read as Subsection (2). As the said provision is dealt in the sub section (2) of section 24 of the principal act.

Comments of MoEFCC

- 3.432 Comments from the Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 22 is as under-
- 3.433 The regulatory and monitoring role of the SBBs is essential in the case of AYUSH and other industries using biodiversity and associated knowledge. Access Benefit Sharing is also applicable to Indian Companies. The details would be indicated in the Rules and Guidelines.
- 3.434 The prior information is meant to take consent of community and approval would be in the form of mutually agreed terms. SBBs also have to give opportunity for hearing to applicant before any rejection.
- 3.435 Amendment of Section 24(4) is done to bring more transparency.

Clause 23: Amendment of section 27

(Constitution of National Biodiversity Fund)

Provision in the Principal Act

- 3.436 "27. (1) There shall be constituted a Fund to be called the National Biodiversity Fund and there shall be credited thereto
- d) any grants and loans made to the National Biodiversity Authority under section 26;
 - e) all charges and royalties received by the National Biodiversity Authority under this Act; and
 - f) all sums received by the National Biodiversity Authority from such other sources as may be decided upon by the Central Government.
- (2) The Fund shall be applied for -
- g) channeling benefits to the benefit claimers;
 - h) Conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed;
 - i) socio-economic development of areas referred to in clause (b) in consultation with the local bodies concerned.

Amendment Proposed in the Bill

- 3.437 "In section 27 of the principal Act,—
- j. in sub-section (1), for clause (b), the following clause shall be substituted, namely:—
 - a) “(b) all sums including charges and benefit sharing amount received by the National Biodiversity Authority;”;
 - k. in sub-section (2),—
 - (A) in the opening portion, for the word “applied”, the word “utilised” shall be substituted;
 - (B) for clauses (b) and (c), the following clauses shall be substituted, namely:—
 - “(b) conservation and sustainable use of biological resources;

(c) socio-economic development of areas from where such biological resources or associated traditional knowledge have been accessed in consultation with the Biodiversity Management Committee or local body concerned:

Provided that when it is not possible to identify the area from where the biological resources or associated traditional knowledge have been accessed, the fund shall be utilised for socio-economic development of the area where such biological resources occur;

(d) activities to meet the purposes of the Act.”

Rationale for the amendment

3.438 The MoEFCC was sought the rationale behind the major amendments proposed to section 27 of the principal Act. They have replied that 'benefit sharing amount' as provided in the section 27(1)(b) also includes royalties. Hence 'all charges and royalties' has been replaced by 'all sums including charges and benefit sharing amount'. Also, the term 'applied' has been replaced by 'utilised' to bring more clarity on utilization of funds. Moreover, section 27(2)(c) is amended so that the involvement of Biodiversity Management Committee or local body concerned will ensure that the fund is used for the right reason and it can also keep watch on proper utilization. the Ministry has also submitted that this amendment will have social as well as economic impact while developing the identified areas, which are in need.

Gist of suggestions received from stakeholders

3.439 The amendment of 2 (c) needs to strengthen the powers and functions of BMC. Hence “or” should be replaced with “and”.

3.440 The Amendment Bill has replaced promotion of biological resources with sustainable use of biological resources; funds collected would not be used for promotion of biological resources, but rather for its sustainable use/sustainability.

3.441 It is unclear how the outcome of sustainability shall be realized.

Comments of MoEFCC

3.442 On the above mentioned suggestions, the MoEFCC have submitted their view that since every Biodiversity Management Committee are being constituted as one of the committees under Panchayat Raj (local body), the language “or” is mentioned, therefore, in some cases when the BMC is inactive or expired, then the local body consultation would be sufficient and this brings more clarity to the provision.

3.443 They have also stated that the expression 'promotion of biological resources' in section 27(2)(b) have been replaced by 'sustainable use of biological resources' to adequately cover all aspects. Further, bringing clarity to the amendment to sub-section(2)(c) of Section 27 which talks about the socio-economic development of "areas from where such biological resources or associated knowledge have been accessed" and in the proviso which talks about "area where such biological resources occur", the MoEFCC submitted that in the event of geographical location from where the biological resources were accessed is known, the benefit sharing amount would be shared with BMC concerned from whose jurisdiction the biological resources were accessed for promoting conservation of the biological resource and for undertaking various socio-economic activities of the respective areas. And, if the biological resources are accessed from traders, exact location from where the bioreosurces were collected may not be known. Hence, in such cases, the benefit sharing amount would be shared with SBB to undertake activities for conservation of particular biological resources occurring in the State.

Suggestion of the Ministry of Law and Justice(Legislative Department)

3.444 MoEFCC has stated in a written submission to the Committee that it agreed to the following correction suggested by the Ministry of Law and Justice(Legislative Department) in sub section 27(2)(c) :-

“27(2) (c) socio-economic development of areas from where such biological resources or associated traditional knowledge have been accessed in consultation with the Biodiversity Management Committee concerned:”

Observation/ Recommendation of the Committee

3.445 In view of the suggestion made by the Ministry of Law and Justice and agreed to by MoEFCC, the proposed Sub Section 27(2) (c) under Clause 23 may be read as below:-

“ 27(2) (c) socio-economic development of areas from where such biological resources or associated traditional knowledge have been accessed in consultation with the concerned Biodiversity Management Committee”.

(Recommendation No. 15)

3.446 The Committee note that the present provision in Section 27 (2)(b) of the Principal Act is “conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed”. Now it is proposed to be amended as “Conservation and sustainable use of biological resources”. Stakeholders have pointed out that promotion of biological resources should not be ignored. Since the Committee are of the firm view that the funds at the kitty of NBA should be used for both conservation and promotion of biological resources. The Committee, therefore, recommend that the clause (b) of sub-section (2) of Section 27 of the Principal Act may read as under:-

“Conservation, promotion and sustainable use of biological resources”

(Recommendation No. 16)

Clause 24: Amendment of section 32 (Constitution of State Biodiversity Fund)

Provision in the Principal Act

3.447 "32. (1) There shall be constituted a Fund to be called the State Biodiversity Fund and there shall be credited thereto-

any grants and loans made to the State Biodiversity Board under section 31 ;

any grants or loans made by the National Biodiversity Authority;

all sums received by the State Biodiversity Board from such other sources as may be decided upon by the State Government.

(2) The State Biodiversity Fund shall be applied for ___

the management and conservation of heritage sites;

compensating or rehabilitating any section of the people economically affected by notification under sub-section (1) of section 37;

conservation and promotion of biological resources;

socio-economic development of areas from where such biological resources or knowledge associated thereto has been accessed subject to any order made under section 24, in consultation with the local bodies concerned;

meeting the expenses incurred for the purposes authorized by this Act."

Amendment Proposed in the Bill

3.448 " In section 32 of the principal Act, —

in sub-section (1), for clause (c), the following clause shall be substituted, namely:—

“(c) all sums including charges and benefit sharing amount received by the State Biodiversity Board and from such other sources as may be decided by the State Government;”;

in sub-section (2),—

in the opening portion, for the word “applied”, the word “utilised” shall be substituted;

after clause (a), the following clause shall be inserted, namely:—

“(aa) channelling benefits to the benefit claimers;”;

(C) in clause (c), for the word “promotion”, the word “sustainability” shall be substituted;

(D) for clause (d), the following clause shall be substituted, namely:—

“(d) socio-economic development of areas from where such biological resources or associated traditional knowledge have been accessed in consultation with the Biodiversity Management Committee or local body concerned:

Provided that when it is not possible to identity the area from where the biological resources or associated traditional knowledge have been accessed, the fund shall be utilised for socio-economic development of the area where such biological resources occur;”;

(E) for clause (e), the following clauses shall be substituted, namely:—

“(e) making grants or loans to the Biodiversity Management Committees;

(f) the activities to meet the purposes of the Act.”.

Rationale for the amendment

3.449 With regard to the rationale behind the amendment proposed in section 32(2)(c), the MoEFCC stated that the word 'sustainability' has been added in line with the second objective of CBD and to provide more clarity in respect of activities to be undertaken. As regards to the amendment to 32(2)(d), it has been submitted that this amendment has been brought to ensure that the fund may get used in necessary regions instead of getting unused in any given situation.

Gist of suggestions received from stakeholders

- 3.450 SBBs cannot levy ABS. When SBB cannot levy ABS, there can be no channeling of benefits. The amendments are not holding true to the purposes as stated, are inappropriate and need to be deleted.
- 3.451 With respect to the amendment in 32(1) (c), it has been suggested that the amendment in the Bill is contrary to the provisions of the CBD and the legislative intent of the BD Act 2002. Also, the proposed amendment have mala fide intentions against the Indian industries and commercial ventures. The Amendments are not hold in true the purposes as stated.
- 3.452 As regards to the amendment as section 32(2) (aa), it has been suggested that there is no clarity on the mode and way the benefits will be channeled to the benefit claimers. Direct Benefit Transfer (DBT) should be explored by the government to transfer the monitory benefits to benefit claimers and for all non-monitory benefits its periodic impact assessment ought to be ascertained.
- 3.453 It has been also suggested that the section 32(2)(c) could be revised as "(c) conservation and promotion of sustainable use of biological resources."
- 3.454 The expression "or associated traditional knowledge" in section 32(2)(d) is inappropriate and may be deleted. Similarly, in the same section "or" may be replaced with "and".
- 3.455 With respect to 32(2)(e), the SBBs cannot make grants when they themselves get grants from NBA and the State. Under the 2002 Act, BMCs are provided funds by way of collection of fees, grant from State and share of ABS from the NBA. This has yet not been implemented despite passage of 20 years since the Act coming into force. A concern as to how SBB make grants when they themselves get grants from NBA and the State is there. Alongside, it is stated that the BMC anyway will get far more money by collection fees if it is implemented.

Comments of MoEFCC

- 3.456 In this regard, the MoEFCC inter-alia stated that SBBs are already levying ABS on commercial utilization to Indian entities. Also, tracking of biological resources help on levying Access Benefit Sharing (ABS) and control bio piracy. Moreover, ABS is also applicable to India while commercial utilization and would be mentioned in the guidelines. They have also provided that the NBA and SBBs are in the process of channeling the ABS to BMCs. Further, they have added that at present Section 7 of the Bill has been integrated with Section 23 and 24 of the Act to bring more clarity. In addition to these, the Ministry had submitted that the proposed amendments for section 32(2) (c) and section 32(2)(d) are important for meeting the objectives of CBD Treaty. It has also been submitted that the amendment in section 32(2)(e) will help the government scheme to get implemented. MoEFCC also stated that the they provide grants in aid to NBA, which are shared with SBBs and BMCs as per the availability of funds.

Observation/ Recommendation of the Committee

- 3.457 **The Committee note that the present provision in Section 32 (2)(c) of the Principal Act is "conservation and promotion of biological resources". Now it is proposed to be amended as "Conservation and sustainable use of biological resources". Stakeholders have pointed out that promotion of biological resources should not be ignored. The Committee are of the firm view that the funds at the kitty of SBB should be used for both conservation and promotion of**

biological resources. The Committee, therefore, recommend that the clause (c) of Sub Section 2 of Section 32 of the Principal Act may read as under:-

“Conservation, promotion and sustainable use of biological resources”

(Recommendation No. 17)

Clause 25: Amendment of section 36

(Central Government to develop national strategies plans. etc., for conservation, etc., of biological diversity)

Provision in the Principal Act

3.458 "36. (1) The Central Government shall develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of in situ, and ex situ, conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity .

(2) Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect, it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.

(3) The Central Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral or cross sectoral plans, programmes and policies.

(4) The Central Government shall undertake measures, —
wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects and where appropriate provide for public participation in such assessment;
to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

(5) The Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity Authority through such measures, which may include registration of such knowledge at the local, State or national levels, and other measures for protection, including sui generis system.

Explanation:-For the purposes of this section,-

“ex situ conservation” means the conservation of components of biological diversity outside their natural habitats;

“in situ conservation” means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties."

Amendment Proposed in the Bill

3.459 " In section 36 of the principal Act, —

for the marginal heading, the following shall be substituted, namely:—

“Central Government to develop national strategies and plans for conservation and sustainable use of biological diversity.”;

in sub-section (1), for the words “conservation of biological resources, incentives”, the words “conservation of biological resources, including cultivars, folk varieties and landraces, incentives” shall be substituted;

in sub-section (3), for the words “sectoral or cross-sectoral plans, programmes and policies”, the words “sectoral policies or cross-sectoral plans and programmes” shall be substituted;

after sub-section (5) and before the Explanation, the following sub-section shall be inserted, namely:—

“(6) The Central Government shall involve the National Biodiversity Authority or State Biodiversity Boards to undertake measures for conservation and sustainable use of biological diversity or associated traditional knowledge thereto.”

Rationale for the amendment

3.460 According to MoEFCC, the purpose behind amending section 36(1) is to give more clarity on conservation of biological resources including cultivars, folk varieties and land races. Moreover section 36(3) has been amended so that sectoral policies for conservation of Biodiversity may be envisaged by Central Government. With regard to the insertion of new sub-section (6) under section (36), the Ministry has stated that this amendment will enable Central Government administrative matters to give more clarity on conservation of biological resources and will ensure close watch and immediate measure as and when needed.

Gist of suggestions received from stakeholders

3.461 Under the assumption of following the international obligations, NBA/SBB cannot exceed their jurisdictions and purposes. NBA provided with excessive powers to regulate use of bioresources imported from foreign countries to India, which shall impact progressive “Make in India” campaign.

3.462 Sui generis protection, preferably perpetual protection through long term recurrent renewals of entitlement in analogy with the GI Act, of such niche specific bioresources under section 36(5) of the Principal Act and knowledge associated thereto will yield double benefit. Alternative formulation may be considered-“In section 62 of the principal Act, in sub-section (2),— the following clause shall be inserted “(eb) criteria for registration and protection, form of application, payment of fees and other details of system of sui generis protection provided for in sub section (5) of section 36, to enhance in situ on farm conservation of bioresources and knowledge of local people related thereto while also bringing it in commercial use and value chains.”;

Suggestion received from State Government

3.463 With regard to Section 36, Odisha State Government stated that in the amendment the word "Biodiversity" may be substituted with "Bioresources" as biodiversity is a structure of the ecosystem and bioresources are the function and bioresources can be used, but not biodiversity.

Suggestion received from BMCs

3.464 Uttarakhand BMCs have suggested that for the words 'conservation of biological resources, incentives' the words 'conservation of habitats, landraces, folk varieties, farmers' varieties and cultivars, domesticated stocks and breeds of animals and microorganisms' may be substituted.

Comments of MoEFCC

3.465 In this regard, the Ministry of Environment, Forest and Climate Change submitted that NBA and SBB have their jurisdiction in tracking of biological resources which helps in levying Access Benefit Sharing and control bio piracy. It has also been stated that section 62(2)(a) of the Bill mentions the manner of issuing certificate of origin for cultivated medicinal plants under sub-section (2) of section 7. Therefore, the need of recurrent renewals of such registration and protection, form of application, which was described in 36 (5) would be further explained in rules and regulations. With reference to the determination of instances when Central Government needs to consult NBA or SBBs or both, the Ministry replied that the Central Government may consult the NBA/SBBs as the case may be when there is a specific need for taking expertise from these expert entities.

Observation/ Recommendation of the Committee

3.466 **The Committee note that in the marginal heading of Section 36 of the Principal Act, it is proposed to substitute the existing marginal heading as “Central Government to develop national strategies and plans for conservation and sustainable use of biological diversity”. Again the Committee note that the Ministry of Environment, Forest and Climate Change has omitted the word ‘Promotion’ even though the word promotion is exists in sub section (1) of Section 36 of the Principal Act. Along with conservation, it is also the responsibility of the Central Government to promote the biological diversity. The Committee, therefore, recommend that the marginal heading of Section 36 shall be read as follows:-**

“ Central Government to develop national strategies and plans for conservation, promotion and sustainable use of biological diversity”.

During clause by clause examination of the bill the committee suggested that the central government shall develop national strategies in consultation with the state Government and Union territories. This suggestion was accepted by the Ministry of Environment Forest and Climate Change. Accordingly, clause 25 (section 36(1)) may be read as follows-

(1) “The Central Government shall in consultation with the State Governments and Union Territories develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of in-situ and exsitu conservation of biological resources including cultivars, folk varieties and landraces, incentives for research, training and public education to increase awareness with respect to biodiversity”.

(Recommendation No. 18)

**Clause 26: Insertion of new sections 36A and 36B-
(Measures to be taken by National Biodiversity Authority)**

Amendment Proposed in the Bill

3.467 "After section 36 of the principal Act, the following sections shall be inserted, namely:-

“36A. The Central Government may authorise National Biodiversity Authority or any other organisation to take any measures necessary to monitor and regulate within the territory of India, the access and utilisation of biological resources obtained from a foreign country in order to meet the international obligations to which India is a signatory.

36B. (1) The State Government shall develop strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity, including measures for identification and monitoring of areas rich in biological resources, promotion of in situ and ex situ conservation of biological resources, including cultivars, folk varieties and landraces, incentives for research, training and public education to increase awareness with respect to biodiversity, in conformity with the national strategies, plans and programmes.

(2) The State Government shall, as far as practicable, wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral policies or cross-sectoral plans and programmes.”

Rationale for the amendment

3.468 To the rationale behind the incorporation of two new sections after section 36 of the principal Act, the Ministry has stated that section 36(A) is inserted to enable Central Government administrative matters to give more clarity on conservation of biological resources and to promote international research, which in turn will improve biodiversity based knowledge. Section 36(B) has been added to enable State Government administrative matters to give more clarity on conservation of biological resources. 'Folk varieties' has been added on the request of the Ministry of Agriculture & Farmers Welfare as this will be helpful in identifying areas and devise customised strategies which could be used for research as well as for sustainable use.

Gist of suggestions received from stakeholders

3.469 Rationale behind the provisions are unclear as it is applicable to biological resources occurring only in India. Also, there is no clarity on the form of monitoring or regulation is contemplated under this provision with respect to imported biological resources. It is also not clear how the regulation and monitoring under this Act would apply in the light of other statutes and regulations that deal with imported biological resources.

Gist of suggestion received from SBB

3.470 Kerala State Biodiversity Board have submitted their suggestion as "In Section 36A, the sentence starts as: “The Central Government may authorize National Biodiversity Authority.....” In a similar manner, it would be better to start the sentence in this Section as: “The State Government may authorize SBB.....” as the state governments undertake biodiversity conservation and related works through SBBs."

Comments of MoEFCC

3.471 As regards to the concern of the stakeholders, the MoEFCC stated that the monitoring or regulation is contemplated under this provision would be explained in rules/ regulations. With respect to the nature and structure of an organization other than NBA which the Central Government may authorize to take any measures necessary to monitor and regulate within the territory of India, the access and utilization of biological resources obtained from a foreign country, MoEFCC submitted that the Central Government may frame rules to select any organization other than or in addition to the NBA to adopt ‘user country measures’ in accordance with the obligations under Nagoya Protocol.

**Clause 27: Amendment of section 37
(Biodiversity heritage sites)**

Provision in the Principal Act

3.472 "37. (1) Without prejudice to any other law for the time being in force, the State Government may, from time to time in consultation with the local bodies, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act.

(2) The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the heritage sites.

(3) The State Government shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification."

Amendment Proposed in the Bill

3.473 "27. In section 37 of the principal Act, —
for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Without prejudice to any other law for the time being in force, based on the recommendations of the State Biodiversity Board, the State Government may, from time to time, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act:

Provided that the State Biodiversity Board shall consult the local body and the Biodiversity Management Committee concerned before making such recommendations.”;

(b) in sub-section (2), for the words “heritage sites”, the words “biodiversity heritage sites” shall be substituted."

Gist of suggestions received from stakeholders

3.474 Local communities have been disempowered by placing more intermediaries and failed to place communities at the centre of controlling heritage sites.

3.475 Replacement of local bodies with state biodiversity board reflects the parastatal trend of further disempowering the local bodies. This amendment is totally in contrary to the FRA, 2006, international law and the constitutional provisions.

3.476 The proposed amendment dilutes the role and power of existing institutions. The doctrine of free, prior informed consent of local institutions has been completely neglected.

3.477 Progressive provisions that can lead to India's biodiversity being conserved and used sustainably have not been effectively operationalised in all these years, under this Act. Such recommendations should be in writing and well documented.

Comments of MoEFCC

3.478 The MoEFCC had submitted that biodiversity heritage sites are notified in consultation with BMCs. Moreover the proposed Bill is an attempt to ensure that India's biodiversity is being conserved and used sustainably and operationalized and would be as per rules and guidelines. With respect to the proposed amendment, the MoEFCC have also stated that earlier biodiversity heritage sites were notified by State Governments without consulting BMCs, which is now mandated. Further, with regard to the parameters to determine "areas of biodiversity importance", the Ministry stated that the parameters to determine the areas of biodiversity importance have already been published by the National Biodiversity Authority as the 'Guidelines for selection and management of the Biodiversity Heritage Sites' and are thus not needed to be incorporated in the Act.

Clause 28: Amendment of section 38 (Power of Central Government to notify threatened species)

Provision in the Principal Act

3.479 "38. Without prejudice to the provisions of any other law for the time being in force, the Central Government, in consultation with the concerned State Government, may from time to time notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species."

Amendment Proposed in the Bill

3.480 "28. In section 38 of the principal Act, the following proviso shall be inserted, namely:—
"Provided that the Central Government may delegate such power to the State Government:
Provided further that where such power is delegated to the State Government, it shall consult the National Biodiversity Authority before issuing any such notification."

Rationale for the amendment

3.481 According to the MoEFCC, the proposed amendment is necessary due to administrative reasons as well as for taking timely and effective steps by the delegation of powers.

Gist of suggestions received from stakeholders

3.482 It has been suggested that there is a need to amend section 38 where loss of species has taken place for the conservation of biodiversity and conservation of threatened and endangered species.

The Central Government should consult the states to notify such species which is on the verge of extinction or likely to become extinct in the near future and come in the category of threatened species and must prohibit or regulate collection thereof for any purpose and take appropriate measures to rehabilitate and preserve those species. Species which are less charismatic like house sparrows, bumble bees must also be protected as they form a part of the ecological web.

Comments of MoEFCC

3.483 To the proposed suggestions, the MoEFCC put forth that all the species listed as per section 38 of the Bill would be approved by central government in consultation with State Governments. Further species like birds and other wildlife are already protected through Wild Life Protection Act, 1972.

Clause 29: Substitution of new section for section 40- Provisions of this Act not to apply in certain cases (Power of Central Government to exempt certain biological resources)

Provision in the Principal Act

3.484 "40. Notwithstanding anything contained in this Act, the Central Government may, in consultation with the National Biodiversity Authority, by notification in the Official Gazette, declare that the provisions of this Act shall not apply to any items, including biological resources normally traded as commodities."

Amendment Proposed in the Bill

3.485 "For section 40 of the principal Act, the following section shall be substituted, namely:—
"40. Notwithstanding anything contained in this Act, the Central Government may, in consultation with the National Biodiversity Authority, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall not apply to biological resources when normally traded as commodities or to the items derived from them, including agricultural wastes, as notified and cultivated medicinal plants and their products for entities covered under section 7, registered as per the regulations made or as prescribed:
Provided that no exemption shall be made for the activities referred to in sub-sections (1) and (2) of section 6."

Rationale for the amendment

3.486 As stated by the MoEFCC, the amendment to section 40 has been envisaged to bring balance between intellectual property rights and its marketing and to ensure that the same is not done at the cost of interests of the local community. Further, it has been stated that this will also ensure that the fair share is given in all cases of commercialization. According to the MoEFCC, earlier exemption of this Act was given to any items including biological resources for Normally Traded as Commodities (NTACs). But now on the request of Department of Biotechnology, agricultural wastes are exempted. Also on the request of the Ministry of AYUSH cultivated medicinal plants and their products for entities covered under section 7 of this Act, as per registration is prescribed. Exclusively section 40 is not applicable to patents. In the original Act, once exemption is given under Section 40, even patents were exempted.

Gist of suggestions received from stakeholders

- 3.487 The proposed amendment states that the exemption applies only when “normally traded as commodities” (NTAC). Exemption to the agricultural waste should include all biowaste and medicinal plant should include access for the purposes of commercialization. Further, the exemption applied to the “derivatives” should also be clarified. It should also be expressly stated that the exemption to NTAC items is irrespective of end use and not restricted only if commodity is traded.
- 3.488 It must be made clear that no provisions of this BD Act shall apply to all NTAC, cultivated medicinal plants, value added products and agricultural wastes. These must be exempted without any rider.
- 3.489 Original provision must be retained for purposes of clarity for trade & commerce along with the exemption of agricultural waste, medicinal plant and the new proviso.
- 3.490 The exemption may be extended even to section 3(2) entities by suitable amendments. There appears to be no basis to restrict the exemption only to agricultural wastes, it is suggested that the exemption may equally be applicable to all biological wastes, i.e. all wastes comprising biological resources, as may be notified. Additionally, it is suggested that biological resources for use in research programs as research tools for screening, trials, testing etc. should be exempted from the purview of the Act.
- 3.491 Normally Traded as A Commodity should be defined and should include all spice crops and their products regardless of their commercial utilisation in any form at any stage. Moreover, if cultivated crops have been provided exemption further classification of these to provide exemption is unjustified.
- 3.492 Exempt all manner of biological waste materials and products derived from them from the definition of biological resources and the purview of this act (not just agricultural waste). Also in Section 2, the word “derivative” may be defined properly to exclude naturally occurring materials of biological origin that are not a result of biological activity (like coal, petroleum and natural gas) from the definition of bio resources and the provisions of this act.
- 3.493 India has presently notified 26,563 accessions belonging to 9 crops, 6 from the crops listed under Annexure-1 of ITPGFRA for exemption from the BD Act. It has been noted that seeds are not included in the NTAC of the BD Act even though seeds are considered as Essential Commodities under Essential Commodities Act.
- 3.494 Amend 'cultivated medicinal plants' to read 'cultivated plants'. All crops listed under the ITPGRFA (Annexure 1) be exempted from the purview of the Act and it is suggested that this exemption may be provided under Section 40 of the Act. Under the Essential Commodities Act, 1955, ‘seeds’ are a commodity listed in this schedule. Therefore these should be treated as normally traded commodities and should be out of the purview of the BDA.
- 3.495 Submission of proof that derived products are being traded as a common practice is not mandated under the proposed amendment. The Bill must provide criteria for better clarity for terms such as ‘biological resources normally traded as commodities’, ‘common practice’, and ‘products derived from biological resources. Under the amended Section 40, if such companies were to access medicinal plants which are not grown in the wild but are cultivated, and then utilize them for manufacturing of drugs, they may do so without taking approval from the relevant SBB.

- 3.496 NTAC list to be exempted from ABS and BDA irrespective of end use.
- 3.497 The amendment proposed to section 40 discriminates between Section 7 and Section 3(2) entities, which again is not aligned to CBD or Nagoya Protocol. Mutually Agreed Terms (MAT) needs further discussion. The creation of process/platform for the National Biodiversity Authority (NBA), State Biodiversity Boards (SBB), Biodiversity Management Committee (BMCs) to provide the applicant a fair negotiating platform to come to MAT before signing the Benefit Sharing Agreement should be considered. Broadening of Normally Traded as A Commodity (NTAC) list to incorporate actual commodity lists from the market, such as those being sold in retail stores, this will ensure sustainable use by different industry sectors.
- 3.498 Amendment to Section 40 has expanded the list of commodities which are normally traded by adding agricultural wastes, medicinal cultivated plants, etc to its list. No exemptions for these commodities could be mandated under Section 6(1) and (2) (Application for intellectual property rights not to be made without approval of National Biodiversity Authority).
- 3.499 The proposed inclusion of ‘agricultural wastes’ under the purview of Section 40 implies that the provisions of the Act shall not apply on the use of such wastes. The reason to do so is not made clear.
- 3.500 Agriculture waste should not be limited to NTAC herbs only. Agriculture waste should be completely exempted from section 4, section 6, section 7 and section 19 of this Act. Agriculture waste definition is not established and needs clarification. The amendments are not very clear; there should be further exemptions build in the section itself as to what is exempted such as the items which are commonly exported.

Gist of suggestions received from SBB

- 3.501 Bihar State Biodiversity Board have stated that the amendment to section 40 allows cultivated medicinal plants and products derived from them to be exempted from the provisions of the Act. Also, if such blanket exemption is given it may encourage the companies to cultivate a few acres only but to show that the entire supply is coming from cultivation only. Moreover, Since the enforcing authorities do not have any mechanism to verify such claims, it may lead to depletion of the naturally occurring biological resources across the country. Apart from the authorities, the end-user i.e., the consumer also gets affected. For example, companies may use common sweeteners for a product but may say that the ingredients for the sweetener are harvested from biological resources but the consumers cannot verify the claim. So, both the authorities as well as the consumers are kept in dark. Kerala SBB have submitted that exemption of all derivatives of normally traded commodities and cultivated medicinal plants will result in exemption of almost all products.

Comments of MoEFCC

- 3.502 The exemption is applicable only when biological resources are “normally traded as commodities”. There is a provision for certification under amendment of Section 7 (2). Therefore, the process of tracking cultivated plants will be developed for issuing the certificate of origin, as mentioned in the Section 7 (2) through further notification under Biological Diversity Rules.
- 3.503 Registered AYUSH Practitioners were exempted and the same is only for individual practitioners and not the companies. Persons having private practice to benefit local community are required to be exempted considering their livelihood as well as for the benefit of the health of local community at large.

- 3.504 Indian Researchers are not required to take any approval and only approval is required at the time of commercialization.
- 3.505 The exemption is applicable for items and their derivatives only when “normally traded as commodities”.
- 3.506 Only in Section 7 cultivated medicinal plants are exempted to reduce pressure on wild.
- 3.507 Coal and Petroleum products are not treated as biological resources and would be treated as NTACs.
- 3.508 No exemption is given for patents under Section 40 of the Bill.
- 3.509 ABS for seeds would be explained in rules/ guidelines.
- 3.510 The latest amendment of Section 40 of BD Bill facilitates ease of doing business and ensures legal protection for Indian biological resources even while patenting of NTACs.
- 3.511 Only the biological commodities that are used as normally traded are exempted under Section 40, but not all.
- 3.512 Seeds if used by only farmers are exempted.
- 3.513 Exemption of cultivation medicinal plants is mainly to reduce pressure from wild.
- 3.514 The Bill, 2021 exempts the PPVFRFA, which is a domestic legislation of ITPGRFA, under the purview of the Act.
- 3.515 All the species that are listed as Normally Traded as Commodities are exempted, including agriculture waste. Details would be as per rules and guidelines.
- 3.516 Further, with reference to the yardstick to determine such 'biological resources', MoEFCC stated that the biological resources which are normally traded as commodities (NTAC) for the purpose of human consumption are exempted from the purview of ABS as it would affect the livelihood and lives of the people. Also, till date, 421 species which are predominantly cultivated by farmers have been categorized as NTAC and notified under Section 40 of the Act. The proposed amendments have exempted research, commercial utilization and bio-survey from the purview of the ABS but exemption is not available under Section 6 for taking IPRs (Patents). As regards to the parameter to determine an item derived from 'normally traded commodities' MoEFCC stated that the definition of ‘derivative’ in the proposed Bill may be utilised for the purpose of deciding on what would amount to items derived from NTAC. Further, regarding exclusion of cultivated medicinal plants, it has been submitted by MoEFCC that it is to help the AYUSH industries and to help in large scale cultivation of medicinal plants by farmers. Moreover, the definition of cultivated medicinal plants would be incorporated in the Bill itself under Section 7.

**Clause 30: Amendment of section 41
(Constitution of Biodiversity Management Committees)**

Provision in the Principal Act

- 3.517 "41. (1) Every local body shall constitute a Biodiversity Management Committee 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 cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity.

Explanation.- For the purposes of this sub-section,-

“cultivar” means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation;

“folk variety” means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;

“landrace” means primitive cultivar that was grown by ancient farmers and their successors.

(2) The National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee.

(3) The Biodiversity Management Committees may levy charges by way of collection fees from any person for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction."

Amendment Proposed in the Bill

3.518 "In section 41 of the principal Act,—

for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) Every local body at the Gram Panchayat level in the rural areas and act the Nagar Panchayat or Municipal Committee or Municipal Corporation level in the urban areas shall constitute a Biodiversity Management Committee (by whatever name called) within its area for the purpose of promoting conservation of landraces, folk varieties, farmers’ varieties, and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity sustainable use and documentation of biological diversity:

Provided that the State Government may constitute Biodiversity Management Committees at the intermediate or district Panchayat level for achieving the objectives of this Act.

(1A) The functions of Biodiversity Management Committee so constituted shall include conservation, sustainable use and documentation of biological diversity, including conservation of habitats, landraces, folk varieties, cultivars, domesticated breeds of animals, and microorganisms, and chronicling of associated traditional knowledge thereto relating to biological diversity.

(1B) The composition of the Biodiversity Management Committee shall be such as may be prescribed by the State Government:

Provided that the number of members of the said Committee shall not be less than seven and not exceeding eleven.”;

(b) in sub-section (2), for the words “and knowledge associated with such resources”, the words “or associated traditional knowledge thereto” shall be substituted;

(c) the following Explanation shall be inserted, namely:—

‘Explanation.—For the purposes of this section,—

“cultivar” means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation;

“folk variety” means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;

“landrace” means primitive cultivar that was grown by ancient farmers and their successors;

“farmers’ variety” means a variety which—

- (i) has been traditionally cultivated and evolved by the farmers in their field; or
- (ii) is a wild relative or landrace of a variety about which the farmers possess the common knowledge;’."

Rationale for the amendment

3.519 According to MoEFCC, the amendment to section 41 has been proposed to bring in more clarity on various levels of BMCs for biodiversity conservation. The explanation to sub-section (1) of section 41 has been now shifted so as to incorporate few more definitions like 'farmers variety' as defined in PPVFRA as requested by the Ministry of Agriculture & Farmers Welfare.

Gist of suggestions received from stakeholders

3.520 The provisions related to PBR are not mandated in the bill. PBR should be governed centrally by any SBB, BMC, Panchayat or any person or group of persons engaged in ensuring the conservation and sustainable use of bioresources and can approach NBA or the competent authority created for getting PBR enforced. PBR is to be linked with ABS disbursement via DBT to avoid any anomalies. The new system should be robust enough to bring the transparency in overall conservation and sustainable use of bioresources in India.

3.521 In the proposed amendment, going beyond a laundry list, the number of BMCs, their role and structure needs to be delineated with clarity. In order to fulfill the role as described in the proposed amendment at section 41(1A), current BMC structure needs to be strengthened. Over 1.5L BMCs are constituted in last 2-3 years and there is no clarity on what they have been doing and how they are functioning at grassroots level.

3.522 The new substitution has elaborated the purpose of the Biodiversity Management Committee. However, the term preservation of habitats has been removed in the new proposal. It should be reinserted.

3.523 The term conservation and sustainable use of biodiversity needs to be included as the National Biodiversity Authority and the State Biodiversity Boards should consult the Biodiversity Management Committee on aspects related to the conservation and sustainable use as they are the local institutional mechanism to implement the Act.

3.524 The implementation of the BDA 2002 is not visible on ground, the procedural aspects like forming and strengthening of BMC is yet to be fully achieved

3.525 The Act does not acknowledge the existence of “pastoralists” and “fishers”, who are not the same as “farmers”. It fails to acknowledge similar diversity existing among domestic livestock which includes “non-descript livestock breeds”, “pastoral livestock breeds”, “native/indigenous livestock breeds”, and clubs them together under a single term “domesticated stocks”. It fails to acknowledge pastoralists as the custodians of such livestock species, similar to farmers for crop plant varieties mentioned in the same section. It does not make direct reference to conservation of fish stocks and fish species, similar to references made for crops, livestock and even microorganisms in the Act. However, the term “Biocultural Diversity” or conservation of such cultural heritage finds no reference place or meaning in the BD Act, 2002

3.526 There is no clarity whether the BMCs have necessary expertise for such specialised work or SBB shall assume the jurisdiction and who would notify the collection fees.

3.527 In section 41(2), the phrase ‘shall consult’ can be substituted with ‘shall obtain prior and informed consent’; instead of just involving BMCs which represent the interest of local and indigenous communities, the communities themselves can be brought on board .

3.528 The Central Rules for non-Indian entity were applied to Indian entities which this bill has attempt to overcome but the way the section 3(2) is drafted in the Act and its implication is not addressing the route cause issue to full extent. Earlier, the State Rules mirror the Central Rules, due

to which the distinction in the treatment of Indian entity and non-Indian entity under the Act is blurred there by adversely impacting the farmers and plant breeding and research industry which largely comprises of SME, MSME Indian entities. Even though Exchange of genetic material under the ITPGRFA is exempted from the Nagoya Protocol, and the benefit-sharing requirement arises only when access for further research and breeding is restricted through IPR. But NBA& SBBs are demanding ABS. So there is no clarity in section 41(3) on use of bioresources as research tools or reference tools (insects or pathogens for testing).

3.529 Powers of BMCs have not been enhanced, and the proposed amendments also allow for State Biodiversity Boards to represent BMCs to determine terms of benefit sharing. Many states have constituted BMCs but the bodies don't really have any power because they haven't been allotted funds. So, the role they can play remains negligible. Their role, especially when it comes to high conservation/economic value bioresources has been ignored. Section 41 (3) empowers BMCs to levy charges for access to bio-resources but there is no clarity on how this can be operationalized and often gets confused with ABS fees amongst those accessing the resources. More clarity could have been provided.

Suggestion received from State Government

3.530 Odisha State Government has suggested that under Explanation 'b', domestic animals may also be included in Explanation provided for 'folk variety' under section 41(2)(b). They have stated that many individuals/farmers/cultivators etc. also breed domesticated animals conventionally to develop new varieties and breeds of domesticated animals (Cows, Dogs, Fowls, Buffaloes, etc.). Hence such animals may be included in folk varieties.

Gist of suggestions received from SBBs

3.531 It has been submitted by Kerala State Biodiversity Board that apart from agrobiodiversity, BMCs shall be mandated with conservation of biodiversity including diversity of species and ecosystems. Therefore "conservation, sustainable use and documentation of biological diversity including preservation of habitats" may be added in the section. In regard to this provision, Chattisgarh SBB has stated that Section 41 (1B) in the proposed amendment allows for the composition of the Biodiversity Management Committees to be determined by the state government as the State Biodiversity Board (SBBs). Meghalaya State Biodiversity Board has submitted that it is a sixth schedule state and there are no Gram Panchayat/Nagar Panchayat institutions. They have also stated that the traditional institutions such as Syiemship, Dolloiship, Sidarship, A'khing, etc. and at village level, village headman are grass root institutions in existence in the state and keeping this in view, the state government has amended the Meghalaya Biological Diversity Rules, 2010 vide notification No.FOR.57/2002/Vol-II/569 dated 23/03/2015 to include villages and accordingly, BMCs have been constituted at village levels. Hence, they have suggested that provisions should be provided in the parent act i.e. "The Biological Diversity Act, 2002 to include BMC constitution at the village level especially for the sixth schedule areas.

Suggestions received from BMCs

3.532 BMCs from Uttarakhand have suggested that for the words 'conservation of landraces, folk varieties, farmers' varieties, and cultivars, domesticated stocks and breeds of animals and microorganisms', the words ' conservation of habitats, landraces, folk varieties, farmers' varieties, and cultivars, domesticated stocks and breeds of animals and microorganisms' may be substituted. Moreover, in section 41(1), the highlighted word 'biological diversity' may be omitted. Further, in place of words 'Biodiveristy Management Committees at the intermediate or district Panchayat

level' the words " Biodiversity Management Committees at the intermediate or District, Municipality (Urban Local bodies) and Panchayat level' may be substituted. Further, in section 41(1A), in place of words, 'biological diversity' the words 'sustainable use and documentation of biological diversity' may be used. Also, definitions in explanation under section 41(2) may be placed under section 2.

Comments of MoEFCC

- 3.533 With regard to the removal of the term 'preservation of habitats', the Ministry had stated that the conservation and sustainable use are within the Gram Sabha, therefore, habitat is also inclusive.
- 3.534 As regards to the forming and strengthening of BMCs, it has been submitted that the intent of the Act is for conservation and sustainable use of biodiversity only. BMC is part of Gram Sabha. Necessary capacity building is provided by SBBs to BMCs. Most of the Biodiversity Management Committees (2, 76,690) have been recently established based on the National Green Tribunal (NGT) Principal Bench Order dated 8th August 2018. The total numbers of Biodiversity Management Committees in 2014 are 34135 and in 2018 the total number of Biodiversity Management Committees (BMC) are 74,063 only
- 3.535 The Biological Diversity Act covers all biological resources including those from the marine and coastal ecosystems. The definition of “biological diversity” as indicated in Section 2(b) 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-systems, and also includes coastal and marine biological resources.
- 3.536 Providing clarity to the consultation process mentioned in section 41(2), the Ministry submitted that the NBA and SBBs have to consult the BMCs before granting approval. After consultation, NBA, on behalf of the BMC/ benefit claimers shall grant approval in the form of an agreement to the users. The benefits received by the NBA/ SBB would be passed-on to the BMC/ benefit claimers concerned. Moreover, as per the Constitution of India, the State (Central Government) shall be responsible to protect the environment and natural resources in the country on behalf of the people of the country. Since the users of biological resources are also from outside India foreigners/ entities and it would be difficult for the BMCs/ local communities to safeguard their rights and interest against these entities. Hence, NBA/ SBB have been entrusted to grant approval in consultation with BMC/ benefit claimers and there will be no exclusion of the BMC/ benefit claimer in the decision making process.
- 3.537 As regards to the substitution of 'conservation' for ‘preservation’ under the list of functions of BMC, MoEFCC stated that the preservation does not always connote conservation. Conservation can also be through sustainable utilization of natural resources. Conservation is generally associated with the protection of natural resources, while preservation is associated with the protection of buildings, objects, and landscapes. Further, it has been stated that the objectives of the Act provide for conservation of biological resources only.

Observation/ Recommendation of the Committee

- 3.538 **The Committee note that a spelling mistake in the first sentence of the sub section (1) of the Clause. The word ‘act’ may be corrected as ‘at’.**

(Recommendation No. 19)

- 3.539 **The Committee note that the words “preservation of habitats have been removed from the proposed sub section 41(1). No plausible reason has been given by the Ministry for removing**

these words from the sub section 41(1) of the Principal Act. It is very much necessary to retain this provision made in the Principal Act. Moreover, conservation of living things in water bodies has to be explicitly mentioned in the proposed amendment. The Committee, therefore, recommend that the proposed para in sub-section (1) of Section 41 should read as follows:-

“Every local body at the Gram Panchayat level in the rural areas and at the Nagar Panchayat or Municipal Committee or Municipal Corporation level in the urban areas shall constitute a Biodiversity Management Committee (by whatever name called) within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of landraces, folk varieties, farmer’ varieties, and cultivars, domesticated stocks and breeds of animals, living things in water bodies and microorganisms and chronicling of knowledge relating to biological diversity”.

(Recommendation No. 20)

**Clause 31: Amendment of section 43
(Constitution of Local Biodiversity Fund)**

Provision in the Principal Act

3.540 "43.(1) There shall be constituted a Fund to be called the Local Biodiversity Fund at every area notified by the State Government where any institution of self government is functioning and there shall be credited thereto-
any grants and loans made under section 42;
any grants or loans made by the National Biodiversity Authority;
any grants or loans made by the State Biodiversity Boards;
fees referred to in sub-section (3) of section 41 received by the Biodiversity Management Committees;
all sums received by the Local Biodiversity Fund from such other sources as may be decided upon by the State Government."

Amendment Proposed in the Bill

3.541 "31. In section 43 of the principal Act, in sub-section (1), for clause (e), the following clause shall be substituted, namely:—
“(e) benefit sharing amount and all other sums received by the Local Biodiversity Fund from such other sources as may be decided by the State Government.”

Gist of suggestions received from stakeholders

3.542 Benefit sharing amount needs to be derived from the NBA to BMC and therefore it is under the jurisdiction of Central Government to allow such inclusion. Benefit sharing amount is determined almost 18 months after obtaining bioresources after the books of accounts are audited. Collection fee is instant payment and therefore this amendment needs to be deleted as it is not in consonance.

3.543 The power to make rules have to be revised in light of the suggestions to delegate more powers to the NBA and SBB.

3.544 The proposed amendments continue to marginalise biodiversity management committees (BMCs). Their powers have not been enhanced, and the proposed amendments also allow for State Biodiversity Boards to represent BMCs to determine terms of benefit sharing.

- 3.545 All amount collected in pursuance of benefit sharing would have to be deposited in the Funds of the NBA, SBBs and BMCs.
- 3.546 The proposed changes also fail to comply with the Nagoya Protocol, 2010 that India became a party to in the year 2014 and later notified Access and Benefit Sharing Regulations, 2014 to give effect to the Protocol that mandates ‘prior and informed consent’ and ‘approval and involvement of indigenous and local communities’ for both access to and benefit-sharing establishing mutually agreed on terms as provided under various sections of articles in the Act.

Comments of MoEFCC

- 3.547 MoEFCC in their comment stated ABS mechanism would be as per guidelines and these suggestions would be taken into consideration in rules and guidelines.

Clause 32: Substitution of new section for section 44- Application of Local Biodiversity Fund (Application of Local Biodiversity Fund)

Provision in the Principal Act

- 3.548 Section 44 of the principal Act which deals with the application of Local Biodiversity Fund states as follows:
- "44. (1) Subject to the provisions of sub-section (2), the management and the custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied, be in the manner as may be prescribed by the State Government.
- (2) The Fund shall be used for conservation and promotion of biodiversity in the areas falling within the jurisdiction of the concerned local body and for the benefit of the community in so far such use is consistent with conservation of biodiversity."

Amendment Proposed in the Bill

- 3.549 Clause 32 which proposes to amend section 44 reads as under:

"32. For section 44 of the principal Act, the following section shall be substituted, namely:—

“44. (1) The Local Biodiversity Fund shall be utilised in accordance with the regulations and the guidelines made in this behalf, for—

(a) the conservation of biodiversity including restoration of areas;

(b) the socio-economic development of the community without compromising the conservation concerns; and

(c) the administrative expenses of the Biodiversity Management Committee.

(2) The Fund shall be utilised in such manner as may be prescribed by the State Government.”

Rationale for the amendment

- 3.550 MoEFCC stated that amendment to section 44(1) has been proposed to help the local community to spend in areas wherever there is more need and the amendment to 44(2) is to address the contingent situation as and when the fund is to be used for some unforeseen purposes within the framework of the Act.

Gist of suggestions received from stakeholders

- 3.551 The emphasis on “economic” indicates a push towards commercialization.
- 3.552 With respect to Section 44 (1) (c), there is need for defining the maximum amount (percentage) of Fund which may be utilized for meeting the administrative expenses of the Biodiversity Management Committee, and major percentage be devoted to sub sections (a) and (b).
- 3.553 The words “including restoration of areas” should be deleted from section 44(1)(a).
- 3.554 The existing Section (2) should not be replaced by the new proposed text.

Suggestions received from State Government

- 3.555 With respect to amendment to section 44, Odisha State Government has stated that in the principal Act, there was no mention on the "utilization of Local Biodiversity Fund for socio economic development of the communities" which is now inserted in the amendment. This may encourage the BMCs for financial mobilization and sustainable management of resources including socio-economic development in their respective jurisdictions.

Suggestions received from BMCs

- 3.556 BMCs from Uttarakhand have suggested that in place of section 44(2) following substituted 'The Fund shall be utilized by the State Government for socio-economic development of areas from where such biological resources or associated traditional knowledge have been accessed in consultation with the Biodiversity Management Committee or local body concerned. The Fund will be used by the local body for socio economic development and climate vulnerability under the direction of the State Government (as is done by panchayats under the Panchayats funds) from where biological resources and associated traditional knowledge are obtained.'

Comments of MoEFCC

- 3.557 To the given suggestions, the MoEFCC stated that the Convention on Biological Diversity realizes biodiversity conservation through sustainable utilization of natural resources and by securing fair and equitable sharing of benefits, but not to ban usage of biological resources for biodiversity conservation. Without commercialization, access and benefit sharing concept would not b there. Further they had also submitted that the funds would be transferred to BMC account only, however, guidelines would be prescribed by respective State Biodiversity Boards.

Observation/ Recommendation of the Committee

- 3.558 **The Committee are concerned to note that the words promotion has been omitted from the provision in the Principal Act without any reason. In this regard, the Committee recommend that the proposed provision in 44(1)(a) of the Bill should be read as follows:-**
“The conservation and promotion of biodiversity including restoration of areas falling within the jurisdiction of the concerned local body”

(Recommendation No. 21)

**Clause 33: Substitution of new section for section 45- Annual statement of Biodiversity Management Committees.
(Annual Report of Biodiversity Management Committees)**

Provision in the Principal Act

3.559 Section 45 of the principal act provides for the annual report of biodiversity management committees. It states as follows:

"45. The person holding the custody of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the concerned local body."

Amendment Proposed in the Bill

3.560 "33. For section 45 of the principal Act, the following section shall be substituted, namely:—

"45. The custodian of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time as may be prescribed by the State Government, its annual statement giving a full account of its activities during the previous financial year, and submit the same to the local body concerned with a copy to the State Biodiversity Board."

Rationale for the amendment

3.561 MoEFCC in their submission stated that the proposed amendment has now simplified the reporting process of local biodiversity fund.

**Clause 34: Substitution of new section for section 46
Audit of accounts of Biodiversity Management Committees**

Provision in the Principal Act

3.562 Section 46 of the Biological Diversity Act, 2002 related to Audit of accounts of Biodiversity Management Committees, reads as under:

The accounts of the Local Biodiversity Fund shall be maintained and audited in such manner as may, in consultation with the Accountant-General of the State, be prescribed and the person holding the custody of the Local Biodiversity Fund shall furnish, to the concerned local body, before such date as may be prescribed, its audited copy of accounts together with auditor's report thereon.

3.563 Amendment Proposed in the Bill

3.564 For section 46 of the principal Act, the following section shall be substituted, namely:

"46. (1) The Biodiversity Management Committee shall maintain the accounts which shall be audited in such manner as may be prescribed by the State Government.
(2) The Biodiversity Management Committee shall furnish to the local body concerned and to the State Biodiversity Board, before such date as may be prescribed by the State Government, its audited copy of accounts together with auditor's report thereon."

Rationale for the proposed amendment

3.565 Regarding the rationale behind the amendment proposed to section 53 of the principal Act, the Ministry have replied that this amendment intends to remove any delay owing to the number of

BMCs in a State and to diligently dispose off the process. The time taken would reduce considerably owing to the number of BMC local funds to be audited, given the fact that the operationalization of BMCs is efficiently being carried out.

3.566 No suggestions were received on this amendment and hence the MoEFCC did not make any comments on this amendment.

Clause 35: Amendment of section 50

Provision in the Principal Act

3.567 Section 50 of the Biological Diversity Act, 2002 relates to the Settlement of disputes between State Biodiversity Boards. The marginal heading of the section reads as under:

Settlement of disputes between State Biodiversity Boards

Amendment Proposed in the Bill

3.568 Clause 35 of the Biological Diversity (Amendment) Bill, 2021 proposes omission of the words “between the State Biodiversity Board” in the marginal heading of section 50 of the principal Act, to read as under:

Settlement of disputes

No suggestions were received on this amendment and hence the MoEF &CC did not make any comments on this amendment.

Clause 36: Amendment of section 52.

Provision in the Principal Act

3.569 Section 52(1) of the Biological Diversity Act, 2002 related to Appeal, reads as under:

52(1) Any person, aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, may file an appeal to the High Court within thirty days from the date of communication to him, of the determination or order of the National Biodiversity Authority or the State Biodiversity Board, as the case may be.

Amendment Proposed in the Bill

3.570 Clause 36 of the Biological Diversity (Amendment) Bill, 2021 proposes amendment of section 52(1) to read as under:

In section 52 of the principal Act, in sub-section (1), for the words “benefit sharing or order”, the words “fair and equitable sharing of benefits or order or direction” shall be substituted.

Rationale for the proposed amendment

3.571 With regard to the rationale behind the amendment proposed, the Ministry have submitted that the NGT has been included for filing appeals as NGT was formed only in 2010. The NGT has

expertise to deal with issues regarding natural resources and also having specialized jurisdiction, there is no pendency like High Courts, therefore there would be timely & effective remedy available in appeal.

3.572 No suggestions were received from stakeholders on this amendment.

Clause 37: Amendment of section 53.

Provision in the Principal Act

3.573 Section 53 of the Biological Diversity Act, 2002 relates to execution of determination or order; and reads as under:

Every determination of benefit sharing or order made by the National Biodiversity Authority or a State Biodiversity Board under this Act or the order made by the High Court in any appeal against any determination or order of the National Biodiversity Authority or a State Biodiversity Board shall, on a certificate issued by any officer of the National Biodiversity Authority or a State Biodiversity Board or the Registrar of the High Court, as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court.

Explanation.- For the purposes of this section and section 52, the expression "State Biodiversity Board" includes the person or group of persons to whom the powers or functions under sub-section (2) of section-22 have been delegated under the proviso to that sub-section and the certificate relating to such person or group of persons under this section shall be issued by such person or group of persons, as the case may be.

Amendment Proposed in the Bill

3.574 Clause 37 of the Biological Diversity (Amendment) Bill, 2021 proposes to amend the abovementioned section by inserting/substituting the following words:

In section 53 of the principal Act,—

for the words "benefit sharing", the words "fair and equitable sharing of benefits" shall be substituted;

after the words "order made by the High Court", the words "or the National Green Tribunal" shall be inserted;

after the words "Registrar of the High Court", the words "or the Registrar of the National Green Tribunal" shall be inserted;

in the Explanation, after the words "group of persons", wherever they occur, the words "or body" shall be substituted.

Explanation.- For the purposes of this section and section 52, the expression "State Biodiversity Board" includes the person or group of persons to whom the powers or functions under sub-section (2) of section-22 have been delegated under the proviso to that sub-section and the certificate relating to such person or group of persons under this section shall be issued by such person or group of persons, or body as the case may be.

Rationale for the proposed amendment

3.575 Regarding the rationale behind the amendment proposed to section 53 of the principal Act, the Ministry have replied that NGT has been included for filing appeals as NGT was formed only in

2010. The NGT has expertise to deal with issues regarding natural resources and also having specialized jurisdiction, there is no pendency like High Courts, therefore there would be timely & effective remedy available in appeal. The Ministry have further submitted that ‘body’ has been added as any ‘body’ can also be delegated.

3.576 No suggestions were received from stakeholders on this amendment.

**Clause 38: Substitution of new sections 55, 55A and 55B for section 55.
(Penalties/Adjudication of penalties)**

Provision in the Principal Act

3.577 Section 55 of the Biological Diversity Act, 2002 relates to penalties. It reads as under:

55(1) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 3 or section 4 or section 6 shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten lakh rupees and where the damage caused exceeds ten lakh rupees such fine may commensurate with the damage caused, or with both.

55(2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 7 or any order made under sub-section (2) of section 24 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.

Amendment Proposed in the Bill

3.578 Clause 38 of the Bill proposes substitution of new sections 55, 55A and 55B for section 55 with regard to Penalties/Adjudication of penalties to be read as under:

For section 55 of the principal Act, the following sections shall be substituted, namely:—

“55. If any person or entity covered under sub-section (2) of section 3 or section 7 contravenes or attempts to contravene or abets the contravention of the provisions of clauses (a) and (b) of sub-section (1) of section 3 or section 4 or section 6 or section 7, such person shall be liable to pay penalty which shall not be less than one lakh rupees, but which may extend to fifty lakh rupees, but where the damage caused exceeds the amount of penalty, such penalty shall be commensurate with the damage caused, and in case, the failure or contravention continues, an additional penalty may be imposed, which shall not exceed one crore rupees and such penalty shall be decided by the adjudicating officer appointed under section 55A.

55A. (1) For the purposes of determining the penalties under section 55, the Central Government may appoint an officer not below the rank of Joint Secretary to the Government of India or a Secretary to the State Government to be the adjudicating officer, to hold inquiry in the prescribed manner and to impose the penalty so determined:

Provided that the Central Government may appoint as many adjudicating officers as may be required.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for, or relevant to, the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person concerned has failed to comply with the provisions of clauses (a) and (b) of sub-section (1) of

section 3 or section 4 or section 6 or section 7, he may impose such penalty as he thinks fit in accordance the provisions of section 55:

Provided that no such penalty shall be imposed without giving the person concerned an opportunity of being heard in the matter.

(3) Any person aggrieved by the order made by the adjudicating officer under sub-section (2) may prefer an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010.

(4) Every appeal under sub-section (3) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person.

(5) The National Green Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

55B. Any authority or officer empowered by the Central Government may, for the purposes of carrying out inspection, survey or any such activity, have all or any of the following powers, namely:—

the power to enter upon any land, vehicle, or premises and to inspect, investigate, survey, and collect information and make a map of the same and seize the materials and records;

(b) the powers of a civil court to compel the attendance of anyone, including witnesses and production of documents and material objects;

(c) the power to issue a search-warrant;

(d) the power to hold an inquiry and in the course of such inquiry, receive and record evidence;

(e) such other power as may be prescribed.”

Rationale for the proposed amendment

3.579 On the question of rationale behind the proposed amendments, the Ministry have submitted that for foreign companies the amount is to be big enough to create sanction in mindset. The local community has the knowledge as well as resource but investments are needed to be encouraged and therefore decriminalisation of offences of this Act is necessary. The penalty of civil nature will serve the purpose. The Ministry have further added that on the request of AYUSH, the imprisonment has been relaxed to monitory punishment for Indians. The decriminalization of the offences under this Act is Governments Policy and may not be considered as a regression as it only intends to give the users of bio-resources a reasonable opportunity to be heard. Further, there is no dilution of the deterrence of the BD Act as the penalty prescribed under Section 55 is increased up to 50 lakh rupees and on continued contravention, up to one crore rupees. Criminal prosecutions are time consuming, and many cases are pending due to prolonged appeals. Decriminalization reduces burden on criminal courts and also ensures investors' interests.

Gist of suggestions received from stakeholders

3.580 A gist of suggestions received in the form of Memoranda on clause 38 is as under:

3.581 The upper limit of one crore is very high and it should be limited to ten lakh rupees. In any case, if the damage exceeds the amount, additional fine may be imposed, as provided.

3.582 Any criminal action before a Criminal Court takes considerable time of 2 to 3 years or more and therefore defeats the purpose of this amendment to the Act. There should rather be an “Alternative Dispute Resolution” mechanism.

3.583 There should be a national and uniform framework for triggering inspections/ surveys/ raids/ closures and seizures and defined in the Act itself.

3.584 By way of these provisions in the bill, an inquiry officer (of the rank of Joint Secretary) will now conduct enquiry in matters of violation and accordingly impose penalty that can go upto Rs. 1

crore in cases of continuous violations. An alternative could be to make an investigative body such as a DG (Enquiry) office which could investigate allegations of non-compliance and place its report before the Authorities (Central or State) for adjudication.

- 3.585 As per the proposed amendments an ‘Adjudicating Officer’ shall conduct an inquiry in respect of the contraventions of the provisions of the Act and award penalties as prescribed for such contraventions. However, there is a need to empower the NBA, SBB and BMCs to issue directions or orders for conservation of biological diversity.
- 3.586 Monetary penalty would be nothing for big corporations in the cases of contravention or attempts to contravene without penal provision for criminal offence. For large multinational companies Rs 1 crore or Rs 50 lakh rupees is a very small amount in terms of the revenue. Allowing them to simply pay fines will not truly be a disincentive for them to not violate the provisions of this act.
- 3.587 Rather than an adjudicating officer appointed by the Central Government, the NBA must continue to exercise powers of determining penalties, especially since it has also been given powers to determine benefit sharing under proposed Section 19(3A).
- 3.588 The intention to decriminalize offences is neither in the interest of biodiversity, farmers, tribals, collectors, growers or conservers of biological resources and holders of traditional knowledge. This is clearly a regressive decision and is in violation of the principal of non-regression which in short means that given the increased threats to environment, environmental law should progress towards becoming more stringent rather than becoming weak.
- 3.589 The proposed amendment to Section 55 is applicable only to “any person or entity covered under sub-section (2) of section 3 or section 7”. It adds a layer of complexity to the law which makes it inaccessible and unclear to the ordinary person, and creates a ripe environment for abuse of process. Further, this preliminary condition would first require to be established, as a pre-condition, before the actual nature, extent, and damages resulting from a violation can be addressed. Whether this preliminary condition has been satisfied or not will be a contested issue from the outset, and at time of adjudication as well, and will be used by violators to escape accountability.
- 3.590 Amendment of section 55 makes the offences, civil offences and the compensation is mere payment of a fine. This drastically changes how seriously the protection of biological resources is taken.
- 3.591 The fixed period of 60 days to file an appeal against an order made by adjudicating officers before the NGT contradicts NGT Act, 2010 and ignored the mandate of Section 59 of the Act of 2002
- 3.592 Introducing such quasi-judicial role for an administrative authority will also result in confusion and chaos, in situations where an aggrieved forest dweller or community initiates a criminal proceeding as provided in other laws (such as the FRA and the Atrocities Act), resulting in parallel, and perhaps contradictory, legal processes.
- 3.593 The introduction of an adjudicatory officer who are to be appointed by the Central or State Government from the ranks of bureaucrats could bring into question the fairness of the adjudicatory process. Further, having officers of the ranks of Joint Secretary and Secretary who are already overburdened with other responsibilities to conduct inquiries and then decide whether provisions of the Act have been complied with or not seems preposterous.
- 3.594 The joint secretary probably will be the joint secretary of Ayush Ministry and there will be a practical impossibility to dispose the dispute without bias and to be impartial. Therefore the power of adjudication must be given to the judicial magistrate itself. The determination of amount of penalty going to non-judicial authority as per Section 55A(1) is also to be removed.
- 3.595 Such a provision would undermine the functioning of the Enforcement Authorities such as the Police Department, who are authorized, knowledgeable and skilled in the acts listed in the amendments in 55B.

Gist of Suggestions received from SBBs/State Governments/BMCs

- 3.596 Assam State Biodiversity Board in this regard have submitted that the proposed amendment in the penalty of offences weakens the existing punishment for offences under this Act. Further, removal of ‘imprisonment’ and empowerment of an executive official to decide on the levy of fines instead of a judicial body is not in line with extant norms and practices of the Indian judicial system.
- 3.597 Bihar State Biodiversity Board in this regard have submitted that under the proposed amendments to Section 55, the imprisonment penalty clause is removed and only the monetary penalties are retained. Many State Forest departments invoke the imprisonment clause provided in the Act to punish the offenders if a biological resource of unknown origin is seized outside the forest area. Hence this provision should be retained as the offences committed are cognizable and non-bailable as given in the original Act.
- 3.598 Further, with regard to the proposed amendments under Section 55 A, they have submitted that for the Chairperson of NBA and SBB, certain qualification criteria have been prescribed whereas, for the adjudicating officers proposed in the bill, no such qualifications are prescribed. Since clause 8(4)(d) of the Bill has specifically provided for legal expertise within the NBA and SBBs, the NBA must be the competent authority and continue to exercise powers of determining penalties, especially since it has also been given powers to determine benefit-sharing under proposed Section 19(3A).
- 3.599 Maharashtra State Biodiversity Board with regard to the amendments proposed under Section 55 have submitted that given the magnitude and extent of biodiversity of Maharashtra, power of Secretary to State Government should be delegated to the Secretary MSBB. Given their complexity, both scientific/technical and geographical spread, Secretary to the State Government would be overburdened with this avoidable responsibility.
- 3.600 State Government of West Bengal have submitted following suggestions with regard to the proposed amendments:
- 3.601 With regard to the amendments proposed under Section 55, it has been pointed that, as stated in the amendment, there is no mention of clauses (a) and (b) of sub-section (1) of Section 3 in the Principal Act; and hence this proposed amendment is not comprehensible.
- 3.602 Under Section 55A(1) the words “the State Government may appoint an officer not below the rank of” and further “or the State Government, as the case may be” may be inserted for the proposed amendment to read as under:
- 3.603 55A. (1) For the purposes of determining the penalties under section 55, the Central Government may appoint an officer not below the rank of Joint Secretary to the Government of India or the State Government may appoint an officer not below the rank of a Secretary to the State Government to be the adjudicating officer, to hold inquiry in the prescribed manner and to impose the penalty so determined:
- 3.604 Provided that the Central Government or the State Government, as the case may be, may appoint as many adjudicating officers as may be required.
- 3.605 With regard to the amendments proposed under Section 55A(2), it has again been pointed that, as stated in the amendment, there is no mention of clauses (a) and (b) of sub-section (1) of Section 3 in the Principal Act; and hence this proposed amendment is not comprehensible.
- 3.606 Under Section 55B, the words “or the State Government, as the case may be” may be inserted for the proposed amendment to read as under:
- 3.607 “55B. Any authority or officer empowered by the Central Government or the State Government, as the case may be, may for the purposes of carrying out inspection, survey or any such activity, have all or any of the following powers, namely:—”
- 3.608 Biodiversity Management Committees from Madhya Pradesh with regard to the amendments proposed under Section 55 have submitted that now only monetary penalty has been proposed whereas in the past there was a provision of fine and imprisonment for violations. This has been weakened the law and in instances of violations, large companies can be acquitted by only paying

the amount. This may encourage illegal and unsustainable trade of biological resources and their exploitation.

- 3.609 Biodiversity Management Committees from Uttarakhand with regard to the amendments proposed under Section 55A(1) have submitted that BMC members and concerned Forest Range Officers should be appointed for determination of penalties. Further, with regard to the amendments proposed under Section 55B, they have submitted that for the purposes of carrying out inspection, survey, etc., any officer or authority empowered by central government, or the state government may be appointed.

Comments of MoEFCC:

- 3.610 The Ministry have agreed that the upper limit of one crore is very high.
- 3.611 Contravention of Biological Diversity Act 2002 being a civil wrong attracts civil penalties and therefore the violations under this enactment is decriminalized. Imposing civil penalties for the civil wrong is the legally correct concept although to make it proportionately remedied depending upon the wrong caused, lower base and higher limit of the fine is given in the Amendment Bill and the details, on the basis of which, the fine amount can be imposed would be given in Rules, including role of adjudicatory officer.
- 3.612 For foreigners, all activities involving access of a biological resource require approval including the contemporary knowledge.
- 3.613 The manner of appointment of adjudicating officer and procedure thereto would be as prescribed under the BD Rules and there shall be no scope for conflict of interest.
- 3.614 Appoint of adjudicatory officer has to be outside NBA or SBB who can work independently. They are many National and state level officers at the rank of Joint Secretary/ Secretary in Forest Department also who can be entrusted the charges.
- 3.615 Further during the Joint Committee meeting, the representative of the State Biodiversity Board has welcomed incorporation of the word “possession” in the definition of ‘access’ as few firms hoard raw material and report as in possession. Therefore, possession is justified, and possession of biological resources must be part of prior information. This would also be deliberated in rules and guidelines.
- 3.616 Since the imprisonment is removed in the amendment, the fine provision can be modified based on the gains obtained by entities using biological resources.
- 3.617 A higher fine will be a deterrent to the users of biological resources to take prior approvals before accessing such resources.

OBSERVATIONS/ RECOMMENDATIONS OF THE COMMITTEE:

- 3.618 **The Committee note that Ministry has proposed amendements in section 55 regarding penalty for violations of provisions of BD Act, 2002. The Government has proposed decriminalization of offences under the Act and also proposed enhancement of penalty amount. The Committee, in principle agree with contention of the Ministry that contravention of Biological Diversity Act 2002 being a civil wrong should attract civil penalties and therefore the violations under this enactment is decriminalized. The Committee also note that there is a provision in Section 59 of the Principal Act that the provisions of this Act is in addition to and in derogation, of the provisions in any other law, for the time being in force. Hence, any violations of the provisions of those Acts would attract punishments according to those laws in addition to the penalties to be prescribed under this Act. However, the Committee are of the view that fine/penalty structure should not be too meagre which may enable violators to escape with a little amount of penalty. The Committee, therefore, recommend that the fine provision should be proportionate to the gains obtained by entities using biological resources. Moreover, the amount of fine/penalty should also be proportionate**

to the size of the company. In this regard, a cottage industry or a small scale industry cannot be equated with very big companies or corporates. If big companies/corporate indulges in activities which are against the sustainable development of bio-diversity or violates the provisions of this Act, they should be imposed more fine/penalty.

(Recommendation No. 22)

Clause 39: Omission of section 58.

Provision in the Principal Act

3.619 Section 58 of the Biological Diversity Act, 2002 relates to cognizable and non-bailable nature of offences. It reads as under:

Offences to be cognizable and non-bailable – The offence under the Act shall be cognizable and non-bailable.

Amendment Proposed in the Bill

3.620 Clause 39 of the Bill proposes omission of section 58 and reads as under:
Section 58 of the principal Act shall be omitted.

A gist of suggestions received from stakeholders is as follows:

3.621 Instead of decriminalizing, it would have been preferable to have improve the procedure under which authorized officers can charge offenders under the law.

3.622 The most powerful aspect the Act has now been omitted – the Act is absolutely spineless now.

3.623 Changes in the provisions of the Biodiversity Act, 2002 is contrary to the 73rd and 74th Amendments to the Constitution, the Panchayat (Extension to Scheduled Areas) Act, 1996 and the Forest Rights Act,2006 and progressively undermine the sovereign control of communities their over their biodiversity, bio resources and other traditional knowledge and intellectual property rights.

Gist of Suggestions received from SBBs/State Governments/BMCs

3.624 Assam State Biodiversity Board in this regard have submitted that the proposed amendment will entirely give the violators a free run and without a strict punishment seeking compliance from entities utilizing biological resources for commercial utilization will become near to impossible.

3.625 Maharashtra State Biodiversity Board with regard to the amendments proposed under Section 58 have submitted that Contravention of Biodiversity Act 2002 being a civil offence attracts civil penalties and therefore, exclusion of this section prima facie seeing justified. There are no objections as regard the other amendment proposed.

3.626 Various Biodiversity Management Committees from Goa with respect to the proposed omission of Section 58, have stated that these amendments will make NBA/SBBs/BMCs powerless and have urged that the biodiversity punitive/disciplinary provisions may be be retained and further strengthened to conserve biodiversity effectively.

3.627 Concerning the proposed omission of Section 58 of the principal Act, the State Government of Goa have submitted that the punitive powers need to exist, though the exact mechanism may be worked out in case the existing provisions are felt as more impractical.

3.628 State Government of Tripura with respect to the proposed omission of Section 58, have stated that this omission shows that intention is to reduce the severity of this Act. Although no-one will be punished for violation of this act except traditional unregistered practitioners; and even if they are caught, they may not have any fear from the provision of this Act.

Comments of MoEFCC:

3.629 Contravention of Biological Diversity Act 2002 is of the nature civil wrong and therefore, in the interest of natural justice, it has been decriminalized. Imposing civil penalties for the civil wrong is the legally correct concept although to make it proportionately remedied depending upon the wrong caused, lower base and higher limit of the fine is given in the Amendment Bill and the details based on which the fine amount can be imposed would be given in Rule, including role of adjudicatory officer.

**Clause 40: Insertion of new section 59A.
Act not to apply to certain persons.**

Provision in the Principal Act

3.630 There was no provision in the Principal Act. It is a new proposal in the Bill.

Amendment Proposed in the Bill

3.631 Clause 40 of the Bill proposes insertion of a new section 59A stating that the Act shall not apply to certain persons. It reads as under:

After section 59 of the principal Act, the following section shall be inserted, namely:—

“59A. The provision of this Act shall not apply to any person who has been given any approval or granted any right under any law relating to protection of plant varieties enacted by Parliament to the extent that such approvals or rights given under that Act does not require similar approval under this Act.”

Rationale for the proposed amendment

3.632 With regard to the rationale behind the proposed amendments, the Ministry have submitted that on the request of Ministry of Agriculture, the overlapping issues between PPVFRA and BD Act were exempted in BD Act. This will make process more easy for the people who will be coming in business as it will reduce compliances. It will bring more clarity and therefore the process will be easy to be followed. Further, section 59A only intends to be non-derogatory of any rights provided under PVPFRA, enacted by Parliament.

A gist of suggestions received from stakeholders is as follows:

3.633 A gist of suggestions received in the form of Memoranda on clause 40 is as under:

3.634 This new provision appears to make the exemption around plant varieties under Section 6(3) vague and narrower than the existing one.

3.635 It should be clarified whether the provisions of this act shall not apply to conventional breeding, trade practices in use in any agriculture and horticulture activities including development of varieties or hybrids and their seed production and distribution regulated under the Seeds Act, 1966 and the seeds (Control)order 1983 or any other applicable laws for the time being in force.

Comments of MoEFCC:

Comments from Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 40 is as under:

3.636 Yes, if approvals are already obtained from PPVFRA, such person may not be needed to take again approval under the Biodiversity Act.

3.637 Only those plants varieties listed under PPVFRA are exempted.

3.638 Section 59 of the Act states that the provisions of this act shall be in addition to, and not in derogation of, the provisions in any other law for time being in force related to forest and wildlife, which includes Forest Rights Act, 2006 also.

3.639 No exemption to seed industry is given in the Bill, 2021.

Clause 41: Amendment of section 61.

Provision in the Principal Act

3.640 Section 61 of the Biological Diversity Act, 2002 relates to Cognizance of offences; and it reads as under:

61. Cognizance of offences:

No Court shall take cognizance of any offence under this Act except on a complaint made by—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 authorized as aforesaid.

Amendment Proposed in the Bill

3.641 Clause 41 of the Bill proposes following Amendments to section 61:

" In section 61 of the principal Act,—

in the opening portion, for the word “complaint”, the words “written complaint” shall be substituted;

in clause (b), for the words “any benefit claimer”, the words “any person or a benefit claimer” shall be substituted."

Gist of suggestions received from stakeholders :

3.642 The term “any person” here given a window to anti- competitive practices.

3.643 Cognizance upon a written complaint does away with the Section in which authorities can take suo-moto cognizance. Here again, it is apparent that the punitive function of the Act is being compromised.

3.644 The failure of the proposed Amendments to remove such precondition and restriction on the power of the court appears to be of a piece with the overall objective of the proposal to reduce legal recourse for benefit claimers to the point of non-existence.

3.645 Persons other than benefit claimers have also been added to the list of persons who can institute complaints. Further, the benefit claimers and other persons do not get to directly file complaints but have to route it through the Central Government or authorized officers who may or may not decide to pursue the matter.

3.646 State Government of Odisha with respect to the proposed amendment of Section 61, have stated that the State Government should also be empowered to authorize persons for booking cases against violation of the Act. Further, justifying the suggestion they have added that this may help the SBBS to take rapid action against the violators of the Act."

Comments of MoEFCC:

3.647 Comments from Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 41 is as under:

3.648 The Section 61 (1) (b) provides powers to benefit claimers which are BMCs to approach court when they are deprived of benefit sharing. So benefit claimers has to give a written complaint.

3.649 Contravention of Biological Diversity Act 2002 is of the nature civil wrong and therefore, decriminalized. Imposing civil penalties for the civil wrong is the legally correct concept although to make it proportionately remedied depending upon the wrong caused, lower base and higher limit of the fine is given in the Amendment Bill and the details, on the basis of which, the fine amount can be imposed would be given in Rules.

Clause 42: Amendment of section 62.

Provision in the Principal Act

3.650 Section 62 of the Biological Diversity Act, 2002 relates to Power of Central Government to make rules; and its sub-section (2) it reads as under:

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

terms and conditions of service of the Chairperson and members under section 9;

powers and duties of the Chairperson under section 10;

procedure under sub-section (1) of section 12 in regard to transaction of business at meetings;

form of application and payment of fees for undertaking certain activities under sub-section (1) of section 19;

the form and manner of making an application under sub-section (2) of section 19;

form of application and the manner for transfer of biological resource or knowledge under sub-section (2) of section 20;

form in which, and the time of each financial year at which, the annual report of the National Biodiversity Authority shall be prepared and the date before which its audited copy of accounts together with auditor's report thereon shall be furnished under section 28;

form in which the annual statement of account shall be prepared under sub-section (1) of section 29;

the time within which and the form in which, an appeal may be preferred, the procedure for disposing of an appeal and the procedure for adjudication, under section 50;

the additional matter in which the National Biodiversity Authority may exercise powers of the civil court under clause (h) of sub-section (6) of section 50;

the manner of giving notice under clause (b) of section 61;

any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

Amendment Proposed in the Bill

3.651 Clause 42 of the Bill proposes following Amendments to section 62:

In section 62 of the principal Act, in sub-section (2),—

for clause (a), the following clauses shall be substituted, namely:—

“(a) the manner of issuing certificate of origin for cultivated medicinal plants under sub-section (2) of section 7;

(aa) the terms and conditions of service of the Chairperson, Member Secretary and other members under section 9;”;

after clause (b), the following clause shall be inserted, namely:—

“(ba) the other functions to be performed by the Member Secretary;”;

in clause (e), after the word “application”, the words “and payment of fees” shall be inserted;

after clause (e), the following clause shall be inserted, namely:—

“(ea) form of application and payment of fees under sub-section (1) of section 20;”;

after clause (j), the following clauses shall be inserted, namely:—

“(ja) the manner of holding inquiry by the adjudicating officer under section 55A;

(jb) the other power under clause (e) of section 55B;”.

Rationale for the proposed amendment

3.652 With regard to the rationale behind the proposed amendments, the Ministry have submitted that ‘Member Secretary’ has been added and the term ‘National’ from National Biodiversity Sites has been removed as they are managed by the States. The powers of adjudicating officer have been further deliberated upon.

Gist of suggestions received from stakeholders

3.653 This is not yet clear in terms of usage of medicinal BR into cosmetics or ayurvedic products (SaundaryaPrasadak) FAQ to be circulated with industry.

Comments of MoEFCC:

3.654 Comments from Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 42 is as under:

3.655 With regard to the suggestions received, the Ministry have responded that such doubts would be explained in the rules and guidelines.

**Clause 43: Amendment of section 63.
Provision in the Principal Act**

3.656 Section 63 of the Biological Diversity Act, 2002 relates to Power of State Government to make rules; and reads as under:

The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

the other functions to be performed by the State Biodiversity Board under clause (c) of section 23;

the form in which the prior intimation shall be given under sub-section (1) of section 24;

the form in which, and the time of each financial year at which, the annual report shall be prepared under section 33;

the manner of maintaining and auditing the accounts of the State Biodiversity Board and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 34;

management and conservation of national heritage sites under section 37;

the manner of management and custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied under sub-section (1) of section 44;

the form of annual report and the time at which such report shall be prepared during each financial year under section 45;

the manner of maintaining and auditing the accounts of the Local Biodiversity Fund and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 46;

any other matter which is to be, or may be, specified.

Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Amendment Proposed in the Bill

3.657 Clause 43 of the Bill proposes following Amendments to section 63:

In section 63 of the principal Act, in sub-section (2),—

after clause (e), the following clause shall be inserted, namely:—

“(ea) the composition of the Biodiversity Management Committee under sub-section (1B) of section 41;”;

in clause (f), for the word “applied”, the word “utilised” shall be substituted;

in clause (g), for the words “annual report”, the words “annual statement” shall be substituted.

Rationale for the proposed amendment

3.658 With regard to the rationale behind the proposed amendment, the MoEFCC have stated that the constitution of BMC has been mandated for conservation of Biodiversity Heritage Sites. Further, the word ‘applied’ has been replaced with ‘utilized’ to bring more clarity on fund utilization rather than application. Also, the word ‘report’ has been replaced with ‘statement’ to simplify the process of reporting.

Gist of suggestions received from stakeholders

3.659 The Annual Report as a document is more extensive. This shift to specify annual statement is a move away from transparency and democratic participation.

Comments of MoEFCC:

3.660 The Ministry of Environment, Forest and Climate Change (MoEFCC) on clause 43 has commented that the intention is to facilitate BMCs with ease of doing business.

3.661 **The following drafting corrections/improvement are suggested by the Committee:**

Sl. No.:	Clause No.:	Drafting corrections/improvement
1.	22	At Page No.:09, Line No.:14 For “(3)” substitute “(2)”
2.	30	At Page No.:11, Line No.:41 For “act” substitute "at".

(Recommendation No. 23)

3.662 **The Joint Committee, therefore, recommends that the Bill as amended after inclusion of suggestions/ recommendations made by the Committee be passed and the General Recommendations may be implemented in due course.**

(Recommendation No. 24)

**DR. SANJAY JAISWAL
CHAIRPERSON,
JOINT COMMITTEE ON THE
BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021.**

**NEW DELHI;
27th JULY, 2022 / SRAVANA 1944 (SAKA)**

Motion in Lok Sabha for reference of the Bill to the Joint Committee

Monday, December 20, 2021/Agrahayana 29, 1943 (Saka)

Shri Bhupender Yadav moved the following motion:-

“That the Bill further to amend the Biological Diversity Act, 2002 be referred to a Joint Committee of the Houses consisting of the following 21 Members from this House :-

1. Dr. Sanjay Jaiswal
2. Ms. Diya Kumari
3. Dr. Heena Vijaykumar Gavit
4. Smt. Aparajita Sarangi
5. Shri Raju Bista
6. Shri Pallab Lochan Das
7. Shri Santosh Pandey
8. Shri Prathap Simha
9. Shri Jugal Kishore Sharma 31
10. Shri Brijendra Singh
11. Shri Ajay Tamta
12. Shri Jagdambika Pal
13. Shri Gaurav Gogoi
14. Ms. S. Jothimani
15. Shri A. Raja
16. Dr. Kakoli Ghosh Dastidar
17. Shri Sridhar Kotagiri
18. Shri Prataprao Jadhav
19. Shri Sunil Kumar Pintu
20. Shri Achyutananda Samanta
21. Shri Ritesh Pandey

and 10 Members from the Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of Members of the Joint Committee;

that the Committee shall make a report to this House by the last day of the first week of next Session;

that in other respects the Rules of Procedure of this House relating to Parliamentary ommittee shall apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House names of the Members to be appointed by Rajya Sabha to the Joint Committee.”

The motion regarding reference was adopted.

Motion in Rajya Sabha for reference of the Bill to the Joint Committee

MONDAY, DECEMBER 20, 2021

Motion for Appointment to the Joint Committee on the Biological Diversity (Amendment) Bill, 2021

A motion for appointment of ten members to the Joint Committee on the Biological Diversity (Amendment) Bill, 2021 was moved and adopted.

Motion dated 04.02.2022 regarding the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021- Extension of Time

Shri Brijendra Singh moved the following motion:-

“That this House do extend by one month from this date the time for the presentation of the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021.”

The motion was adopted.

Motion dated 14.03.2022 regarding the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021- Extension of Time

Shri Brijendra Singh moved the following motion:-

“That this House do extend up to the 03 June, 2022, the time for the presentation of the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021.”

The motion was adopted.

Motion dated 18.07.2022 regarding the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021- Extension of Time

Shri Brijendra Singh moved the following motion:-

“That this House do extend up to the first week of Monsoon Session, 2022 of Parliament the time for the presentation of the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021.”

The motion was adopted.

APPENDIX VI

Motion dated 22.07.2022 regarding the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021- Extension of Time

Dr. Sanjay Jaiswal moved the following motion:-

“That this House do further extend up to the last week of Monsoon Session 2022 of the Parliament the time for presentation of the Report of the Joint Committee on the Biological Diversity (Amendment) Bill, 2021, which was extended upto the first week of the current session on a motion adopted by this House on 18 July, 2022.

The motion was adopted.

LIST OF STAKEHOLDERS WHO SUBMITTED MEMORANDA

1.	Dr Vandana Shiva, Biodiversity Expert, Founder, Navdanya, the Biodiversity Movement and President International Biodiversity Congress).
2.	Sunita K. Sreedharan with Adv. Kapil Kumar, SKS Law Associates, A-98 Ground Floor, CR Park, New Delhi – 110 019
3.	(Arvind Saklani) Dr. Muhammed Majeed, COA Member, Dr. Lal Hingorani, Vice-Chairman, SHEFEXIL
4.	Dr Sudipta Modak, Retired Associate Professor in Chemistry, City College Kolkata (CU) and Chairman, Biodiversity Management Committee, Chandernagore Municipal Corporation, West Bengal, Member, Biodiversity Management Committee, Hooghly Zilla Parishad, Hooghly
5.	Mr. Chandrakant Bhanushali, President Ayurvedic Drug Manufacturers' Association On behalf of 4 leading Associations of Ayurvedic Medicines, namely 1. ADMA (Ayurvedic Drugs Manufacturers Association), Mumbai, 2. AMAM (Association of Manufacturers of Ayurvedic Medicine), New Delhi, 3. AMMOI (Ayurveda Medicine Manufacturers Organisation of India), Kerala & 4. AMWA (Ayurvedic Manufacturer's Welfare Association), Nagpur
6.	Swapnil Chaturvedi, Advocate and Technical Legal Expert Madhya Pradesh Biodiversity Board, Bhopal (MP)
7.	Subhadra Khaperde 74, Krishnodayanagar Khandwa Naka, Indore -452001
8.	Dr. Om Prakash (PhD Microbiology) Scientist-D, Curator, Anaerobic Facility NCMR-NCCS, PUNE National Centre for Microbial Resource
9.	Ayurvedic Medicine Manufacturers Organisation of India (AMMOI) Room No. 33, Arafa Towers, Veliyannur Road, Thrissur - 680 021. Kerala (Dr. D. Ramanathan, General Secretary)
10.	Indian Chamber of Commerce, Dr. Rajeev Singh, Director General
11.	Dabur India Limited Dabur Research & Development Centre Sahibabad-201010, Ghaziabad (U.P) India (Dr Pankaj Prasad Raturi, Head- Bioresources Development)
12.	Professor Dr. Bharat H. Desai Professor of International Law Jawaharlal Nehru Chair in International Environmental Law Jawaharlal Nehru University
13.	Cherian Xavier, Chairman All India Spices Exporters Forum Kaloor Kochi
14.	Confederation of Indian Industry (CII) Chhattisgarh State Council Sandeep Goel, Chairman
15.	(i) K. Divakaran Prathapan, Kerala Agricultural University, Vellayani P.O.,

	Thiruvananthapuram along with (ii) Priyadarsanan Dharma Rajan, Ashoka Trust for Research in Ecology and the Environment
16.	Avinash Jain, General Manager Indian Oil Corporation Ltd.
17.	NB Brindavanam Consultant (NRM, Biodiversity, Medicinal Plants)
18.	Prof. Dr. Shankar Garg *Founder of World Researchers Associations *Honorary Editor-in-Chief- Research Journal of Biotechnology, India
19.	Mr Krishnan G.S Dr P M Murali, Honorary President Association of Biotechnology Led Enterprises (ABLE)
20.	Shivendra Bajaj, Ph.D. Executive Director Federation of Seed Industry of India (FSII) 10A, 10th Floor, Vandhana Building, 11 Tolstoy Marg, New Delhi -110001.
21.	Shrikumar Suryanarayan Managing Director, Sea6 Energy private limited Bangalore.
22.	Goutam Saha Dean, Rajiv Gandhi School of Intellectual Property Law Indian Institute of Technology Kharagpur
23.	M. Prabhakar Rao President, National Seed Association of India NSL ICON, 4th Floor, #8-2-684/2/A, Road No. 12, Banjara Hills, Hyderabad - 500 034
24.	Dr. Jacob Joseph B.Sc., LL.M., Ph.D. Associate Professor & Head, Post Graduate and Research Studies Bharata Mata School of Legal Studies Choondy, Aluva, Kerala State, India Former Director, Centre for Law and Agriculture National University of Advanced Legal Studies (NUALS), Kochi
25.	Professor(Dr) Prabuddha Ganguli CEO, Vision-IPR, 201 Sunview Heights, 262 Sher e Punjab, Andheri (E), Mumbai, India, 400093;
26.	Dr. Ritu Dhingra Regional Vice Chair East and Southern Asia , IUCN (CEESP)
27.	Kanokwan (May) Chodchoey, Ph.D Executive Director Asia and Pacific Seed Alliance, LTD. The Asia and Pacific Seed Association (APSA) 7 th Floor, Institute of IFRPD Building, Kasetsart University, Ladyao, Chatuchak, Bangkok 10900, Thailand
28.	Malathi Lakshmikumaran Ph.D., FNASc Executive Director Lakshmikumaran & Sridharan, Attorneys

	B-6/10, Safdarjung Enclave New Delhi – 110029
29.	Pramod Kumar Choudhary National General Secretary BHARTIYA AGRO ECONOMIC RESEARCH CENTRE Regd. no.: S/15649, of 1985, Under Societies Act 1860 (Office of Bharatiya Kisan Sangh) 43, Deen Dayal Upadhyay Marg, New Delhi
30.	Durgesh Mukharya (Mr.) Partner K&S Partners Intellectual Property Attorneys 4121/B, 6th Cross, 19A Main, HAL II Stage (Ext.), Bangalore 560038, India
31.	Mahesh Pandya Paryavaran Mitra 502, Raj Avenue, Bhaikakanagar Road Thaltej, Ahmedabad - 380059
32.	yogesh shouche, Researcher working in the area of Microbial Taxonomy
33.	Dr. N. Ramesh Kumar Avittam, 51/2692(6) Pappanamcode, Trivandrum, Kerala- 695 018
34.	Sanjay Deshpande SGM (PR & Govt. Relation) Mahyco Private Limited
35.	Dr R.S. Paroda, Chairman, <i>Trust for Advancement of Agricultural Sciences (TAAS)</i> <i>Avenue II, Indian Agricultural Research Institute (IARI)</i> <i>Publication Unit, Pusa Campus</i> <i>New Delhi - 110012</i>
36.	Bhumi AdhikarAndolan <i>F 10/12 (Basement) Malviya Nagar, New Delhi-17</i>
37.	D.P. Tiwari Managing Director Global Biodiversity Education Society Bhopal (M.P.)
38.	Dr. Sudhir Kochhar ARS (Retd.) Former ADG (IPR) and National Coordinator (NAIP), ICAR
39.	Seema Arora Deputy Director General Confederation of Indian Industry 3rd Floor, Andhra Association Building 24, 25 Institutional Area Lodi Road,
40.	Debadityo Sinha Senior Resident Fellow & Lead (Climate & Ecosystems) Vidhi Centre for Legal Policy A-232, Defence Colony, New Delhi – 110024
41.	Neerja Bhatia (Ms) Executive Director

	Confederation of Indian Industry (CII) The Mantosh Sondhi Center 23 Institutional Area, Lodhi Road New Delhi 110003, India Email : neerja.bhatia@cii.in
42.	Dr. T.R.Sharma Deputy Director General (Crop Science) Indian Council of Agricultural Research Division of Crop Science, Krishi Bhavan, New Delhi 110 001. INDIA Phone: (Off.) 91-11-23382545; Fax: 91-11-23097003 E-mail: ddgcs.icar@nic.in
43.	Dr. S. Krishnamurthi, # 593 (Gr. Floor) Phase I (sector 55), Mohali Punjab 160055
44.	Dr Gopal Krishna, LL.M., Ph.D Advocate Patna High Court
45.	Adarsh Ramanujan Advocate Patent Agent K13, LGF, Kailash Colony New Delhi 110048
46.	Dr. Suchandra Dutta Asst. Prof., Department of Botany , Incharge, Herbarium RDNCP R. D. & S. H. National College Bandra West, Mumbai 400040 MAHARASHTRA, India
47.	M R Madhavan, President PRS Legislative Research Institute for Policy Research Studies
48.	Mallika Verma, Director/ Shivendra Bajaj, Ph.D Federation of Seed Industry of India
49.	Arya Vaidya Sala, Kottakkal
50.	Swapan Kumar Dasgupta 10 Suruchi Apartments Plot 31, Sector 10 Dwarka New Delhi-110075
51.	Nawabzada Saad bin Jung
52.	Anonymous ghanshyamgairola74@gmail.com
53.	Trustee of Jimmy and Janak McGilligan Foundation For Sustainable Development Sanawadiya Village, Indore India (Dr. Mrs Janak Palta McGilligan)
54.	P. Aravind, MA Economics Student Christ university, Bangalore
55.	Madhava Pharaceutical Laboratories
56.	Paschimbanga Vigyan Mancha (Pradip Kr. Mahapatra, General Secretary)
57.	Anonymous vs4675976@gmail.com
58.	Andhra Pradesh State Biodiversity Board Flat No.210 , 311 Walnut Block,

	Raintree Park, Nambur , Opp. Nagarjuna University, NH-5, Guntur District, Andhra Pradesh – 522508 (D. Nalini Mohan, IFS P.C.C.F & Member Secretary)
59.	Anonymous nareshchauhan1991@gmail.com
60.	Association of Manufacturers of Ayurvedic Medicines H-66, Connaught Place, New Delhi-110001 Tel: 011-41513323 (Pradeep Multani, President)
61.	SITARAM AYURVEDA (P) LIMITED. 43/1092, Gandhi Nagar Road PO Nedupuzha,Thrissur, Kerala - 680 007 (K S Vasudevan, Manager- Administration)
62.	WWF India 172-B Lodi Estate New Delhi 110003, India (Dr. Sejal Worah, Programme Director)
63.	PHD Chamber of Commerce and Industry (PHDCCI) (Vivek Seigell, Assistant Secretary General)
64.	ALL INDIA PEOPLE’S SCIENCE NETWORK (AIPSN) (P. Rajamanickam,General Secretary Dr. Soma Marla, Convenor, AIPSN Agriculture Desk) AIPSN, Central Secretariat, o/o Tamil Nadu Science Forum 6, Kakkathoppu Street, MUTA Building, Madurai-625 001-Tamil Nadu
65.	Coalition for Environmental Justice in India
66.	Everest Ayurveda
67.	Amrita Life Ayurvedic Healthcare, Kerala, India
68.	Kpnamboodiri’s Ayurvedics
69.	Ratnavilas Ayurveda Oushada Sala(p) Ltd.
70.	RAMCO HERBALS PVT LTD.
71.	Sh. Sanjay Mariwala, President Association of Herbal and Nutraceutical Manufacturers of India, Phoenix House, T-8, A Wing 462, Senapati Bapat Marg, Lower Parel, Mumbai, Maharashtra 400013
72.	Manohargopal Lunani Director, Sri Krishna Jute Mills, Eluru & on behalf of A.P. Composite Jute Mills Association (Forwarded by Shri Kotagiri Sridhar)
73.	The Indian Medical Practitioners’ Co-Operative Pharmacy and Stores (Dr. K. Kader Mohideen, Secretary In charge)
74.	Dr. Joydeep Mukherjee, Professor & Director School of Environmental Studies Faculty of Interdisciplinary Studies Law & Management Jadavpur University

75.	Dr. J. P Singh, President Punjab Ayurvedic Drugs Manufacturers Association
76.	Ashish Saraf, Manorama Industries Ltd
77.	Arun D.K. Rangwasa Institute of Bio-Village
78.	Praveen Rahi, PhD Scientist, National Centre for Microbial Resource, National Centre for Cell Science, Pune
79.	Govind Maheshwari Village Sanawadia, Indore
80.	Dr.Jay Krishna, Researcher
81.	Riti Sethi, Indore, Madhya Pradesh Student Of M S Ramaih Institute Of Technology Banglore Karnatak
82.	Nikky Sureka Cow rearing and breeding
83.	Manoj Nagar Aditya Organic Agriculture Farm, Nursery Village Sanavadia Tehsil and District Indore Madhya Pradesh
84.	Ambrish Kela Sciencetech Eco Foundation, Indore
85.	Smt. Manorama Menon Husband Late Padmashree Govindankutty Menon 46 Samvad Nagar Indore
86.	SIANGHEE TAN, Ph D Executive Director/ Thelma L. Soriano, Seed Regulatory Affairs Director CropLife Asia #06-00 Malacca Center 20 Malacca Street Singapore 048979
87.	Vijay Sharma Hon' Secretary AYUSH Manufacturer's Welfare Association, (AMWA) 84/114, Tawakkal Layout, Off Katol Road Bypass, Wadi, Nagpur-440023 (M.S.) India
88.	People of Indore sangeetgurukull@gmail.com;
89.	Chanchal Kaur and People of Indore
90.	Pooja Chandran Senior Project Manager Foundation for Ecological Security
91.	Navroz Mody Hon. Secretary Bombay Environmental Action Group 80, Empire Building, 2nd Floor 134/136 D N Road, Fort, Mumbai – 400 001
92.	Ajeeth A N A proud citizen of India

93.	Dr. Joseph Selvin <i>FNAAS</i> Professor and Head Department of Microbiology Pondicherry University Puducherry 605 014, India
94.	Sana Taraheem S
95.	Dr. A.K. Dwivedi Member, Scientific Advisory Board, CCRH, Ministry of Ayush [Govt. of India]
96.	Dr.Samad Kottur, M.Sc (Env Sci), PhD. M.A (Popln Stds), M.A (Eng), B.Ed, P.G.D.MCJ, # 461, "ASHA", Basaveshwara Extn, HOSPET-583201 Bellary dist, Karnataka.
97.	Prakhar Jain, A1, Khandelwal Colony, Dugay Chhattisgarh 491001
98.	Srilaxmi Concerned citizen of India
99.	Mrs. Supriya Mohanrao Patil Manager, Business development Indus Biotech Ltd
100.	Dr. Sunil A. Patil ME-501, IISER Mohali SAS Nagar, Punjab
101.	Mahendra Kumar rahngdale Seoni, MP
102.	Rajesh temre President, Swatantra Yuva Shakti Sangathan seoni mp
103.	Adv. Arvind Kumar Jha, Pune.
104.	<i>Malathi Narayanan</i> <i>Secretary-General</i> Indian Beauty & Hygiene Association (IBHA)
105.	Sindhu Thulaseedharan Associate Professor & Head Department of Law University of Kerala
106.	Dr. Aparna Watve Member, Maharashtra State Biodiversity Board Chairman, Plant Expert Committee 34/6, Gulawani Maharaj Rd. Pune 411004
107.	Iqra khalil China Kishori Vikas Kendra
108.	Devendra Sonkar Samanta Ke Sathi, Faizabaad
109.	Simmi, Prerna Kishori Vikas Kendra, Ayodhya
110.	People's Alliance Uttar Pradesh

111.	aarzoo ,parena kisori vikas
112.	Deepak Kumar, Asangathit Kaamgaar Aadhikar Munch, Faizabad, Ayodhya
113.	Jaagriti, Perna Kishori Vikas Kendra, Ayodhya
114.	Afaq Ullah Awadh Youth Collective, Uttar Pradesh
115.	Lochan Bariha, President Zindabad Sangathan At- Kapsipali,Po – odiapali Via-Khaprakhhol Dist. Balangir Pin 767028, Odisha Mobile 8018438289, 9937866507
116.	Shri Sartaaaz, Samanta ke Sathi
117.	Alok Shukla Chhattisgarh Bachao Andolan C-52, Sector 1 Shankar Nagar Raipur
118.	Uttar Pradesh Private Safai Karamchari Manch Faizabad
119.	Khet Mazdoor Kisan Sangram Samiti Uttar Pradesh
120.	Eisha Krishn, Environment Law and Development Foundation
121.	Anonymous rahijnp15784@gmail.com
122.	Dr. Satyadeep Singh/ Mr. Sourav Sardar/ Mr. Kahnava Mahajan/ Mr. Suvesh Kumar AGISS Research Institute
123.	Trilochan Punji, General Secretary Shramik Adhikar Manch At- Kapsipali , Po – odiapali Via-Khaprakhhol Dist. Balangir Pin 767028, Odisha Mobile 9348880611, 9937866507
124.	Disha sanghathan jaunapur uttar pradesh
125.	Bio Diversity Management Committee, Sothawadi Gram Panchayat, Chapra
126.	Van Panchayat Sangharsh Morcha Nainital Laxman Singh Van Panchayat Village Galla Ramgarh Nainital
127.	Shyama Kuriakose Wildlife Conservation Society-India
128.	Uttarakhand Van Panchayat Sangharsh Morcha Nainital" Gopal Lodhiyal
129.	Randhir Sahgal, President Bombay Natural History Society
130.	Centre for Environmental Law Education, Research and Advocacy (CEERA)
131.	Sabyasachi Das. Ph.D. National Coordinator, RRA Network & Director, WASSAN Revitalising Rainfed Agriculture Network

132.	<p>Indu Netam , Adiwasi Jan Van Adhikar Manch, Chhattisgarh Gouthu Baiga, President-Committee on Baiga Habitat Right, Pandariya-Kabirdham Dr.Bobby Luthra Sinha, Adiwasi Jan Van Adhikar Manch, Chhattisgarh Rajesh Ranjan, Adiwasi Jan Van Adhikar Manch, Chhattisgarh Savita Rath, Bhoomi Bandhu Samajik Adhyan Prasikshan evam Sodh Sanstha(BBSAPESS), Surguja-Chhattisgarh Mamta Kujur, Jashpur Jan Vikas Sanstha(JJVS), Jashpur, Chhattisgarh Anima Banerjee, District Coordinator- Adiwasi Jan Van Adhikar Manch, Kabeerdham,Chhattisgarh Sahattar Singh Dhurve, Block Coordinator- Adiwasi Jan Van Adhikar Manch, Pandariya, Kabirdhaam ,Chhattisgarh Etwari Pandram, Cluster Coordinator- Adiwasi Jan Van Adhikar Manch, Daldali-Bodla, Kabirdhaam,Chhattisgarh Chandan Dhurve, Cluster Coordinator- Adiwasi Jan Van Adhikar Manch, Chilpi- Bodla, Kabirdhaam ,Chhattisgarh Dayal Singh Meravi, Block- Adiwasi Jan Van Adhikar Manch, Bodla, Kabirdhaam,Chhattisgarh Rajesh Tripathi, Jan Chetna, Raigarh Bhojmati Rathia, Block Coordinator- Adiwasi Jan Van Adhikar Manch, Tamnar,Raigarh, Chhattisgarh Satyanarayan Pattnayak, Seba Jagat,Odisha Bhanu Patel, Environics, Kudumkela, Dharamjaigarh, Raigarh Puspha Soren, District Coordinator- Adiwasi Jan Van Adhikar Manch, Kanker, Chhattisgarh Dr.Basavi Kiro , Todang Trust, Ranchi, Jharkhand</p>
133.	<p>Kavitha Kuruganti Co-Convenor Ph: 8880067772 Email: kavitakuruganti@gmail.com Alliance for Sustainable & Holistic Agriculture (ASHA-Kisan Swaraj)</p>
134.	<p>Neha Rane Save Kokan Movement</p>
135.	<p>Anonymous hrushigirishpatil@gmail.com</p>
136.	<p>President, BMCs of Nani Virani, Guneri, Dhareshi, and Siyot</p>
137.	<p>1. Shomona Khanna, Advocate, Supreme Court of India, and Former Legal Advisor, Ministry of Tribal Affairs, Government of India. 2. Sanghamitra Dubey, Independent Researcher, Odisha. 3. Rahul Shrivastava, Advocate, Madhya Pradesh High Court, Jabalpur. 4. Khushboo Pareek, Advocate, Supreme Court of India. 5. Astha Saxena, Doctoral Fellow, NALSAR University of Law, Hyderabad</p>
138.	<p>Hasan khan, Tal: Malvan, Dist.: Sindhudurg, Maharashtra 416 606</p>
139.	<p>Shruti Ravindra Pophale</p>
140.	<p>Satyajit Vishwanath Chavan Rajapur , Ratnagiri Save Kokan Movement</p>

141.	Abhishek vitthal Parab
142.	Kshitija Kharade
143.	Rupesh Parab
144.	Obhan & Associates N - 94, Second Floor, Panchshila Park, New Delhi 110017, India
145.	S Singh, Vasant Kunj
146.	Raj malondkar
147.	Dr. Sanchita Ganguli S. Majumdar & co. Patent & Trade Mark Attorneys 5, Harish Mukherjee Road Kolkata 700025
148.	Anonymous payalshirpute61@gmail.com ;
149.	Balkrishna Gavas Save Kokan Movement Maharashtra
150.	Megal Dsouza
151.	Golap Nial, Secretary Gaon Mukti Sangathan At- Kapsipali , Po – odiapali Via-Khaprakhhol Dist. Balangir Pin 767028, Odisha
152.	Chaitali Dhondu Sawant
153.	Mr.M.S.Selvaraj, President Vivasaigal Thoilarlagal Munnetra Sangam (VTMS) 10/210, MGR NAGAR Near Narthagi, Gudalur, Nilgiris, Tamil Nadu, South India Pin: 643 212
154.	Purva Varak
155.	Akhilesh AnilKumar Bring Back Green Foundation Trivandrum, Kerala
156.	Yashvant rane
157.	Pritam kambli
158.	Sameer Sharma, Secretary, Janak and Jimmy Mugiligan Foundation for Sustainable Development Founder Indore Social Media Group Indore, Madhya Pradesh
159.	Mangesh Chavan Save Kokan Movement
160.	Dr. Madhukar Bachulkar. Cholekar. Save Kokan Movement
161.	Prateek shantaram more Save Kokan Movement
162.	Gopal bagwe

163.	Anonymous tanvichavan506@gmail.com;
164.	Pankaj A. Dalvi
165.	Ganesh Khatu Save Kokan Movement
166.	Tejasvi Sawant.
167.	Shailesh P. Karmarkar Save Kokan Movement
168.	Anonymous saylinatalkar2604@gmail.com;
169.	Saili K Palande-Datar Vice President, Malabar Nature Conservation Club, Amboli Member, Kalpavriksh Environmental Action Group Member, Save Konkan Movement
170.	Aarathi Sridhar, Researcher, Dakshin Foundation Alphonsa Jojan, Lawyer Jasoon Chelat, Lawyer Neha Kurian, Lawyer Shyama Kuriakose, Lawyer Stella James, Environmental Law Researcher Vineetha Venugopal, Social Science Researcher
171.	Anonymous divyamandlik07@gmail.com;
172.	Janhvai paste(Radiographer) Save Kokan Movement
173.	Jerome Gerald Kujur Central secretary Pilot Project Netarhat Field Firing Range Anti-Central Jan Sangharsh Samiti, Latehar-Gumla Central Office – Village – Choramunda, Post Arhans, Police Station – Netarhat, District – Latehar, Jharkhand
174.	Sanket Methar
175.	Trupti sharad madye
176.	Kajal
177.	Rita Roy Choudhury Assistant Secretary General Federation of Indian Chambers of Commerce and Industry (FICCI) Industry's Voice for Policy Change Federation House, 1 Tansen Marg, New Delhi 110001
178.	Anonymous poonamchodnekar@gmail.com;
179.	Dr. M. S. Sawant Save Kokan Movement
180.	Pritee Khobrekar, Devbag
181.	Maitreyi Krishnan Co-Convenor, All India Lawyers' Association for Justice (AILAJ)
182.	Santan Fernandes
183.	Prasanth J
184.	Dr. Chandrashekhar Salunkhe

	Save Kokan Movement
185.	ASOKA Pharmaceuticals, Keralas
186.	Haritha Pharmaceuticals
187.	SVIMCO (S.V. Indigenous Medical Research & Manufacturing Co.
188.	Pearl Pharmaceuticals, Parayakad, N. Paravur
189.	S.K.M. Ayurvedic Products Sree Rangam Building Kerala
190.	Cherupushpam Ayurveda Pharmacy P.O. Mala Thrissur
191.	Chettiparambil Ayur Products P.O. Alathur Annamanada Thrissur
192.	Aranya Ayurveda Vaidya Sala
193.	Himalaya Pharmaceuticals Kerala
194.	Chaithanya Ayurvedic Pharmacy
195.	Nila Pharmaceuticals, Kerala
196.	Susrutha Ayurveda Pharma, Kerala
197.	Dr. Sajikumar S, Managing Director Dhathri Life Sciences Private Limited
198.	The Eco Club of TERI School of Advanced Studies, New Delhi
199.	Dr. E.T. neelakandhan Mooss, Managing Director Vaidyaratnam Oushadhasala Pvt. Ltd.
200.	Dr R.S. Paroda, President, Indian Society of Plant Genetic Resources (ISPGR) Dr (Ms) Anuradha Agrawal General Secretary Indian Society of Plant Genetic Resources c/o ICAR-National Bureau of Plant Genetic Resources Pusa Campus, New Delhi - 110 012, IND
201.	Ritwick Dutta Legal Initiative for Forest and Environment N-71, LGF Greater Kailash 1 New Delhi
202.	Amrutha Ayurvedic Pharmacy
203.	AVN Ayurveda Formulations Pvt. Ltd
204.	Mukthi Pharma Manufacturers of Genuine Ayurvedic Medicines
205.	Kadathanad Ayurvedic Pharmaceuticals
206.	Kamal Bawa & Ravi Chellam On behalf of the Biodiversity Collaborative

DETAILS OF THE SITTINGS OF THE JOINT COMMITTEE ON THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

Sl. No.	Sitting No.:	Date of Sitting	Agenda of the sitting and official/non-official witnesses appeared.
1.	1	04.01.2022	<p>Briefing by the representatives of the Ministry of Environment, Forest and Climate Change on the Biological Diversity (Amendment) Bill, 2021 including the amendments proposed on the Bill.</p> <p>(Present: The Ministry of Law and Justice (Legislative Department and Dept. of Legal Affairs).</p>
2.	2	21.01.2022	<p>Oral evidence of the representatives of the Ministry of AYUSH on the Biological Diversity (Amendment) Bill, 2021.</p> <p>Oral evidence of the representatives of the Ministry of Agriculture & Farmers Welfare; the Ministry of Rural Development and the Ministry of Tribal Affairs on the Biological Diversity (Amendment) Bill, 2021.</p> <p>(Present: The Ministry of Law and Justice (Legislative Department and Dept. of Legal Affairs).</p>
3.	3	28.01.2022	<p>Oral evidence of the representatives of the Ministry of Environment, Forest & Climate Change and National Biodiversity Authority, Ministry of Science and Technology (Department of Biotechnology), Ministry of Food Processing Industries and Ministry of Panchayati Raj.</p>

4.	4	08.02.2022	Oral evidence of the representatives of the State Biodiversity Boards of Andhra Pradesh, Assam, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, and Uttarakhand on the various provisions of the Biological Diversity (Amendment) Bill, 2021.
5.	5	18.02.2022	Oral evidence of the representatives of NGOs/ Organizations on the provisions of the Biological Diversity (Amendment) Bill, 2021.
6.	6	21.02.2022	Oral evidence of the representatives of NGOs/ Organizations on the provisions of the Biological Diversity (Amendment) Bill, 2021.
7.	7	28.02.2022	Oral evidence of the representatives of Industrial Organizations/Manufacturers Associations on the provisions of Biological Diversity (Amendment) Bill, 2021
8.	8	15.03.2022	Oral evidence of Experts on various provisions of Biological Diversity (Amendment) Bill, 2021.
9.	9	19.04.2022	Discussion with representatives of Ministry of Environment, Forest and Climate Change on their views/comments on suggestions received from various stakeholders on the Biological Diversity (Amendment) Bill, 2021.
10.	10	12.05.2022	Oral evidence of the representatives of the Biodiversity Management Committees (BMCs) of the States of Uttarakhand and Madhya Pradesh on the provisions of the Biological

			Diversity (Amendment) Bill, 2021 in the presence of representatives of the Ministry of Environment, Forest and Climate Change and National Biodiversity Authority.
11.	11	15.06.2022	Clause by Clause consideration of the Biological Diversity (Amendment) Bill, 2021
12.	12	27.06.2022	Clause by Clause consideration of the Biological Diversity (Amendment) Bill, 2021
13.	13	11.07.2022	Clause by Clause consideration of the Biological Diversity (Amendment) Bill, 2021
14.	14	19.07.2022	Clause by Clause consideration of the Biological Diversity (Amendment) Bill, 2021
15.	15	27.07.2022	Consideration and Adoption of Report of the Biological Diversity (Amendment) Bill, 2021

**LIST OF OFFICIAL/ NON-OFFICIAL WITNESSES WHO TENDERED ORAL
EVIDENCE BEFORE THE COMMITTEE**

LIST OF OFFICIAL WITNESSES

Sl. No.	Name of organizations	Date of oral evidence
1.	Ministry of AYUSH	21.01.2022
2.	Ministry of Agriculture & Farmers Welfare	21.01.2022
3.	Ministry of Rural Development- Department of Rural Development	21.01.2022
4.	Ministry of Rural Development- Department of Land Resources	21.01.2022
5.	Ministry of Tribal Affairs	21.01.2022
6.	National Biodiversity Authority (Ministry of Environment, Forest & Climate Change)	28.01.2022
7.	Department of Biotechnology (Ministry of Science and Technology)	28.01.2022
8.	Ministry of Food Processing Industries	28.01.2022
9.	Ministry of Panchayati Raj	28.01.2022
10.	Andhra Pradesh State Biodiversity Board	08.02.2022
11.	Assam State Biodiversity Board	08.02.2022
12.	Gujarat State Biodiversity Board	08.02.2022
13.	Karnataka State Biodiversity Board	08.02.2022
14.	Kerala State Biodiversity Board	08.02.2022
15.	Maharashtra State Biodiversity Board	08.02.2022
16.	Uttarakhand State Biodiversity Board	08.02.2022
17.	Protection of Plant Varieties and Farmers' Rights Authority	15.03.2022

LIST OF NON-OFFICIAL WITNESSES

Sl. No.	Name of organizations	Date of oral evidence
1.	Dr. Vandana Shiva Biodiversity Expert, Founder, Navdanya, the Biodiversity Movement and President International Biodiversity Congress.	18.02.2022
2.	Alliance for Sustainable & Holistic Agriculture	18.02.2022
3.	ALL INDIA PEOPLE'S SCIENCE NETWORK (AIPSN)	18.02.2022
4.	Trustee of Jimmy and Janak McGilligan Foundation For Sustainable Development	18.02.2022
5.	Zindabad Sangathan	18.02.2022
6.	Adivasi Jan Van Adhikar Manch	18.02.2022
7.	Legal Initiative for Forest and Environment	18.02.2022
8.	Bhartiya Agro Economic Research Centre	21.02.2022
9.	WWF India	21.02.2022
10.	Centre for Environmental Law, Education, Research and Advocacy [CEERA] National Law School of India University	21.02.2022
11.	Bombay Natural History Society	21.02.2022
12.	President, Indian Society of Plant Genetic Resources (ISPGR), New Delhi	21.02.2022
13.	For Shellac & Forest Products Export Promotion Council (SHEFEXIL), Kolkata	28.02.2022
14.	Ayurvedic Drug Manufacturers` Association	28.02.2022
15.	Ayush Manufacturer`s Welfare Association	28.02.2022
16.	Indian Chamber of Commerce -National Expert Committee on Seaweeds	28.02.2022
17.	Association of Herbal & Nutraceutical Manufacturers of India, Mumbai	28.02.2022
18.	Dabur India Limited	28.02.2022
19.	Mahyco Private Limited	28.02.2022
20.	Confederation of Indian Industry	28.02.2022
21.	National Seed Association of India	28.02.2022
22.	Federation of Seed Industry of India	28.02.2022
23.	PHD Chamber of Commerce and Industry	28.02.2022
24.	All India Spcies Exporters Forum	28.02.2022
25.	Dr. Ritu Dhingra Regional Vice Chair East and Southern Asia , IUCN (CEESP)	15.03.2022

26.	Shri M.R. Madhavan and Mr Saket Surya PRS Legislative Research	15.03.2022
27.	Shri K.Divakaran Prathapan (Asst. Professor, Kerala Agricultural University) and Dr. Priyadarsanan Dharma Rajan(Ashoka Trust for Research in Ecology and the Environment)	15.03.2022
28.	Shri Mahesh Pandya Paryavaran Mitra, Ahmedabad	15.03.2022
29.	Shri D.P. Tiwari Managing Director Global Biodiversity Education Society	15.03.2022
30.	Professor Dr. Bharat H. Desai Professor of International Law, JNU	15.03.2022

**JOINT COMMITTEE ON THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL,
2021**

The 1st sitting of the Joint Committee was held on Thursday, the 4th January, 2022 from 1400 hrs. to 1515 hrs. in Committee Room B, Parliament House Annexe, New Delhi.

PRESENT

Dr. Sanjay Jaiswal - Chairperson

LOK SABHA

2. Ms. Diya Kumari
3. Dr. Heena Vijaykumar Gavit
4. Shri Raju Bista
5. Shri Pallab Lochan Das
6. Shri Santosh Pandey
7. Shri Prathap Simha
8. Shri Brijendra Singh
9. Shri Gaurav Gogoi
10. Ms. S. Jothi Mani
11. Shri A. Raja
12. Shri Prataprao Jadhav
13. Shri Sunil Kumar Pintu

RAJYA SABHA

14. Shri Shiv Pratap Shukla
15. Shri Jairam Ramesh
16. Shri Tiruchi Siva
17. Dr. Amar Patnaik
18. Shri Ram Nath Thakur

SECRETARIAT

1. Shri J.M. Baisakh - Joint Secretary
2. Dr. Vatsala Joshi - Director
3. Shri R.C. Sharma - Additional Director
4. Ms. Maya Menon - Under secretary

MINISTRY OF LAW & JUSTICE

(Department of Legal Affairs)

1. Shri Anoop Kumar Mendiratta - Secretary

2. Shri R. S. Verma - Additional Secretary
3. Shri Mahendra Khandelwal – Senior Government Advocate

2. At the outset, the Chairperson welcomed the Members to the first sitting of the Joint Committee. While giving a brief background of the Biological Diversity (Amendment) Bill, 2021 he apprised the Members about the agenda of the sitting.
3. Thereafter, the Chairperson invited the representatives of the Ministry of Environment, Forest and Climate Change and the Ministry of Law & Justice (Department of Legal Affairs and Legislative Department) to brief the Committee on various aspects related to the Biological Diversity (Amendment) Bill, 2021. He then drew the attention of representatives from the Ministries to Direction 55(1) of the Directions by the Speaker, Lok Sabha concerning the confidentiality of the Committee proceedings.
4. The representatives of the Ministry of Environment, Forests and Climate Change then made a Power Point presentation to the Committee covering the following aspects:-
5. (i) Brief background of the Biological Diversity Act, 2002 (ii) Need for the amendments to the Biological Diversity Act, 2002 (iii) Details of the various committees constituted to address the concerns of various stakeholders (iv) Major and minor Amendments proposed in the Bill.
6. The Members, thereafter, sought clarifications on various amendments being proposed in the Bill. Broadly these relate to incorporation of decriminalization provisions, amendments to Section 3 (2) and Section 7, composition of the NBA, need to have transparent guidelines for monetary and non monetary benefits, marginalization of Biodiversity Management Committees (BMC), synchronization between the rights conferred in the Forests Act and Forests Conservation Act to the forest dwellers and tribals, definition of foreign company, effect of the amendments on local communities, performance and status of Biodiversity Management Committees (BMCs), method, if any, regarding quantification of the market value of biodiversity, of local herbs, local plants, exclusion of marine and biodiversity and coastal biodiversity from the Bill, exclusion of Indian entity and local communities from access benefit sharing, the exclusion of other Indian traditional medicinal practitioners etc.
7. The Chairman then directed the Ministry of Environment, Forest and Climate Change to provide written replies to all the points raised during the sitting.

The representatives of the Ministries then withdrew

8. The Committee, thereafter, briefly deliberated on future course of examination. The Chairperson proposed that considering the importance and wider implications of the proposed Bill, a press communiqué may be issued to give wide publicity through electronic and print media to elicit views of the public and NGOs/experts/stakeholders and institutions on the Biological Diversity (Amendment) Bill, 2021. The Committee unanimously agreed to the proposal.
9. The Committee also decided to hold their next sitting on 12 January, 2022 to take oral evidence of the Ministry of AYUSH, the Ministry of Agriculture and Farmers Welfare, the Ministry of Rural Development and the Ministry of Tribal Affairs.

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL,
2021

The second sitting of the Joint Committee was held on Friday, the 21 January, 2022 from 1100 hrs. to 1300 hrs. in Room No.:53, Parliament House, New Delhi.

PRESENT

Dr. Sanjay Jaiswal - Chairperson

LOK SABHA

2. Ms. Diya Kumari
3. Shri Raju Bista
4. Shri Santosh Pandey
5. Shri Jugal Kishor Sharma
6. Shri Brijendra Singh
7. Shri Ajay Tamta
8. Shri Jagdambika Pal
9. Shri Kotagiri Sridhar
10. Shri Sunil Kumar Pintu

RAJYA SABHA

11. Shri Shiv Pratap Shukla
12. Dr. Anil Agrawal
13. Shri Neeraj Shekhar
14. Shri Jairam Ramesh
15. Shri Jawhar Sircar
16. Dr. Amar Patnaik

SECRETARIAT

1. Shri Vinod Kumar Tripathi - Joint Secretary
2. Dr. Vatsala Joshi - Director
3. Shri R.C. Sharma - Additional Director
4. Ms. Maya Menon - Under secretary

Ministry of Environment, Forest and Climate Change

1. Mrs. B.V. Uma Devi - Additional Secretary
2. Shri Tarun Kathula - Scientist 'F'
3. Ms. Swarupama Chaturvedi - Legal Consultant

Ministry of AYUSH

1. Vaidya Rajesh Kotecha- Secretary
2. Dr. Anand T.Gudiwada- Adviser. Drug Policy Section
3. Dr. Tanuja Nesari- CEO. National Medicinal Plant Board
4. Dr. S.R.Chinta- Deputy Adviser. Drug Policy Section
5. Dr. Chandrashekhar Sanwal - Deputy CEO. National Medicinal Plant Board
6. Shri K.S.Nagi- Advisor (Parliament) MoH&FW

Ministry of Agriculture & Farmers Welfare

1. Dr. Abhilaksh Likhi- Additional Secretary
2. Shri Ashwani Kumar- Joint Secretary (Seeds)
3. Dr. K. V. Prabhu Chairperson, Protection of Plant Varieties and Farmers' Rights Authority
4. Dr. A. K. Singh - Director, Indian Agricultural Research Institute
5. Dr. Ashok Kumar- Director, National Bureau of Plant Genetic Resources
6. Smt. Rukmani Sundaram- Director (Seeds)
7. Shri M. Gunasekaran- Assistant Commissioner (Seeds)

Ministry of Tribal Affairs

1. Shri Anil Kumar Jha- Secretary
2. Smt. R. Jaya - Additional Secretary
3. Shri Manoj Bapna - Director

Ministry of Rural Development

(Department of Rural Development)

1. Shri Nagendra Nath Sinha- Secretary
2. Shri Rohit Kumar - Joint Secretary

(Department of Land Resources)

1. Shri Ajay Tirkey - Secretary
2. Shri Hukum Singh Meena - Additional Secretary
3. Shri Umakant- Joint Secretary

Ministry of Law and Justice

(Department of Legal Affairs)

1. Shri Rajveer Singh Verma- Additional Secretary
2. Shri Mahendra Khandelwal- Sr. Govt. Advocate

(Legislative Department)

1. Ms. Veena Kothavale- Joint Secretary and Legislative Counsel

2. At the outset, the Chairperson welcomed the Members to the second sitting of the Joint Committee. While giving a brief about the agenda of the sitting, he apprised the Members about the press communiqué issued in the various papers on 16th January, 2022 to elicit views of the public.

3. Thereafter, the Chairperson invited the representatives of the Ministry of AYUSH to brief the Committee on the various aspects related to the Biological Diversity (Amendment) Bill, 2021. He also drew the attention of representatives from the Ministry to Direction 55(1) of the Directions by the Speaker, Lok Sabha concerning the confidentiality of the Committee proceedings.

4. The representatives of the Ministry of AYUSH then briefed the Committee on the various aspects of Bill concerning the Ministry of AYUSH. The Members, thereafter, sought clarifications on various amendments being proposed in the Bill from the Ministry and also put forth their suggestions with respect to the proposed Bill. Thereafter, the Chairperson directed the Ministry of AYUSH to furnish written replies to all the points raised by members during the sitting within 15 days.

The representatives of the Ministry of AYUSH then withdrew

5. Thereafter, the Chairperson welcomed and invited the representatives of the Ministry of Agriculture and Farmers Welfare, Ministry of Tribal Affairs and the Ministry of Rural Development (Department of Rural Development and Department of Land Resources) to brief the Committee on various aspects related to the Biological Diversity (Amendment) Bill, 2021. He also drew the attention of representatives from the Ministry to Direction 55(1) of the Directions by the Speaker, Lok Sabha concerning the confidentiality of the Committee proceedings

6. The representatives from the Ministries thereafter briefed the Committee on the various provisions of the proposed amendments concerning the respective Ministry. The Members, thereafter, sought clarifications on various amendments being proposed in the Bill from the Ministries and also put forth their suggestions with respect to the proposed Bill. The Chairperson also directed the Ministries to furnish written replies to all the points raised by members during the sitting.

The representatives of the Ministries then withdrew

7. The Committee also decided to hold their next sitting on 28 January, 2022 to take oral evidence of the Ministry of Environment, Forest & Climate Change and National Biodiversity Authority, Ministry of Science and Technology (Department of Biotechnology), Ministry of Food Processing Industries and Ministry of Panchayati Raj.

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL,
2021

The 3rd sitting of the Joint Committee was held on Friday, the 28th January, 2022 from 1430 hrs. to 1600 hrs. in Room No.:53, Parliament House, New Delhi.

PRESENT

Dr. Sanjay Jaiswal - Chairperson

LOK SABHA

2. Shri Brijendra Singh
3. Shri Jagdambika Pal
4. Ms. S. Jothi Mani
5. Shri Kotagiri Sridhar
6. Shri Sunil Kumar Pintu
7. Shri Ritesh Pandey

RAJYA SABHA

8. Shri Anil Agrawal
9. Shri Jairam Ramesh
10. Shri Jawhar Sircar
11. Shri Ram Nath Thakur

SECRETARIAT

1. Shri Vinod Kumar Tripathi - Joint Secretary
2. Dr. Vatsala Joshi - Director
3. Shri C. Kalyanasundaram - Additional Director
4. Shri Bharat Lal Meena - Research Officer

Ministry of Environment, Forest and Climate Change

1. Shri Naresh Pal Gangwar - Additional Secretary
2. Dr. S. Kerketta - Scientist 'G'
3. Shri Tarun Kathula - Scientist 'F'
4. Ms. Swarupama Chaturvedi - Legal Consultant
5. Dr. V.B. Mathur- Chairperson, National Biodiversity Authority
6. Shri. J. Justin Mohan- Secretary, National Biodiversity Authority
7. Dr. Raghu Ram- Technical Officer, National Biodiversity Authority
8. Shri. Kannusamy Chittrarasu- Advisor, National Biodiversity Authority

MINISTRY OF SCIENCE AND TECHNOLOGY

(Department of Biotechnology)

1. Dr. Rajesh Gokhale- Secretary
2. Dr. Alka Sharma - Scientist-H

3. Dr. Anamika Gambhir - Scientist-G
4. Dr. Sangita Kasture - Scientist-F
5. Dr. Amit Parikh - Scientist-F
6. Dr. Manoj Kumar Modi- Scientist-F
7. Shri Subodh Kumar Ram- Under Secretary

MINISTRY OF PANCHAYATI RAJ

1. Shri Sunil Kumar – Secretary
2. Dr. Chandra Shekhar Kumar- Additional Secretary
3. Shri Khushwant Singh Sethi Joint Secretary
4. Ms. Rekha Yadav Joint Secretary

MINISTRY OF FOOD PROCESSING INDUSTRIES

1. Shri Atul Saxena – Joint Secretary
2. At the outset, the Chairperson welcomed the Members to the third sitting of the Joint Committee. Then he briefed the Members about the agenda of the sitting.
3. Thereafter, the Chairperson invited the representatives of the Ministry of Environment, Forest and Climate Change, and National Biodiversity Authority along with the Ministry of Science and Technology (Department of Biotechnology), the Ministry of Food Processing Industries, and the Ministry of Panchayati Raj to hear the views of the respective Ministry on the impact, if any, of the Biological Diversity (Amendment) Bill, 2021 on the areas concerning them. He then drew the attention of representatives from the Ministries to Direction 55(1) of the Directions by the Speaker, Lok Sabha concerning the confidentiality of the Committee proceedings.
4. The representatives from the Ministries thereafter briefed the Committee on the various provisions of the proposed amendments concerning the respective Ministry. The Members, thereafter, sought clarifications on various amendments being proposed in the Bill from the Ministries and also put forth their suggestions with respect to the proposed Bill. The Chairman then directed the Ministries to provide written replies to all the points raised during the sitting within a week and directed the Ministry of Panchayati Raj to send their suggestions in writing within 15 days if they would like to add anything.

The representatives of the Ministries then withdrew

5. The Committee also decided to hold their next sitting on 08 February, 2022 to take oral evidence of the representatives of the State Biodiversity Boards of Andhra Pradesh, Assam, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, and Uttarakhand.

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL,
2021

The 4th sitting of the Joint Committee was held on Tuesday, the 08th February, 2022 from 1400 hrs onwards in Committee Room No. 2, Parliament House Annexe Extension, New Delhi.

PRESENT

Dr. Sanjay Jaiswal - Chairperson

LOK SABHA

2. Ms. Diya Kumari
3. Dr. Heena Vijaykumar Gavit
4. Shri Prathap Simha
5. Shri Brijendra Singh
6. Shri Jagdambika Pal
7. Shri Gaurav Gogoi
8. Shri A. Raja
9. Dr. Kakoli Ghosh Dastidar
10. Shri Kotagiri Sridhar
11. Shri Sunil Kumar Pintu
12. Shri Ritesh Pandey

RAJYA SABHA

13. Smt. Ramilaben Becharbhai Bara
14. Shri Jairam Ramesh
15. Shri Jawhar Sircar
16. Shri Tiruchi Siva
17. Dr. Amar Patnaik

SECRETARIAT

1. Shri Vinod Kumar Tripathi - Joint Secretary
2. Dr. Vatsala Joshi - Director
3. Shri C. Kalyanasundaram - Additional Director
4. Ms. Maya Menon - Under Secretary

Ministry of Environment, Forest and Climate Change

1. Shri Naresh Pal Gangwar - Additional Secretary
2. Shri Tarun Kathula - Scientist 'F'

3. Ms. Swarupama Chaturvedi - Legal Consultant

STATE BIODIVERSITY BOARDS

(Andhra Pradesh)

1. Dr. D. Nalini Mohan - PCCF and Member Secretary
2. Shri P. Satyanarayana - Technical Officer
3. Dr. Ch. Koteswara Rao - Scientist

(Assam)

1. Shri K.S.P.V. Pavan Kumar - Addl. PCCF (Biodiversity) & Member Secretary

(Gujarat)

1. Shri P.G. Gardi - Member Secretary
2. Dr. Vivek Vegda - Expert Botanist
3. Shri Kunal Makwana - Legal Assistant

(Karnataka)

1. Smt. Pavithra K.A. - Deputy Director (Horticulture)
2. Shri K.R. Prasanna - Technical Executive
3. Shri Nikhil N. - Technical Executive

(Kerala)

1. Dr. C. George Thomas Chairman

(Maharashtra)

1. Dr. S.H. Patil - Chairman
2. Shri Praveen Srivastava- Member Secretary

(Uttarakhand)

1. Shri R. N. Jha - Member Secretary

2. At the outset, the Chairperson welcomed the Members to the fourth sitting of the Joint Committee. Then he briefed the Members about the agenda of the sitting.

3. Thereafter, the Chairperson invited the representatives of the various State Biodiversity Boards to apprise the Committee regarding the impact of the Biological Diversity (Amendment) Bill, 2021 on various sectors concerning them. The Chairperson also urged them to use the meeting as an opportunity to put forward their views and suggestions, if any, with respect to the amendments proposed in the Bill. He then drew the attention of the representatives from the Ministry and various State Biodiversity Boards to Direction 55(1) of the Directions by the Speaker, Lok Sabha regarding confidentiality of the Committee proceedings.

3. The representatives of various State Biodiversity Boards, thereafter, briefed the Committee on the impact of the proposed amendments with regard to the State Biodiversity Boards, in general, and their respective States, in particular. The Members, thereupon, sought clarifications on the various amendments being proposed in the Bill from the representatives of various State Biodiversity Boards. The Chairperson, then, thanked the witnesses for sharing valuable information with the Committee on the subject and directed them to send, in writing, requisite information which was not readily available with them to the Committee Secretariat within a week.

The representatives of the Ministry and various State Biodiversity Boards then withdrew

4. The Committee then decided to hold their next two sittings on 18th February, 2022 and 21st February, 2022 to take oral evidence of the representatives of various NGOs/Organizations on the provisions of the Biological Diversity (Amendment) Bill, 2021.

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL,
2021

The 5th sitting of the Joint Committee was held on Friday, the 18th February, 2022 from 1400 hrs. to 1530 hrs. in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Dr. Sanjay Jaiswal - Chairperson

LOK SABHA

2. Ms. Diya Kumari
3. Shri Brijendra Singh
4. Shri Ajay Tamta
5. Shri Sunil Kumar Pintu

RAJYA SABHA

6. Shri Shiv Pratap Shukla
7. Dr. Anil Agrawal
8. Smt. Ramilaben Becharbhai Bara
9. Shri Jawhar Sircar
10. Dr. Amar Patnaik

SECRETARIAT

1. Shri Vinod Kumar Tripathi - Joint Secretary
2. Dr. Vatsala Joshi - Director
3. Shri C. Kalyanasundaram - Additional Director
4. Shri Sumesh Kumar - Deputy Secretary

REPRESENTATIVES OF MINISTRY/DEPARTMENT

Ministry of Environment, Forest and Climate Change

1. Ms. Leena Nandan - Secretary
2. Shri Naresh Pal Gangwar - Additional Secretary
3. Dr. S. Kerketta - Scientist G
4. Shri Tarun Kathula - Scientist 'F'
5. Ms. Swarupama Chaturvedi- Legal Consultant

REPRESENTATIVES OF NGOs/ ORGANISATIONS

Navdanya

1. Dr. Vandana Shiva - Biodiversity Expert, Founder, Navdanya Shri Naresh Pal Gangwar - Additional Secretary

Alliance for Sustainable & Holistic Agriculture (ASHA-Kisan Swaraj)

1. Dr K S Varaprasad - ASHA
2. Shri Nachiket Udupa - Member, Steering Group of ASHA

Jimmy and Janak McGilligan Foundation For Sustainable Development

1. Dr. Mrs Janak Palta McGilligan-Trustee of Jimmy and Janak McGilligan Foundation
2. Shri Avinash Singh – Biotechnologist

Zindabad Sangathan

1. Shri Gopal Krishna-Zindabad Sangathan
2. Ms. Shweta tripathi-Zindabad Sangathan

Adivasi Jan Van Adhikar Manch (AJVAM)

1. Ms. Indu Netam – Convenor
2. Dr. Bobby Luthra Sinha - Research Head

Legal Initiative for Forest and Environment (LIFE)

1. Ritwick Dutta – LIFE
2. Dr Rakesh Kumar Singh – LIFE

2. At the outset, the Chairperson welcomed the members to the fifth sitting of the Joint Committee. Then he briefed the members regarding the response received by the Secretariat to the press communiqué issued on 16.01.2022 seeking suggestions/views of various stakeholders, including individuals, non-governmental organizations (NGOs) and industrial associations.

3. Thereafter, the Chairperson invited the representatives of the Ministry of Environment, Forest and Climate Change, along with the representatives of non-governmental organizations and environmental activist organizations, to place their suggestions/views on the impact of the amendments proposed in the Biological Diversity (Amendment) Bill, 2021. He also drew the attention of representatives from the Ministries and NGOs to Direction 55(1) of the Directions by the Speaker, Lok Sabha, regarding confidentiality of the Committee proceedings.

4. Then the representatives from the non-governmental organisations and environmental activist organisations put forth their views/suggestions on the amendments proposed in the Bill. The members, thereafter, sought clarification on various amendments being proposed in the Bill from the representatives of NGOs. The Chairperson, then, thanked the witnesses for sharing valuable information with the Committee on the subject and directed them to send, in writing,

requisite information which was not readily available with them to the Committee Secretariat within a week.

The representatives of the Ministries then withdrew

5. The Committee also decided to hold their next sitting on February 21, 2022 to hear from another set of stakeholders, including non-governmental organisations (NGOs), various people, and environmental activist organizations, who had submitted their views on the Biological Diversity (Amendment) Bill, 2021.

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

**JOINT COMMITTEE ON THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL,
2021**

The Sixth sitting of the Joint Committee was held on Monday, the 21st February, 2022 from 1430 hrs. to 16.10 hrs. in Committee Room C, Parliament House Annexe, New Delhi.

PRESENT

Dr. Sanjay Jaiswal - Chairperson

LOK SABHA

2. Dr. Heena Vijaykumar Gavit
3. Shri Santosh Pandey
4. Shri Jugal Kishor Sharma
5. Shri Brijendra Singh
6. Shri Ajay Tamta
7. Shri Kotagiri Sridhar
8. Shri Sunil Kumar Pintu

RAJYA SABHA

9. Dr. Anil Agrawal
10. Smt. Ramilaben Becharbhai Bara
11. Dr. Amar Patnaik
12. Shri Ram Nath Thakur

SECRETARIAT

1. Shri Vinod Kumar Tripathi - Joint Secretary
2. Dr. Vatsala Joshi - Director
3. Shri C. Kalyanasundaram - Additional Director
4. Shri Sumesh Kumar - Deputy Secretary

Ministry of Environment, Forest and Climate Change

1. Ms. Leena Nandan - Secretary
2. Shri Naresh Pal Gangwar - Additional Secretary
3. Dr. S. Kerketta - Scientist G
4. Shri Tarun Kathula - Scientist 'F'

Bhartiya Agro Economic Research Centre (BAERC), New Delhi

1. Adv. Ashish Vilas Sonawane

WWF India

1. Ms. Vishaish Uppal –Director, Governance, Law and Policy

**Centre for Environmental Law, Education, Research and Advocacy [CEERA]
National Law School of India University**

1. Ms. Madhubanti Sadhya- Teaching Associate and Faculty
2. Mr. Rohith R Kamath

Bombay Natural History Society

1. Ms. Neha Sinha- Head, Conservation and Policy

Indian Society of Plant Genetic Resources (ISPGR), New Delhi

1. Dr R.S. Paroda - President,
2. Dr Anuradha Agrawal –General Secretary

2. At the outset, the Chairperson welcomed the Members to the sitting of the Joint Committee and apprised the Members about the agenda of the sitting.

3. Thereafter, the Chairperson invited the representatives of the Ministry of Environment, Forest and Climate Change and the representatives from NGOs/environmental activist Organizations to brief the Committee on their suggestions/views on the proposed Bill. . He then drew the attention of representatives from the Ministries to Direction 55(1) and Direction 58 of the Directions by the Speaker, Lok Sabha regarding confidentiality of the Committee proceedings.

4. The representatives from NGOs/environmental activist Organizations put forth their views/suggestions on the proposed Bill. The Members, thereafter, sought clarifications on the same to which the representatives NGOs/environmental activist Organizations responded. The Chairperson, then, thanked the witnesses for sharing valuable information with the Committee on the subject and directed them to send, in writing, requisite information which was not readily available with them to the Committee Secretariat within five days.

The representatives of the Ministries then withdrew

5. The Committee also decided to hold their next sitting on 28th February, 2022 to take oral evidence of the

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL,
2021

The 7th sitting of the Joint Committee was held on Monday, the 28th February, 2022 from 1130 hrs to 1430 hrs in Committee Room 2, Block A, Parliament House Annexe Extension, New Delhi.

PRESENT

Dr. Sanjay Jaiswal - Chairperson

LOK SABHA

2. Ms. Diya Kumari
3. Smt. Aparajita Sarangi
4. Shri Raju Bista
5. Shri Santosh Pandey
6. Shri Jugal Kishore Sharma
7. Shri Brijendra Singh
8. Shri Ajay Tamta
9. Shri Gaurav Gogoi
10. Shri Sunil Kumar Pintu

RAJYA SABHA

11. Dr. Anil Agrawal
12. Smt. Ramilaben Becharbhai Bara

SECRETARIAT

1. Dr. Vatsala Joshi - Director
2. Shri C. Kalyanasundaram - Additional Director
3. Shri Sumesh Kumar - Deputy Secretary
4. Ms. Maya Menon - Under Secretary

REPRESENTATIVES OF MINISTRY/DEPARTMENT

Ministry of Environment, Forest and Climate Change

1. Shri Tanmay Kumar - Additional Secretary
2. Ms. Manju Pandey - Joint Secretary
3. Dr. S. Kerketta - Scientist G
4. Shri Tarun Kathula - Scientist 'F'
5. Dr. V. B. Mathur - Chairman, National Biodiversity Authority
6. Shri J. Justin Mohan - Secretary, National Biodiversity Authority
7. Ms. Swarupama Chaturvedi - Legal Consultant

**REPRESENTATIVES OF
INDUSTRIAL ORGANIZATIONS/MANUFACTURERS ASSOCIATIONS**

Shellac & Forest Products Export Promotion Council (SHEFEXIL)

1. Dr. Arvind Saklani - Vice President (Agri Biotechnology) M/s. Sami-Sabinsa Groups Ltd., Karnataka
2. Dr. Debjani Roy - Executive Director, SHEFEXIL, Kolkata

Ayurvedic Drug Manufacturers' Association (ADMA)

1. Shri Ranjit Puranik - Managing Committee Member, ADMA

Ayush Manufacturers Welfare Association (AMWA)

1. Shri Bharat Bhushan Shrikhande- President, AMWA
2. Shri Vijay Sharma- Secretary, AMWA

Indian Chamber of Commerce (ICC)

1. Shri Abhiram Seth - Chairman, ICC-National Expert Committee on Seaweeds
2. Dr. Shrikumar Surjanarayan - Co-Chairman, ICC-National Expert Committee on Seaweeds

Association of Herbal and Nutraceutical Manufacturers of India (AHNMI)

1. Ms. Gaura Verma- Executive Director, AHNMI

Dabur Research & Development

1. Dr. Pankaj Prasad Raturi- Head of the Department
2. Dr. Narasimha Baba Brindavanam- Advisor, Bio-Resource Development, Dabur

Mahyco Private Limited

1. Ms. Paramita Patit Paban Ghosh -Mahyco
2. Ms. Madhavi Bharat Char- Mahyco

Confederation of Indian Industry (CII)

1. Shri Rajiv Vasudevan - Chairman, CII Ayush Forum and Founder & CEO, AyurVAID Hospitals
2. Ms. Elizabeth Jose- Deputy Director, Med Tech and Ayush CII

National Seed Association of India (NSAI)

1. Dr. R.K. Trivedi- Executive Director, NSAI
2. Shri S. Sartaj Mohammed Khan- Consultant, NSAI

Federation of Seed Industry of India (FSII)

1. Dr. Arvind Kapur - FSII
2. Shri Tarun Bhalla - FSII

PHD Chamber of Commerce and Industry (PHD CCI)

1. Dr. J L N Sastry- Managing Committee Member, PHD CCI
2. Shri Sanjay Kumar - AGM, Multani Pharmaceuticals Limited (member company of the Chamber)

All India Spices Exporters Forum (AISEF)

1. Shri Emmanuel Nambusseril- Vice Chairman, AISEF
2. Col. Deric Sebastian (Retd.)- Executive Director, AISEF

2. At the outset, the Chairperson welcomed the Members to the seventh sitting of the Joint Committee. Then he briefed the Members about the agenda of the sitting.

3. Thereafter, the Chairperson invited the representatives of the Ministry of Environment, Forest and Climate Change, along with the representatives of various industrial organizations and manufacturers associations, to apprise the Committee regarding the impact of the Biological Diversity (Amendment) Bill, 2021 on various sectors/industries concerning them. The Chairperson also urged them to highlight the contentious issues, if any, regarding the amendments proposed in the Bill. He then drew the attention of the representatives from the Ministry and various industrial organizations and manufacturers associations to Direction 55(1) of the Directions by the Speaker, Lok Sabha regarding confidentiality of the Committee proceedings.

4. The representatives of various industrial organizations and manufacturers associations, thereafter, put forth their views/suggestions on the amendments proposed in the Bill. The Members, thereupon, sought clarifications on the various views/suggestions put forth by the representatives of various industrial organizations and manufacturers associations. Thereafter, the representatives replied to some of the queries of the Members with respect to the proposed Bill. The Chairperson, then, thanked the witnesses for sharing valuable information with the Committee on the subject and directed them to send, in writing, requisite information which was not readily available with them to the Committee Secretariat within a week.

The representatives of the Ministry and various industrial organizations and manufacturers associations then withdrew

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON
THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

The 8th sitting of the Joint Committee was held on Tuesday, the 15th March, 2022 from 1600 hrs onwards in Committee Room 3, Block A, Parliament House Annexe Extension, New Delhi.

PRESENT

Dr. Sanjay Jaiswal

-

Chairperson

LOK SABHA

2. Dr. Heena Vijaykumar Gavit
3. Smt. Aparajita Sarangi
4. Shri Raju Bista
5. Shri Pallab Lochan Das
6. Shri Santosh Pandey
7. Shri Jugal Kishore Sharma
8. Shri Brijendra Singh
9. Shri Gaurav Gogoi
10. Ms. S. Jothi Mani
11. Dr. Kakoli Ghosh Dastidar
12. Shri Kotagiri Sridhar
13. Shri Prataprao Jadhav

RAJYA SABHA

14. Dr. Anil Agrawal
15. Shri Jawahar Sircar
16. Dr. Amar Patnaik
17. Prof. Ram Gopal Yadav

SECRETARIAT

- | | | |
|----------------------------|---|---------------------|
| 1. Shri V. K. Tripathi | - | Joint Secretary |
| 2. Dr. Vatsala Joshi | - | Director |
| 3. Shri C. Kalyanasundaram | - | Additional Director |
| 4. Shri Sumesh Kumar | - | Deputy Secretary |
| 5. Ms. Maya Menon | - | Under Secretary |

REPRESENTATIVES OF MINISTRY/DEPARTMENT

Ministry of Environment, Forest and Climate Change

- | | | |
|----|--------------------------|--|
| 1. | Ms. Leena Nandan | Secretary |
| 2. | Shri J. Justin Mohan | Secretary, National Biodiversity Authority |
| 3. | Dr. S. Kerketta | Scientist ‘G’ |
| 4. | Dr. Saurabh Upadhyay | Scientist ‘C’ |
| 5. | Ms. Swarupama Chaturvedi | Legal Consultant |

Protection of Plant Varieties and Farmers’ Rights Authority

- | | | |
|----|---------------------|---------------|
| 1. | Dr. K. V. Prabhu | Chairperson |
| 2. | Shri D. S. Rajganes | Legal Advisor |

NON-OFFICIAL WITNESSES

Experts

- | | | |
|----|--------------------------------|--|
| 1. | Dr. Ritu Dhingra | Regional Vice Chair – East and Southern Asia,
IUCN (CEESP) |
| 2. | Shri M. R. Madhavan | President, PRS Legislative Research |
| 3. | Shri Saket Surya | Senior Analyst, PRS Legislative Research |
| 4. | Shri K. Divakaran Prathapan | Assistant Professor,
Kerala Agricultural University |
| 5. | Dr. Priyadarsanan Dharma Rajan | Ashoka Trust for Research in Ecology and the
Environment |
| 6. | Shri Mahesh Pandya | Paryavaran Mitra, Ahmedabad |
| 7. | Shri D. P. Tiwari | Managing Director,
Global Biodiversity Education Society |
| 8. | Prof. Bharat H. Desai | Professor of International Law,
Jawaharlal Nehru University |

2. At the outset, the Chairperson welcomed the Members to the eighth sitting of the Joint Committee. He then informed the Members about the grant of extension of time to the Committee upto 3rd June, 2022 to present its Report and also briefed them about the agenda of the sitting.

3. Thereafter, the Chairperson invited the representatives of Protection of Plant Varieties & Farmers Rights Authority (PPVFRA); the Ministry of Environment, Forest and Climate Change and learned subject experts to put forth their views before the Committee related to the Biological Diversity (Amendment) Bill, 2021. He also drew the attention of the representatives

from PPVFRA; the Ministry; and the subject experts to Direction 55(1) of the Directions by the Speaker, Lok Sabha regarding confidentiality of the Committee proceedings.

4. The subject experts, thereafter, put forth their views/suggestions on the amendments proposed in the Bill. The Chairperson, thereafter, sought comments from the representatives of PPVFRA on the Bill. Thereupon, the representatives of PPVFRA replied to the queries of the Chairperson. The Chairperson, then, thanked the representatives of PPVFRA; the Ministry; and the subject experts for sharing valuable insights with the Committee on the subject and further impressed upon them to send, in writing, additional information/suggestions, if any, to the Committee Secretariat within ten days.

The representatives of PPVFRA; the Ministry of Environment, Forest and Climate Change and subject experts then withdrew

The Committee then adjourned.

A copy of verbatim record of proceedings is kept on record.

JOINT COMMITTEE ON
THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

The 9th sitting of the Joint Committee was held on Tuesday, the 19th April, 2022 from 1400hrs to 1530hrs in Committee Room 1, Block A, Parliament House Annexe Extension, New Delhi.

PRESENT

Dr. Sanjay Jaiswal

-

Chairperson

LOK SABHA

2. Shri Raju Bista
3. Shri Brijendra Singh
4. Shri Jagdambika Pal
5. Shri Gaurav Gogoi
6. Shri A.Raja

RAJYA SABHA

7. Shri Shiv Pratap Shukla
8. Dr. Anil Agrawal
9. Smt. Ramilaben Becharbhai Bara
10. Shri Jairam Ramesh
11. Shri Jawhar Sircar
12. Dr. Amar Patnaik
13. Shri Ram Nath Thakur

SECRETARIAT

- | | | | |
|----|-------------------------|---|---------------------|
| 1. | Shri V.K. Tripathi | - | Joint Secretary |
| 2. | Dr. Vatsala Joshi | - | Director |
| 3. | Shri C. Kalyanasundaram | - | Additional Director |
| 4. | Smt. Maya Menon | - | Under Secretary |

REPRESENTATIVES OF
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

- | | | |
|----|---------------------|--|
| 1. | Ms. Leena Nandan | Secretary |
| 2. | Dr. V.B. Mathur | Chairman, National Biodiversity Authority |
| 3. | Shri J Justin Mohan | Secretary, National Biodiversity Authority |

- | | |
|------------------------------|----------------------|
| 4. Shri Naresh Pal Gangwar | Additional Secretary |
| 5. Dr. S. Kerketta | Scientist 'G' |
| 6. Shri Tarun Kathula | Scientist 'F' |
| 7. Ms. Swarupama Chaturvedi, | Legal Consultant |

2. At the outset, the Chairperson welcomed the Members and the representatives of the Ministry of Environment, Forest and Climate Change (MoEF&CC) to the sitting convened to discuss views/comments of the Ministry on suggestions received from various stakeholders on the Biological Diversity (Amendment) Bill, 2021. Further the Chairperson drew attention of the Committee and officers to Direction 55(1) of the *Directions by the Speaker, Lok Sabha* regarding confidentiality of Committee proceedings..

3. Thereafter, the MoEF&CC made a power point presentation before the Committee and put forth their comments on suggestions received from stakeholders. During the sitting, the Ministry discussed major concerns which had been raised by stakeholders especially with respect to definitions of terms such as “access”, “bio-survey”, “foreign entity”, “member secretary” and inclusion of derivative in the definition of “biological resources, deletion of the term " bio-utilization”, prohibition of transfer of result of research on codified traditional knowledge to foreigners/foreign controlled companies, exemption of approvals for Indian entities while applying patents, specific time frame for approvals by State Biodiversity Boards, exemption of codified traditional knowledge, cultivated medicinal plants and registered AYUSH practitioners, exemption of other products along with agriculture waste and decriminalization of violations under this legislation.

4. During the deliberations, the representatives from MoEF&CC responded to the queries of Members and elucidated on proposed amendments. Thereafter, Chairperson appreciated representatives of MoEF&CC for sharing valuable information with the Committee and directed them to send written replies to the points raised by the Members for which requisite replies were not readily available with them to the Committee Secretariat within a week.

The representatives of the MoEF&CC then withdrew.

5. Thereafter, the Committee also decided to undertake an on-the-spot study visit to Uttarakhand in connection with the examination of the Biological Diversity Amendment Bill, 2021.

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON
THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

The 10th sitting of the Joint Committee was held on Thursday, the 12th May, 2022 from 1400 hrs. to 1440 hrs. in Committee Room No.:1, Parliament House Annexe Extension, New Delhi.

PRESENT

Dr. Sanjay Jaiswal - **Chairperson**

LOK SABHA

2. Shri Santosh Pandey
3. Shri Jugal Kishore Sharma
4. Ms. S. Jothi Mani

RAJYA SABHA

5. Shri Shiv Pratap Shukla
6. Dr. Anil Agrawal
7. Shri Neeraj Shekhar
8. Shri Jairam Ramesh
9. Prof. Ram Gopal Yadav
10. Shri Ram Nath Thakur

SECRETARIAT

- | | | |
|----|---------------------------|---------------------|
| 1. | Shri Vinod Kumar Tripathi | Joint Secretary |
| 2. | Dr. Vatsala Joshi | Director |
| 3. | Shri C. Kalyanasundaram | Additional Director |
| 4. | Shri Sumesh Kumar | Deputy Secretary |
| 5. | Ms. Maya Menon | Under Secretary |

REPRESENTATIVES

Ministry of Environment, Forest and Climate Change

- | | | |
|----|-------------------------------|---|
| 1. | Ms. Leena Nandan | Secretary |
| 2. | Dr. V.B. Mathur | Chairman, National Biodiversity Authority |
| 3. | Shri Naresh Pal Gangwar | Additional Secretary |
| 4. | Dr. Rita Khanna | Adviser |
| 5. | Dr. Achuta Nand Shukla | Additional Director |
| 6. | Dr. Abhilasha Singh Mathuriya | Joint Director |

7. Ms. Swarupama Chaturvedi, Legal Consultant

Biodiversity Management Committees (BMCs) of Madhya Pradesh

- | | | |
|----|---------------------------|---|
| 1. | Shri Prem Chand Bhalavi | Chairperson, District- Seoni, Chhapara, Madwa (Sothawadi) Panchayat |
| 2. | Shri Kishori Lal | Member, District- Seoni, Chhapara, Madwa (Sothawadi) Panchayat |
| 3. | Shri Kanhaiya Lal Bhalavi | Chairperson, District- Seoni, Chhapara Khamaria Panchayat |
| 4. | Shri Lalchand Deshmukh | Chairperson, District- Seoni, Kurai, Jhalagond Panchayat |
| 5. | Shri Rajesh K. Tembhare | Master Trainer, District- Seoni, Chhapara Khamaria Panchayat |

Biodiversity Management Committees (BMCs) of Uttarakhand

- | | | |
|----|-----------------------------|---|
| 1. | Shri Haridutt | Chairman, District- Almora, Syalde Baringal Panchayat |
| 2. | Shri Anil Singh Rana | Chairman, Bhatwari, Jaspur Panchayat |
| 3. | Shri Madhvendra Singh Rawat | Member, Bhatwa, Harshil Panchayat |
| 4. | Shri Chandra Shekhar | Chairman, District- Pithoragarh, Bin, Sanghar Panchayat |
| 5. | Shri Pratham Singh | Chairman, Bhatwari, Dharali Panchayat |
| 6. | Shri Rajesh Kumar | Member, Dehradun, Sahaspur, dudhai Panchayat |

2. At the outset, Hon'ble Chairperson welcomed the Members, representatives of the Ministry of Environment, Forest and Climate Change and BMCs of Madhya Pradesh and Uttarakhand to the sitting of the Joint Committee convened for oral evidence of representatives of these BMCs on the provisions of the Biological Diversity (Amendment) Bill, 2021. Further Chairperson drew attention of all to confidentiality of Committee proceedings as per *Directions by the Speaker, Lok Sabha*. Afterwards, the representatives introduced themselves to Committee.

3. At first, representatives of BMCs of Madhya Pradesh apprised the Committee about the work done in their local areas in furtherance to the implementation of the Biological Diversity Act, 2002. They also put forth their concerns before the Committee regarding insufficient fund devolution to BMCs and issues with respect to amendments proposed to Sections 55 and 56 which deal with penalties. Thereafter representatives of BMCs of Uttarakhand submitted their concerns which inter-alia include definition of 'benefit claimers' [Clause 3(i)(aa) of Bill], amendments to Section 5 with respect to 'traditional knowledge' (Clause 7 of the Bill), Section 7 regarding inclusion of 'cultivated medicinal plants' (Clause 9 of the Bill), Section 24 on power of State Biodiversity Boards (Clause 22 of the Bill) and penalty provisions (Clause 38 of the Bill). They also proposed for appointment of an expert in BMCs to strengthen their functioning.

4. During deliberations, representatives from MoEF&CC and BMCs responded to queries of Members and elucidated their views. Thereafter, Chairperson expressed his appreciation to the representatives of BMCs for appearing before the Committee to share their valuable suggestions and assured them that their concerns would be taken into account.

The representatives of the Ministries and BMCs then withdrew.

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON
THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

The 11th sitting of the Joint Committee was held on Wednesday, the 15th June, 2022 from 1400 hrs onwards in Committee Room 3, Block A, Parliament House Annexe Extension, New Delhi.

PRESENT

Dr. Sanjay Jaiswal

-

Chairperson

LOK SABHA

2. Shri Santosh Pandey
3. Shri Brijendra Singh
4. Dr. Kakoli Ghosh Dastidar
5. Shri Ritesh Pandey

RAJYA SABHA

6. Shri Shiv Pratap Shukla
7. Dr. Anil Agrawal
8. Shri Neeraj Shekhar
9. Shri Jawahar Sircar
10. Dr. Amar Patnaik
11. Shri Ram Nath Thakur

SECRETARIAT

- | | | | |
|----|-----------------------|---|------------------|
| 1. | Shri V. K. Tripathi | - | Joint Secretary |
| 2. | Shri Sumesh Kumar | - | Deputy Secretary |
| 3. | Ms. Maya Menon | - | Under Secretary |
| 4. | Shri Bharat Lal Meena | - | Research Officer |

REPRESENTATIVES OF MINISTRY/DEPARTMENT

Ministry of Environment, Forest and Climate Change

- | | | |
|----|-------------------------|--|
| 1. | Ms. Leena Nandan | Secretary |
| 2. | Shri Naresh Pal Gangwar | Additional Secretary |
| 3. | Dr. V.B. Mathur | Chairman, National Biodiversity Authority |
| 4. | Shri J. Justin Mohan | Secretary, National Biodiversity Authority |
| 5. | Dr. Achuta Nand Shukla | Additional Director |

replies to the points raised by the Members, for which replies were not readily available, to the Committee Secretariat within a week.

The representatives of the Ministry of Environment, Forest and Climate Change; and the Ministry of Law and Justice then withdrew.

The Committee then adjourned.

A copy of verbatim record of proceedings is kept on record.

JOINT COMMITTEE ON
THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

The 12th sitting of the Joint Committee was held on Monday, the 27th June, 2022 from 1400 hrs. to 1610 hrs. in Committee Room No.:3, Parliament House Annexe Extension, New Delhi.

PRESENT

Dr. Sanjay Jaiswal - **Chairperson**

LOK SABHA

2. Smt. Aparajita Sarangi
3. Shri Raju Bista
4. Shri Santosh Pandey
5. Shri Brijendra Singh
6. Shri Jagdambika Pal
7. Ms. S. Jothi Mani
8. Shri A. Raja
9. Shri Ritesh Pandey

RAJYA SABHA

10. Shri Neeraj Shekhar
11. Smt. Ramilaben Becharbhai Bara
12. Shri Tiruchi Siva
13. Dr. Amar Patnaik
14. Prof. Ram Gopal Yadav
15. Shri Ram Nath Thakur

SECRETARIAT

- | | | |
|----|---------------------------|---------------------|
| 1. | Shri Vinod Kumar Tripathi | Joint Secretary |
| 2. | Dr. Vatsala Joshi | Director |
| 3. | Shri C. Kalyanasundaram | Additional Director |
| 4. | Shri Bharat Lal Meena | Research Officer |

REPRESENTATIVES

Ministry of Environment, Forest and Climate Change

- | | | |
|----|-------------------------|--|
| 1. | Ms. Leena Nandan | Secretary |
| 2. | Shri J Justin Mohan | Secretary, National Biodiversity Authority |
| 3. | Shri Naresh Pal Gangwar | Additional Secretary |
| 4. | Ms. Rita Khanna | Adviser |

Ministry of Law and Justice

(Legislative Department)

1. Ms. Veena Kothavale Joint Secretary & Legislative Counsel
2. Smt. Arti Chopra Deputy Legislative Counsel

(Department Of Legal Affairs)

Sl. No.	Name	Designation
1.	Dr. Rajiv Mani	Additional Secretary

2. At the outset, Chairperson welcomed Members and the representatives of the Ministry of Environment, Forest and Climate Change (MoEFCC), National Biodiversity Authority and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) to the sitting convened for the clause by clause consideration of the Biological Diversity (Amendment) Bill, 2021. Further the Chairperson drew attention of the Committee and officers to Direction 55(1) of the *Directions by the Speaker, Lok Sabha* regarding confidentiality of Committee proceedings.

3. Thereafter, the Committee took up Clause by Clause examination of the Bill and deliberated on all the Clauses with the representatives of MoEFCC, Ministry of Law and Justice and NBA. During the deliberations, they responded to the queries of the Members on the Clauses of the Bill. The Committee had approved the Clauses of the Bill based on the replies/clarifications given by MoEFCC including those Clauses on which MoEFCC agreed to the suggestions made by the stake holders and kept aside five clauses viz. (i) Clause 6 about the transfer of research result, (ii) Clause 8 regarding the application for intellectual property rights, (iii) Clause 25 which enables the Central Government to develop national strategies plans, etc of biological diversity, (iv) Clause 38 pertaining to penalties and (v) Clause 39 on offences to be cognizable and non-bailable, for detailed examination during the next sitting.

4. At the end the Chairperson extended vote of thanks to the Members and the representatives of the Ministries.

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON
THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

The 13th sitting of the Joint Committee was held on Monday, the 11th July, 2022 from 1100 hrs. to 1240 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Dr. Sanjay Jaiswal - **Chairperson**

LOK SABHA

2. Shri Jugal Kishor Sharma
3. Shri Brijendra Singh
4. Shri Jagdambika Pal
5. Shri Gaurav Gogoi
6. Ms. S. Jothi Mani
7. Shri Kotagiri Sridhar
8. Shri Sunil Kumar Pintu
9. Shri Ritesh Pandey

RAJYA SABHA

10. Dr. Anil Agrawal
11. Shri Neeraj Shekhar
12. Smt. Ramilaben Becharbhai Bara
13. Dr. Amar Patnaik
14. Shri Ram Nath Thakur

SECRETARIAT

- | | | |
|----|---------------------------|------------------|
| 1. | Shri Vinod Kumar Tripathi | Joint Secretary |
| 2. | Dr. Vatsala Joshi | Director |
| 3. | Shri C. Kalyanasundaram | Director |
| 4. | Shri Sumesh Kumar | Deputy Secretary |
| 5. | Ms. Maya Menon | Under Secretary |

REPRESENTATIVES

Ministry of Environment, Forest and Climate Change

- | Sl. No. | Name | Designation |
|----------------|------------------|--------------------|
| 1. | Ms. Leena Nandan | Secretary |

2.	Dr. V.B. Mathur	Chairman, National Biodiversity Authority
3.	Shri J Justin Mohan	Secretary, National Biodiversity Authority
4.	Shri Naresh Pal Gangwar	Additional Secretary
5.	Ms. Rita Khanna	Adviser
6.	Dr. Satyendra Kumar	Director
7.	Dr. Achuta Nand Shukla	Scientist E
8.	Ms. Swarupama Chaturvedi	Legal Consultant

Ministry of Law and Justice

(Legislative Department)

Sl. No.	Name	Designation
1.	Ms. Veena Kothavale	Joint Secretary & Legislative Counsel
2.	Smt. Arti Chopra	Deputy Legislative Counsel

(Department Of Legal Affairs)

Sl. No.	Name	Designation
1.	Dr. Rajiv Mani	Additional Secretary

2. At the outset, Chairperson welcomed the Members and the representatives of the Ministry of Environment, Forest and Climate Change (MoEFCC), National Biodiversity Authority and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) to the sitting convened for the clause by clause consideration of the Biological Diversity (Amendment) Bill, 2021. Further the Chairperson drew attention of the Committee and officers to Direction 55(1) of the *Directions by the Speaker, Lok Sabha* regarding confidentiality of Committee proceedings.

3. Thereafter, the Committee took up Clause by Clause consideration of the five clauses viz. (i) Clause 6 about the transfer of research result, (ii) Clause 8 regarding the application for intellectual property rights, (iii) Clause 25 which enables the Central Government to develop national strategies plans, etc of biological diversity, (iv) Clause 38 pertaining to penalties and (v) Clause 39 on offences to be cognizable and non-bailable. The Committee agreed to the amendments proposed by the MoEFCC under Clauses 6 and 25. The Committee had exhaustive deliberation on Clauses 8, 38 and 39. As the deliberations on these Clauses remained inconclusive, the Committee decided to continue the deliberation on these Clauses during the next sitting. The Committee also desired that the nodal Ministry may furnish the details of provisions relating to punishments for violation of biodiversity laws in the United States of America, United Kingdom, Germany, Brazil and Japan.

4. During the deliberations, the representatives of the Ministries responded to the queries of Members and elucidated on proposed amendments. Thereafter, Chairperson directed them to send the desired information to the Secretariat for the use of the Committee. The Chairperson extended the vote of thanks to the Members and the representatives of the Ministries.

The representatives of the Ministry of Environment, Forest and Climate Change; and the Ministry of Law and Justice then withdrew.

5. Thereafter, the Committee discussed the provisions made in Clauses 8, 38 and 39 of the Bill. In regard to clauses 38 and 39, the Committee unanimously held the view that any kind of laxity in the Bill with respect to penalties would encourage private companies to circumvent the law and exploit biodiversity and therefore, a fine distinction is needed to be maintained between the serious offences such as biopiracy and minor offences. With regard to Clause 8, the Committee were of the view that the Indian Pharmaceutical Companies may be treated on par with foreign companies at the time of applying for Intellectual Property Rights i.e. shall obtain prior approval of NBA before grant of such Intellectual Property Rights whereas the Government funded research institutions and universities may be excluded and they may register with NBA before grant of Intellectual Property Rights.

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON

THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

The 14th sitting of the Joint Committee was held on Tuesday, the 19th July, 2022 from 1500 hrs. to 1600 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Dr. Sanjay Jaiswal

-

Chairperson

LOK SABHA

18. Ms Diya Kumari
19. Dr. Heena Vijaykumar Gavit
20. Shri Pallab Lochan Das
21. Shri Santosh Pandey
22. Shri Jugal Kishor Sharma
23. Shri Brijendra Singh
24. Shri Ajay Tamta
25. Shri Jagdambika Pal
26. Shri Gaurav Gogoi
27. Ms. S. Jothi Mani
28. Shri Kotagiri Sridhar
29. Shri Achyutananda Samanta

RAJYA SABHA

30. Dr. Anil Agrawal
31. Smt. Ramilaben Becharbhai Bara
32. Shri Tiruchi Shiva
33. Dr. Amar Patnaik
34. Shri Ram Nath Thakur

SECRETARIAT

- | | | |
|----|---------------------------|------------------|
| 1. | Shri Vinod Kumar Tripathi | Joint Secretary |
| 2. | Dr. Vatsala Joshi | Director |
| 3. | Shri C. Kalyanasundaram | Director |
| 4. | Shri Sumesh Kumar | Deputy Secretary |
| 5. | Ms. Maya Menon | Under Secretary |

REPRESENTATIVES

Ministry of Environment, Forest and Climate Change

Sl. No.	Name	Designation
8.	Ms. Leena Nandan	Secretary
9.	Dr. V.B. Mathur	Chairman, National Biodiversity Authority
10.	Shri J Justin Mohan	Secretary, National Biodiversity Authority
11.	Ms. Rita Khanna	Adviser
12.	Dr. Satyendra Kumar	Director
13.	Dr. Achuta Nand Shukla	Scientist E
14.	Ms. Swarupama Chaturvedi	Legal Consultant
15.	Ms. Harsha Nijhawan	Legal Associate

Ministry of Law and Justice

(Legislative Department)

Sl. No.	Name	Designation
6.	Shri Diwakar Singh	Joint Secretary & Legislative Counsel
7.	Smt. Arti Chopra	Deputy Legislative Counsel

(Department Of Legal Affairs)

Sl. No.	Name	Designation
2.	Dr. Rajiv Mani	Additional Secretary

2. At the outset, Chairperson welcomed the Members and the representatives of the Ministry of Environment, Forest and Climate Change (MoEFCC), National Biodiversity Authority and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) to the sitting convened for the clause by clause consideration of the Biological Diversity (Amendment) Bill, 2021. Further the Chairperson drew attention of the Committee and officers to Direction 55(1) of the *Directions by the Speaker, Lok Sabha* regarding confidentiality of Committee proceedings.

3. Thereafter, the Committee took up Clause by Clause consideration of the three clauses viz. (i) Clause 8 regarding the application for intellectual property rights, (ii) Clause 38 pertaining to penalties and (iii) Clause 39 on offences to be cognizable and non-bailable of the Biological Diversity (Amendment) Bill, 2021.

4. During the deliberations, the representatives of the Ministries responded to the queries of Members and elucidated on proposed amendments and explained the various penal provisions present in laws of different countries viz Brazil. Germany, Japan, USA, UK. The Ministry

apprised the committee that all these countries have only monetary penalties for the contravention. After that the Chairperson extended the vote of thanks to the representatives of the Ministries.

The representatives of the Ministry of Environment, Forest and Climate Change; and the Ministry of Law and Justice then withdrew.

5. Thereafter, the Committee had exhaustive deliberation on Clauses 8, 38 and 39. In regard to clauses 38 and 39, The Committee, in principle agrees with contention of the Ministry that contravention of Biological Diversity Act 2002 being a civil wrong should attract civil penalties and therefore the violations under this enactment is decriminalized. The Committee also noted that there is a provision in Section 59 of the Principal Act that the provisions of this Act are in addition to and in derogation, of the provisions in any other law. However, the Committee were of the view that fine/penalty structure should not be too meager which may enable violators to escape with a little amount of penalty.

The Committee then adjourned.

A copy of verbatim record of the proceedings is kept on record.

JOINT COMMITTEE ON
THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

The 15th sitting of the Joint Committee was held on Wednesday, the 27th July, 2022 from 1000 hrs. to 1030 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Dr. Sanjay Jaiswal

-

Chairperson

LOK SABHA

35. Ms Diya Kumari
36. Dr. Heena Vijaykumar Gavit
37. Smt. Aparajita Sarangi
38. Shri Raju Bista
39. Shri Pallab Lochan Das
40. Shri Santosh Pandey
41. Shri PrathapSimha
42. Shri Jugal Kishor Sharma
43. Shri Brijendra Singh
44. Shri Ajay Tamta
45. Shri Jagdambika Pal
46. Dr. Kakoli Ghosh Dastidar
47. Shri Sunil Kumar Pintu
48. Shri Ritesh Pandey

RAJYA SABHA

49. Shri Neeraj Shekhar
50. Smt. RamilabenBecharbhai Bara
51. Shri Jawahar Sircar
52. Dr. Amar Patnaik
53. Shri Ram Nath Thakur

SECRETARIAT

- | | | |
|----|---------------------------|------------------|
| 1. | Shri Vinod Kumar Tripathi | Joint Secretary |
| 2. | Dr. Vatsala Joshi | Director |
| 3. | Shri C. Kalyanasundaram | Director |
| 4. | Shri Sumesh Kumar | Deputy Secretary |
| 5. | Ms. Maya Menon | Under Secretary |

2. At the outset, Chairperson welcomed the Members of the Joint Committee to the sitting of the Committee convened for consideration and adoption of Draft Report of the Committee. The Committee considered the Draft Report in entirety and adopted the same unanimously. The Committee also authorised the Hon'ble Chairperson to present the Report in Lok Sabha and lay Report on the table of the Rajya Sabha. It was also decided that two sets of memoranda containing comments and suggestions of stakeholders on the provisions of the Bill, as circulated to the Members of the Committee may be placed in Parliament Library, after the Report has been presented, for reference of the Members of Parliament

3. The Chairperson also decided that if any member wants to give any dissent note, he/she may submit the same within 24 hours.

4. The Chairperson in his concluding remarks thanked all the members of the Joint Committee for their unstinted support and cooperation which made the Committee to examine and finalize the report on a comprehensive and important legislation within a short time. The Chairperson, thereafter placed on record the appreciation for the relentless assistance rendered to the Committee by the officers and staff of the Lok Sabha Secretariat

The Committee then adjourned.

THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2022

AS REPORTED BY THE JOINT COMMITTEE

[Words underlined indicate the amendments suggested by the Joint Committee and asterisks indicate omissions]

	THE <u>BIOLOGICAL DIVERSITY</u> (AMENDMENT) BILL, 2022	
	A BILL	
	<i>further to amend the Biological Diversity Act, 2002.</i>	
	BE it enacted by Parliament in the Seventy- <u>third</u> Year of the Republic of India as follows:—	
	1. (1) This Act may be called the Biological Diversity (Amendment) Act, <u>2022</u> .	Short title and commencement.
	(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	
18 of 2003.	2. In the Biological Diversity Act, 2002 (hereinafter referred to as the principal Act), in the preamble, —	Amendment of preamble.
	(a) for the word “party”, the word “Party” shall be substituted;	
	(b) for the words beginning with “AND WHEREAS it is considered necessary”, and ending with “give effect to the said Convention”, the following shall be substituted, namely:—	
	“AND WHEREAS India is a Party to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity which was adopted on the 29th October, 2010 in Nagoya, Japan;	
	AND WHEREAS it is considered necessary to provide for conservation, sustainable utilisation, fair and equitable sharing of the benefits arising out of utilisation of biological resources and also to give effect to the said Convention.”.	
Amendment of section 2.	3. In section 2 of the principal Act, —	
	(i) for clause (a), the following clauses shall be substituted, namely:—	

	‘(a) “access” means collecting, procuring or possessing any biological resource occurring in or obtained from India or *traditional knowledge associated thereto, for the purposes of research or bio-survey or commercial utilisation;	
	(aa) “benefit claimers” means the conservers of biological resources, their by-products, creators or holders of *traditional knowledge associated thereto (excluding codified traditional knowledge only for Indians) and information relating to the use of such biological resources, innovations and practices associated with such use and application;’;	
	(ii) in clause (b), after the words “biological diversity”, the words ‘or “biodiversity”’ shall be inserted;	
	(iii) for clause (c)*, the following clause shall be substituted, namely:—	
	‘(c) “biological resources” include plants, animals, micro-organisms or parts of their genetic material and derivatives (excluding value added products), with actual or potential use or value for humanity, but does not include human genetic material;’;	
	*** *** ***	
	(iv) after clause (e), the following clause shall be inserted, <u>namely:—</u>	
	<u>‘(ea)“codified traditional knowledge” means the knowledge derived from authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940;’;</u>	23 of 1940.
	(v) after clause (f), the following clause shall be inserted, namely:—	
	‘(fa) “derivative” means a naturally occurring biochemical compound or metabolism of biological resources, even if it does not contain functional units of heredity;’;	
	(vi) after clause (g), the following clauses shall be inserted, namely:—	
	‘(ga) “folk variety” means a cultivated variety of plant that was developed, grown and exchanged informally among	

	farmers;	
80 of 1976.	(gb) “India” means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, and the air space above its territory;	
	(gc) “landrace” means primitive cultivar that was grown by ancient farmers and their successors;’;	
	(vii) after clause (i), the following clause shall be inserted, namely:—	
	‘(ia) “Member Secretary” means the full time Secretary of the National Biodiversity Authority, or of the State Biodiversity Board, as the case may be;’.	
Amendment of heading of Chapter II.	4. In Chapter II of the principal Act, in the Chapter heading, for the word “DIVERSITY”, the word “RESOURCES” shall be substituted.	
Amendment of section 3.	5. In section 3 of the principal Act,*in sub-section (2), in clause (c), for sub-clause (ii), the following sub-clause shall be substituted, namely:—	
	“(ii) incorporated or registered in India under any law for the time being in force, which is <u>controlled by a foreigner within the meaning of clause (27) of section 2 of the Companies Act, 2013.</u> ”.	18 of 2013.
	*** *** ***	
Amendment of section 4.	6. For section 4 of the principal Act, the following section shall be substituted, namely:—	
Results of research not to be transferred to certain persons without approval of National Biodiversity	“4. No person or entity shall share or transfer any result of the research on any biological resource occurring in, or obtained or accessed from, India or *traditional knowledge <u>associated</u> thereto, for monetary consideration or otherwise, to a person <u>or body corporate</u> referred to in sub-section (2) of section 3, without the prior written approval of the National Biodiversity Authority, except the codified traditional knowledge which is only for Indians:	

Authority.		
	Provided that the provisions of this section shall not apply if publication of research papers or dissemination of knowledge in any seminar or workshop involving financial benefit is as per the guidelines issued by the Central Government:	
	Provided further that where the results of research are used for further research, then, the registration with National Biodiversity Authority shall be necessary:	
	Provided also that if the results of research are used for commercial utilisation or for obtaining any intellectual property rights, within or outside India, prior approval of National Biodiversity Authority shall be required to be taken in accordance with the provisions of this Act.”.	
Amendment of section 5.	7. In section 5 of the Principal Act, *—	
	(i) in marginal heading, for the words and figures “Sections 3 and 4”, the words “Certain provisions” shall be substituted;	
	(ii) for sub-section (1), the following sub-section shall be substituted, namely:—	
	“(1) The provisions of section 3 shall not apply to collaborative research projects involving transfer or exchange of biological resource or* traditional knowledge associated thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in sub-section (3).”.	
Amendment of section 6.	8. In section 6 of the Principal Act,—	
	(a) for sub-section (1), the following sub-sections shall be substituted, namely:—	
	“(1) Any person or entity covered under sub-section (2) of section 3 applying for an intellectual property right, * by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or*traditional knowledge associated thereto, shall obtain prior approval of the National Biodiversity	

	Authority before grant of such intellectual property rights.	
	(1A) Any person covered under section 7 applying 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 which is accessed from India, including those deposited in repositories outside India, or* traditional knowledge associated thereto, shall register with the National Biodiversity Authority before grant of such intellectual property rights.	
	(1B) Any person covered under section 7 who has obtained intellectual property right, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or*traditional knowledge associated thereto, shall obtain prior approval of the National Biodiversity Authority at the time of commercialization.”.	
	(b) in sub-section (3), the words “enacted by the Parliament” shall be omitted.	
Substitution of new section for section 7.	9. For section 7 of the principal Act, the following section shall be substituted, namely:—	
Prior intimation to State Biodiversity Board for accessing biological resource for certain purposes.	“7. (1) No person, other than the person covered under sub-section (2) of section 3, shall access any biological resource and its associated knowledge for commercial utilization, without giving prior intimation to the concerned State Biodiversity Board, but such access shall be subject to the provisions of clause (b) of section 23 and sub-section (2)of section 24:	
	Provided that the provisions of this section shall not apply to the codified traditional knowledge, cultivated medicinal plants and its products, local people and communities of the area, including growers and cultivators of biodiversity and to vaidas, hakims and registered AYUSH practitioners only who have been practicing indigenous medicines, including Indian systems of medicine as profession for sustenance and livelihood.	
	(2) * <u>The certificate of origin for cultivated medicinal plants shall be obtained through making an entry of details of</u>	

	<u>cultivated medicinal plants into the books of concerned Panchayatbody or Biodiversity Management Committee. The “books” is meant for governing instruments of the Panchayat Body. (Handbook for Sarpanch and Gram Panchayat Functionaries or State Specific Biological Diversity Rules or State Specific Panchayat Raj Rules)”.</u>	
Amendment of section 8.	10. In section 8 of the principal Act,—	
	(a) for sub-section (3), the following sub-section shall be substituted, namely:—	
	“(3) The Head office of the National Biodiversity Authority shall be at Chennai and the Central Government may, by notification in the Official Gazette, establish regional offices in other places in India.”;	
	(b) in sub-section (4),—	
	(i) for clauses (a), (b) and (c), the following clauses shall be substituted, namely:—	
	“(a) a Chairperson, who shall be an eminent person having adequate knowledge, expertise and experience in the conservation and sustainable use of biological diversity and in matters relating to fair and equitable sharing of benefits, to be appointed by the Central Government;	
	(b) sixteen <i>ex officio</i> members to be appointed by the Central Government, representing the Ministries dealing with—	
	(i) Agricultural Research and Education;	
	(ii) Agriculture and Farmers Welfare;	
	(iii) Ayurveda, Unani, Siddha, Sowa Rigpa, Yoga and Naturopathy and Homeopathy;	
	(iv) Biotechnology;	
	(v) Environment and Climate Change;	
	(vi) Forests and Wildlife;	
	(vii) Indian Council of Forestry Research and Education;	

	<p>(viii) Earth Sciences;</p> <p>(ix) Panchayati Raj;</p> <p>(x) Science and Technology;</p> <p>(xi) Scientific and Industrial Research;</p> <p>(xii) Tribal Affairs;</p>	
	(c) four representatives from State Biodiversity Boards on rotational basis;	
	(ii) in clause (d),—	
	(A) for the word “specialists”, the words “* experts including legal experts” shall be substituted;	
	(B) for the word “equitable”, the words “fair and equitable” shall be substituted;	
	(iii) after clause (d), the following clause shall be inserted, namely:—	
	“(e) a Member-Secretary, who shall have experience in matters relating to biodiversity conservation, to be appointed by the Central Government.”.	
Amendment of section 9.	11. In section 9 of the principal Act,—	
	(a) in the marginal heading, for the words “Chairperson and members”, the words “Chairperson, members and Member Secretary” shall be substituted;	
	(b) after the words “National Biodiversity Authority”, the words “and of Member Secretary” shall be inserted.	
Insertion of new section 10A.	12. After section 10 of the principal Act, the following section shall be inserted, namely:—	
Member-Secretary.	“10A. (1) The Member-Secretary shall be the chief coordinating officer and the convener of the National Biodiversity Authority and shall assist that Authority in the discharge of its functions under this Act.	
	(2) The Member-Secretary shall perform such other functions as may be prescribed.”	

Amendment of section 13.	13. In section 13 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—	
	“(2) The National Biodiversity Authority may also constitute such number of committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act.”.	
Amendment of section 15.	14. In section 15 of the principal Act,—	
	(i) after the words “signature of the Chairperson”, the words “or Member-Secretary” shall be inserted;	
	(ii) for the words “signature of an officer”, the words “signature of Member-Secretary or an officer” shall be substituted.	
Amendment of section 16.	15. In section 16 of the principal Act, after the words “delegate to any member”, the words “or Member Secretary” shall be inserted.	
Amendment of section 18.	16. In section 18 of the principal Act,—	
	(a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—	
	“(1) The National Biodiversity Authority shall, with the approval of the Central Government, make regulations to provide for access to biological resources and *traditional knowledge associated thereto, and for determination of fair and equitable sharing of benefits.	
	(2) It shall be the duty of the National Biodiversity Authority to regulate any activity referred to in sections 3, 4 and 6 by granting or rejecting approvals.	
	(b) in sub-section (3), —	
	(i) in clause (a), for the word “equitable”, the words “fair and equitable” shall be substituted;	
	(ii) in clause (b), for the words “heritage sites”, the words “biodiversity heritage sites” shall be substituted;	
	(iii) after clause (b), the following clause shall be inserted, namely:—	

	“(ba) advise the State Biodiversity Boards on any matter relating to the implementation of the Act;”;	
	(c) for sub-section (4), the following sub-section shall be substituted, namely:—	
	“(4) The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource which is found in or brought from India, including those deposited in repositories outside India, or* traditional knowledge associated thereto accessed.”.	
Amendment of section 19.	17. In section 19 of the principal Act,—	
	(a) for sub-section*(2), the following sub-section shall be substituted, namely:—	
	*** *** ***	
	(2) Any person referred to in sub-section (2) of section 3 who intends to apply for a patent or any other form of intellectual property rights, whether in India or outside India, referred to in sub-section (1) of section 6, may make an application to the National Biodiversity Authority in such form, on payment of such fee, and in such manner, as may be prescribed.	
	(2A) Any person referred to in sub-section (1A) of section 6 shall register with National Biodiversity Authority at the time of making application under sub-section (2), and persons referred to in sub-section (1B) of section 6 shall obtain prior approval from <u>the</u> National Biodiversity Authority at the time of commercialisation.”;	
	(b) after sub-section (3), the following sub-section shall be inserted, namely:—	
	“(3A) The National Biodiversity Authority shall, while granting approval under this section, determine the benefit sharing in such manner as may be specified by regulations made in this behalf:	
	Provided that if the National Biodiversity Authority is of the opinion that such an activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or	

	fair and equitable sharing of benefits arising out of such activity, it may, by order, for reasons to be recorded in writing, prohibit or restrict any such activity:	
	Provided further that no such order for rejection shall be made without giving an opportunity of being heard to the person concerned.”.	
	(c) for sub-section (4), the following sub-section shall be substituted, namely:—	
	“(4) The National Biodiversity Authority shall place in public domain details of every approval granted or rejected under this section.”.	
Amendment of section 20.	18. In section 20 of the principal Act,—	
	(i) in the marginal heading, for the words “biological resource or knowledge”, the words “results of research” shall be substituted;	
	(ii) for sub-section (1), the following sub-sections shall be substituted, namely:—	
	“(1) Any person or entity who intends to transfer the results of any research on biological resources, which are found in or brought from India, including those deposited in repositories outside India or *traditional knowledge associated thereto, to persons referred to under sub-section (2) of section 3 for monetary consideration or otherwise, he shall make an application to the National Biodiversity Authority in such form, and on payment of such fee, as may be prescribed.”;	
	(iii) in sub-section (2), for the words “any biological resource or knowledge associated thereto”, the words “the results of research” shall be substituted;	
	(iv) for sub-sections (3) and (4), the following sub-sections shall be substituted, namely:—	
	“(3) On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquiries, as it deems fit, by order, grant approval, subject to such terms and conditions, as it may deem fit, including benefit sharing or otherwise, as per the guidelines or for reasons to be recorded in writing, or reject the application:	

	Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person concerned.	
	(4) The National Biodiversity Authority shall place in public domain the details of every approval granted or rejected under this section.”.	
Amendment of section 21.	19. In section 21 of the principal Act, —	
	(a) in the marginal heading, for the word “equitable”, the words “fair and equitable” shall be substituted;	
	(b) for sub-section (1), the following sub-section shall be substituted, namely:—	
	“(1) The National Biodiversity Authority shall, while determining benefit sharing for the approval granted under this Act, ensure that the terms and conditions subject to which the approval is granted secures fair and equitable sharing of benefits arising out of the use of accessed biological resources, their derivatives, 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, and the Biodiversity Management Committee represented by the National Biodiversity Authority.”.	
	(c) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—	
	“Provided that where biological resource or associated knowledge was a result of access from an individual or group of individuals or organisations, the National Biodiversity Authority may direct that the amount shall be paid directly to such benefit claimer or organisation in accordance with the terms of any agreement and in such manner as it deems fit.”.	
Amendment of section 22.	20. In section 22 of the principal Act, —	
	(i) in sub-section (2), in the proviso, after the words “group of persons”, the words “or body” shall be inserted;	
	(ii) in sub-section (4), for clauses (a), (b) and (c), the following clauses shall be substituted, namely:—	

	“(a) a Chairperson, who shall be an eminent person having adequate knowledge, expertise and experience in the conservation and sustainable use of biological diversity and in matters relating to fair and equitable sharing of benefits, to be appointed by the State Government;	
	(b) not more than seven <i>ex officio</i> members to be appointed by the State Government to represent the concerned departments of the State Government, including departments dealing Panchayati Raj and tribal affairs;	
	(c) not more than five non-official members to be appointed from amongst * <u>experts, including</u> legal experts, scientists having special knowledge, <u>expertise and work experience</u> in matters relating to conservation of biological diversity, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources.”.	
Amendment of section 23.	21. In section 23 of the principal Act, for clauses (a) and (b) the following clauses shall be substituted, namely:-	
	“(a) advise the State Government on matters relating to the conservation of biodiversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the utilisation of biological resources or *traditional knowledge <u>associated</u> thereto, in conformity with the regulations or guidelines, if any, issued by the Central Government or the National Biodiversity Authority;	
	(b) regulate any activity referred to in section 7 by granting or rejecting approvals;	
	(ba) determine the fair and equitable sharing of benefits as provided under the regulations made in this behalf by the National Biodiversity Authority while granting approvals;”.	
Amendment of section 24.	22. In section 24 of the principal Act, —	
	(a) for sub-section (1), the following sub-section shall be substituted, namely:—	
	“(1) Any person other than the person referred to in sub-section (2) of section 3, intending to undertake any activity covered under section 7, shall give prior intimation to the State Biodiversity Board, in such form as may be prescribed by the	

	State Government.”;	
	(b) for sub-section (3), the following sub-sections shall be substituted, namely:—	
	“(3) If the State Biodiversity Board is of the opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or fair and equitable sharing of benefits arising out of such activity, it may by order, restrict or reject such activity:	
	Provided that no such order of rejection shall be made without giving an opportunity of being heard to the person concerned.	
	(4) The State Biodiversity Board shall place in public domain the details of every approval granted or rejected under this section.”.	
Amendment of section 27.	23. In section 27 of the principal Act,—	
	(i) in sub-section (1), for clause (b), the following clause shall be substituted, namely:—	
	“(b) all sums including charges and benefit sharing amount received by the National Biodiversity Authority;”;	
	(ii) in sub-section (2),—	
	(A) in the opening portion, for the word “applied”, the word “utilised” shall be substituted;	
	(B) for clauses (b) and (c), the following clauses shall be substituted, namely:—	
	“(b) conservation, <u>promotion</u> and sustainable use of biological resources;	
	(c) socio-economic development of areas from where such biological resources or * traditional knowledge <u>associated thereto</u> have been accessed in consultation with the Biodiversity Management Committee *:	
	Provided that when it is not possible to identify the area from where the biological resources or * traditional knowledge <u>associated thereto</u> have been accessed, the fund shall be utilised for socio-economic development of the area where such biological resources occur;	

	(d) activities to meet the purposes of the Act.	
Amendment of section 32.	24. In section 32 of the principal Act,—	
	(i) in sub-section (1), for clause (c), the following clause shall be substituted, namely:—	
	“(c) all sums including charges and benefit sharing amount received by the State Biodiversity Board and from such other sources as may be decided by the State Government;”;	
	(ii) in sub-section (2),—	
	(A) in the opening portion, for the word “applied”, the word “utilised” shall be substituted;	
	(B) after clause (a), the following clause shall be inserted, namely:—	
	“(aa) channelling benefits to the benefit claimers;”;	
	(C) * <u>for</u> clause (c), *** <u>the following clause</u> shall be substituted, <u>namely:—</u>	
	<u>“(c) conservation, promotion and sustainable use of biological resources;”;</u>	
	(D) for clause (d), the following clause shall be substituted, namely:—	
	“(d) socio-economic development of areas from where such biological resources or *traditional knowledge <u>associated thereto</u> have been accessed in consultation with the Biodiversity Management Committee or local body concerned:	
	Provided that when it is not possible to identify the area from where the biological resources or associated knowledge have been accessed, the fund shall be utilised for socio-economic development of the area where such biological resources occur.”.	
	(E) for clause (e), the following clauses shall be substituted, namely:—	
	“(e) making grants or loans to the Biodiversity Management Committees;	

	(f) the activities to meet the purposes of the Act.”.	
Amendment of section 36.	25. In section 36 of the principal Act,—	
	(i) for the marginal heading, the following shall be substituted, namely:—	
	“Central Government to develop national strategies and plans for conservation, <u>promotion</u> and sustainable use of biological diversity”;	
	(ii) in sub-section (1), —	
	<u>(a) after the words “The Central Government shall”, the words “, in consultation with the State Government and Union territories,” shall be inserted;</u>	
	(b) for the words “conservation of biological resources, incentives”, the words “conservation of biological resources, including cultivars, folk varieties and landraces, incentives” shall be substituted;	
	(iii) in sub-section (3), for the words “sectoral or cross-sectoral plans, programmes and policies”, the words “sectoral policies or cross-sectoral plans and programmes” shall be substituted.	
	(iv) after sub-section (5) and before the <i>Explanation</i> , the following sub-section shall be inserted, namely:—	
	“(6) The Central Government shall involve the National Biodiversity Authority or State Biodiversity Boards to undertake measures for conservation and sustainable use of biological diversity or * traditional knowledge associated thereto.”.	
Insertion of new section 36A and 36B.	26. After section 36 of the principal Act, the following sections shall be inserted, namely:—	
Measures to be taken by National Biodiversity Authority.	“36A. The Central Government may authorise National Biodiversity Authority or any other organisation to take any measures necessary to monitor and regulate within the territory of India, the access and utilisation of biological resources obtained from a foreign country in order to meet the international obligations to which India is a signatory.	
State Government to develop	“36B. (1) The State Government shall develop strategies, plans, programmes for the conservation and promotion and sustainable	

strategies and plans for conservation and sustainable use of biological diversity.	use of biological diversity, including measures for identification and monitoring of areas rich in biological resources, promotion of <i>in situ</i> , and <i>ex situ</i> , conservation of biological resources, including cultivars, folk varieties and landraces, incentives for research, training and public education to increase awareness with respect to biodiversity, in conformity with the national strategies, plans and programmes.	
	(2) The State Government shall, as far as practicable, wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral policies or cross-sectoral plans and programmes.”.	
Amendment of section 37.	27. In section 37 of the principal Act, —	
	(a) for sub-section (1), the following sub-section shall be substituted, namely:—	
	“(1) Without prejudice to any other law for the time being in force, based on the recommendations of the State Biodiversity Board, the State Government may, from time to time, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act:	
	Provided that the State Biodiversity Board shall consult the local body and the Biodiversity Management Committee concerned before making such recommendations.”;	
	(b) in sub-section (2), for the words “heritage sites”, the words “biodiversity heritage sites” shall be substituted.	
Amendment of section 38.	28. In section 38 of the principal Act, the following provisos shall be inserted, namely:—	
	“Provided that the Central Government may delegate such power to the State Government:	
	Provided further that where such power is delegated to the State Government, it shall consult the National Biodiversity Authority before issuing any such notification.”.	
Substitution of new section for section 40.	29. For section 40 of the principal Act, the following section shall be substituted, namely:—	
Provisions of this Act not to	“40. Notwithstanding anything contained in this Act, the Central Government may, in consultation with the National	

apply in certain cases.	Biodiversity Authority, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall not apply to biological resources when normally traded as commodities or to the items derived from them, including agricultural wastes, as notified and cultivated medicinal plants and their products for entities covered under section 7, registered as per the regulations made or as prescribed:	
	Provided that no exemption shall be made for the activities referred to in sub-sections (1) and (2) of section 6.”.	
Amendment of section 41.	30. In section 41 of the principal Act,—	
	(a) for sub-section (1), the followings sub-sections shall be substituted, namely:—	
	“(1) Every local body at the Gram Panchayat level in the rural areas and <u>atthe</u> Nagar Panchayat or Municipal Committee at Municipal Corporation level in the urban areas shall constitute a Biodiversity Management Committee (by whatever name called) within its area for the purpose of promoting <u>conservation, sustainable use and documentation of biological diversity including preservation of habitats,</u> conservation of landraces, folk varieties, farmers’ varieties, and cultivars, domesticated stocks and breeds of animals, <u>living things in water bodies</u> and microorganisms and chronicling of knowledge relating to biological diversity*:	
	Provided that the State Government may constitute Biodiversity Management Committees at the intermediate or district Panchayat level for achieving the objectives of the Act.	
	(1A) The functions of Biodiversity Management Committee so constituted shall include conservation, sustainable use and documentation of biological diversity, including conservation of habitats, landraces, folk varieties, cultivars, domesticated breeds of animals, and microorganisms, and chronicling of * traditional knowledge <u>associated</u> thereto relating to biological diversity.	
	(1B) The composition of the Biodiversity Management Committee shall be such as may be prescribed by the State Government:	
	Provided that the number of members of the said Committee shall not be less than seven and not exceeding eleven.”;	

	(b) in sub-section (2), for the words “and knowledge associated with such resources”, the words “or *traditional knowledge associated thereto” shall be substituted.	
	(c) the following <i>Explanation</i> shall be inserted, namely:—	
	“ <i>Explanation.</i> —For the purposes of this section, —	
	(a) “cultivar” means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation;	
	(b) “folk variety” means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;	
	(c) “landrace” means primitive cultivar that was grown by ancient farmers and their successors.	
	(d) farmers’ variety” means a variety which — (i) has been traditionally cultivated and evolved by the farmers in their field; or (ii) is a wild relative or landrace of a variety about which the farmers possess the common knowledge.”.	
Amendment of section 43.	31. In section 43 of the principal Act, in sub-section (1), for clause (e), the following clause shall be substituted, namely:—	
	“(e) benefit sharing amount and all other sums received by the Local Biodiversity Fund from such other sources as may be decided by the State Government.”.	
Substitution of new section for section 44.	32. For section 44 of the principal Act, the following section shall be substituted, namely:—	
Application of Local Biodiversity Fund.	“44. (1) The Local Biodiversity Fund shall be utilised in accordance with the regulations and the guidelines made in this behalf, for— (a) the conservation and promotion of biodiversity including restoration of areas <u>falling within the jurisdiction of concerned local body</u> ; (b) the socio-economic development of the community without compromising the conservation concerns; and	

	(c) the administrative expenses of the Biodiversity Management Committee.	
	(2) The Fund shall be utilised in such manner as may be prescribed by the State Government.”.	
Substitution of new section for section 45.	33. For section 45 of the principal Act, the following section shall be substituted, namely:—	
Annual statement of Biodiversity Management Committees.	“45. The custodian of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time as may be prescribed by the State Government, its annual statement giving a full account of its activities during the previous financial year, and submit the same to the local body concerned with a copy to the State Biodiversity Board.”	
Substitution of new section for section 46.	34. For section 46 of the principal Act, the following section shall be substituted, namely:—	
Audit of accounts of Biodiversity Management Committees.	“46. (1) The Biodiversity Management Committee shall maintain the accounts which shall be audited in such manner as may be prescribed by the State Government.	
	(2) The Biodiversity Management Committee shall furnish to the local body concerned and to the State Biodiversity Board, before such date as may be prescribed by the State Government, its audited copy of accounts together with auditor's report thereon.”	
Amendment of section 50.	35. In section 50 of the principal Act, in the marginal heading, the words “between the State Biodiversity Board” shall be omitted.	
Amendment of section 52.	36. In section 52 of the principal Act, in sub-section (1), for the words “benefit sharing or order”, the words “fair and equitable sharing of benefits or order or direction” shall be substituted —	
Amendment of section 53.	37. In section 53 of the principal Act, —	
	(i) for the words “benefit sharing”, the words “fair and equitable sharing of benefits” shall be substituted;	
	(ii) after the words “order made by the High Court”, the words “or the National Green Tribunal” shall be inserted;	

	(iii) after the words “Registrar of the High Court”, the words “or the Registrar of the National Green Tribunal” shall be inserted;	
	(iv) in the <i>Explanation</i> , after the words “group of persons”, wherever they occur, the words “or body” shall be substituted.	
Substitution of new sections 55, 55A and 55B for section 55.	38. For section 55 of the principal Act, the following sections shall be substituted, namely:—	
Penalties.	“55. If any person or entity covered under sub-section (2) of section 3 or section 7 contravenes or attempts to contravene or abets the contravention of the provisions of clauses (a) and (b) of sub-section (1) of section 3 or section 4 or section 6 or section 7, such person shall be liable to pay penalty which shall not be less than one lakh rupees, but which may extend to fifty lakh rupees, but where the damage caused exceeds the amount of penalty, such penalty shall be commensurate with the damage caused, and in case, the failure or contravention continues, an additional penalty may be imposed, which shall not exceed one crore rupees and such penalty shall be decided by the adjudicating officer appointed under section 55A.	
Adjudication of penalties.	55A. (1) For the purposes of determining the penalties under section 55, the Central Government may appoint an officer not below the rank of Joint Secretary to the Government of India or a Secretary to the State Government to be the adjudicating officer, to hold inquiry in the prescribed manner and to impose the penalty so determined:	
	Provided that the Central Government may appoint as many adjudicating officers as may be required.	
	(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for, or relevant to, the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person concerned has failed to comply with the provisions of section 3 or section 4 or section 6 or section 7, he may impose such penalty as he thinks fit in accordance the provisions of section 55:	

	Provided that no such penalty shall be imposed without giving the person concerned an opportunity of being heard in the matter.	
19 of 2010.	(3) Any person aggrieved by the order made by the adjudicating officer under sub-section (2) may prefer an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010.	
	(4) Every appeal under sub-section (3) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person.	
	(5) The National Green Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.	
Power to enter, inspect, survey, etc.	<p>55B. Any authority or officer empowered by the Central Government may, for the purposes of carrying out inspection, survey or any such activity, have all or any of the following powers, namely:—</p> <p>(a) the power to enter upon any land, vehicle, or premises and to inspect, investigate, survey, and collect information and make a map of the same and seize the materials and records;</p> <p>(b) the powers of a civil court to compel the attendance of anyone, including witnesses and production of documents and material objects;</p> <p>(c) the power to issue a search-warrant;</p> <p>(d) the power to hold an inquiry and in the course of such inquiry, receive and record evidence;</p> <p>(e) such other power as may be prescribed.”.</p>	
Omission of section 58.	39. Section 58 of the principal Act shall be omitted.	
Insertion of new section 59A.	40. After section 59 of the principal Act, the following section shall be inserted, namely:—	
Act not to apply to certain	“59A. The provision of this Act shall not apply to any person who has been given any approval or granted any right under any law relating to protection of plant varieties enacted by Parliament	

persons.	to the extent that such approvals or rights given under that Act does not require similar approval under this Act.	
Amendment of section 61.	41. In section 61 of the principal Act,—	
	(a) in the opening portion, for the word “complaint”, the words “written complaint” shall be substituted;	
	(b) in clause (b), for the words “any benefit claimer”, the words “any person or a benefit claimer” shall be substituted.	
Amendment of section 62.	42. In section 62 of the principal Act, in sub-section (2),—	
	(i) for clause (a), the following clauses shall be substituted, namely:—	
	“(a) the manner of issuing certificate of origin for cultivated medicinal plants under sub-section (2) of section 7;	
	(aa) the terms and conditions of service of the Chairperson, Member-Secretary and other members under section 9;”;	
	(ii) after clause (b), the following clause shall be inserted, namely:—	
	“(ba) the other functions to be performed by the Member-Secretary;”;	
	(iii) in clause (e), after the word “application”, the word “and payment of fees” shall be inserted;	
	(iv) after clause (e), the following clause shall be inserted, namely:—	
	“(ea) form of application and payment of fees under sub-section (1) of section 20;	
	(v) after clause (j), the following clauses shall be inserted, namely:—	
	“(ja) the manner of holding inquiry by the adjudicating officer under section 55A;	
	“(jb) the other power under clause (e) of section 55B;”.	
Amendment of section 63.	43. In section 63 of the principal Act, in sub-section (2),—	
	(i) after clause (e), the following clause shall be inserted, namely:—	

	“(ea) the composition of the Biodiversity Management Committee under sub-section (1B) of section 41;	
	(ii) in clause (f), for the word “applied”, the word “utilised” shall be substituted;	
	(iii) in clause (g), for the words “annual report”, the words “annual statement” shall be substituted;	