
What is covered by the Biological Diversity Act?

The Act covers conservation, use of biological resources and associated knowledge occurring in India for commercial or research purposes or for the purposes of bio-survey and bio-utilisation. It provides a framework for access to biological resources and sharing the benefits arising out of such access and use. The Act also includes in its ambit the transfer of research results and application for intellectual property rights (IPRs) relating to Indian biological resources.
Who is covered by the Biological Diversity Act and what do they require?

The Act covers foreigners, non-resident Indians, body corporate, association or organization that is either not incorporated in India or incorporated in India with non-Indian participation in its share capital or management. These individuals or entities require the approval of the National Biodiversity Authority when they access/use biological resources and associated knowledge occurring in India for commercial or research purposes or for the purposes of bio-survey or bio-utilisation.

Indians and Indian institutions do not require the approval of the National Biodiversity Authority when they engage in the above mentioned activities. However they would need to inform the State Biodiversity Boards prior to undertaking any research with the intent of commercialisation. Any application for IPR based on biological resources should be approved by NBA.
Who and what is excluded by the Biological Diversity Act?

The Act excludes Indian biological resources that are normally traded as commodities. Such exemption holds only so far the biological resources are used as commodities and for no other purpose. The Act also excludes traditional uses of Indian biological resources and associated knowledge and when they are used in collaborative research projects between Indian and foreign institutions with the approval of the central government.
What is the National Biodiversity Authority required to do when it receives an application for approval to use Indian biological resources and associated knowledge?

The National Biodiversity Authority shall give approval, based on agreement with State Biodiversity Boards (SBBs), only after establishing mutually agreed terms and an fair and equitable benefit sharing agreement between the users of the biological resources and associated knowledge and concerned local bodies and benefit claimers.

What are the consequences of lack of compliance with the Biological Diversity Act?

In cases where an approval of the National Biodiversity Authority is required for the use of Indian biological resources and associated knowledge and such approval is not obtained, the punishment can extend to five years imprisonment or a fine of ten lakh rupees or both.

In cases where the State Biodiversity Board needs to be intimated about the use of Indian biological resources and associated knowledge and this is not done, the punishment can extend to three years imprisonment or a fine of five lakh rupees or both.

Any offence under the Act is cognizable and non-bailable.
Relevant definitions for the purposes of the Biological Diversity Act:

In this Act, unless the context otherwise requires,-

(a) "benefit claimers" means the conservers of biological resources, their byproducts, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application;

(b) "biological diversity" means the variability among living organisms from all sources and the ecological complexes of which they are part, and includes diversity within species or between species and of eco systems;

(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;

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

(e) "Chairperson" means the Chairperson of the National Biodiversity Authority or, as the case may be, of the State Biodiversity Board;

(f) "commercial utilization" means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping;

(g) "fair and equitable benefit sharing" means sharing of benefits as determined by the National Biodiversity Authority under section 21;

(h) "local bodies" means Panchayats and Municipalities, by whatever name called, within the meaning of clause (1) of article 243B and clause (1) of article 243Q of the Constitution and in the absence of any Panchayats or Municipalities, institutions of self government constituted under any other provision of the Constitution or any Central Act or State Act;
(i) "member" means a member of the National Biodiversity Authority or a State Biodiversity Board and includes the Chairperson;

(j) "National Biodiversity Authority" means the National Biodiversity Authority established under section 8;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "regulations" means regulations made under this Act;

(m) "research" means study or systematic investigation of any biological resource or technological application, that uses biological systems, living organisms or derivatives thereof to make or modify products or processes for any use;

(n) "State Biodiversity Board" means the State Biodiversity Board established under section 22;

(o) "sustainable use" means the use of components of biological diversity in such manner and at such rate that does not lead to the long term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations;

(p) "value added products" means products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form.