

## DO YOU KNOW? the mechanisms for settling DISPUTES?

### WHO, WHAT, HOW?

These mechanisms come into play when permission for accessing biological resources has been granted by a concerned National Biodiversity Authority or State Biodiversity Board and there are reasons for it to be challenged. For instance, one or more SBBs might not agree with the decision of the NBA to grant permission in their state; or the BMCs would not have been consulted or might see ill-effects of approvals given or might want to challenge any benefit sharing arrangements so determined.

Disputes could also arise between two BMCs if only one of them has been consulted and agreed to grant of access to biological resource or traditional knowledge which is not “exclusively” held within the area or practice of that community, e.g., the use of a particular forest produce which has medicinal value etc.

- a) **Between NBA and SBB:** The SBB and/or NBA needs to appeal to the Central Government i.e. Ministry of Environment and Forests (MoEF), New Delhi.
- b) **Between two SBBs:** Concerned SBBs to appeal to MoEF, New Delhi which will refer it to the NBA.

These need to be filed in the form of a memorandum of appeal along with “authenticated” facts within 30 days of date of the order. Another 15 days time is there in case it can be proved by the appellant that there is sufficient cause for delay.

### NBA as a Civil Court

The National Biodiversity Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908. The NBA can summon or enforce attendance of any person; receive evidence of affidavits; issue commissions for examination of witnesses and or documents; review its decisions etc.

Every proceeding before the NBA will be a judicial proceeding.



- c) **Between BMC and NBA or SBB:** No procedure prescribed.
- d) **Between two or more BMCs:** No procedure prescribed.

In the above two instances, when communities are involved, despite being part of the institutional structure of the legislation there is no special provision. The BMCs and local communities would need to use mechanisms which are prescribed for any common citizen, i.e. before the High Court (*more details on this in the next point*).



- e) **Any person:** If any person is aggrieved by any order of the NBA or SBB, they can file an appeal within 30 days of the order or the date of communication to him/her (i.e. rejection, conditions for approval). The High Court can extend the time to 60 days, if it can be proved that there was sufficient cause for the delay.



**The above procedures show the politics of centralisation and the distancing of decision-making further away from where the access is taking place. This is reflected in the redressal mechanisms and dispute settlement prescribed within the text of the law.**



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# Offences, Disputes and Remedies under INDIA'S BIODIVERSITY LAW



India enacted the Biological Diversity Act in 2002 to lay down a framework for biological resources and related traditional knowledge. It established the do's and don'ts vis-à-vis use, access and conservation of plants, animals, micro-organisms, their genetic material or their parts, or traditional knowledge. Since this Act there is enacted a list of activities including research, commercial utilization and patenting, that cannot be undertaken on any of the above resources either without prior permission of the National Biodiversity Authority (NBA) or the knowledge of the concerned State Biodiversity Board (SBB). Each of these bodies also needs to “consult” the Biodiversity Management Committees (BMCs) at the local level, before grant of any approvals. Apart from its regulatory regime the Act also spells out the offences and violations and lays down mechanisms to resolve disputes and provide redressal. *The provisions under this Act are in addition to the provisions of the forest and wild life laws in India and do not override those provisions.*

“Redressal” is the relief that a legislation provides for violations. It could be in the form of some remedy, compensation for loss or punishment for wrong doing. For that one needs to know what is ILLEGAL under the Biological Diversity Act, the ACTIONS that can be taken under it and by whom.

### DID YOU KNOW? under this law it is ILLEGAL

**FOR FOREIGNERS** to obtain any biological resource or knowledge for research, commercial use, biosurvey or bioutilisation without the permission of the National Biodiversity Authority.

**Punishment** - imprisonment upto five years or fine upto Rs.10 lakhs and where the damage exceeds Rs.10 lakhs fine will be equal to the damage caused.

**FOR INDIANS – citizens, corporations, associations or organisations registered in India**

a) to obtain any biological resource for biosurvey, bio-



utilisation and commercial utilisation without prior intimation to the concerned State Biodiversity Board [*local people and communities, including growers and cultivators of biodiversity, vaidas and hakims are exempt*].

b) to go against any order of the State Biodiversity Board passed after consultation with local bodies prohibiting or restricting any activities when it receives intimation.

**Punishment** - prison term upto three years and fine upto Rs.5 lakhs.

#### FOR ANY PERSON

a) to transfer the results of any research relating to biological resources to any foreign person or organisation without the prior approval of the National Biodiversity Authority (*this does not include publication of research papers or dissemination of knowledge in any seminar/ workshop*).

b) to apply for Intellectual Property Rights (like patents, geographical indications, etc.) in or outside India without the prior approval of the National Biodiversity Authority.

**Punishment** - imprisonment upto five years or fine upto Rs.10 lakhs and where the damage exceeds Rs.10 lakhs fine will be equal to the damage caused.

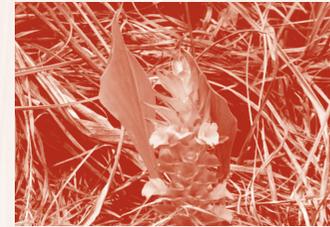
The above punishments also apply to persons/ entities who

- attempt to contravene or
- abet such actions.

### DID YOU KNOW? under this law there is also PENALTY

**FOR ANY PERSON** going against any order or direction of the Central government, State government, NBA or SBB for which no separate penalty is prescribed under this law other than punishments mentioned above.

**Penalty** - fine upto Rs.1 lakh for the first offence, extendable to Rs.2 lakhs in case of the second offence. If this is continuous then it can go upto Rs.2 lakhs every day of the default continuing.



In case the offence is by a company, i.e., a body corporate including a firm or association, then action can be taken against both the company and persons involved.

**Offences under this Act are cognizable and non-bailable.**

### COGNIZANCE OF OFFENCES

**How can violations be brought to book and by whom?**

**Any offence under the Act can be brought to a court of law only by**

- Complaint filed by the Central Government or authority or officer authorised by the government (i.e. including officers of the State Forest Department etc);
- Complaint by a “benefit claimer” after giving a notice to the Central Government (MoEF) or NBA or any other authorised officer. This should be within thirty days of the offence having occurred.

As per the Act, “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.



In case a citizen is not directly a “benefit-claimer” of the biological resource for which the violation or offence has occurred, then they would not be in a position to challenge the offence. For example, in case a person or a company has illegally accessed any species of plant, animal or insect (in whole or part) from a forest or wetland or desert, this illegal access can be challenged only by another person who can be proved to be a “benefit claimer” as per the definition prescribed in the Biological Diversity Act.

**In effect, the Act disallows public interest litigation by any ordinary concerned person.**

**The Act also gives immunity to Central/ State government officials and NBA/ SBB members from any legal proceeding for any acts done or intended “in good faith.”**