

## About NBA

The National Biodiversity Authority (NBA) was established in 2003 to implement India's Biological Diversity Act (2002). The NBA is a Statutory, Autonomous body and it performs facilitative, regulatory and advisory functions for Government of India on issues of conservation, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources.

The Biological Diversity Act (2002) mandates implementation through a decentralized approach with the NBA focusing on advising 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; and advising 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 besides supporting conservations and sustainable management of biodiversity.

The State Biodiversity Boards (SBBs) focus on advising the State Governments, 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. The State Biodiversity Boards (SBBs) also regulate, by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource for commercial utilization by Indians.

The local level Biodiversity Management Committees (BMCs) are responsible for 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.

The NBA with its headquarters in Chennai, Tamil Nadu, delivers its mandate through a structure that comprises of the Authority, Secretariat, SBBs, BMCs and Expert Committees.

Since its establishment, NBA has supported creation of SBBs in 28 States and facilitated establishment of around 33,000 BMCs at local level.



# Guidance Manual

## ABS MECHANISM UNDER THE BIOLOGICAL DIVERSITY ACT, 2002, INDIA

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**Disclaimer :**

This publication is prepared as part of UNEP-GEF-MoEF Project on Strengthening the Implementation of Biological Diversity Act & Rules with focus on its Access and Benefit Sharing Provisions.

All the views expressed in the Manual are based on established legal principles. Any error or lapse is purely unintended and inconsequential and shall not make either the NBA or the Project liable for the same.

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**About the Project:**

The Objective of the UNEP-GEF MoEF project on ABS is to increase the institutional, individual and systemic capacities of stakeholders to effectively implement the Biological Diversity Act, 2002 and the Rules 2004 to achieve biodiversity conservation through implementing Access and Benefit Sharing Agreements in India.

This project is implemented in the 5 states of India namely Andhra Pradesh, Gujarat, West Bengal, Himachal Pradesh and Sikkim. The executing organisation includes NBA in collaboration with 5 SBBs, Botanical Survey of India (BSI), Zoological Survey of India (ZSI), United Nations Development Programme (UNDP), United Nations Environment Programme - Division of Environmental Law and Conventions (UNEP/DEL/C), United Nations University – Institute of Advanced studies (UNU-IAS) and Global Environment Facility.

**The main components of the project are:**

- ✓ Identification of biodiversity with potential for ABS and their valuation in selected ecosystems such as forest, agriculture and wetlands.
- ✓ Development of tools, methodologies, guidelines, frameworks for implementing ABS provisions of the Biological Diversity Act.
- ✓ Piloting agreements on ABS
- ✓ Implementation of policy and regulatory frameworks relating to ABS provisions at national level and thereby contribute to international ABS policy issues.
- ✓ Capacity building for strengthening implementation of the ABS provisions of the BD Act.
- ✓ Increase public awareness and education programmes.

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# **ABS MECHANISM UNDER THE BIOLOGICAL DIVERSITY ACT, 2002**

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## *GUIDANCE MANUAL*

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UNEP - GEF - MoEF PROJECT ON “STRENGTHENING THE  
IMPLEMENTATION OF THE BIOLOGICAL DIVERSITY ACT AND RULES  
WITH FOCUS ON ITS ACCESS AND BENEFIT SHARING PROVISIONS”



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## Foreword

Implementation of Access and Benefit Sharing (ABS) provisions under the Biological Diversity Act provides a significant challenge and opportunity for the National Biodiversity Authority (NBA), State Biodiversity Boards (SBBs) and the Biodiversity Management Committees (BMCs) in realizing the objectives of the Act and the Convention on Biological Diversity (CBD).

In spite of a decade of existence of the Act and Rules, stakeholders are still unclear about the ABS provisions under the Act. This publication, brought out under the UNEP-GEF-MoEF ABS Project implemented by NBA, is an attempt by NBA to create better understanding on ABS issues.

The Guidance Manual is intended to provide an overview of significant elements of the Act related to ABS and should not be seen as an interpretation document by NBA.

I hope this Manual will fill the gap in the understanding of the Act and Rules better.

**Balakrishna Pisupati**

Chairman

National Biodiversity Authority

Chennai.

## The Biological Diversity Act, 2002 In A Nutshell

**Scope and Extent:-** The Biological Diversity Act, 2002 was legislated pursuant to India's obligation under the Convention on Biological Diversity (CBD).

The CBD was adopted in the year 1992 and the Biological Diversity Act was enacted in 2002, taking cognizance of the provisions of CBD and to deal with extensive pressure on our biological resources. To detail the procedures to be adopted, the Biological Diversity Rules were notified in the year 2004. Several State rules were also notified subsequently for implementing the Act in the respective States in India.

The Act relates to biological diversity, the definition of which, as per Section 2(b) of the Act 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"*. The Act extends to whole of India



## Biological Resources

The Biological Diversity Act, 2002, covers certain elements of biological diversity for the purposes of regulation. These elements are termed as 'biological resources'.

As per Section 2 (c) of the Biological Diversity Act, 2002, biological resources means *plants, animals and micro-organisms or parts thereof, their genetic material and by-products which have an actual or potential use or value*. This definition excludes 'value added products' from the term biological resources. Further, human genetic material is also not included under the term.





‘Value added products’ are defined under Section 2 (p) of the Act, as being *products that may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form.*



## Knowledge associated with Biological Resources

The Biological Diversity Act, 2002, apart from biological resources, also covers knowledge associated with biological resources for the purposes of regulation.

The inclusion of knowledge associated with biological resources under the Act, is a reflection of realizing the objectives of the CBD. Though the CBD refers only to traditional knowledge, the Biological Diversity Act, 2002, uses the term ‘knowledge associated with biological resources’, to give a wider scope to the regulatory mechanism by using an inclusive approach to the knowledge that is associated with biological resources.



## Categorization of Persons and Entities under the Act

The Act categorises persons and entities in a particular manner to implement the Act. The persons or entities are broadly under two categories namely Indian and Non-Indian.

The following are the categories of persons –



Persons who are not citizens of India (Foreigners)



Persons who are citizens of India but Non-Resident Indians as per the Income Tax Act, 1961 (NRIs)



Indian Citizens

The following are the categories of entities –



Body corporate's, Associations or Organisations not incorporated or registered in India (Foreign Entities)



Body corporate's, Associations or Organisations registered in India but having any Non-Indian participation in its share capital or management (Indian entities with foreign elements)



Body corporate's, Associations or Organisations registered in India (Indian entities)

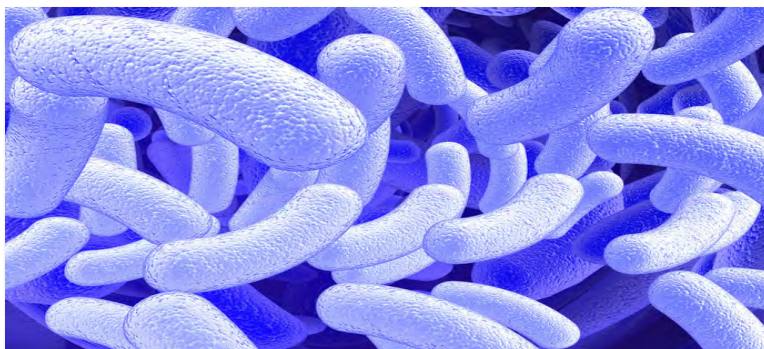
## Classification of certain Purposes under the Act

The Act envisages the access and use of biological resources and knowledge associated thereto for certain specific purposes. These uses are classified as (i) commercial utilization; (ii) research; and (iii) bio-survey and bio-utilization.

Commercial utilization is defined under Section 2 (f) of the Act. It is an inclusive definition which mentions certain end uses of biological resources in commercial nature such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention. This definition includes all such commercial uses of biological resources which are of the similar nature as those mentioned explicitly.

A reading of this definition shows that uses of biological resources that involve certain end uses and process are the ones which are sought to be covered under the Act.







The definition of commercial utilization excludes certain specific uses of biological resources. The excluded uses are conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping.



Research is defined under Section 2 (m) of the Act. The definition describes any study or systematic investigation of biological resources or technological applications that use biological systems, living organisms or derivatives thereof for the purpose of making or modifying products or processes for any use, as research.



Bio-survey and bio-utilization is defined under Section 2 (d) of the Act and means survey or collection of species, sub-species, genes, components and extracts of biological resources for any purpose and includes characterization, inventorisation and bioassay.

The definition details the concept of bio-prospecting. Any survey or collection of biological resources in any of the mentioned forms for purposes such as characterization, inventorisation and bioassay, would be covered under this definition.





## Bodies established under the Act

There are three statutory bodies established under the Act:

1. *National Biodiversity Authority;*
2. *State Biodiversity Boards;*
3. *Biodiversity Management Committees.*

The National Biodiversity Authority (NBA) is the body established at the national level and the headquarters is situated at Chennai, Tamil Nadu.



The Role of the NBA under the Act is multi-fold. The NBA facilitates conservation action besides ensuring sustainable use and fair and equitable sharing of benefits arising from such use. It also has a regulatory duty with respect to access and use of biological resources occurring within India. It acts as an advisor in decisions being taken by the Central Government and the State Governments in matters relating to biological diversity.

The NBA further acts on behalf of the Central Government in opposing grant of IPR in any country outside India which involves any biological resource, or knowledge associated thereto, from India. Furthermore, the NBA may perform such other functions as may be necessary to secure the proper implementation of all the provisions of the Act.

The State Biodiversity Boards are established at the state level. The role of the State Biodiversity Boards (SBBs) is advisory in nature towards the State Government for matters relating to the objectives of the Act. The SBBs act as regulatory bodies within their respective states. Furthermore, the SBBs may perform such other functions as maybe necessary to carry out the provisions of the Act or as maybe prescribed by the relevant State Governments.

The Biodiversity Management Committees (BMCs) are constituted at the local body level, for the purpose of achieving the objectives of the Act within their local area jurisdiction.

The Act refers to the Constitution of India for the purpose of identifying local bodies under the Act. All panchayats, municipalities and municipal corporations and other bodies established under the Constitution of India that are of the nature of a local self-government, are understood to be local bodies for the purposes of the Biological Diversity Act, 2002.

The Act envisages certain specific functions of the BMCs for a wholesome implementation of conservation of biological resources in the local area. Those functions include preparation of People's Biodiversity Registers (PBRs), maintenance registers and data of access and obtainment of biological resources from their local area, conservation and promotion of sustainable use of biological diversity of the local area, etc. The Act makes the BMCs consulting bodies for the NBA and SBBs for matters concerning access and benefit sharing (ABS). The BMCs are also empowered to levy fee for access and collection of biological resources from areas within their jurisdiction.

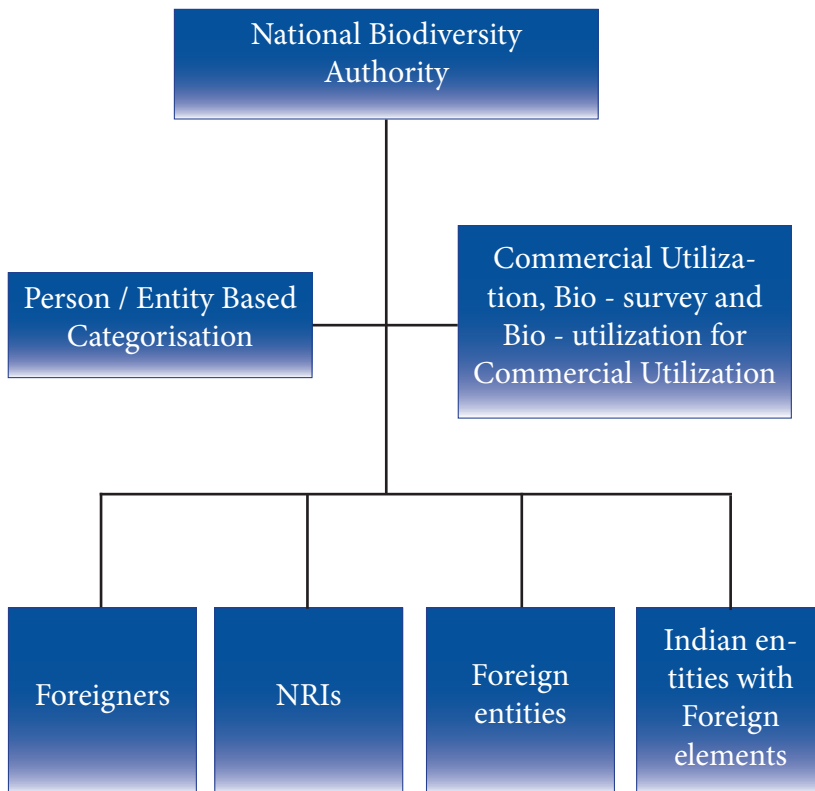
The NBA and SBB are body corporates, having perpetual succession and common seal. They can sue and be sued in their respective names, hold and dispose of movable and immovable property.

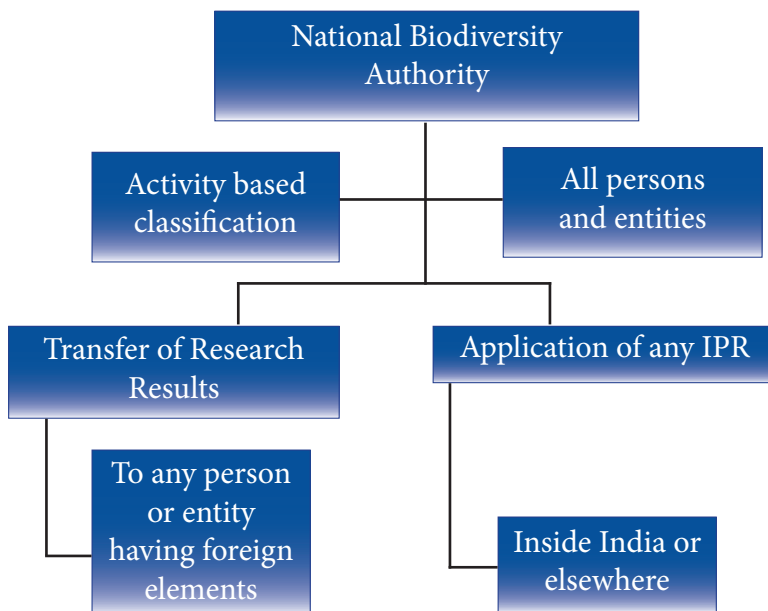
With respect to Union Territories, there shall be no SBB but the NBA will perform the functions of SBB therein. The NBA may delegate this function to such persons or group of persons as maybe determined by the Central Government.

## Jurisdiction of NBA & SBBs with respect to Categories and Classification

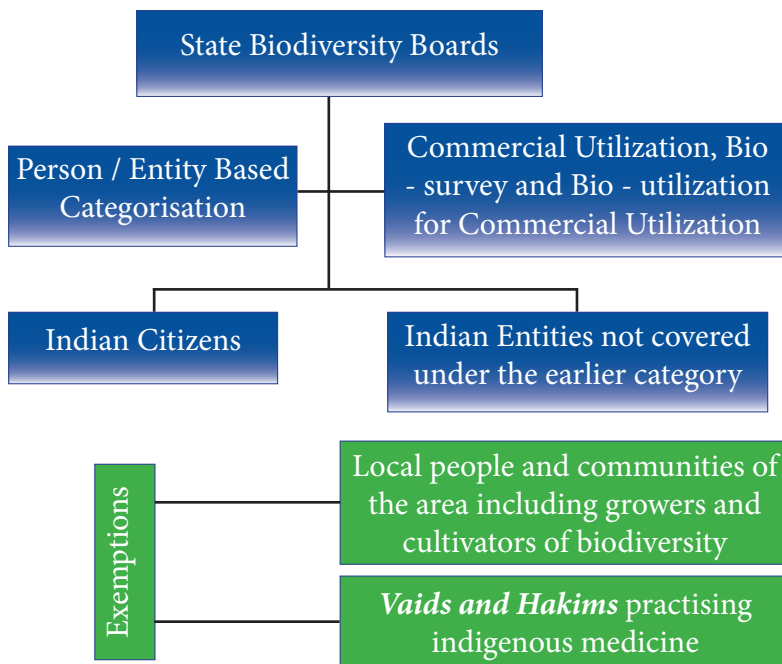
The National Biodiversity Authority is vested with powers of regulation over the following categories of persons in respect of their access and use of biological resources and/or knowledge associated thereto for the purposes of commercial utilization, research, bio-survey and bio-utilization.

Apart from the regulation of the relevant category of persons or entities, the National Biodiversity Authority is also vested with powers to regulate certain specific activities as follows - Detailed explanation of the activities can be found in subsequent parts of this Manual.





The State Biodiversity Boards, like the NBA are vested with powers to regulate the following categories of persons:



As seen above, the local people and communities of the area, including growers and cultivators of biodiversity, and *vaid*s and *hakims* who are practising indigenous medicine are exempted from the regulatory ambit of the SBBs.



## Access and Benefit Sharing (ABS) Mechanism

**The Mechanism:-** The Biological Diversity Act, 2002, envisages the ABS mechanism as a legal framework. This regulatory framework has been put in place in the Act to regulate activities of commercial utilization, research, bio-survey and bio-utilization of biological resources occurring in or obtained from India.

ABS is one of the most important areas of emerging biodiversity jurisprudence. Access and Benefit Sharing is a mechanism which secures fair and equitable share in the benefits arising out of access and utilization of biological resources for commercial purposes.

The benefits thus secured are channelled to the benefit claimers and for the conservation of biological diversity.



The ABS mechanism is a legal regime which falls within the framework of international and national legal instruments.

The Act makes it mandatory for such persons to apply for prior approval from NBA in cases where they fall within the regulatory jurisdiction of the NBA.



Further certain activities, namely, the transfer of research results relating to any biological resource occurring in or obtained from India, by any person to any person who falls within the purview of the NBA; and application to obtain any Intellectual Property Right for any invention based on research or information relating to any biological resource obtained from India, are regulated under the ABS mechanism. For the purpose of the above mentioned



activities, the National Biodiversity Authority is vested with the power of regulation. In this regard, irrespective of the category to which the person or entity belongs, they shall have to obtain the prior approval of the NBA.

The NBA is also vested with the power to regulate by granting permissions for third party transfer of accessed biological resources and associated knowledge . Whenever a person or entity wishes to transfer the biological resources that have been accessed upon approval of the NBA, such person or entity shall have to obtain the prior permission of the NBA before transferring the same to any third party.

In case of Indian citizens or entities accessing and collecting biological resources for the purpose of commercial utilization or bio-survey and bio-utilization for commercial utilization, prior intimation has to be given to the relevant SBB. The SBBs have powers to regulate such requests by granting of approvals or otherwise.

The NBA and SBBs shall consult the BMCs of the local area in such decision making process.





All the bodies under the Act shall function in a manner that benefits the conservation and sustainable use of biological resources and work in co-ordination with each other in this regard.

### **Provisions of the Act:-**

Sections 3, 4, 6, 7 and 21 of the Biological Diversity Act, 2002 are in essence the regulatory provisions under the ABS mechanism envisaged by the Act.

**SECTION 3:** Any person or entity having any foreign element, seeking access to any biological resource and/or associated knowledge or to obtain any biological resource occurring in India, for commercial utilization, research or bio-survey and bio-utilization shall have to seek prior approval from the NBA before such access or obtainment.

**SECTION 4:** Any person who seeks to transfer to any person or entity having any foreign element, the results of research relating to biological resource occurring in, or obtained from India, has to apply and obtain prior approval of NBA before such transfer. The consideration for transfer under this section may be monetary or otherwise. The provision exempts publication of research papers or dissemination of knowledge in any seminar or workshop provided such publication is in conformity with Central Government Guidelines made in this regard.

**SECTION 6:** Any person who seeks to apply for any Intellectual Property Right, anywhere, within or outside India, for any invention based on any research or information on a biological resource obtained from India has to apply and obtain prior approval of National Biodiversity Authority, before applying for such IPR. In cases where the IPR sought is a patent, the approval from National Biodiversity Authority may be applied and obtained subsequent to acceptance of the application for patent but prior to sealing of the patent.

Where the IPR sought is relating to rights under any law for protection of plant varieties in India, such application for IPR is exempted. In such cases, the authority granting the right has to endorse a copy of the relevant document granting the right, to National Biodiversity Authority.

**SECTION 7:** Any Indian person or entity not covered under the earlier category, seeking to access and obtain biological resources for commercial utilization or bio-survey and bio-utilization for commercial utilization has to give prior intimation to the relevant State Biodiversity Board, from whose State the biological resources are sought to be accessed or obtained. Local people and communities practising indigenous medicine including *vaid*s and *hakims*, and growers and cultivators of biological diversity of the local area are exempted from this provision.

**SECTION 21:** It is the duty of the National Biodiversity Authority to ensure that the terms and conditions under which approval is granted to an application made to it, secure the equitable share in the benefits that would arise from the utilization of biological resources and associated knowledge, in accordance with mutually agreed terms between the applicant, local body concerned and the benefit claimers.

Sections 5 and 40 contain certain exemptions from the ABS mechanism.

**SECTION 5:** If any research institution in India is engaged in its institutional capacity in a collaborative research project with such institution in another country, relating to transfer or exchange of biological resources or associated information, it is exempted from applying for approval under this Act, provided that such collaborative research project has the approval of Central Government and is in conformity with the Central Government Guidelines made in this regard. A copy of the approval so obtained

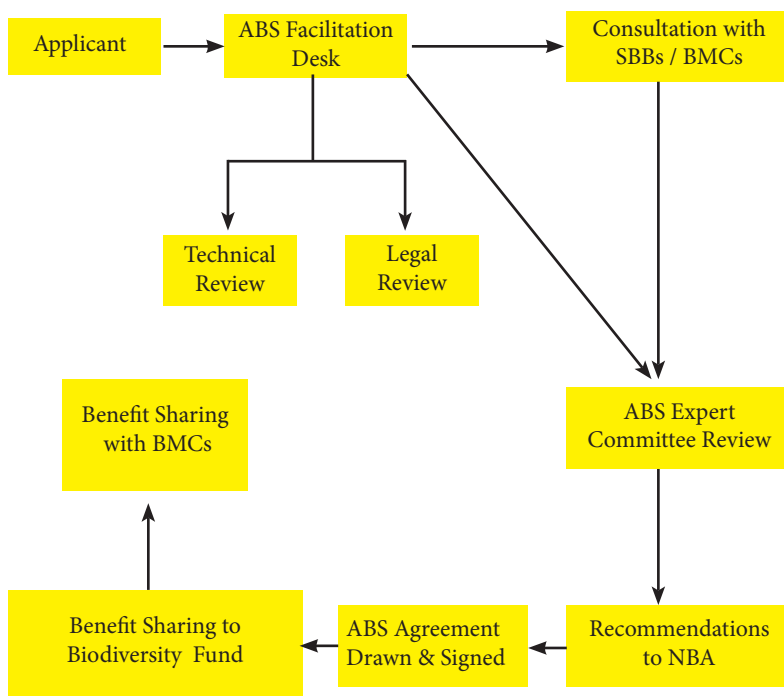
from the Central Government along with all relevant details has to be submitted to the National Biodiversity Authority. This section includes Government sponsored institutions of India and such institutions in other countries, engaged in collaborative research projects.

**SECTION 40:** Pursuant to Central Government notifying any item including biological resources normally traded as commodities under this section, the same becomes exempted from the purview of the Act.

Currently the Central Government has notified 190 biological resources as normally traded commodities. Such exemption is available only for the normal trade of those items as commodities and not for any other purpose.

## Process of ABS Application Approvals

In order to ensure that the ABS application are properly reviewed on a case by case basis and to ensure due diligence in decision making, NBA currently use the process depicted in the following figure to review and approve ABS application received under Forms I, II, III and IV.



## The Biological Diversity Rules, 2004

The Central Government framed the Biological Diversity Rules, 2004, describing in detail the administrative procedures of NBA, procedure to be followed under the ABS mechanism, the constitution of BMCs and settlement of disputes *inter se* NBA and SBBs and other matters relating to procedure.

The Rules contain the various forms in the Annexure thereto for the purposes of ABS mechanism with specific regard to approvals sought from NBA under the Act.

**Form I** – Application form for access to biological resources and associated traditional knowledge (Section 3 and 19(1)).

**Form II** – Application for seeking prior approval of NBA for transferring the results of research to foreign nationals, companies, NRIs, for commercial purposes (Section 4 and 19(1)).

**Form III** – Application for seeking prior approval of NBA for applying for IPR (Section 6 and 19(2)).

**Form IV** – Application for seeking approval of NBA for third party transfer of the accessed biological resources and associated traditional knowledge (Section 20(2)).

Further the Annexure to the Rules contain Forms V, VI and VII for the purposes of appeal under Section 50 of the Act and for complaint regarding offences under the Act.

## Biodiversity Management Committees

**Establishment of BMCs:-** The Act provides for the establishment of Biodiversity Management Committees at every local body governed area within India. India is a country that lives in Her villages. The Act has thus correctly placed the onus of responsibility on the grass – root organs called the Biodiversity Management Committees (BMCs) under the Act, for the purposes of conservation of the rich biological diversity in India.

The BMCs are constituted for the purpose of –

- ✓ Promoting conservation of biological diversity;
- ✓ Promoting Sustainable use of biological diversity;
- ✓ Promoting documentation of biological diversity;
- ✓ Preservation of habitats;
- ✓ Conservation of land races;
- ✓ Conservation of folk varieties and cultivators;
- ✓ Conservation of domesticated stocks and breeds of animals;
- ✓ Conservation of microorganisms; and
- ✓ Chronicling of knowledge relating to biological diversity.

Thus, the primary purpose of BMCs is conservation and they take up activities to further that end.

Activities like preparation of People's Biodiversity Registers (PBRs), consultation with SBB and NBA on approvals for access to genetic resources within their territorial jurisdiction, are all aimed towards the primary purpose of empowering communities on biodiversity conservation and use.

The Biological Diversity Rules, 2004 and the various State Rules framed under the Act, specify details about the constitution of BMCs in various States.

**Constitution of BMCs:-** Rule 22 of the Biological Diversity Rules, 2004 states that every local body shall constitute a BMC within its local area jurisdiction. The BMC so constituted shall consist of a Chairperson and a maximum of 6 members apart from the Chairperson to be part of it. Such members of the BMC shall be nominated to be the members by the local body.

The Rules give importance to the equitable participation of women in the mechanism of biodiversity conservation, by mandating a minimum of 1/3rd representation of women in the total membership of the BMC. Further, a minimum of 18% reservation in the total membership of the BMC is made for persons from the Schedule Castes/Schedule Tribes.

The Chairperson of the BMC shall be elected from and out of the entire membership. The election for Chairperson shall be held in a meeting which is headed by the Chairperson of the local body concerned. In case there is a tie in the vote, the Chairperson of the local body concerned shall have the casting vote. The elected Chairperson of the BMC shall hold office for a term of 3 years.



The BMC shall conduct periodical meetings and the local Member of the Legislative Assembly/ Member of the Legislative Council and the Member of Parliament would be specially invited to attend the said meetings.

**Functions:-** The functions of the BMCs are aimed towards achieving the purposes for which BMCs are established under the Act. The main function of the BMCs as per the Rules is the preparation of People's Biodiversity Registers (PBRs). This comes under the purpose of documentation of biological diversity and chronicling of knowledge relating to biodiversity. Only when the data of occurring biological resources in each area is available, can the strategies and plans for their conservation be devised. Thus, the very first step towards achieving the purposes of BMCs is the preparation of PBRs.

These PBRs are prepared by the BMCs in consultation with the local communities and will contain complete details on the availability of the various biological resources within their local area, local knowledge relating to the same, knowledge on the medicinal or other uses of the said resources with the local communities or any other traditional knowledge associated thereto.

The BMCs advice on matters referred to it by the SBB and the NBA for granting approvals for access to and use of biological resources from within the territorial jurisdiction of the concerned BMC. It is also the function of the BMCs to provide proper feedback to the SBB and NBA on matters of IPR, traditional knowledge and all other local biodiversity related issues, as needed.



The BMCs shall also maintain data about the vaid and local medicinal practitioners using the biological resources.



The NBA and the SBB help and provide assistance to the BMCs in performing their functions effectively. The NBA shall specify the form of the PBRs to be prepared by the BMCs, including the particulars it shall contain and the format for the electronic database of PBRs.

The SBB and NBA shall provide technical support and guidance to the BMCs in preparation of PBRs. The PBRs so prepared shall be maintained and validated by the BMCs.

The BMCs shall also perform the important task of maintaining the register for ABS mechanism within their local area jurisdiction. This register shall contain particulars on the grant of access to biological resources and traditional knowledge from their local area, details of fee imposed, benefits derived and the mode of sharing of benefits so derived.

The functions of the BMCs are inclusive in nature. They shall perform such functions that are consistent with their powers and that which aim at achieving the purposes for which they are established.

The BMCs shall take into account the following criteria while preparing the PBRs towards effective biodiversity conservation within their local area –

- ✓ The current biodiversity challenges faced within the territorial jurisdiction of the BMC concerned;
- ✓ Data on the various flora and fauna including their local names;
- ✓ Traditional knowledge relating to the same;
- ✓ Community practices on conservation and sustainable use of the local biodiversity;

Further, the BMCs shall hold periodical meetings and co-ordinate planning and activities on issues ranging from conservation, harvesting and processing shared biological resources, to traditional knowledge related value addition to biological resources for sustainable livelihoods.

It is very important that the BMCs should reflect the nature of the biodiversity of their local area, so that the local knowledge, tradition and heritage are conserved and preserved along with all the expertise of the local persons from different walks of life.

In cases where the local biodiversity is at imminent threat or has been degraded, the BMCs shall undertake eco-restoration of the biological diversity within their local area.



The BMCs are also responsible for management of Biodiversity Heritage Sites within their local area jurisdiction including heritage trees, animals, microorganisms, sacred groves, sacred water bodies etc.



To effectively perform all these functions, the BMCs shall take upon themselves the duty of sensitizing the local population on the necessity of biodiversity conservation, equitable sharing of benefits arising out of access and use of biological resources from the local area, and all other aspects of biodiversity. For this purpose, the BMCs shall formulate and execute educational and awareness building programs.

The BMCs apart from the above shall perform such other functions to achieve its purpose which shall include-

- ✓ Identification of training needs for the members of the BMCs;
- ✓ Identification of biological resources which have the potential for ABS agreements;
- ✓ Identification of biological resources for the consideration of registration as Geographical Indicators (G.I.);
- ✓ Identification of biological resources for preservation, conservation and development;
- ✓ Formulation of strategies and methods of preservation, conservation and development of biological resources taking into account the local practices for the same;
- ✓ Protection of PBRs as a custodian in matters of regulation of access to agencies and individuals outside the jurisdictional limits and where access is made, to maintain a register in writing for the same, containing detailed particulars of the access and collection of biological resource.
- ✓ Conduct periodical meetings to evaluate, discuss and plan activities.
- ✓ Maintain the required quorum during all meetings.
- ✓ Record minutes of the meetings and report its functioning, progress, planning etc., to the SBB and the local body.
- ✓ Maintain proper accounts and periodical audit.

**Role of BMCs:-** The nature and role of BMCs aid in the use of the bottom-up approach in the effective implementation of the ABS mechanism in India. The BMCs are the linkages between the local communities including benefit claimers and the ABS legal regime in India.

In such a scenario, the approach to ABS by way of sensitizing and garnering public awareness and co-operation is the best method to achieve meaningfully the effective implementation. Here BMCs step in as the face of the Biological Diversity Act to the local communities.

Securing active local community participation in the ABS mechanism by creating and organising awareness campaigns and participative programs is the key.

Through a consultative process, the NBA and SBBs ensure that BMCs will undertake the task of obtaining the prior informed consent of the local communities for all application on access and use and further perform the effective role of facilitators and negotiators for local communities' participation in the drawing up of mutually agreed terms in ABS Agreement process chain.

BMCs will also act as effective evaluators and check-points for access and obtainment of biological resources and associated knowledge including traditional knowledge through their function of maintenance of register for all access and obtainment of biological resources from within their local area and most importantly by way of preparation of the People's Biodiversity Registers.

The following activities that could be performed by the BMCs with the help of Technical Support Groups, SBBs and the NBA, are a suggestive list that may aid in the effective implementation of the ABS provisions of the Biological Diversity Act, 2002:

- ✓ Engaging local communities in local ABS need assessments like current use of biological resources including traditional knowledge and the actual value received by the benefit claimers and the assessment of equitable value that ought to be received.
- ✓ Tracking and tapping potential biological resources and traditional knowledge that might be possible subject matter for ABS agreements.
- ✓ Preparation of PBRs.
- ✓ Preparation of Bio-resource Inventory to quantify the current availability of biological resources as a means to assess the required action with regard to conservation of biological diversity.
- ✓ Community mapping of land uses, animal husbandry practices, cultivation and other related practices to secure the knowledge rights of the local communities and for the benefit of all.
- ✓ Education and public awareness about ABS targeted towards local communities.
- ✓ Engaging local communities' active participation in tapping ABS potential by encouraging them to bring forward for compliance the current users of biological resources sourced from their local area to the ABS provisions of the Biological Diversity Act, 2002, thereby ensuring flow of benefits to the local communities themselves.
- ✓ Evolving a vernacular model to endear ABS agreements to alternatively literate local communities.



The role of the BMCs in the entire ABS Agreement process starts with consultation on the application. The State Rules of different states detail the procedures to be adopted by the BMCs in such a scenario. This may include public announcements, meeting of the local body and discussions with the local people during such meeting about the complete information on the ABS application and getting their formal approval.



After this, the BMC advises the SBB and/or the NBA on the request for access and accordingly NBA either approves or rejects and ABS application that seeks to obtain biological resources and / or associated knowledge occurring in its local area.



After the above process the NBA signs the ABS agreement where applicable,

The BMC shall also monitor the flow of equitable share in the benefits that was agreed upon, back to the local communities by engaging with the SBB.

Once the benefits flow back to the BMC, the BMC shall take appropriate steps to channel the benefits to the benefit claimers and use the same for purposes of conservation and betterment of livelihood of the local people.

Guidelines for preparing the PBRs and functioning of BMCs have been issued by the NBA in 2010 and 2013 respectively.



## Offences and Penalties under the Act

Any contravention of provisions of Sections 3, 4, 6, 7 and 24(2) are all cognizable and non-bailable.

The offences under the Act aim to penalise acts that threaten all biological resources occurring within India. Therefore any act which seeks to illegally access/obtain; unsustainably use/exploit; unjustly enrich the person accessing/using, evading fair and equitable benefit sharing; the biological and genetic resources occurring in India, an offence which is punishable with a considerable penalty and imprisonment.

For violations of Sections 3, 4 and 6, the penalty is fine which may extend upto 10 Lakh Rupees and/or imprisonment which may extend upto 5 years.

For violations of Sections 7 and 24(2), the penalty is fine which may extend upto 5 Lakh Rupees and/or imprisonment which may extend upto 3 years.

For violations of any order passed under the Act, the penalty is fine which may extend upto 1 Lakh Rupees for the first instance. For any second or subsequent violation, the penalty is fine which may extend upto 2 Lakh Rupees. In case of continuous violation, the penalty is fine which may extend upto 2 Lakh Rupees for each day during which the default continues.

## Acronyms

ABS	Access and Benefit Sharing
BD	Biological Diversity
BMCs	Biodiversity Management Committees
CBD	Convention on Biological Diversity
GI	Geographical Indicators
IPR	Intellectual Property Rights
MAT	Mutually Agreed Terms
MTA	Material Transfer Agreement
NBA	National Biodiversity Authority
PBR	People's Biodiversity Registers
PIC	Prior Informed Consent
SBBs	State Biodiversity Boards
SC/ST	Schedule Castes / Schedule Tribes
TSGs	Technical Support Groups