

### 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 function for the 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 system 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 biodiversity heritage sites and measures for the management of such heritage sites.

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 SBBs also regulate, by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource 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 26 States and, facilitated establishment of around 33,500 BMCs at local level.



## Defining and Explaining ABS TERMINOLOGY



National Biodiversity Authority  
Government of India

### About the UNEP - GEF - MoEF ABS Project

The Objective of the UNEP-GEF-MoEF project on Access and Benefit Sharing [ABS] is to increase the institutional, individual and systemic capacities of stakeholders and to effectively implement the Biological Diversity Act, 2002 and the Rules, 2004.

This project is the first National project under GEF on ABS and it is implemented in five states of India namely Andhra Pradesh, Gujarat, West Bengal, Himachal Pradesh and Sikkim. The project is implemented by NBA in collaboration with five State Biodiversity Boards, 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/DELCO), United Nations University - Institute of Advanced studies (UNU-IAS).

#### The main components of the project are

- ❖ Identification of biodiversity with potential for ABS and their valuation in the selected ecosystems such as forest, agriculture and wetlands.
- ❖ Development of tools, methodologies, guidelines, frameworks for implementing ABS provisions of the Biological Diversity Act, 2002.
- ❖ 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 Biological Diversity Act, 2002.
- ❖ Increase public awareness and educational programme.





## Defining and Explaining **ABS Terminology**

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Disclaimer

All care is taken to provide references and sources of information provided in this document. Any error or lapse is purely unintended and inconsequential. The information provided in the document is not the view, opinion or stand of NBA.

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### Foreword

The Biological Diversity Act, 2002 was enacted by the Government of India to fulfil its obligations under the Convention on Biological Diversity (CBD) of which India is a party to conserve, sustainably use and share the benefits of such use equitably between the users and the providers of such resources. The Act and the Rules, provides a legal framework in India on how the country's biological resources can be accessed, used and benefits shared.

In a mega biodiversity country like India with a diverse set of stakeholders using the country's biological resources, the issue of Access and Benefit Sharing (ABS) is not only important but also relevant to promote conservation and development action.

The National Biodiversity Authority (NBA) has put in place a wide range of actions at national, state and local levels to make stakeholders understand and comply with national ABS provisions. Through the UNEP-GEF-MoEF project on "Strengthening the Implementation of the Biological Diversity Act and Rules with focus on Access and Benefit Sharing Mechanism", NBA is working on enhancing the capacity and awareness on ABS issues across five states in the country. This publication was compiled to provide a quick reference to ABS terms and explain the same in an easy to understand language for non-experts. I hope this publication will help better understanding of ABS issues not only in India but also globally.

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## Introduction

India is one of the 17 mega biodiversity countries of the world where a majority of its population still directly depends on biological resources for their livelihood. With only 2.5 per cent of the total land area, India accounts for 8 per cent of the recorded species of the world which includes countless millions of races, subspecies and local variants of species.

India has been playing a major role in the implementation of global, regional and national policies and programme related to environment, biodiversity, trade and intellectual property rights. Biological diversity and associated traditional knowledge are two important areas of focus for India, with links to sustainable development.

Government of India enacted the Biological Diversity Act, 2002 and notified the Rules in 2004. The Act focuses on conservation of biological diversity, sustainable use and equitable sharing of benefits.

This Act provides for regulated access to biological and genetic resources by bonafide end-users for different purposes, including scientific research, commercial uses, bio-survey and bio-utilization, conservation and other sustainable uses. The implementation of the Act is overseen by three functional bodies viz., the National Biodiversity Authority (NBA), the State Biodiversity Boards (SBBs) and the Biodiversity Management Committees (BMCs).

India's experience in implementing the ABS provisions under the Act is based on 'learning by doing' approach. So far about one hundred and ten legal agreements on ABS were signed.

This publication is an attempt to create more awareness on the issue of ABS for non-experts to understand ABS terms and definitions. We anticipate that this compilation of ABS terms with explanations and definitions would increase the capacities to better participate in operationalizing the ABS provisions under the Act in India and abroad.

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## Defining and Explaining the ABS Terminology

**Access** - To obtain biological resources or knowledge associated thereto within national jurisdiction for the purposes of research, or for commercial utilization, or for bio-survey and bio-utilization<sup>1</sup>.

**Agreement** - An agreement is a mutual understanding between two or more legally competent persons with respect to their rights and duties regarding their past or future actions<sup>2</sup>. Every promise and every set of promises forming consideration for each other are agreement(s)<sup>3</sup>.

**Agriculture** - The art and science of growing plants and raising of animals for food, other human needs, or economic gain<sup>4</sup>.

**Agro-biodiversity** - Biological diversity of agriculture related species and their wild relatives<sup>5</sup>.

**Benefit Claimers** - 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<sup>6</sup>.



**Benefit Sharing** - Equitable sharing of benefits (both monetary and non-monetary), 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<sup>7</sup>. As per the Biological Diversity (BD) Act benefits can be shared by means of<sup>7</sup>:

- a. Grant of Joint ownership of intellectual property rights;
- b. Transfer of technology;
- c. Location of production, research and development unit in such areas which will facilitate better living standards to the benefit claimers;
- d. Association of Indian scientist, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilization;
- e. Setting up of venture capital fund for aiding the cause of benefit claimers;
- f. Monetary and non-monetary benefits.

**Biodiversity Heritage sites (BHS)** - Well defined areas that are unique, ecologically fragile ecosystems - terrestrial, coastal and inland waters and marine having rich biodiversity viz.,

**Threatened Species** - Threatened species are any species (including animals, plants, fungi, etc.) which are vulnerable to endangerment in the near future<sup>43</sup>.

**Trade** - Trade is the transfer of ownership of goods and services from one person or entity to another by getting something in exchange from the buyer.

**Trade Agreements** - A negotiated agreement among two or more countries, individuals or organisations to limit or alter their policies with respect to trade.

**Traditional Knowledge:** The knowledge innovations and practices of local and indigenous communities relevant to conservation and sustainable use of biological diversity<sup>4</sup>.

**Up-front Payments** - Up-front Payments is anything of value, usually money, delivered at the time a contract is signed.

**Utilization of NBF** - The National Biodiversity Fund shall be applied for channeling benefits to the benefit claimers, conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed and for socio-economic development of areas in consultation with the local bodies<sup>44</sup>.

**Value Added Products** - Products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form<sup>45</sup>.



**State Biodiversity Fund (SBF)** - The fund created under the BD Act at State level that facilitates receipt of any grants and loans made to the SBB, any grants or loans made by NBA, all sums received by the SBB from such other sources as may be decided upon by the State Government<sup>12</sup>.

**Sustainable Use** - The use of components of biological diversity such means and at such rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations<sup>14</sup>.

**Technical Support Group (TSG)** - Group of experts from various disciplines and line departments, Universities, research institutes, colleges and schools and non-governmental organizations. The TSG is established to provide technical inputs and advice to the BMCs on identification of plants and animals, monitor and evaluate the PBR exercise, examine confidential information and advice on legal protection, maintain a database of local and external experts on biodiversity<sup>38</sup>.

**Technology Transfer** - To collaborate and cooperate among the parties in technical and scientific research and development programmes, including biotechnological research activities<sup>17</sup>.

**Third Party Transfer** - Transfer of material, knowledge and/or products arising from access to a party other than the user as identified in the PIC, MAT and /or benefit sharing agreements<sup>1</sup>.

richness of wild as well as domesticated species or intra-specific categories, high endemism, presence of rare and threatened species, keystone species, species of evolutionary significance, wild ancestors of domestic/cultivated species or their varieties, past pre-eminence of biological components represented by fossil beds and having significant cultural, ethical or aesthetic values and are important of the maintenance of cultural diversity, with or without a long history of human association with them<sup>8</sup>. The BHS is established under section 37 of the BD Act of India.

**Biodiversity Offsetting** - Conservation action intended to compensate for the residual, unavoidable harm to biodiversity caused by development projects, so as to ensure 'no net loss' of biodiversity. Before developer contemplates offsets, they should have first sought to avoid and minimize harm to biodiversity<sup>9</sup>.

**Biodiversity Management Committee (BMC)** - As per the BD Act of India, BMCs are committees constituted by local bodies in their territorial jurisdiction. BMCs are constituted 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 related to biological diversity<sup>10</sup>. BMCs are statutory bodies at local level.

**Biological Diversity** - 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<sup>11</sup>.



**Biological Resources** - Plants, animals and microorganisms 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<sup>12</sup>.

**Bio-piracy** - The appropriation of biological resources without the prior informed consent of owners or local people or government<sup>1</sup>.

**Bio-prospecting** - The collection, research and use of biological and/or genetic material for purposes of applying the knowledge derived there from for scientific and/or commercial purposes. Bio-prospecting entails the search for economically valuable genetic and biochemical resources from nature<sup>1</sup>.

**Biotechnology** - Technological application that uses biological systems, living organisms or derivatives thereof, to make or modify products or processes for specific use<sup>1</sup>.

**Bio-survey and Bio-utilization** - Survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterisation, inventorisation and bioassay<sup>12</sup>.

**Clearing House Mechanism** - An effective information service (established by the Convention on Biological Diversity) to promote and facilitate scientific and technical cooperation, knowledge sharing and information exchange, and to establish a fully operational network of parties and partners<sup>19</sup>.

**People's Biodiversity Register (PBR)** - It is a register that contains comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use and any other traditional knowledge associated with them<sup>38</sup>. The preparation of PBR is mandated under the Indian Biological Diversity Act 2002.

**Prior Informed Consent (PIC)** - A set of administrative procedures for deciding on whether to grant access to biological resources on defined terms<sup>39</sup>.

**Protected Area** - A geographically defined area which is designated or regulated and managed to achieve specific conservation objectives<sup>41</sup>.

**Provider** - A person who provides the biological resources.

**Royalties** - Sources of payment for an inventor who holds the patent for a particular product or process. Royalties accrue when someone uses the patented product or process<sup>1</sup>.

**Research** - The 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<sup>40</sup>.

**State Biodiversity Boards (SBBs)** - The SBBs are body corporate established as per Section 22 of the Indian Biological Diversity Act by the State Governments to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources<sup>41</sup>.



**Net Sale** - The amount of sales generated by a company after the deduction of returns, allowances for damaged or missing goods and any discounts allowed<sup>36</sup>.

**Non-Monetary Benefits** - The non-monetary benefits are benefits that include sharing of research and development, results collaboration and cooperation in research and development, participation in product development, collaboration and cooperation in education and training, admittance to *ex-situ* facilities of genetic resources and databases, transfer of knowledge and information in concessional terms, capacity building activities, specific and targeted training, access to scientific information in preferential terms, contributions to local development plans and economic activities, social recognition and joint ownership of IPRs<sup>17</sup>.

**Normally Traded Commodities (NTCs)** - The Ministry of Environment and Forests, Government of India had issued a notification contain bioresources that are exempted from the perview of the Biological Diversity Act 2002, under Section 40. These are the resources used in commodity trade for purpose of specific use<sup>37</sup>.

**Patents** - An intellectual property right granted to an inventor, giving him/her/them exclusive rights of use of such invention, for a stipulated period of time, provided the invention is made public by disclosure. Patents on their own do not grant anything but only provide legal means by which the inventor can prevent anybody else from using the invention. Patents are country specific.

**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<sup>15</sup>.

**Convention on Biological Diversity (CBD)** - An International Convention which entered into force on 29<sup>th</sup> December 1993 having 193 countries as parties to date. The CBD has three main objectives; conservation of biological diversity, sustainable use of the components of biological diversity and fair and equitable sharing of the benefits arising out of the utilization of genetic resources<sup>14</sup>.

**Country of Origin** - The country from where the genetic resources and/or biological material originated. A country of origin can be a primary or a secondary centre of origin for the material<sup>1</sup>.

**Country providing Genetic Resources** - The country supplying genetic resources collected from *in-situ* sources, including populations of both wild and domesticated species, or taken from *ex-situ* sources, which may or may not have originated in that country<sup>1</sup>.



**Cultivar** - A variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation<sup>16</sup>.

**Derivatives** - 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<sup>17</sup>.

**Direct use Values** - It involves human interaction with the ecosystem itself rather than *via* the services it provides. It may be consumptive or extractive use, such as fisheries or timber or it may be non-consumptive as with some recreational and educational activities<sup>18</sup>.

**Domesticated or Cultivated Species** - Species in which the evolutionary process has been influenced by humans to meet their needs<sup>1</sup>.

**Ecosystem** - A dynamic complex of plant, animal, fungi and microorganism communities and their associated non-living environment interacting as a functional unit<sup>1</sup>.

**Ecosystem Diversity** - The diversity of biological communities and their physical environment. Diversity is determined by the species composition, physical structure and processes within an ecosystem. This is the highest level of biodiversity<sup>19</sup>.

**Ecosystem Services** - Benefits people obtain from eco - systems, including food, natural fibers, a steady supply of clean water, regulation of pests and diseases, medicinal substances,

**Local Bodies** - The Panchayats and Municipalities, by whatever name called<sup>25</sup>, constituted under the Constitution of India and any other body of self-Government constituted under any other law for the time being in force.

**Material Transfer Agreement (MTA)** - A set of administrative procedures agreed by the provider and user of genetic resources on how the accessed material could be sourced, used as well as issues of compliance to benefit sharing principles<sup>1</sup>.

**Monetary Benefits** - Benefits include access fee/fee per sample, collected or acquired, up-front payments, milestone payments, payments of royalties, license fee in case of commercialization, special fee, salaries and others mutually agreed, research funding, joint ventures and joint ownership of relevant IPRs<sup>17</sup>.

**Mutually Agreed Terms (MAT)** - A set of terms and conditions agreed between the provider and user of genetic resources for prospecting purposes<sup>1</sup>.

**National Biodiversity Fund (NBF)** - A fund created at national level consisting of all grants and loans made by the Central Government to the NBA. All charges, royalties received by the NBA and all other sums received from other sources as may be decided upon by the Central Government<sup>26</sup>.

**National Focal point** - The national focal point shall be responsible national entity for liaison with the CBD Secretariat and also to make information available for applicants seeking access to genetic resources<sup>7</sup>.



**Joint Ownership** - Refers to two parties owning property resources together.

**Joint venture** - A contractual agreement joining together two or more parties for the purpose of executing a particular business undertaking. All parties agree to share in the profits and losses of the enterprise<sup>30</sup>.

**Landrace** - Primitive cultivar that was grown by ancient farmers and their successors<sup>31</sup>.

**License fee** - The fee charged for processing an application filed with the competent authority to obtain license for import or export of any biological resource.

**Sustainable Livelihood** - A livelihood comprises people, their capabilities and their means of living, including food, income and assets. Tangible assets are resources and stores, and intangible assets are claims and access. A livelihood is environmentally sustainable when it maintains or enhances the local and global assets in which livelihoods depend, and has net beneficial effects on other livelihoods. A livelihood is socially sustainable which can cope with and recover from stress and shocks, and provide for future generations<sup>32</sup>.

**Local Biodiversity Fund (LBF)** - Fund created at every area notified by the state Government where any institution of self-Government is functioning and shall comprise of any grants or loan made by the NBA, SBB, fees if any collected by the BMCs and such other sums from other sources as may be decided upon by the state Government<sup>33</sup>. The LBF 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<sup>34</sup>.

recreation, and protection from natural hazards such as floods. Human well-being consists of security, the basic materials for a viable livelihood (food, shelter, clothing, energy, etc., or the income necessary to purchase them), freedom and choice, good health, and good social-cultural relations<sup>20</sup>.

**Ecosystem Valuation** - The process of expressing an economic value for ecosystem goods or services (e.g. Biodiversity value, flood protection, recreational opportunity)<sup>21</sup>.

**Ex- factory Price** - True price applied at the factory and does not include any other charges, such as delivery or subsequent taxes.

**Ex-factory Sale** - The sale of goods directly from the factory where the transfer happens at the factory point.

**Ex-situ Conservation** - Conservation of components of biological diversity outside their natural habitat (eg. zoos, botanical gardens and seed banks).

**Folk Variety** - A cultivated variety of plant that was developed, grown and exchanged informally among farmers<sup>22</sup>.

**Forest Ecosystem** - Comprise of entire assemblage of forest organisms (trees, shrubs, herbs, bacteria, fungi, and animals, including people) together with their environmental substrate (the surrounding air, soil, water, organic debris, and rocks), interacting inside a defined boundary<sup>23</sup>.



**Form-I** - Application form prescribed under the Rule 14 of the Biological Diversity Rules (2004) for securing access to biological resources and associated traditional knowledge under the Indian Biological Diversity Act, 2002<sup>24</sup>.

**Form-II** - Application form prescribed under the Rule 17 of the Biological Diversity Rules (2004) for seeking prior approval of National Biodiversity Authority for transferring the results of research to foreign nationals, companies, NRI's for commercial purposes under the Indian Biological Diversity Act, 2002<sup>25</sup>.

**Form-III** - Application form prescribed under the Rule 18 of the Biological Diversity Rules (2004) for seeking prior approval of National Biodiversity Authority for applying for Intellectual Property Right under the Indian Biological Diversity Act, 2002<sup>26</sup>.

**Form-IV** - Application form prescribed under the Rule 19 of the Biological Diversity Rules (2004) for seeking prior approval of National Biodiversity Authority for third party transfer of the accessed Biological resources and associated traditional knowledge under the Indian Biological Diversity Act, 2002<sup>27</sup>.

**Genetic Diversity** - The variety of genetic information contained in individual plants, animals and microorganisms.

**Genetic Material** - Any material of plant, animal, microbial or other origin containing functional units of heredity<sup>1</sup>.

**Genetic Resources** - The genetic material contained in the biological diversity of actual and/or potential value<sup>1</sup>.

**Intellectual Property** - Creation of the mind: inventions, literary and artistic work, and symbols, names, images, and designs used in commerce<sup>28</sup>.

**Internationally Recognized Certificate** - The certificate attached with the biological / genetic resources valid internationally. The certificate should contain the following minimum information such as: (a) Issuing authority; (b) Date of issuance; (c) The provider; (d) Unique identifier of the certificate; (e) The person or entity to whom prior informed consent was granted; (f) Subject-matter or genetic resources covered by the certificate; (g) Confirmation that mutually agreed terms were established; (h) Confirmation that prior informed consent was obtained; and (i) Commercial and/or non-commercial use<sup>17</sup>.

**In-situ Conditions** - The conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties<sup>1</sup>.

**In-situ Conservation** - 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<sup>29</sup>.