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NATIONAL BIODIVERSITY AUTHORITY
PROCEEDINGS OF THE 52nd AUTHORITY MEETING

19th March 2019

Venue

**Godavari Conference Hall,
5th Floor Akash Block
Indira Paryavaran Bhavan,
Jor Bagh Road, New Delhi-110003.**

Proceedings of the 52nd Authority Meeting of the National Biodiversity Authority held on 19th March 2019 at Godavari Hall, Indira Paryavaran Bhavan, Jor Bagh, New Delhi

The fifty Second Authority meeting of the National Biodiversity Authority (NBA) was held on 19th of March 2019 at Godavari Conference Hall, 5th Floor Akash Block, Indira Paryavaran Bhavan, Jor Bagh Road, New Delhi-110003 under the Chairmanship of Shri Ashok Kumar Jain, Additional Secretary, MOEF&CC and Chairman, National Biodiversity Authority. The list of participants is placed at **Annex-I**.

At the outset, the Chairman, NBA while extending his warm welcome to all the members, requested all the members present to introduce themselves as this being the first meeting under his Chairmanship. The members appreciated the good work done by Dr. B. Meenakumari during her tenure as Chairperson of the National Biodiversity Authority. Further, members also extended their warm welcome and greetings to the new Chairman and expressed hope for smooth functioning in carrying out the associated activities of NBA, during his tenure, and with his dynamic leadership with a new approach.

The Chairman expressed his concern over poor representation of the ex-officio members representing different ministries/ Departments of the Govt of India. He urged the members to take effort to participate in the meeting as the Authority considers issues which have cross sectoral implications. He also advised the Secretary NBA to be in touch with the members to ensure better participation in future.

The Secretary, NBA then apprised that it is the sixth meeting of the Authority during this financial year, 2018-19. Thereafter, the agenda items were considered as under:

52.01: Confirmation of the Proceedings of the 51st Authority meeting
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The draft proceedings of the 51st Authority meeting of the National Biodiversity Authority held on 24th January 2019 at Chennai was circulated to the Members for seeking their comments. In response, comments were received only from Dr. Sujata Arora which are incorporated appropriately.

In this regard, Chairman, NBA enquired whether proceedings of the Authority meetings are uploaded on the website. Secretary, NBA informed that the brief on agenda items are uploaded since 26th Authority meeting. Earlier, the full proceedings were uploaded. The members discussed on the matter and decided to upload the complete proceedings on NBA website.

- Decision:** 1. The members confirmed the proceedings of the 51st Authority Meeting.
2. The Proceedings of the Authority meetings to be uploaded henceforth on the NBA website

Action: Secretary, NBA

52.02: Action Taken Report of the 51st Authority Meeting.

The Secretary, NBA explained the actions taken and the actions in progress of the decisions taken during the 51st Authority Meeting. He also presented the different publications of CEBPOL (Agenda item No. 51.10) that has been published during the project period. The members appreciated the efforts of CEBPOL/NBA in bringing out the publications.

Decision: Members noted the action taken.

52.03: To deal with applications filed under O.M issued by the MOEFCC after lapse of 100 days *i.e* after 18.12.2018.

The MOEFCC issued an Office Memorandum (OM) dated 10th September 2018 giving direction to NBA under section 48 of the BD Act for effective implementation of the BD Act. It was also envisaged in the O.M that this exercise shall be completed within 100 days of issuance of this O.M. (i.e., on or before 18.12.2018), including course of action for matters related to past. Under the O.M., the Authority has approved 201 ABS applications.

Secretary, NBA informed the members that during the 100 days' time *i.e., upto 18.12.2018*, NBA received 255 applications from various stakeholders to consider their applications under said O.M. Out of which 188 applications that are complete and were taken into consideration and are under process in the NBA secretariat. He informed

further that the remaining applications are pending in the preliminary stage of scrutiny due to want of mandatory information /documents from the applicants.

It was also informed that apart from 255 applications under O.M., some of the stakeholders like Ganga Kaveri Seeds, IOC, Reliance, Vyome bioscience, etc have filed their applications with NBA after the lapse of 100 days' period (i.e. after 18.12.2018) with a request to consider under the said O.M., the details of which are furnished below:

S.no	Description	No of applications received
1	Number of applications received on 19.12.2018	17 (through online)
2	Number of applications received after 19.12.2018	19 (6 online +13 offline)
	Total	36

The MoEFCC has now issued a O.M. dated 18-3-2019 directing NBA under section 48 of the Biological diversity Act, 2002 to accept and consider within a period of another 60 days from the date of issuance of this O.M., all such cases where prior approval was required but not obtained, on the basis of merit ensuring that only those cases are granted approval which would have otherwise been approved in the normal course, had the person/entity concerned applied in time for prior approval. This O.M. dt. 18.3.2019 was circulated to the members.

The members observed that the O.M. dt. 10.9.2018 had enabled the users to comply with the Act. As more users are availing the facility, the extended period could bring many more to comply with the Act. The members opined that the revised timeline could be extended to these applications which have been received after 18.12.2018. Additional man power required to process these applications should be looked into and planned accordingly so that time bound actions are taken for these applications as well.

Decision: 1. It was decided that the revised timeline given under the O.M.dated.18.3.2019 could be extended to those 36 applications that have been received after 18.12.2018.
2. Adequate manpower required to process the applications should be positioned to clear these applications in a time bound manner.

Action: Secretary, NBA

52.04 To seek guidance on processing of Applications received under the OM dated 10.09.2018 issued by the MOEF&CC under section 48 of the Act

In pursuance of the Ministry's OM dated 10.09.2018, NBA received 255 Applications from different stakeholders up to 18.12.2018, seeking approval for the past activities, which are not covered under the provisions of the BD Act. Of these, 211 are Form I, 4 Form II, 34 Form III and 6 are Form IV applications. Out of 255 Applications, more than 100 applications are filed by companies like MAHYCO, Monsanto, Pioneer Overseas Corporation, Syngenta, DCM Shriram and Nunhems.

Secretary, NBA informed that while processing these applications, NBA encountered various problems due to the fact that most of the applicants did not furnish necessary mandatory information and the details given in the applications are perfunctory. Applicants seek unreasonably long time to send their response. In the normal course, NBA gives 15 days' time to send their response. These applicants request for two month / 45 days' time to provide requisite information. Even after granting the extension, they again seek more time, which unnecessarily delays the processing time of applications.

Members opined that these applications should be processed within a prescribed time limit and Secretariat cannot wait indefinitely. Since a new O.M. is issued by MoEFCC, the members observed that, the incomplete application may be returned to the applicants with a suggestion to apply afresh, availing the facility under O.M. dt. 18.3.2019. The members suggested that the applicants may be encouraged to use the online facility for filing the applications and may resort to only online applications in future. Secretary NBA referred to the draft ABS guidelines that provide for filing applications only through online.

Decision: 1. It was decided to return the incomplete applications where the required information is not furnished within the stipulated time to the applicants advising them to apply afresh availing the facility under O.M.dated.18.3.2019.

Action: Secretary, NBA

52.05: Constitution of Expert Committees.

NBA vide office order no. NBA/Tech/EC/9/14/32/18/18-19/4189, dated 23.01.2019, constituted an Expert committee under the Chairmanship of Shri A.K.Goyal, IFS (Retd.) to review the Guidelines on ABS Regulations, 2014 and suggest appropriate measures thereof with a tenure of one month.

Decision: The Authority ratified the action regarding constitution of EC and extension of tenure.

Action: Secretary, NBA

52.06: Expert Committee to review the Guidelines on ABS Regulations, 2014 and suggest appropriate measures thereof

As per the decision taken in the Authority and direction of the MOEFCC, NBA, vide office order dated 23.01.2019, constituted an Expert committee under the Chairmanship of Shri A.K.Goyal, IFS (Retd.) to review the Guidelines on ABS Regulations, 2014 and suggest appropriate measures thereof with a tenure of one month. The committee met three times during the period and the report is being finalized.

Secretary, NBA informed that the committee considered the issues raised by the stakeholders like representatives of seed industries, AYUSH industries, representatives of cosmetic and biotechnology sector, research/academic Institutions, etc., and made deliberation in the meetings. The committee has submitted the draft ABS guidelines which will be part of the final report. These draft guidelines are being placed before the Authority to appraise the members on the development on this context.

Secretary, NBA made a presentation especially referring to the clauses where the amendments are proposed by the committee. The members felt that there could be a zero slab on ABS for companies up to a certain threshold as collecting Rs. 500 as proposed seems to be impractical having high transaction cost. Members also felt that the possibility of linking benefit sharing component with the profit instead of sales price, and for keeping a zero slab for profit up to certain limit may be explored. While discussing on the proposed amendments, the members felt that there is a need to revisit the Biological Diversity Rules and some issues pertaining to user country

measures under Nagoya protocol. After detailed deliberations, the following decisions were taken:

- Decision:** 1. The draft guidelines which will be submitted by the EC can be hosted on NBA website to seek comments from the public. Action as warranted as per the recommendations may be taken up at the Secretariat level and the report be placed before the Authority in its next meeting for consideration.
2. The EC shall be reconstituted of the EC under the chairmanship of Shri. A.K. Goyal to examine Biological Diversity Rules, user country measures under Nagoya protocol and development of sector specific SOPs.

Action: Secretary, NBA

52.07: Initiation of India Biodiversity Awards (IBA) 2020

IBA is an initiative to recognize, encourage and honor the exemplary efforts of individuals and institutions, which contribute to and serve as inspirations for biodiversity conservation, sustainable use of biological resources and fair and equitable sharing of benefits on the following categories:

1. Conservation
 - a. Conservation of wild species (individual and institution)
 - b. Conservation of domesticated species (individual and institution)
2. Sustainable use of biological resources (individual and institution)
3. Replicable mechanism of access and benefit sharing
4. Best biodiversity management committee

The committee constituted to examine the nominations while finalizing the awards for 2018 suggested that it is not possible to get suitable nominations under the category "conservation of wild species (individuals)". The members discussed that it may not be normally possible for an individual to make significant contribution on conservation of wild species. So, this category may not be continued. The committee also recommended enhancement of Award prize which was Rs. 1,00,000 for all categories in 2018. Based on the recommendation of the committee, the members

deliberated on the cash prize for the winners and suggested that Rs. 2,00,000 and Rs 5,00,000 may be given to the individuals and institutions respectively.

Decision: a. Only seven categories will be notified for IBA 2020 which can be announced during International Day for Biodiversity on 22.5.2019

b. The cash prize for the winners may be enhanced to 2,00,000 and Rs. 5,00,000 for individuals and institutions respectively.

Action: Secretary, NBA

52.08: To consider post grant opposition to be filed before Indian Patent Office.

Secretary NBA informed the members that M/s. Sunev Pharma Solutions have obtained patents on inventions using bio-resources viz. *Azadirachta indica*, *Berberis aristata* or *Berberis vulgaris*, *Glycyrrhiza glabra*, *Jasminum officinale*, *Picrorhiza kurroa*, *Pongamia pinnata*, *Rubia cordifolia*, *Saussurea lappa*, *Terminalia chebula*, *Capsicum abbreviata*, *Nymphaea lotus*, *Curcuma longa*; *Tricosanthes dioica*, *Symplocos racemose*, *Ichnocarpus frutescens*, *Sesamum indicum* oil, *Ricinus communis* oil, *Cocos nucifera* oil, *Brassica juncea* oil.

He explained that on examination of the application by the NBA Secretariat it was found that patents were granted in countries like Europe, South Africa, United States of America, South Korea, and Mexico without prior approval of the NBA which is a violation of S.6.

Subsequently on the verification of Indian Patent Office database it was found that the patent was granted on 10.10.2018 with the patent number 302105. Initially the patent office has directed the applicant to submit the approval from NBA in FER, for this the applicant has replied on 10.10.2015, that they have applied for NBA approval. Subsequently the applicant amended their FER reply on 04.01.2018 stating that all the biological resources were imported from China except *Sesamum indicum* oil, *Ricinus communis* oil, *Cocos nucifera* oil, *Brassica juncea* oil which were sourced from India and are exempted from permission of NBA as they are notified as Normally Traded Commodities in the NBA notification dated 7th April 2016. Based on the information provided by the applicant, patent was granted on 10.10.2018 with the patent number 302105.

From the documents available it is clear that patent was granted to the applicant based on the wrongful disclosure of the source of biological resources used in the invention by the applicant even after sending rejection order by NBA. Section 25(2) of the Indian Patent Act, 1970 provides for filing post grant opposition on the ground of wrongful disclosure of geographical source and origin of biological resource used in the invention. Based on the information on record, it is found that the Sunev Pharma had wrongfully disclosed the geographical source and origin of biological resource and was proposed to file for post grant opposition.

Members discussed that it is a routine regulatory activity which is required to be done by the Secretariat. Accordingly, the Secretariat may proceed as per existing procedure.

Decision: The Authority noted the information and advised the Secretariat to proceed as per rules on such routine matters.

Action: Secretary, NBA

52.09: To consider the ABS Certification Logo.

Secretary, NBA informed the members that it was proposed to develop a logo which can be used as a mark on products to certify that the manufacturer have complied with 'Access and Benefit Sharing' (ABS) obligations under the Biological Diversity Act, 2002. The selected logo may be registered as a certification trademark under Section 71 of the Trade Marks Act, 1999.

In pursuance to this, he informed that, NBA secretariat organized a national level logo design contest through "mygov.in" portal with a prize money of Rs. 50,000/- (Rupees fifty thousand only). The shortlisted logos were presented before the members, It was discussed in detail and the members suggested to develop a new logo for NBA. Instead of having two different logos, the NBA logo may be suitably modified for the purpose of ABS certification. The members opined that this may increase the awareness of the Act and its provisions. Members suggested that the NBA logo and a variant may be designed by National Institute of Design. The variant logo designed may be used as the certification mark by the applicants.

Decision: A new NBA logo and its variant may be designed involving specialized organizations like NID and the variant may be utilized as the certification of compliance to the Biological Diversity Act, 2002 for the particular product.

Action: Secretary, NBA

52.10: Research proposals on Red Sanders (RS)

The committee constituted to prepare ways to utilize the accrued amount on access to Red Sanders payment, recommended eighteen percent (18%) of the benefit sharing amount for research and development on Red Sanders with respect to specific thrust areas. Till date, NBA has received Rs.82,66,39,598 as benefit sharing amount.

Secretary, NBA informed that NBA invited proposals on the identified thrust areas from different Government institutions including CSIR, ICFRE, ICAR and other Government Institutions. A total of 15 proposals were received by the Secretariat for consideration from CSIR, IFGTB, IWST and CSIR-NEERI. All the 15 proposals were examined based on the above criteria. The project proponents were invited to present the proposals before the committee to make brief presentation followed by discussion. The evaluation of the research proposals on RS was carried out based on specific criteria and a total of six proposals were recommended with specific conditions by the Expert committee.

The members deliberated the way of spending the amount received from the benefit sharing of RS. They further suggested the Secretariat to invite government institutions and all Universities with research facilities, while seeking such proposals in future

Decision: a. Members approved the recommendations of the Expert Committee with regard to award of research proposals to the recommended Government Institutions.

b.The Secretariat may invite proposals from government Institutions and all Universities with research facilities in future.

Action: Secretary, NBA

52.11: To consider revising the Sitting fees payable to the Members of Authority and Expert Committees

Secretary informed that the Rule 6(2) of Biological Diversity Rules, 2004 stipulates that “Every non- official member attending the meeting of the Authority shall be entitled to sitting allowance, travelling expenses, daily allowance and such other allowances as are applicable to non-official member of commissions and committees of the Central Government attending the meeting (s) of such Commissions or Committees”. The non-official expert members recused from the deliberations of the agenda item.

Secretary, NBA referred to the Rule 11(2) of Biological Diversity Rules, 2004 stipulates that “The members of the Committee other than the members of the Authority shall be paid such fees and allowances for attending the meetings as the Authority may deem fit”. At present the sitting fees paid is Rs. 3,000 per sitting to the Authority members, as per the decision of the 28th Authority Meeting held during March 2014 (Agenda item No. 28.08.01).

Now, Department of Expenditure, Ministry of Finance vide its OM no.19047/10/2016-E-IV dt.12th April 2017 which was circulated by MOEF&CC vide its OM.no. A-65011/32/2015-P.II (pt.) dt. 26th April 2017 had revised the maximum rate of sitting fees to be paid to Non-Official Chairman/Members and also the purpose of payment of sitting fees, the committees/Boards/Panels at Rs. 10,000, 6,000 and 4,000 depending upon the nature of the committee. The official members discussed and found the non-official expert members of the Authority fall under category II. The sitting fees for ECs constituted under Section 13 of the Biological Diversity Act were also deliberated. It was informed that Experts and persons of eminence usually participate and deliberate in the meetings.

Decision: 1. The Authority approved the revision of sitting fees as given below:

Members	Sitting fees (Rs.)
Non-official expert members of Authority	6,000
Chair and Co-Chair of EC	6,000
Members of EC	4,000

2. In no case, the ceiling should exceed 10 meetings in a month.

Action: Secretary, NBA

52.12: Details of Form-C applications received by the NBA.

The Authority, in its 37th meeting held in March 2016 under agenda item 37.14.02, decided that the Indian researchers / scientists should provide prior intimation to the NBA in the prescribed format *viz.*, Form – C for deposition of microorganisms in other country's repository for claim of novel species for publication in journals. However, if any non-Indian person /entity intend to access the deposited Indian biological resource from the foreign repository, he/she should obtain the prior approval of NBA as per Section 3 of the BD Act, 2002.

NBA has received 95 such intimations since March 2016 – January 2019 and the same have been reported to the Authority from time to time. Since January, 2019, the Secretariat has received eight (8) Form-C applications.

Decision: The information submitted in this regard is noted.

52.13: Items for information

Secretary, NBA informed that an expert committee by the MoEFCC was constituted to identify issues in the Biological Diversity Act and Rules under the chairmanship of Ms. Amarjeet Ahuja, IAS, (Retd.). The committee has submitted its report to the Ministry.

Secretary, NBA informed that under the Article 17 of the Nagoya Protocol Parties are required to issue a permit or its equivalent at the time of access as evidence that access to genetic resources was based on prior informed consent and that mutually agreed terms were established. Since India is being a party to the Nagoya Protocol, NBA has uploaded 215 approvals granted in the ABS CH platform and generated Internationally Recognized Certificate of Compliance. He also informed that India is a leading country among 196 parties in publishing IRCCs and is also the first country to publish the "Procedure for accessing the biological resource and/or associated knowledge for commercial or non-commercial use" in the ABS CH portal in all UN languages. The members appreciated the efforts of the Secretariat in publishing relevant information in the ABS CH and suggested that India should play a leading role in the implementation of the Nagoya protocol.

Secretary, NBA informed that the Secretariat with a help of expert committee developed a comprehensive policy for protection, conservation and sustainable use of Red Sanders to utilize the benefit sharing amount accrued on access of Red Sanders (RS) wood. The report of the EC recommended for liberalizing domestic trade in plantation timber and exemption under Foreign Trade Policy (FTP) for export of RS wood in order to encourage private cultivation. The report was approved by the Authority in its 41st meeting and was communicated to the concerned State Governments/ Ministries/ Departments / Institutions including DGFT for taking necessary action. In this connection, DGFT vide. public notice no. 74 /2015-20 , dated 18th February, 2019 made relaxation for export of Red Sanders wood sourced from cultivation origin obtained from private land.

NBA launched “ABS e-filing”, an online portal for submission of application by different stakeholders in March 2017 and has received more than 1000 ABS applications through this facility. Secretary appraised the members on the various programs that were organized by NBA during the period viz. Capacity building program to the IFS officers, Dehradun on 18th&19thFebruary 2019, Consultation meet with stakeholders on 9thand 11thFebruary, 2019 at NBA, Chennai, Workshop on implementation of Nagoya protocol on ABS on 25th& 26th February, 2019 at NBA, Chennai, Training about e-filing of ABS applications on 14th February, 2019 at NBA, Chennai.

Secretary, NBA further informed the members that United Nations Development Programme (UNDP) along with MoEFCC have implemented a global multi-country project on Biodiversity Finance Initiative (BIOFIN). The MoEFCC designated National Biodiversity Authority (NBA) as the host organization and Secretary, NBA as National Focal Point for the purpose of implementing BIOFIN project. Phase-1 activities under BIOFIN were carried out beginning October, 2015 till December, 2018. BIOFIN Phase-1 activities culminated with the preparation of Biodiversity Finance Plan (BFP). The draft BFP is now under consideration by MoEFCC. Following the authorization of Phase-II activities in India by the UNDP in December, 2018; the Ninth Meeting of PSC was held on 19 September, 2018 under the Chairmanship of Dr. A.K. Mehta, Additional Secretary and Chairman of PSC, approved the Annual Work Plan for BIOFIN (2019-20) including the utilization of allocations under Phase II.

Chairman, NBA suggested that Directors of BSI, ZSI, and National Focal points dealing with other MEAs such as Ramsar that may have an interface with functioning of the Authority may also be invited to attend the meetings of the Authority.

It was discussed about developing a comprehensive database of the bio-resources of India by collating the data already available with BSI, ZSI and other Government agencies such as FRLHT, NIOT, etc. Members observed that development of National Biodiversity Information Facility with all relevant information on flora and fauna is the need of the hour and NBA is mandated under Biological Diversity Rules to develop such a system.

Decision: 1. The Authority has taken note of the information submitted on various subjects.

2. Secretariat may invite Directors of BSI, ZSI, and National Focal points dealing with other MEAs such as Ramsar that may have an interface with functioning of the Authority to attend the meetings of the Authority.

3. Secretariat may develop a comprehensive database by collating the data already available with BSI, ZSI and other Government agencies such as FRLHT, NIOT, etc.

Action: Secretary, NBA

52.14: Any other matters with the permission of the Chair.

The Chairman, NBA permitted to take up for discussion, an additional Agenda on the recommendations of 54th Meeting of EC on ABS which was held on 14-03-2019 at the office of NBA, Chennai and 72 agenda items were examined and recommendations made by the EC are as follows:

Out of 72 applications, 25 were filed by the applicants seeking approval of NBA, were considered for approval under the OM scheme for the past as well as future activities. After examining these 25 applications in the context of paras 4 and 5 of the OM, the EC gave its recommendation for approval. One of the 25 Applications pertains to a fresh application filed by M/s Dow Agro Sciences India Pvt Ltd, in lieu of an earlier application no.1044, which was rejected by the Authority on 28.11.2017.

While discussing the cases under the O.M., the Authority in earlier meetings has decided on benefit sharing percentage and also on imposing certain general conditions such as organizing awareness programmes, giving an assurance that they would

comply with the provisions of the Act in future etc. It was agreed that to be consistent, all those conditions and the benefit sharing percentage decided earlier by the Authority, will be considered for these cases as well.

Further, the EC recommended for approval of three Form III applications filed by Ms Sami Labs, a Sec 3(2) entity and other such entities, did not obtain prior approval of NBA for accessing the biological resources involved in the research/invention leading to the filing of IPR in these cases, by filing Form I application, in view of the fact that these Form III applications were filed within the time limit prescribed under the OM and EC recommended the same. Three applications were recommended for closure, since the EC noted that the purpose of access and activities do not fall under the purview of the BD Act.

The members deliberated on expediting the process of approval at the Secretariat level. Members opined that the incomplete applications received in the hard copy should be returned and the applicant may be asked to apply online within 60 days. The hardcopy of the application may be considered only if it is complete in all respect. Chairman also suggested that the respective SBBs may be linked to the online submission to get direct access to the application and speed up the process.

The Secretary, NBA explained about the procedure that is being followed while processing ABS applications. He also informed the members about the improvement in the timely disposal of the applications by the Secretariat. The members while appreciating the efforts of the Secretariat in improving the efficiency of clearing the ABS applications asked the Secretariat to further improve the delivery. They asked the Secretariat to identify the stages where more time is consumed now and how to reduce time including by using technology. The Secretary explained about the simplified procedure will be worked out to process ABS applications for non commercial research based on the recommendation of the Goyal Committee report and will be placed before the Authority for consideration. Chairman suggested that the entire procedure may be studied once again and identify means to reduce the time taken to process the ABS application. He further impressed upon the need to reduce the processing time by all possible means so that the entire ABS process is user friendly and efficient.

Decision: a. The Authority approved the recommendations of the EC on ABS.

b. The hard copy application submitted if incomplete can be returned and directed to apply afresh through online within 60 days.

52.15: Special Agenda (from ICAR) for NBA meeting (19-3-2019)

As the matter was brought at a very short notice, the members could not study the proposal. Authority deferred the discussion on the item as the representatives of DARC were also not present to explain.. This can be taken up as an agenda in the next meeting

List of Participants**Official Members****1. Shri. Anil Kumar Jain, IAS**

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