

ALL INDIA PEOPLE'S SCIENCE NETWORK (AIPSN)

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To

27 Jan 2022

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Sub: Biological Diversity (Amendment) Bill, 2021, comments from AIPSN

During the monsoon session of Parliament (December, 2021) Honorable Minister for Environment and Forests has introduced the Biological Diversity (Amendment) Bill, 2021. It was stated that the presented bill seeks to facilitate easy access of biological material, fast tracking of research, encourage Indian system of medicine, decriminalize certain provisions for use of traditional knowledge of resources such as seeds, rare medicinal plants, by local communities, registered AYUSH practitioners. It was also intended to reduce pressure on wild medicinal plants, encourage their cultivation and facilitate transfer of research results while utilizing biological resources in India including Patent and commercial use.

India is rich in biodiversity and one of the twelve centers/regions of diversity of crop plants in the world. Being the birth place for mango, black pepper, several rare medicinal plants with about 28% of plants occur and are endemic to our country. The Biodiversity Act (2002) was enacted with a mandate to conserve the rich biological resources, sharing the benefits arising from their justified exploitation with traditional and local custodians. Development of this Act was through a systematic process of public discussions with eminent scientists, experts and Peoples Science and environmental groups involved in Biodiversity Conservation. The Act safeguards from bio piracy and protects biological diversity and traditional custodians through a three-tier central and state National Biodiversity Authority (NBA), State Biodiversity Boards (SBBs) and Biodiversity Management Committees (BMCs) in local bodies.

1. **Amendment to section 3(2)(c)(ii) of the Biodiversity Act (2002)** permits foreign nationals or entities having any non-Indian participation in its share capital or management sans requirements, any approvals for research or bio-survey of biological resources occurring in or obtained from India. Also they will not pay any monetary benefit sharing payment for such activities restricting the scope of people or groups that will be covered under the said provisions covered under section 7 of the Act.

India is a party to the Convention of Biological Diversity, and the Nagoya Protocol on Access and Benefit Sharing. It is mandatory under article 5 of the Protocol to provide for benefit

sharing from the use of biological resources that are shared in a fair and equitable manner among the indigenous and local communities.

It is, therefore, anticipated that this amendment will only enable foreign players to get access to exploit our biological resources without sharing of benefits with local communities.

2. **Diminishing regulatory authority of NBA & State Biodiversity Boards:** An important amendment to section 6 (1A) & (1B) proposed in the Bill for the benefit of section 7 entities, that such entities only need to register with the NBA before grant of any IP (intellectual property) right in India or outside, for any invention based on any research or information on a biological resource which is accessed from India. It includes those deposited in repositories outside India, or associated traditional knowledge thereto. Such entities need to obtain an approval from the NBA only at the time of commercialization of the IP right and not before. This amendment restricts the regulatory authority of NBA& State Biodiversity Boards for approvals. This runs against our national interests and is likely to allow the foreign players free access to our traditional knowledge.
3. **The amendment to section 6 (3);** Section 59 A in the Bill widens the scope of the exemption to plant varieties. The current provision states that section 6 shall not apply to any individual submitting an application any right under any law relating to protection of plant varieties enacted by Parliament.
The Bill proposes to remove the words ‘enacted by the Parliament’.
The proposed exemption under section 6(3) would also apply to cases where plant variety protection is sought outside India thereby making an easy access to our plant resources by foreign nationals/ companies.
4. **Omissions of Section 58 of Biodiversity Act 2002** relating to offences committed by violators to be cognizable non bailable from arrest.
Liberalizing the non bailable clause might potentially encourage future biopiracy.
5. In **section 14 of the Amendment of section 15** of the Biodiversity Act (2002) it is stated that the signature of the member secretary would be enough to pass orders. Thus it **aims to diminish the authority of Chair Person** and by upgrading, the position of the secretary of the NBA is made more important. Moreover, the Chairperson is generally a scientist of national and international reputation. His position should not be equated with the power enjoyed by the secretary in the Authority. This will bureaucratize the NBA and make the system vulnerable to influential practices.
6. **Insertion of a new section 59A** in the Biodiversity Bill (2002) as mentioned in Section (40) of the amendment is that if a seed company or a farmers’ group has an approval or a right granted under the Protection of Plant Varieties and Farmers Rights Act, 2001 (PPVFR Act), then similar permissions are not needed under the Biodiversity Act. The PPVFR Act gives intellectual property protection for seed companies for the seeds they have developed, and also gives rights to farmers for their traditionally conserved varieties. The idea was that through the intellectual property system India’s biological resources should not be taken into the private sector and locked, and the traditional conservers of biological diversity are cheated from the benefits these resources bring. Such **exemption as provided by the amendment will weaken the process to check bio-piracies.**
7. India is the leader in the development of the Biodiversity Act and model to many developing countries rich in biodiversity. Our country is one of the earliest countries to work on a biological diversity act and bring legislation that included all the principles of the CBD and Nagoya Convention on benefit sharing. We also created a three-tier structure of the national biodiversity authorities, state biodiversity boards and the biodiversity management committees to conserve and safeguard Biodiversity.
8. **The bill has been introduced without seeking public comments as required under the pre-legislative consultative policy. The bill has neither been forwarded to the Parliamentary Standing Committee on environment and forests.**

It appears that the main focus of the Amendment Bill is to facilitate the trade in biodiversity. The Amendment Bill will undo all the efforts made in the last few years to conserve Biodiversity and the Government should withdraw the proposed amendments.

We urge the government to examine these suggestions to prevent further damage to Biodiversity in India.

Looking forward to your acknowledgment, feedback and discussion,

Regards



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