

Policy on ABS in India

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Traditional Knowledge
in the context of CBD**

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“There is enough on this earth for everybody’s need but not for everybody’s greed”

Convention on Biological Diversity

- **CBD – the first comprehensive global agreement addressing all aspects of biodiversity.**
- **CBD envisages reciprocity of arrangements between developed and developing countries not seen before.**
- **CBD – a framework agreement that provides for country-driven approach to its implementation.**
- **Three objectives of the Convention:**
 - **Conservation of biodiversity**
 - **Sustainable use of its components**
 - **Fair and equitable sharing of benefits arising out of the use of genetic resources**
- **189 countries Parties to CBD, India a Party.**

CBD – Access and benefit sharing

- **Pre-CBD, biological resources considered as common heritage of mankind**
- **CBD recognizes sovereign rights of nations over their biological resources, and enjoins upon Parties to facilitate access to genetic resources on mutually agreed upon terms and with prior informed consent of country of origin of resource, so as to ensure fair and equitable sharing of benefits arising out of use of resource with provider country (Article 15)**
- **CBD also stipulates Parties to ensure equitable sharing of benefits arising from use of traditional knowledge associated with biological resources (Article 8j).**

ABS – Action at National level

- **Pursuant to ratification of CBD, India initiated wide-ranging extensive and intensive consultations with all stakeholders.**
- **Enacted Biological Diversity Act in 2002 and Biological Diversity Rules in 2004.**
- **Act aims at regulating access to biological resources and associated traditional knowledge to ensure sharing of benefits with the country and its people.**
- **India one of the few countries to have enacted ABS legislation.**

ABS – Action at National level

- **India has also amended its Patent Act to provide for mandatory disclosure in patent application of source and geographical origin of biological material and traditional knowledge used in invention.**
- **Amended Patent Act also provides for pre-grant opposition and revocation of granted patents on grounds of non-disclosure or wrongful disclosure of source or geographical origin of biological resources and traditional knowledge.**

ABS provisions of Biological Diversity Act, 2002

- **Biodiversity Act has three-tier structure for its implementation : NBA, SBBs and local level BMCs.**
- **NBA deals with all matters relating to requests for access by foreign individuals / institutions and transfer of results of research to foreigners.**
- **While granting approvals, NBA imposes conditions which secure equitable sharing of benefits from use of biological resources and associated knowledge.**
- **Benefits to include monetary gains, grant of joint ownership of IPRs, transfer of technology, association of Indian scientists in R&D, setting up of venture capital funds etc.**
- **NBA approval also required before seeking IPR based on biological material and TK obtained from India.**
- **NBA has power to oppose grant of IPRs in any other country on bioresources / TK obtained from India.**

ABS provisions of Biological Diversity Act, 2002

- **SBBs constituted by State Governments deal with matters relating to access by Indians for commercial purposes. Indian industry required to provide prior intimation to concerned SBB about use of biological resources.**
- **SBB has power to restrict any such activity which violates principle of conservation, sustainable use and equitable sharing of benefits.**
- **Local institutions of self government are required to set up BMCs in their respective areas for conservation, sustainable use, documentation of biodiversity, and chronicling of knowledge relating to biodiversity.**
- **NBA and SBB are required to consult concerned BMCs on matters relating to use of biological resources and associated TK within their respective jurisdictions.**

ABS provisions of Biological Diversity Act, 2002

- **This mandatory consultation of BMCs by NBA and SBBs ensures formalisation of PIC by communities through involvement of BMCs in decision making process.**
- **Act provides exemptions :**
 - **To local people for free access to use bioresources within India.**
 - **To growers and cultivators, vaidis and hakims to use bioresources.**
 - **Through notification by Central Government of normally traded commodities so as not to affect trade.**
 - **To collaborative research through government-sponsored institutes subject to overall guidelines and approval of Central Government.**
 - **To value added products.**

Biopiracy from India

- **Patents secured in USA and Europe e.g. on use of neem, wound healing properties of haldi, hypoglycaemic properties of brinjal, karela and jamun.**
- **Use of these biological materials already known in India.**
- **For neem and haldi, it was proved their use is prior art; hence these patents were revoked.**

Biopiracy from India

- **Recent studies on patents granted at USPTO, EPO and UKPTO indicate increase in misappropriation of genetic resources and traditional knowledge.**
- **Biopiracy cannot be resolved with revocation or domestic legislation alone.**
- **Need for documentation of traditional knowledge at national level through e.g. TKDL.**
- **An international regime for operationalising ABS provisions of CBD required for addressing biopiracy effectively.**

International Regime on ABS under CBD

- **Framework for implementation of core objective of CBD on ABS provided in Articles 15 and 8j, however, not much progress made till 2004.**
- **Seventh CoP to CBD in 2004 adopted a landmark decision to negotiate an International regime on ABS under CBD.**
- **Two negotiation meetings held so far.**
- **CoP-8 has decided that negotiations for IR on ABS be completed by 2010.**

IR on ABS – Potential advantages

- **IR would be beneficial to both developed and developing countries.**
- **Harmonisation of national legislations a prerequisite for smooth conduct of business between provider and user countries.**
- **IR thus expected to be tool of equity and fair play between developed and developing countries.**

IR on ABS – Some key issues

- **Access should be facilitated only upto sustainable level, and not exploitative level.**
- **Sustainable level to be decided by provider country, would vary from region to region.**
- **Countries thus need to agree for defining guidelines to facilitate provider country to decide on sustainable level.**

IR on ABS – Some key issues

- **Defining parameters of benefit sharing much more challenging.**
- **Benefit could be separated from access in terms of time, space and distance.**
- **Also problem in quantification of benefit.**
- **Equitable sharing of benefits another difficult question.**

IR on ABS – Some key issues

- **Debate over country of origin and country providing resource also needs to be settled.**
- **In case where biological resource or TK is held by more than one community, sharing of benefits would become more complicated.**
- **Need to explore answers to these difficult questions during negotiations of IR on ABS.**

THANK YOU