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LEGISLATION TRACKER

Biological Diversity (Amendment) Act, 2023

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SUBJECTS COVERED

ENVIRONMENT

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ACT NUMBER	YEAR ENACTED
Act No. 10 of 2023	2023

KEY PROVISIONS

- 1 Exempts registered AYUSH practitioners and codified traditional knowledge users from requiring prior approval of the National Biodiversity Authority (NBA)
- 2 Replaces criminal penalties with monetary fines for most violations (decriminalisation)
- 3 Facilitates access to biological resources for Indian AYUSH and seed companies by simplifying approval process
- 4 Introduces fast-track approval for research using biological resources by Indian entities
- 5 Renames benefit-sharing provisions and broadens the scope of benefit claimers to include local communities
- 6 Section 7 exemption expanded — Indian companies using codified traditional knowledge need only intimate State Biodiversity Boards (SBBs) instead of seeking NBA approval

BACKGROUND

The Biological Diversity (Amendment) Act, 2023 amends the Biological Diversity Act, 2002. The parent Act was enacted to give effect to India's obligations under the Convention on Biological Diversity (CBD), 1992, which India ratified in 1994. The 2002 Act established a three-tier regulatory structure: the National Biodiversity Authority (NBA) at the central level, State Biodiversity Boards (SBBs) at the state level, and Biodiversity Management Committees (BMCs) at the local level.

The amendment was necessitated by concerns that the original Act's approval-centric framework was burdensome for Indian practitioners of traditional medicine (AYUSH — Ayurveda, Yoga, Unani, Siddha, Homeopathy), seed companies, and researchers. The AYUSH industry argued that obtaining NBA approval for using biological resources already documented in codified traditional knowledge texts (such as Charaka Samhita, Sushruta Samhita) was impractical and stifled the sector. Over 900 cases of alleged biopiracy/non-compliance were pending before the NBA as of 2022, most involving Indian AYUSH companies.

The Amendment Act received Presidential assent on August 3, 2023, and came into force on April 1, 2024. It broadens exemptions for Indian users of biological resources, decriminalises most offences under the Act, and simplifies the access and benefit-sharing (ABS) framework. However, the amendments have attracted criticism from environmentalists, tribal rights organisations, and opposition parties who argue that the changes favour industry at the expense of biodiversity conservation and the rights of indigenous communities.

KEY CONCEPTS

- **Access and Benefit Sharing (ABS):** The CBD and the Nagoya Protocol (2010) require that benefits arising from the use of biological resources and associated traditional knowledge be shared fairly with the providers — typically local and indigenous communities. The 2002 Act implemented this through NBA-regulated benefit-sharing agreements. The 2023 Amendment simplifies this for Indian entities.
- **Codified traditional knowledge:** Knowledge of biological resources documented in authoritative texts (e.g., Ayurvedic pharmacopoeia, Siddha texts). The Amendment exempts users of codified knowledge from NBA approval, arguing that such knowledge is already in the public domain and does not require biopiracy protection.
- **Decriminalisation of biodiversity offences:** The original Act prescribed imprisonment of up to 5 years for violations such as accessing biological resources without NBA approval. The Amendment replaces imprisonment with monetary penalties (fines ranging from Rs 1 lakh to Rs 50 lakh), following the Government's broader decriminalisation agenda under the Jan Vishwas Act.
- **National Biodiversity Authority (NBA):** Headquartered in Chennai. The NBA regulates access to biological resources by foreign entities, approves benefit-sharing agreements, and advises the Government on biodiversity conservation. The Amendment reduces the NBA's regulatory oversight over Indian entities.
- **State Biodiversity Boards (SBBs):** The Amendment strengthens the role of SBBs by requiring Indian entities using biological resources to intimate the SBB (instead of seeking full NBA approval). This decentralises the regulatory framework.
- **Biodiversity Management Committees (BMCs):** Local-level bodies at the panchayat/municipality level responsible for documenting biodiversity in People's Biodiversity Registers (PBRs). The Amendment broadens benefit-sharing to include BMCs and local communities directly.

IMPORTANT PROVISIONS

- **Section 3 — Exemption for AYUSH practitioners:** Registered AYUSH practitioners and persons using codified traditional knowledge for commercial purposes are exempt from the requirement of obtaining prior approval of the NBA. They need only intimate the concerned State

Biodiversity Board.

- **Section 7 — Intimation instead of approval for Indian entities:** Indian companies, individuals, and organisations accessing biological resources for research, commercial utilisation, or bio-survey/bio-utilisation need only file an intimation with the SBB. Prior NBA approval was required under the old framework.
- **Section 21 — Benefit sharing:** The scope of benefit claimers is expanded beyond “local people” to include all “local communities” and their representatives. The benefit-sharing framework now covers monetary payments, technology transfer, skill development, and employment generation.
- **Section 55 — Penalties (Decriminalisation):** Criminal penalties (imprisonment) are replaced with monetary penalties for most offences. For accessing biological resources without intimation: penalty up to Rs 1 lakh. For commercial utilisation without benefit-sharing: up to Rs 50 lakh. Imprisonment retained only for offences by foreign entities attempting biopiracy.
- **Section 36 — Biodiversity Heritage Sites:** The framework for declaring Biodiversity Heritage Sites is retained. State Governments, in consultation with local bodies, can designate areas of biodiversity importance.

LANDMARK JUDGMENTS

- **Divya Pharmacy v. Union of India (2018):** The NBA filed cases against Divya Pharmacy (Patanjali group) and other AYUSH companies for accessing biological resources without NBA approval. Over 900 such cases were pending. The 2023 Amendment effectively resolves most of these cases by exempting AYUSH practitioners from NBA approval requirements.
- **Niyamgiri case — Orissa Mining Corporation v. Ministry of Environment and Forests (2013):** The Supreme Court upheld the rights of the Dongria Kondh tribe over biological resources of the Niyamgiri Hills. While this case concerned the Forest Rights Act, it established the principle that indigenous communities have rights over their biological resources — a principle that the Amendment’s broadened benefit-sharing provisions must respect.

RECENT AMENDMENTS / DEVELOPMENTS

- **Amendment Effective from April 1, 2024:** The Biological Diversity (Amendment) Act, 2023 came into force on April 1, 2024, operationalising the AYUSH exemptions and decriminalisation provisions.
- **Biological Diversity Rules, 2024:** Notified on October 22, 2024 (effective December 22, 2024), these comprehensive rules replace the 2004 Rules. Key features: all applications must be made online via the NBA web portal; fees set at Rs 10,000 for individuals and Rs 20,000 for entities; clarified that

NBA approval is required for commercialisation of IPR based on Digital Sequence Information (DSI) accessed from India.

- **Biological Diversity Regulations, 2025:** Notified by the NBA on April 29, 2025, replacing the 2014 Guidelines on Access to Biological Resources and Benefit Sharing. The 2025 Regulations set benefit-sharing obligations with special provisions for high-value or threatened species (red sanders, agarwood, sandalwood) with minimum sharing percentages of 5%, potentially rising to 20%+ for commercial use. Cultivated medicinal plants are exempted for Indian entities.
- **Nagoya Protocol implementation:** India ratified the Nagoya Protocol on Access and Benefit Sharing on October 9, 2012. The Protocol requires domestic legislation to ensure fair benefit sharing. Critics argue that the 2023 Amendment weakens India's Nagoya Protocol compliance by reducing regulatory oversight over access.
- **AYUSH industry growth:** The Indian AYUSH market was valued at approximately \$18 billion in 2023 and is projected to reach \$30 billion by 2030. The industry lobbied strongly for simplified access to biological resources.
- **People's Biodiversity Registers:** As of 2024, over 2.7 lakh BMCs have been constituted across India, but only about 1.5 lakh PBRs have been completed. The Amendment's effectiveness depends on comprehensive documentation of biological resources and traditional knowledge in PBRs.
- **Environmental criticism:** The Legal Initiative for Forest and Environment (LIFE), the Centre for Policy Research, and several environmental NGOs have challenged the Amendment, arguing it favours commercial interests over community rights and biodiversity conservation.

UPSC RELEVANCE

*Biological Diversity Act, 2002 — three-tier structure (NBA, SBB, BMC); NBA headquarters (Chennai); Nagoya Protocol (2010, ratified by India 2012); CBD (1992); AYUSH exemption under 2023 Amendment; decriminalisation of biodiversity offences. **Mains GS-3:** Biodiversity conservation vs. economic utilisation; Access and Benefit Sharing framework; AYUSH industry and traditional knowledge; biopiracy; Nagoya Protocol compliance; role of local communities (BMCs) in biodiversity governance. **Interview:** "Can India promote its traditional medicine industry globally while maintaining its commitment to the Convention on Biological Diversity and the rights of indigenous communities over their biological resources?"*

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