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THE BIOLOGICAL DIVERSITY ACT: STRENGTHS, GAPS, AND THE WAY FORWARD

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Abstract

The Biological Diversity Act, 2002,[53]was enacted to give effect to the provisions of the United Nations Convention on Biological Diversity, 1992 to which India is a party. The Act provides for the conservation of biological diversity, sustainable utilization and equitable sharing of the benefits arising out of utilization of genetic resources. The Act is very important for India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto.

Key Words: Biological Diversity, India, Sustainable Utilization, Equitable sharing, Traditional.

[53] The Biological Diversity Act, 2002 received the assent of the President on the 5th February, 2003.

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Introduction

Biological diversity within species, between species and of eco-system. Since ancient time the tradition of preserving sacred groves, the nurseries of wildlife species, played a very small part in the maintenance of ecological diversity. In the past, the declared conservation policy was biased to animals, especially big cats and large mammals, while protection and conservation of plants, forest trees, micro-organisms, mangroves and biological wealth were ignored. In the late seventies, the court did not favour saving one of the largest evergreen tropical forests rich with diverse and complex flora and fauna. Scientists laid emphasis on the need for demarcation and protection of gene pool reserves and gene sanctuaries. They stressed that for a long-term conservation of biodiversity and development of sustainable pattern of resource use, the involvement of the local people was essential.

It is because of the wide-ranging efforts at the international level, the idea of conservation of bio-diversity has been effectively developed. The significant guidance part is given by the World Conservation Strategy. However with the consensus of the members of the United Nations Convention on Biological Diversity it has been taken very cautiously under the leadership UNO. The objectives of CBD is firstly conservation of biological diversity, secondly the sustainable use of its components and lastly the fair and equitable sharing of benefits arising out of the utilization of genetic resources. Biological diversity was defined as the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic eco-system and the ecological complexes of which they are part this includes diversity within species, between species and of eco-system.

Meaning of Biological diversity

Biological diversity refers to the global variety of species and ecosystems and the ecological processes of which they are part, covering three components: genetic, species and ecosystem diversity.[54] According to Article 2 of the Convention on Biological Diversity 1992, "biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.

India is a party to the CBD and has enacted the Biological Diversity Act 2002 (BDA). The following are the thrust areas of the BDA:

(1) Access to biological resources and information.

(2) Benefit sharing with conservers of biological resources/creators and holders of knowledge and information relating to use of biological resources.

(3) Notification of areas important from the stand point of biological diversity as biological heritage sites.

(4) Protection of threatened species.

(5) Involvement of local bodies in sustainable management of biodiversity and the preparation of biodiversity registers.

(6) Establishment of biodiversity authority, state biodiversity boards and biodiversity committees at block/village level to implement the legislation.

Regulation of Access to Biological Diversity of India

The Act regulates the access to biological diversity of India for certain persons. Section 3 prohibits certain persons to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization[55] or for bio-survey

[54] See OECD Glossary of Statistical Terms.
[55] According to section 2(f) "commercial utilization" means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, 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.

and bio-utilization,[56] without previous approval of the National Biodiversity Authority. These persons are:

(a) Non-citizens;

(b) Non-resident citizens of India;

(c) Body corporates, associations or organizations which are not incorporated or registered in India or incorporated or registered in India but has any non-Indian participation in its share capital or management. All other persons who are not covered under the aforesaid categories of persons have access to biological diversity in India.

BDA incorporates these ideas as well as broadly accepts the provisions of the CBD. The definition of biological diversity in BDA is slightly different to the one in the CBD. It is defined as meaning 'the variability among living organisms from all sources and the ecological complexes of which they are part' and as including 'diversity within species or between species and of eco-systems'.[57] The term 'biological resources' is defined to mean plants, animals and micro-organisms, or parts thereof, and their genetic material and by-products, with actual or potential use or value, but not so include human genetic material.[58] This differs from the CBD definition.[59]

Obtaining any biological resource for research, commercial utilization or bio-survey or bio-utilization without previous approval of the National Biodiversity Authority (NBA) is prohibited.[60] The prohibition may also go against the transfer of any result of research with respect to any biological resource for monetary consideration.[61] However, collaborative research projects will be exempted subject to the overall policy guidelines and approval of the Central Government.[62] BDA provides for prior intimation of application for intellectual property rights based on research or information of biological resources, to the NBA. For obtaining any biological resource for commercial utilization or bio-survey and bio-utilization for commercial utilization prior intimation to the state bio-diversity boards is necessary.[63]

Besides the NBA, BDA provides for state bio-diversity boards and bio-diversity management committees in local bodies.[64] Without the previous approval of NBA, no person shall apply for any intellectual property rights.[65] NBA advises the Central Government on conservation of bio-diversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources.[66] It also advises the state government with regard to the selection and management of bio-diversity heritage sites.[67] NBA can oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India, or knowledge associated with such biological resource which is derived from India.[68]

These regulatory provisions in BDA are in conformity with the provisions of the CBD. The responsibilities given to Bio-diversity management committees in local bodies for promoting conservation, sustainable use and documentation of biological diversity not only indicate the need for awareness at the grass roots, but also helps evolution of a viable regime for preserving biological diversity at the

[56] According to section 2(d) "bio-survey and bio-utilization" means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterization, inventorisation and bioassay.
[57] Section 2(b), Biological Diversity Act 2002.
[58] Section 2(c), Ibid.
[59] The United Nations Convention on Biological Diversity 1992, art 2 defines the term 'Biological resources' to include genetic resources, organisms, or parts thereof population or any other biotic component of eco-systems with actual or potential use of value for humanity.
[60] The United Nations Convention on Biological Diversity 1992, art 2 defines the term 'Biological resources' to include genetic resources, organisms, or parts thereof population or any other biotic component of eco-systems with actual or potential use of value for humanity.
[61] Section 3(4), Biological Diversity Act 2000. The prohibition will extend to transferring the results to a non-citizen, a non-resident citizen, a body corporate or organisation 'not registered or incorporated in India' or without any 'participation in its share capital or management'.
[62] Sections 5 and 19, Ibid.
[63] Section 7, Ibid.
[64] Sections 8-35 and 41-47, Ibid.
[65] Section 6(1), Ibid. It does not matter whatever be the name in or outside India for the invention based on any research or information on a biological resource obtained from India.
[66] Section 18(3) (a), Ibid.
[67] Section 18(3) (b), Ibid.
[68] Section 18(4), Ibid.

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rural level. The purpose of these committees is to 'promote conservation, sustainable use and documentation of biological diversity including preservation of habitats, cultivars and domesticated stocks and breeds of animals and micro-organisms and chronicling of knowledge relating to biological diversity.[69]

Section 4 of the Biodiversity Act provides, "No person shall, without previous approval of the NBA, transfer the result of any research relating to any biological resources occurring or obtained from India for monetary consideration or otherwise to any person who is not a citizen of India or body corporate or organization which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management. The publication of research paper, collaborative research project may involve biological resources or information or knowledge. Publication has not been declared transfer within Section 4. Thus through publication or research information of knowledge can be disseminated. But this freedom can be enjoyed only if publication is as per guidelines of the Central Government."[70]

Implementation Mechanism:

The Act, 2002 is implemented through a three-tier institutional mechanism: National Biodiversity. Authority (NBA) at the national level; State Biodiversity Boards (SBBs) at the State Government level; and the Biodiversity Management Committees (BMCs) at the local level. NBA was constituted in the year 2003. It has its office in Chennai, which is the capital of the coastal state of Tamil Nadu. It is funded by the Union Budget of India. All the 30 states of India have constituted the State Biodiversity Boards.

Sections 3, 7 and 23 of the Act, 2002 empower the NBA and SBBs respectively to grant approval for access to GRs and associated knowledge as applicable. Participation of local communities is ensured through BMCs. India's local communities are a part of the mainstream. BMCs are constituted at the village/ local level by the elected Municipal and Panchayat bodies and comprise the elected members of the local communities and have a direct link and interface with the local people. Over 62,000 BMCs have been constituted so far. Section 41(1) of the Act, 2002 mandates BMCs to document biological diversity found in their jurisdiction in the form of Peoples Biodiversity Registers (PBRs) and chronicle TK related thereto. This documentation is done with the participation of local communities including women.

Constitution of Biodiversity Management Committee:

Every local body shall constitute a Biodiversity management committee within its area 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 and domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity.[71] "Benefit claimers" to mean 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 ."

National Bio-diversity Authority:

The Central government may, by notification in the official Gazette, appoint, there shall be established by the Central Government for the purposes of the Act, a body to be called the National Bio-diversity Authority.[72] The National Bio-diversity Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property,

[69] Section 41, Biological Diversity Act, 2002, explanation. BDA defines 'cultivar' as meaning a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation, 'folk variety' means a cultivated variety of plant developed, grown and exchanged informally among farmers. 'Land race' means primitive cultivar grown by ancient farmers and their successors.

[70] Prof. (Dr) M.K. Bhandari, Intellectual Property Rights, Central Law Publications, Third Edition, 2012.

[71] Section 41 of Biological Diversity Act, 2002.

[72] Section 2(a) of the Biological Diversity Act, 2002.

both moveable and immoveable, and to contract, and shall by the said name sue and be sued . The Chairman and members of the National Bio-Diversity Authority shall be appointed by the Central Government .The National Biodiversity Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorums at its meetings) as may be prescribed.[73] The Act authorizes the chairman of the National Biodiversity Authority to preside over its meeting.

Powers and functions of the Board:

1. It shall be the duty of the National Biodiversity Authority to regulate activities referred to in sections 3,4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing.

2. The National Biodiversity Authority may grant approval for undertaking any activity sections 3, 4 and 6.

3. The National Biodiversity Authority may-

(a) advise the Central Government on matters relating to the conservation of biodiversity, sustainable use[74] of its components and equitable sharing of benefits arising out of the utilization of biological resources;

b) advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites and measures for the management of such heritage sites;

(c) perform such other functions as may be necessary to carry out the provisions of this Act.

4. The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource which is derived from India.[75]

APPROVAL BY THE NATIONAL BIODIVERSITY AUTHORITY

(1) Any person referred. to in sub-section (2) of section 3 who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for biosurvey and bio-utilization or transfer the results of any research relating to biological resources occurring in, or obtained from, India, shall make application in such form and payment of such fees as may be prescribed, to the National Biodiversity Authority.

(2) Any person who intends to apply for a patent or any other form of intellectual property protection whether in India or outside India referred to in subsection (1) of section 6, may make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(3) On receipt of an application under subsection (1) or sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to any regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

Approval by National Biodiversity Authority for undertaking certain activities The Biological Diversity Act & Rules 15

[73] Section 8(1) of the Biological Diversity Act, 2002.
[74] Section 2(o) of the Biological Diversity Act 2002, defines "sustainable use" to mean the use of components of biological diversity in such manner and at such rate that does not lead to the long-term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations.
[75] Section 18, Ibid.

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(1) No person who has been granted approval under section 19 shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval except with the permission of the National Biodiversity Authority.

(2) Any person who intends to transfer any biological resource or knowledge associated thereto referred to in sub-section (1) shall make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(3) On receipt of an application under subsection (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application: Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

Determination of equitable benefit sharing

The National Biodiversity Authority shall while granting approvals under section 19 or section 20 ensure that the terms and conditions subject to which approval is granted secures equitable sharing of benefits 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 Determination of equitable benefit sharing by National Biodiversity Authority Transfer of biological resource or knowledge 16 agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers.[76]

The National Biodiversity Authority shall, subject to any regulations made in this behalf, determine the benefit sharing which shall be given effect in all or any of the following manner, namely:

(a) Grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers;

(b) Transfer of technology;

(c) Location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;

(d) Association of Indian scientists, 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) Payment of monetary compensation and other non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.

Where any amount of money is ordered by way of benefit sharing, the National Biodiversity Authority may direct the amount to be deposited in the National Biodiversity Fund: The Biological Diversity Act & Rules 17 Provided that where biological resource or knowledge was a result of access from specific individual or group of individuals or organizations, the National Biodiversity Authority may direct that the amount shall be paid directly to such individual or group of individuals or organizations in accordance with the terms of any agreement and in such manner as it deems fit.[77] For the purposes of this section, the National Biodiversity Authority shall, in

[76]Section 20(1), Biological diversity
[77] Section 21 of the Biological Diversity Act, 2002.

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consultation with the Central Government, by regulations, frame guidelines.

State Biodiversity Board

The Act also provides for the establishment of State Biodiversity Boards for the States. There will be no Biodiversity Board for the Union territories and Authority will work for them. The Board is to consist of a Chairman and 10 members.[78] The functions of the State Biodiversity Board are to-

(a) Advise the State 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;

(b) Regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians;

(c) Perform such other functions as may be necessary to carry out the provisions of this Act.

The State Biodiversity Boards exercise powers to restrict certain activities. Any citizen of India or a body corporate, organization or association registered in India intending to undertake any activity as referred in section 7 is required to give prior intimation in prescribed form. On receipt of intimation, the State Biodiversity Board may, in consultation with the local bodies concerned, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity. However, no such order is to be made without giving an opportunity of being heard to the person affected. Any information given in the form for prior intimation is to be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.

National strategies plans for conservation of biological diversity

The Central Government shall develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of in situ,[79] and ex situ,[80] conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity. Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect, it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.

The Central Government shall integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies. It shall undertake measures –

(i) Wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects and where appropriate provide for public participation in such assessment;

(ii) To regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

It shall also endeavor to respect and protect the knowledge of local people relating to biological

[78] Section 22, Ibid.

[79] "In situ conservation" means the 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.

[80] "Ex situ conservation" means the conservation of components of biological diversity outside their natural habitats.

diversity, as recommended by the Authority through such measures, which may include registration of such knowledge at the local, State or national levels, and other measures for protection, including sui generis system.[81]

Biodiversity heritage sites

The State Government, from time to time in consultation with the local bodies, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act. The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the heritage sites. The State Government shall also frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.[82]

Central Government to notify threatened species

The Central Government, in consultation with the concerned State Government, may from time to time notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species. It may also prohibit or regulate collection of those species for any purpose and take appropriate steps to rehabilitate and preserve them.[83] The Central Government may, in consultation with the Authority, designate institutions as repositories under this Act for different categories of biological resources. The repositories shall keep in safe custody the biological material including voucher specimens deposited with them. Any new taxon discovered by any person is to be notified to the repositories or any institution designated for this purpose and he shall deposit the voucher specimens with such repository or institution.

Biodiversity Management Committees

Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races,[84] folk varieties[85] and cultivars,[86] domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity. The National Biodiversity Authority and the State Biodiversity Boards are required to consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee. The Biodiversity Management Committees may levy charges by way of collection fees from any person for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction.[87]

The Act also provides for the constitution of Local Biodiversity Fund which is to 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 in so far such use is consistent with conservation of biodiversity.[88]

Settlement of disputes between State Biodiversity Boards

If a dispute arises between the Authority and a State Biodiversity Board, an appeal may be preferred to the Central Government by any of the parties. Before the disposal of an appeal, the parties shall be given a reasonable opportunity of being heard. If a dispute arises between the State Biodiversity Boards, the Central Government shall refer the same to the Authority, which shall be guided by the principles of natural justice and shall follow the prescribed procedure while adjudicating the

[81] Section 36 of Biological Diversity Act, 2002.
[82] Section 37 of Biological Diversity Act, 2002.
[83] Section 38, ibid.
[84] "Landrace" means primitive cultivar that was grown by ancient farmers and their successors.
[85] "Folk variety" means a cultivated variety of plant that was developed, grown and exchanged informally among farmers.
[86] "Cultivar" means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation.
[87] Section 41 of Biological Diversity Act, 2002.
[88] Sections 42-44, Ibid.

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dispute. The Authority shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely-

(i)summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

(iv) issuing commissions for the examination of witnesses or documents;

(v) reviewing its decisions; dismissing an application for default or deciding it exparte;

(vi) setting aside any order of dismissal of any application for default order passed by it exparte;

(vii) any other matter which may be prescribed.

Every proceeding before the Authority is to be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code. The Authority is to be deemed a civil court for all the purposes of section 195 and Chapter XXVI of the code of Criminal Procedure, 1973.[89]

Appeal to National Green Tribunal

Any person aggrieved by any determination of benefit sharing or order of the Authority or a State Biodiversity Board under the Act, on or after the commencement of the National Green Tribunal Act, 2010 may file an appeal to the National Green Tribunal in accordance with the provisions of that Act.[90] Earlier the appeals were to be filed before the High Court. Any appeal pending before High Court has to be disposed of by that High Court only. After 18th October 2010, the appeals are to be filed only before the National Green Tribunal.

Every determination of benefit sharing or order made by the Authority or a State Biodiversity Board or the order made by the High Court in any appeal against any determination or order of the Authority or a State Biodiversity Board shall, on a certificate issued by any officer of the Authority or a State Biodiversity Board or the Registrar of the High Court, as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court.[91]

Penalties

Section 55 makes contravention of the provisions of section 3, punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten lakh rupees and where the damage caused exceeds ten lakh rupees such fine as may commensurate with the damage caused, or with both. Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 7 or any order made under section 24(2) shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.

If any person contravenes any direction given or order made by the Central Government, the State Government, the Authority or the State Biodiversity Board for which no punishment has been separately provided under this Act, he shall be punished with a fine which may extend to one lakh rupees and in case of a second or subsequent offence, with fine which May extend to two lakh rupees and in the case of continuous contravention with additional fine which may extend to two lakh rupees every day during which the default continues.[92]

Offences by companies

Where an offence or contravention under this Act has been committed by a company,[93] every person who at the time the offence or contravention was committed was in charge of, and was responsible to, the company

[89] Section 50 of Biological Diversity Act, 2002.
[90] Section 52 A, Ibid.
[91] Section 53, Ibid.
[92] Section 56 of Biological Diversity Act, 2002.
[93] "Company" means body corporate and includes a firm or other association of individuals.

for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly. No person, however, shall be rendered liable to any punishment, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention. However where an offence or contravention under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director,[94] manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly.

Cognizance of offences

The offences under this Act shall be cognizable and non-bailable. No Court is to take cognizance of any offence under this Act except on a complaint made by- (a) the Central Government or any authority or officer authorized in this behalf by that Government; or (b) any benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

Conclusion

India being the sixth largest country of the world in terms of area is endowed with an immense resources in its rich animal and plant heritage, which sustains millions of its people and maintains ecological balance. While the maintenance of the country's basic biological productivity through proper land and water management is of vital ecological concern, the preservation of its genetic diversity and conservation of its species and ecosystems for sustainable utilization is of crucial significance for the future survival and development of our people. Hundreds of species have become extinct and many others are on the verge of extinction as they are listed as such. It has rightly observed that the preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has become a great and urgent necessity for its survival. The famous Silent Valley case highlighted the issue of protection and conservation of our rich and unique heritage of rare and valuable flora and fauna for the benefit of the nation and posterity, including endangered species like lion-tailed monkey, as they are national asset.

[94] "Director", in relation to a firm, means a partner in the firm.