

# Biological Diversity Act 2002

- President signature- 5<sup>th</sup> Feb 2003
- Enforcement- 15<sup>th</sup> April 2004
- **NBA- 1<sup>st</sup> October 2003**
- 16 members- 1+3+7+5
  - National Biodiversity Fund-royalties, fees
  - Committee on agro-biodiversity
- **State Biodiversity Board- 1+5+5**
  - State Biodiversity Fund
- **Biodiversity Mgmt Committee-1+6**
  - Local Biodiversity Fund-local levy
  - People's biodiversity registers

# Definitions

- "**benefit claimers**" means the conservers of biological resources, their byproducts, creators and **holders of knowledge** and information relating to the use of such biological resources, innovations and practices associated with such use and application.
- "**biological diversity**" means the variability among living organisms from **all sources** and the ecological complexes of which they are part, and includes diversity within species or between species and of eco-systems;
- "**biological resources**" means plants, **animals** and micro-organisms or parts thereof, their genetic material and **by-products** (excluding value added products) with actual or potential use or value, but does not include human genetic material;
- "**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;

# Regulations for Access

- No person referred to in [sub-section \(2\)](#) shall, without previous approval of the National Biodiversity Authority, obtain any biological resource occurring in India or [knowledge](#) associated thereto for research or for [commercial utilization](#) or for bio-survey and bio-utilization.
- Results of research not to be transferred to [certain persons](#) without approval of National Biodiversity Authority
  - For the purposes of this section, "transfer" does not include publication of research papers or dissemination of knowledge in any seminar or workshop, if such publication is [as per the guidelines](#) issued by the Central Government.
- These provisions shall not be applicable in case of collaborative research projects if these projects
  - Conform to the policy guidelines issued by GOI
  - Approved by the GOI
- No person, [who is a citizen of India](#) or a body corporate, association or organization which is registered in India , shall obtain any biological resource for commercial utilization, or bio-survey and bio-utilization for commercial utilization except after giving prior intimation to the State Biodiversity Board concerned:
- REPOSITORIES

# Transfer of Resource/ knowledge

- 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
- 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 agreed terms** and conditions between the person applying for such approval, local bodies concerned and the **benefit claimers**.
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- Joint IPR/ Developmental activity/ joint sharing/ venture capital fund/ Direct Payments

# Regulations- IPR

- No person shall apply for any intellectual property right, by whatever name called, **in or outside India** for any invention based on any research or information on a biological resource obtained from India without obtaining the previous approval of the National Biodiversity Authority before making such application.
- The National Biodiversity Authority may, while granting the approval under this section, impose benefit sharing fee or royalty or both or impose conditions including the sharing of financial benefits **arising out of the commercial utilization** of such rights.
- The provisions of this section shall not apply to any person making an application for any right under any law relating to **protection of plant varieties** enacted by Parliament.
- "**commercial utilization**" means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, 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;

# NBA- approvals

- Approvals for what?
  - Obtaining any biological resource, knowledge associated, bio-survey or bio utilization
  - Research result transfer
  - IP protection, collaborations, third party transfers
- Who needs approval?
  - Not citizen of India, NRI's
  - Corporate organizations not registered in India, registered but has any non-Indian participation in share capital/ management
- Others- prior intimation to state boards

# NBA-procedures

- Procedure for access to biological resources
- Application, fees 10000/-, 6 months
- NBA terms & conditions
- Bilateral agreements- 13 clauses
- Copy to state board, BMC
- BMC can prohibit access and ask for damages

# NBA-procedures

- Transfer of research results to foreign nationals, NRI's, companies
  - Application-5000/-, 3 months
- Applying for IP protection
  - Application- 500/-, 3 months
  - Not applicable under PVFR act 2001
- Third party transfers
  - Application-10000/-, 6 months
- Appeals to NBA, to high court



# NBA regulations- general features

- Benefit sharing formula guidelines- monetary other benefits
- Formula case by case
- Mutual agreements, time frame of benefits
- Individuals, groups, organizations direct payments through district administration
- Terms and conditions, 5% service charge
- Civil court powers-Judicial proceedings
- Non-bailable offence, penalties
- Opposition of IPR granted in any other country

# Punishments

- Whoever contravenes or to or abets the contravention of the provisions of section 3 or section 4 or section 6 shall be 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 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 sub-section (2) of section 24 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.
- Offences to be cognizable and non-bailable

Practical aspects: transfer of material from CGIAR institute in India or any other institute/organization abroad

- What are formalities
- SMTA
- Commercialization- 1.1%
- Will it be given directly?
- Where to deposit?
- Who will pay and to whom?
- Any share for country? And where to be deposited?
- Access consistence with international agreement and with relevant **national laws** (12.3.f)
- Benefit sharing/ royalty- NBA/PPVFRA

## Practical aspects: material transfer in India

- MTA of ICAR
- Free for research but PIC and source of origin applicable
- Mutually Agreed Terms
- Benefit sharing
- Royalty
- Own material deposited and asked back?  
From international- national institution???

# Strategic questions

- Prefer to take material from home institution, if available
- How to business with Pvt companies
- MTA or SMTA/ MAT
- IPR/ royalty as per ITPGRFA (12.3.d)
- Involvement of NBA/ PPVFRA/ GI office
- Benefit sharing (13.2.d.ii)
- Advertising and publicity of your material

# Strategic questions

- Passport data & **non-confidential information (??)** to be provided
- Can we charge fee for PGR- yes (**12.3.b**) but not exceeding the **minimal cost** involved (??)
- Purpose of access- only food/forage, no direct use (**12.3.a**)
- Applicable to all crops- No, rubber, soybean, groundnut, jute, mulberry etc not included
- Can I hold material with me- No, facilitated access (**12.3.g**), one of the condition in SMTA