

COMPLIANCE OF PROVISIONS OF THE BIOLOGICAL DIVERSITY ACT, 2002, THE BIOLOGICAL DIVERSITY RULES, 2004 & THE MAHARASHTRA BIOLOGICAL DIVERSITY RULES, 2008

The Biological Diversity Act, 2002,(hereinafter referred to as 'the Act')provides for conservation, use of biological resources and associated knowledge occurring in India for commercial or research purposes or for the purposes of bio-survey and bio-utilization. The Act covers foreigners, non-resident Indians, body corporate, association or organization i.e. either not incorporated in India or incorporated in India with non-Indian participation in share capital or management. In exercise of the powers conferred under Section 62 of the Act, the Central Government has made the Biological Diversity Rules, 2004 for carrying out the purposes of the Act. The Government of Maharashtra, in exercise of the powers conferred under Section 63(1) of the Act has also made the Biological Diversity Rules, 2008 for carrying out the purposes of the Act.

As per the D.O. No. 14-6/2015(CPP-II), dated 9th March, 2015 received from the University Grants Commission, all staff members, researchers, scientists and students of the Savitribai Phule Pune University, its affiliated colleges, recognised institutions and research centres are required to comply with the provisions of the Act and the Rules made thereunder.

- (1) Some of the important terms defined in the Act are as under:
 - (i) “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.
 - (ii) “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.
 - (iii) “Bio-survey and Bio-utilization” means survey or collection of species, sub-species, genes, components and extracts of

Biological resource for any purpose and includes characterization, inventorisation and bioassay.

(iv) “Commercial Utilisation” 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 crop and live stock 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.

(2) Provisions of the Act requiring compliance are as under:

(i) A person who is not a citizen of India or is a non-resident Indian or a body corporate or an association or an organization not incorporated or registered in India or incorporated or registered in India but has non-Indian participation in its share capital and management, is required to seek approval of the National Biodiversity Authority to obtain any biological resource in India or the knowledge associated thereto for research, commercial utilization, bio-survey and bio-utilization.

(ii) A person is required to seek approval of the National Biodiversity Authority to transfer results of any research relating to any biological resources occurring in or obtained from India for monetary consideration or otherwise to any person who is not a citizen of India or is a non-resident Indian or a body corporate or an organization which is not registered or incorporated in India or which has non Indian participation in its share capital or management.

Transfer of results of research does not include publication of research paper or dissemination of knowledge in any seminar or workshop, if such publication is as per the guidelines issued by the Central Government.

Approvals as mentioned in Clauses (i) and (ii) above are not required for collaborative research projects involving transfer or exchange of biological resources or information relating thereto between institutions, including government sponsored institutions of India, and institutions in other countries, if such collaborative research projects conform to the policy guidelines issued by the Central Government in that behalf and are approved by the Central Government.

(iii) A person is required to seek approval of the National Biodiversity Authority before applying 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. However, if a person applies for a patent, permission of the National Biodiversity Authority may be obtained after the acceptance of the patent but before sealing of the patent by the patent authority concerned.

(iv) A person who is a citizen of India or a body corporate or an association or an organization registered in India shall give prior intimation to the State Biodiversity Board before obtaining any biological resource for commercial utilization or bio-survey and bio-utilisation for commercial utilisation.

(3) Right to appeal:

Any person, aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Authority, may file an appeal to the High Court within thirty days from the date of communication of such order to him.

(4) Consequences of lack of compliance with the Act:

(i) In cases where an approval of the National Biodiversity Authority is required for the use of Indian biological resources and associated knowledge and such approval is not obtained, the punishment can extend to five years imprisonment or a fine of ten lakh rupees or with both.

However, where the damage caused exceeds ten lakh rupees such fine may commensurate with the damage caused.

(ii) In cases where the State Biodiversity Board needs to be intimated about the use of Indian biological resources and associated knowledge and this is not done, the punishment can extend to three years imprisonment or a fine of five lakh rupees or both.

(iii) Any offence under the Act is cognizable and non-bailable.

(5) Forms of application, manner of making applications and payment of fees are prescribed in the Biological Diversity Rules, 2004. Details of these forms are as under:

(i) Form I: Application for access to biological resources and associated traditional knowledge;

(ii) Form II: Application for seeking prior approval of the National Biodiversity Authority for transferring the results of research to foreign nationals, companies, non-resident Indians, for commercial purposes;

(iii) Form III: Application for seeking prior approval of the National Biodiversity Authority for applying for Intellectual Property Right;

(iv) Form IV: Application for seeking approval of the National Biodiversity Authority for third party transfer of the accessed biological resources and associated traditional knowledge.

Further details of the Biological Diversity Act, 2002, the Biological Diversity Rules, 2004 and other information in regard to biodiversity are available at www.nbaindia.org.
