

Access and Benefit Sharing

Key provisions of the Biological Diversity Act, 2002 and Rules, 2004



Section 3

Persons Covered:

Foreign citizens, NRIs, body corporates, associations or organisations not incorporated or registered in India or incorporated or registered in India which has any non-Indian participation in share capital or management.

Activity Covered:

Obtainment of any biological resource occurring in India or knowledge associated thereto.

Purpose Covered:

Research, Commercial Utilization, Bio-survey and Bio-utilization.

- Submit Application to NBA
- Obtain **prior approval** by signing an ABS agreement with the NBA

Persons Covered:

Indian citizens, foreign citizens, NRIs, body corporates, associations or organisations incorporated or registered in India with or without any non-Indian participation in share capital or management and body corporates, associations or organisations not incorporated or registered in India.

Activity Covered:

Transfer of results of any research relating to any biological resource occurring in, or obtained from India, to any person covered under Section 3.

Purpose Covered:

Transfer of research results for monetary consideration or otherwise.

Section 4

- Submit Application to NBA
- Obtain **prior approval** by signing an ABS agreement with the NBA

Publication of research papers or dissemination of knowledge in any seminar or workshop, as per Central Government Guidelines are not covered under this Section.

Persons Covered:

Indian citizens, foreign citizens, NRIs, body corporates, associations or organisations incorporated or registered in India with or without any non-Indian participation in share capital or management and body corporates, associations or organisations not incorporated or registered in India.

Activity Covered:

Application of any IPR in or outside India for any invention based on any research or information on a biological resource obtained from India.

Purpose Covered:

Obtaining IPR, by whatever name called, in or outside India.

Section 6

- Submit Application to NBA
- Obtain **prior approval** by signing an ABS agreement with the NBA

If the IPR is a patent, application maybe made to the NBA after acceptance of the patent application but before sealing of the Patent.

Section 2(m):

It is study or systematic investigation that involves-

- Any biological resource;
- Any technological application that uses biological systems, living organisms and/or their derivatives.



The purpose of the research as above explained will be for making or modifying products or processes for any use.

Commercial Utilization

Section 2(f):

This means the end use of a biological resource for commercial use such as Drugs; Industrial Enzymes; Food Flavours; Fragrance; Cosmetics; Emulsifiers; Oleoresins; Colours; Extracts; and Genes used for improving crops and livestock through genetic intervention.



Conventional breeding and traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping are not commercial utilization as per S. 2(f) of the Act.



Section 2(d):

The survey or collection for any purpose of species, sub-species, genes, components and extracts of biological resources for any purpose is bio-survey and bio-utilization.



This also includes characterisation, inventorisztion and bio-assay of biological resources and their components.



**Exemption from Sections 3
and 4 of the Act.**

Exemption Criteria:

- The collaborative *research* project must be between *institutions including government sponsored institutions* and *such* institutions in *other countries*.
- The collaborative research project must be approved by the Central Government.
- The collaborative research project must conform with the Central Government guidelines.

Activity Covered:

- Transfer or exchange of biological resources or information relating thereto between the collaborating institutions. No IPR exemption is provided

Section 5

- Must have the approval of Central Government.
- Submit all relevant details to NBA as per Guidelines.

The Collaborative Research must be as per criteria under Section 5 and must conform with the Central Government Guidelines.

Provisions on Procedures under the ABS Mechanism

Procedural Provisions:

- Submission of application to NBA for prior approvals under Sections 3, 4 and 6.
 - All application to be accompanied by fee prescribed.
 - NBA to make enquiries as it may deem fit.
 - NBA to consult an Expert Committee if necessary.
 - Approve or reject the application.
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Rule 14, 17 and 18 of the Biological Diversity Rules, 2004, read with Form I, II and Form III thereto are the applicable provisions for applications under Sections 3, 4 and 6 respectively.

Section 19

- The time period for processing applications made in Form I, is 6 months and for Form II and III is 3 months from the date of receipt of complete application.
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In case of rejection of application, the reasons will be recorded in writing. The applicant will be given an opportunity for being heard.

Procedural Provisions:

- Submission of application to NBA for prior approvals for transfer of biological resources already accessed as per Section 19, to third parties.
- All application to be accompanied by fee prescribed.
- NBA to make enquiries as it may deem fit.
- NBA to consult an Expert Committee if necessary.
- Approve or reject the application.

Rule 19 of the Biological Diversity Rules, 2004, read with Form IV thereto are the applicable provisions for applications under Section 20.

Section 20

- The time period for processing applications made in Form IV, is 6 months from the date of receipt of complete application.

In case of rejection of application, the reasons will be recorded in writing. The applicant will be given an opportunity for being heard.

Determination of Equitable Benefit Sharing:

- The terms and conditions subject to which approvals are granted under Sections 19 and 20, shall secure equitable sharing of benefits arising out of the use of accessed biological resource or knowledge associated thereto.
- These terms and conditions form the ABS Agreement.
- The determination of equitable benefit sharing by the NBA shall be in accordance with mutually agreed terms and conditions between the applicant, local bodies and benefit claimers.
- The NBA may decide whether the equitable sharing of benefits could be in monetary or non-monetary terms.

Section 21

- Rule 20 of the Biological Diversity Rules, 2004, deals with the procedural provisions for determining benefit sharing component of ABS Agreements.

The formula for determination of benefit sharing shall be done on a case-to-case basis

Provisions of ABS relating to the State Biodiversity Boards

Persons covered:

Indian citizens, body corporates, associations or organisations which are registered or incorporated in India *and not covered under Section 3.*

Activity Covered:

Obtaining any biological resource.

Purpose Covered:

Commercial utilization, bio-survey and bio-utilization for commercial utilization.

Section 7

- Submit **prior intimation** to the concerned State Biodiversity Board.
- Obtain relevant permits/letters of no objection from the concerned SBB prior to commencement of activity.

Local people/communities practising indigenous medicine including vaidas and hakims, and growers and cultivators of biological diversity of the local area are exempted from this provision.

Procedural Provisions:

- State Biodiversity Boards shall regulate by granting of approvals or otherwise requests for utilization of biological resources by persons covered under Section 7.
- Such requests for utilization of biological resources must be for commercial utilization or bio-survey and bio-utilization for commercial utilization.

Section 23

- SBBs have powers to regulate activities under Section 7 by way of granting approvals or other such orders.
- The procedures of the SBB are detailed in the respective State Rules framed under the Biological Diversity Act, 2002.

Procedural Provisions:

- Persons covered under Section 7 shall have to give *prior intimation* to the concerned SBB.
- The form for such prior intimation may be prescribed by the State Government to the SBB.
- This form for prior intimation will be found in the State Rules.
- The SBB has powers to prohibit or restrict any such activity if it is detrimental to the objectives of the Act.

Section 24

- SBB may consult the local bodies in processing the forms in which prior intimation is given by the applicant.
- The SBB may conduct such enquiry as it may deem fit.

An opportunity for hearing shall be given to an applicant whose request is rejected or prohibited by way of an order.

Exemption from the Act

Exemption under Section 40:

- The Central Government after consultation with the NBA may notify in the official gazette for exemption from the purview of the Act.
- Currently 190 items which are biological resources are exempted from the purview of the Act provided they are normally traded as commodities.



Section 40



By notification any items including biological resources normally traded as commodities may be exempted from the purview of the Act.

Legal Actions and Penal Provisions

Section 55:

Contravention or abetment of contravention of the provisions of Sections 3, 4, 6, 7 or 24 of the Act amounts to a *cognizable non-bailable offence*.

- Penalties extend upto five years of imprisonment and ten lakh rupees for offences under Section 3, 4 and 6.
- Penalties extend upto 3 years of imprisonment and five lakh rupees for offences under Section 7 and 24.



Section 52 A:

Any person aggrieved by a determination of benefit sharing or an order of the National Biodiversity Authority or a State Biodiversity Board under the Biological Diversity Act, 2002 may appeal before the National Green Tribunal, established under the National Green Tribunal Act, 2010.



All appeals to NGT shall be made as per provisions of the National Green Tribunal Act, 2010.