

Conservation of Biodiversity is need of the hour

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Abstract: Man has always been fascinated by the diversity of life. Now a days “globalization” has become another sight of fascination of man. All over the world of globalization has been accepted as new global economic policy for the world economic progress in order to bring the spectacular success in most of the countries (developing and developed countries) over the world. Globalization not only heightens the environmental risk for the present and future human generation but it has also deteriorating effect towards the “biodiversity”. So because of rapid exploitation of various species population, Trading with endangered species and expansion of industries, “Biodiversity ” becomes new international buzz word but it has not attracted as much attention as global Warming” or “ozone depletion”, and “climate change”. This paper demonstrates how the conservation of biological diversity is a desirable goal and what steps are to be taken for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of utilization of genetic resources

Keywords: Conservation, Sustainable use, Bio-Diversity, Modernization, Development.

Introduction:

Biodiversity involves so many variations among the plants and animal species within an ecosystem, and also so many various within the various ecosystems/habitants. Different kinds of animals and plants live at one place, each having its own mode of shape, living, food, protection, etc. According to “Darwin’s Struggle for Existence Theory”, each form of living organism adopts its own procedure to protect its life. Even plants are not exception. This is a natural phenomenon. Due to this natural phenomenon provide by the nature, all forms of living organisms have been continuing on the earth. This is called Biodiversity. However, this natural and harmonious biodiversity has been destroyed by the man. Due to increasing of civilization, modernization, technology, industrialization, indiscriminate use of the natural resources (minerals, water,

crude oil, forests, etc.) urbanization, over population, etc., the man invaded on the natural sources of earth. Deforestation is the first effect. Due to deforestation, the rainfall is decreased. The global warming is increased. It also badly affected on diversity.

The United Nations Conference on Environment and Development (UNCED) concentrated on the preservation of natural biological diversity with sustainable development of biological resources. Except America, all the participating member-States, i.e. 167 Nations signed and ratified this Convention. The Conference was funded by the UNO and other voluntary organizations. Originally the Conference was scheduled to be conducted from 1st to 12th June, 1992. It was conducted from 3rd June to 12th June, 1992 at Rio de Janerio of Brazil. The aim of the Biodiversity Convention, 1992 is to preserve the vast

gene pool of flora and fauna, and make the developed countries pay for exploiting it.

The Biological Diversity Act, 2002ⁱ:

India is a party to the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992. The afore said convention has the main objective of conservation of biological diversityⁱⁱ, sustainable useⁱⁱⁱ of its components and fair and equitable sharing of the benefits arising out of utilization of genetic resources. India being a Member State of the Convention on Biological Diversity, hence enacted the Biological Diversity Act, 2002.

The main **object** of the Act is clearly stated in the preamble. So the object of the Act is as follows.-

- (a) Conservation of biological diversity,
- (b) Sustainable use of its components and
- (c) Equitable sharing of the benefits arising out of the use of biological resources and knowledge.

Regulation of access to Biological Diversity:

Approval of National Biodiversity Authority is required, in order to access to biological diversity, the regulation of access to biological diversity are as follows-

- (1) Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority.^{iv} The following persons shall be required to take the approval of the Biodiversity Authority namely-
 - (a) A person who is not a citizen of India
 - (b) A citizen of India who is a non-resident as defined in Clause (30) of Sec. 2 of the Income-tax Act, 1961.
 - (c) A body corporate, association or organization-

(i) Not incorporated, or registered in India or

(ii) Incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management.^v

(2) Result of research not to be transferred to certain persons without approval of the National Biodiversity Authority (NBA). A result of Research includes the research relating to any biological resources occurring in, or obtained from, India for monetary consideration.^{vi}

Explanation of section 4 clearly stated that the "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.

(3) Above two regulations shall not apply to collaborative research projects involving transfer or exchange of biological resources^{vii} or information relating thereto between institution, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the following conditions-

- (a) The collaborative research projects shall conform to the policy guidelines issued by the Central Government in this behalf, or
- (b) The collaborative are approved by the Central Government.
- (4) Application for intellectual property rights not to be made without approval of National Biodiversity Authority.^{viii} According to this regulation "no person shall apply for any intellectual property right, by whatever name called (may be Patent or Geographical Identification etc.) 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. Provided that if a person applies for patent, permission of National Biodiversity Authority (NBA) may be obtained after the acceptance of the patent but before the sealing of the Patent by the patent authority concerned. Further provided that the NBA shall dispose of the application for permission made to it within a period of ninety days from the date of receipt thereof.

(5) The NBA may, while granting the approval, impose benefits sharing fee or royalty or both or impose conditions including the sharing of financial benefit arising out of the commercial utilization of such rights. This regulation shall not apply to any person making an application for any right under any law relating to Protection of Plant Varieties enacted by Parliament. Where any right granted to relating to protection of Plant Varieties, the concerned authority granting such right shall endorse a copy of such document granting the right to the NBA.

(6) 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^{ix} after giving prior intimation to the State Biodiversity Board concerned. Provided this regulation shall not apply to the local people and communities of the area, including grower and cultivators of biodiversity, and vaidas and hakims, who have been practicing indigenous medicine.^x

The Central Government may, by Notification in the Official Gazette

establish a Body Corporate by the name of as National Biodiversity Authority (NBA) in order to fulfill the objects of this Act.^{xi} The Head Office of NBA shall be at Chennai and the NBA may, with the previous approval of the Central Government establish offices at other places in India.

Functions and powers of NBA:

Functions and powers of National Biodiversity Authority^{xii} are as follows-

(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 referred to in 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 of its components and equitable sharing of benefits arising out of the utilization of biological resources;

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

(c) Performs 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 right in any country outside India on any biological resource obtained from India or knowledge associated with

such biological resource which is derived from India.

State Government may, by Notification in the Official Gazette, establish a Board for the State for the purpose of this Act to be known as the (Name of the state) Biodiversity Board.^{xiii} There shall be constituted a fund to be called the National Biodiversity Fund (u/sec 27) and State Biodiversity fund (u/sec 32). The accounts of NBA is to be certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and the auditors report to be laid, as soon as may be after they are received, before each House of Parliament. The accounts of State Biodiversity Board is to be also follow the same procedure in consultation with Accountant-General of the State and the report to be laid before the House of State Legislature.

Duties of the Central and the State Governments:^{xiv}

- (1) Central Government to develop National Strategies, plans, etc., for conservation and promotions and sustainable use of biological diversity, including measures for identification and monitoring of areas rich in biological resources, promotion of in situ, and ex situ, conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity.^{xv}

“*ex situ conservation*” means the conservation of components of biological diversity outside their natural habits.

“*in situ conservation*” means the conservation of ecosystem and natural habitats and the maintenance and recovery if viable population 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.

- (2) Where the Central Government has reason to believe that area rich in biological diversity, biological resources and their habitats is being threatened by over use, 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.^{xvi}
- (3) Biodiversity Heritage Sites.^{xvii}

Without prejudice to any other law for the time being in force, the State Government may, from time to time in consultation with the local bodies, notify in the Official Gazette, area of biodiversity importance as **Biodiversity heritage sites**. 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 frame Schemes for compensation or rehabilitating any person or section of people economically affected by such Notification.

- (4) Central Government has the power to notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species from time to time and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitation and preserve those species.^{xviii}
- (5) Designate repositories- The Central Government may in consultation with NBA, designate institutions as repositories for different categories of biological resources. The repositories shall keep in safe custody the biological material including voucher specimens deposited with them.^{xix}

(6) The Central Government may, in consultation with the NBA, by Notification in the Official Gazette, declare that the provisions of this Act shall not apply to any items, including biological resources normally traded as commodities.^{xx}

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 landraces, folk varieties and cultivars, domesticated stocks and breeds of animals and micro organisms and chronicling of knowledge relating to biodiversity.

Offence under this Act shall be cognizable and non-billable.^{xxi} No Court shall take cognizance of any offence under this Act except on a complaint made by

- (a) The Central Government or any authority or officer authority in this behalf by that Government , or
- (b) Any benefit claimer^{xxii} who has given notice of not less than thirty days in the prescribed manner, to the Central Government or the authority or officer authority as aforesaid.^{xxiii}

Any person, aggrieved by any determination of benefit sharing or order of the NBA or State Biodiversity Board (SBB) under this Act, may file an appeal to the High Court within 30 days from the date of communication to him, of the determination or order of the NBA or the SBB, as the case may be.^{xxiv} Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Penalties (sec 55)

(1) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of sec 3 or sec 4 or sec 6 shall be punishable with imprisonment for a term which may extend to 5 years, or with fine which may extend to Ten Lakh rupees and where the damage caused exceed ten Lakh, such fine may commensurate with the damage caused or with both.

(2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of sec 7 or any order made under sub-sec (2) of sec 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.

Conclusion:

For proper and continuity of living beings (Plants and Animals), the biodiversity is very necessary. The balance of biodiversity has been set up by the nature, it has been continuing from lakhs of years. However, the biodiversity is now under dire threat. If it further spoils, the earth becomes like other planet, without living organisms. We are making that position intentionally or unintentionally. Hence it has become necessary and is a time to protect the earth and its biodiversity. Hence, if The Biological/Biodiversity Act, 2002 is implemented properly then we can reach our goal as conservation of biodiversity.

Reference:

- ⁱ Act No. 18 of 2003

ⁱⁱ Sec 2 (b) of Biological Diversity Act, 2002 defined Biological Diversity

Unless the context otherwise requires the Biological Diversity means the variability among living organisms from.

- All sources and
- The ecological complexes
And include diversity
- Within species or
- Between species and of ecosystem living organisms so simply it can be said as different kinds of diversity of ecosystem.

ⁱⁱⁱ Sustainable Use is defined under Sec 2 (o) of Biological Diversity Act, 2002

Unless the context otherwise requires sustainable means 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 further generations.

^{iv} Section 3 of Biological Diversity Act, 2002

^v Sec. 3(2) of Biological Diversity Act, 2002

^{vi} Sec. 4 of Biological Diversity Act, 2002

^{vii} Biological resources is defined under Sec. 2(c) of Biological Diversity Act, 2002

Unless the context otherwise requires 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 includes human genetic material.

^{viii} Sec 6 of Biological Diversity Act, 2002

^{ix} Bio-survey and Bio-utilization is defined under sec 2(d) of Biological Diversity Act, 2002-

Unless the context otherwise requires bio-survey and bio-utilization means

survey or collection of species , sub-species, genes, components and extract of biological resources for any purpose and includes characterization, inventorisation and bioassay.

^x Sec. 7 of Biological Diversity Act, 2002

^{xi} Sec. 8 of Biological Diversity Act, 2002

^{xii} Sec. 18 of Biological Diversity Act, 2002

^{xiii} Sec 22 of Biological Diversity Act, 2002

^{xiv} Chapter IX of Biological Diversity Act, 2002, i.e. Secs. 36 to 40.

^{xv} Section 36(1) of Biological Diversity Act, 2002

^{xvi} Sec. 36(2) of Biological Diversity Act, 2002

^{xvii} Sec. 37 of Biological Diversity Act, 2002

^{xviii} Sec. 38 of Biological Diversity Act, 2002

^{xix} Sec. 39 of Biological Diversity Act, 2002

^{xx} Sec. 40 of Biological Diversity Act, 2002

^{xxi} Sec. 58 of Biological Diversity Act, 2002

^{xxii} Benefit claimers defines under sec 2(a) of Biodiversity Act, 2002

Benefit claimers means unless the context otherwise requires-

- (a) Conservers of biological resources, their by products,
- (b) Holder of knowledge and information relating to the use of such biological resource and,
- (c) Creators of innovations and practices associated with such use and application.

^{xxiii} Sec. 61 of Biodiversity Act, 2002

^{xxiv} Sec. 52 of Biodiversity Act, 2002