



# INTERNATIONAL STAND ON BIODIVERSITY CONSERVATION LAWS AND ITS IMPACT ON PLANT VARIETY PROTECTION WITH SPECIAL REFERENCE TO INDIAN JUDICIAL CLIMATE

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## ABSTRACT

*Biodiversity supports the coexistence of all living organisms across several sources of terrestrial, marine and aquatic ecosystems. It forms the basis for production of several medicinal products, food items and raw materials for trade and commerce. Biodiversity contributes for the all-round development of a nation and adds to the pride of a nation. Duty is cast upon every nation to preserve and nourish its biodiversity, thereby preventing any damage to it. Destruction of biodiversity would ultimately have an adverse effect on the human existence. Any harm caused to global biodiversity would result in environmental degradation and imbalance of ecosystem. The author had divided the study into various heads comprising of Historical background of the biodiversity conservations of the world, international conventions and legislations connected to biodiversity, like the 'Convention on Biodiversity' (CBD), Nagoya protocol, Cartagena protocol. The author evaluates the legal frame work relating to environmental protection in Indian scenario. Case analysis by discussing the land mark judgements passed by the Indian courts relating to biodiversity is being discussed. The paper also discusses about the provisions of 'The Biological Diversity Act, 2002' passed in India. The introduction of the unique 'Traditional Knowledge Digital Library' and its contribution to curb biopiracy in Indian soil and across the globe is enunciated. Case analysis by discussing the land mark judgements passed by the international judicial bodies, honourable Indian courts relating to biodiversity is discussed. The author concludes the study by providing suggestions and recommendations for the lacunas with which the legal frame work suffers.*

**Keywords:** Biodiversity; CBD; Nagoya protocol; Biopiracy; ‘The Biological Diversity Act’, 2002.

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## 1. INTRODUCTION

The term ‘Biodiversity’ includes plants, bacteria, animals and human beings categorised as living things in the earth. Valuable biological resources of the earth are indispensable for the development of human race. Resultantly, biological diversity had become the global asset and the world communities have started conserving and nurturing the same. Threat posed due to natural and several man-made factors had resulted in extinction of certain species thereby causing an imbalance of ecosystem<sup>1</sup>. It could be fascinating to know that the estimated species of flora and fauna in the earth is 8.7 million, however, only 1.2 million of those were identified<sup>2</sup>. These variety of species have exhibited unique traits and help the world to maintain the balance of ecosystem. Some parts of the world like Mexico, United States, few African nations are marked for its richness of biodiversity. ‘Biodiversity hotspots’ refer to areas with extreme high levels of biodiversity and that need to be conserved and preserved. Endangered species and endemic species that need to be preserved and nurtured are also present in these hotspots<sup>3</sup>. All creatures in the earth exist to maintain their ecosystems in their respective habitats. The exploitation of natural resources beyond several other man - made and natural factors have jeopardised the ecosystems. Thus, biodiversity needs to be preserved, protected and conserved. Hence international conventions lay a strong foundation for the sustainable development focusing much on natural resources. India being a land marked for its richness of biodiversity and wealth always faced threats of destruction of it, from various quarters. This necessitated the passing of Convention on Biodiversity (CBD) in India and several legal issues pertaining to it were resolved through courts of law. Other countries across the globe had also legislated on the protection of biodiversity and implemented the terms of conventions in this respect.

## 2. INTERNATIONAL CONVENTIONS AND THE PROTECTION OF BIODIVERSITY

‘The United Nations Environment Programme’ (UNEP), through its meeting with the subject matter experts in the year 1988 explored the necessity to draft a convention relating to biological diversity.<sup>4</sup> Incidentally on May 1989, the ‘Ad Hoc legal’ and technical experts’ session were assembled to prepare the terms for the conservation and sustainable use of natural resources and biodiversity. The careful considerations made by the experts committee had paved the way for the passing of the CBD on 1992.

### 2.1. A NOTE ON CBD:

The CBD was the pioneer legal instrument committed to conservation of biodiversity and sustainable development. The three main objectives of CBD can be summarised as follows:

- Aims to promote the conservation of bio diversity through its appropriate provisions.

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<sup>1</sup> <https://www.cbd.int/history/>, last accessed on 19<sup>th</sup> August, 2023 at 10.38 a.m.

<sup>2</sup> <https://education.nationalgeographic.org/resource/biodiversity/>, last accessed on 20<sup>th</sup> August, 2023 at 01.07 p.m.

<sup>3</sup> *ibid*

<sup>4</sup> <https://www.cbd.int/history/>, last accessed 28<sup>th</sup> August, 2023 at

- Provides for sustainable use of components of biodiversity.
- Utilisation of genetic resources through 'fair and equitable sharing'.

Thus, it could be rightly said that the convention aims at utilising genetic resources and the appropriate transfer through proper funding. The preamble of the convention underlines the rights and liabilities of the contracting parties and reaffirmed that the contracting states are only responsible for sustainable use of their biological resources. It also indicated that the lack of knowledge about biological diversity is felt and it necessitated the need for developing scientific, other technical and institutional facilities regarding the implementation of the measures for biodiversity protection. The convention also focuses on '*in situ*' and '*ex situ*' conservation of natural habitats and ecosystems thereby preventing the extinction of species in their surroundings and in their country of origin for '*ex situ*' measures. Traditional knowledge of the indigenous communities and their practices involved in their dealing with biological resources is to be shared equitably and the sustainable use of resources are one of the key points in the preamble of CBD. Moreover, it stressed that the conservation and sustainable use of biodiversity will in turn strengthen the ties of nations contributing to the peace of the world<sup>5</sup>.

## 2.2. Cartagena Protocol:

The protocol was finalised and adopted in the year 2000 after discussions with other nations. The protocol provides for an environment that apply biotechnology to the maximum benefit of the human health<sup>6</sup>. Protocol also aims in regulating biosafety and a special focus on transboundary movement for organisms created as a result of modern biotechnological uses. Other key features of the protocol are to consider framing appropriate procedures for informed agreement. Other objectives of the protocol are Reaffirming Principle 15 of the Rio Declaration which contains the precautionary approach, understanding the ill effects of unregulated advanced biotechnology on the environment, recognising genetic diversity, considering the developing nations and their constraints on infra structural patterns, trade and environment agreements to be mutually supportive for achievement of sustainable development.

## 2.3. Nagoya Protocol:

The protocol being the supplementary agreement to the CBD was adopted in the year 2010 and came into force on 2014. It provides for a more comprehensive frame work to implement the objectives of CBD by establishing probable conditions to access genetic resources and to ensure for the sharing of benefits<sup>7</sup>. It resultantly contributes to the development of human being through the enhancement of biodiversity. Nagoya Protocol covers in its ambit the traditional knowledge covered under CBD and other benefits out of its utilisation.

Obligations are set out to the contracting parties for taking measures related to genetic resources and matters related to benefit sharing.

The measure that need to be taken are as follows:

- i) Creating certainty on legal aspects, clarity on terms and transparency.
- ii) Providing fair and non-arbitrary rules and procedures
- iii) Framing rules and procedures incorporating 'prior informed consent' and terms agreed by the parties.
- iv) Providing permit during grant of access.

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<sup>5</sup> *ibid*

<sup>6</sup> <https://www.cbd.int/doc/legal/cartagena-protocol-en.pdf>, last accessed 28<sup>th</sup> September, 2023 at 11.10 a.m.

<sup>7</sup> <https://www.cbd.int/abs/about/>, last accessed 25<sup>th</sup> September, 2023 at 01.11 p.m.

- v) Creating conditions for promotion and encouragement of research on biodiversity and its sustainable use.
- vi) Due attention to be paid on the cases that threaten the ecosystem.
- vii) Importance of genetic resources which will in turn contribute to food security need to be focussed on.

Apart from the core measures given in the protocol, it also stresses on benefit sharing that could be monetary, non-monetary by way of royalties and the other like kind with the contracting parties.” Mutually agreed terms” find a mention in the protocol with specific obligations that support its compliance with the legislation of the state. The protocol is a pioneer instrument that provides for traditional knowledge, its access and benefit sharing linked with genetic resources. It follows wide range of mechanisms and tools for the implementation. It also aims at establishing “National focal points, (NFPs)”, Competent National Authorities (CNAs) that serve as contacts points for vital information and other compliance issues. Capacity building for implementing key aspects, which includes appropriate domestic legislation for implementing the protocol, developing research institutions for awareness, technology transfer offering financial support for developmental activities indicated in the protocol

#### **2.4. U.N. Biodiversity Conference:**

Countries across the globe had met on December, 2022 and consented for new set of goals to end nature losses<sup>8</sup>. Global biodiversity framework addressing the factors for nature loss is the need of the hour to secure the health of the planet earth. The conference raised the below mentioned ideas for the sustainable development of earth.

- i. Implementing biodiversity by utilising the resources and adopting a comprehensive framework.
- ii. Addressing the hazards caused due to pollution, fragmentation and agricultural practices that are unsustainable in character.
- iii. Providing plans to safe guard the rights of indigenous communities who are considered as the protectors of nature.
- iv. Arranging finance and funds for promoting biodiversity<sup>9</sup>.

Apart from these conventions there are other supportive instruments which provide for the conservation of wild life, birds, world cultural and natural heritage.

### **3. INDIAN LEGISLATIVE FRAME WORK – ‘THE BIOLOGICAL DIVERSITY ACT, 2002’:**

India being a signatory of the Convention of Biological Diversity, had felt a vacuum for laws relating to conservation of biological diversity. Hence, The Biological Diversity Act, hereinafter referred to as the Act was enacted in the year 2002.<sup>10</sup> India ranks among the top mega diverse countries in the world. Statistics also reveal that India accounts for 7 to 8 percentage of the recorded species of the world.<sup>11</sup> India records for 91,200 species of animals and 45,500 for plants and it was documented in ten biographic regions across the country. The richness of Indian biodiversity necessitated the enactment of the Act. Biopiracy issues went unnoticed and unprotected with no proper legislation to protect natural resources. Thus, the Act was passed to uphold the aim and objectives of The CBD, 1992.

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<sup>8</sup> <https://www.unep.org/un-biodiversity-conference-cop-15>, last accessed 26<sup>th</sup> September, 2023 at 03.30pm

<sup>9</sup> *ibid*

<sup>10</sup> <http://nbaindia.org/uploaded/docs/biological-diversityact-ii.pdf>, last accessed 27<sup>th</sup> September, 2023 at 12.42 p.m.

<sup>11</sup> <https://www.cbd.int/countries/profile/?country=in>, last accessed 27<sup>th</sup> September, 2023 at 02.48 p.m.

### 3.1. Scope and Ambit of the Act:

The Act consists of 12 chapters and sixty-five sections. Chapter one deals with the preliminary concepts and operational definitions. Other chapters of the Act discuss about the provisions related to regulation of access to biological diversity<sup>12</sup>. It emphasises on certain safety measures where people are not supposed to carry out biodiversity related activities without the approval of The National Biodiversity. Further, the results of the research carried out is not to be transferred to the persons who does not obtain the approval of The National Biodiversity. The ambit of Sec. 3 and 4 of the Act does not extend to certain collaborative projects. If the bioresources need to be utilised for commercial purposes by any Indian citizen or a body corporate, the concerned parties are obligated to make a prior intimation to State Biodiversity Board. Chapter III and IV of the Act discusses about the establishment of National Biodiversity Authority and the corresponding functions and powers respectively. Appropriate provisions of the Act deal about the approval to be obtained from the National Biodiversity for transfer of biological resources and other associated knowledge. Chapter VI of the Act provides for the establishment of State Biodiversity Board. Other provisions relating to the finance, accounts and audit of the National and State biodiversity board is provided in appropriate chapters. The Act also recommends the central government for the development of strategic plan for conservation and sustainable use of the bio resources. Protection of unique heritage sites by the State government to protect the biodiversity areas. The Act also aims in protecting and conserving biological diversity, to control the utilisation of resources and for maintaining equality over distribution of resources and the associated benefits<sup>13</sup>. The underlying objectives behind the Act is safe guarding traditional knowledge, preventing biopiracy, intervention of the government while granting patents to the public. Chapter IX of the Act through Sections 36, 37 and 38 aims for conservation of biological diversity. There are provisions for the constitution of local biodiversity fund for conservation and preservation of biodiversity within the areas of local jurisdiction provided the usage is consistent with biodiversity conservation.<sup>14</sup> Aggrieved persons from the order of authority or the state biodiversity board may appeal to the National green tribunal as laid down under the Act.<sup>15</sup>

### 3.2. OFFENCES AND PENALTIES UNDER THE ACT:

Sec. 55 of the Act provides for the penalties imposed on anybody who contravenes Sec.3 and 4 of the Act. The imprisonment extends to five years and a fine up to ten lakh rupees, if the damage caused by the offender exceeds ten lakh rupees, then the equivalent amount shall be fined in addition with the fine. Other acts amounting to contravention of Sec. 7 and Sec. 24(2) shall attract imprisonment extending up to three years or fine extending up to rupees five lakhs or with both. Other acts amounting to contravention of directions or orders of the central, state or the state biodiversity for which there is no punishment prescribed attracts a fine extending to one lakh rupees, in case of second or subsequent offences a fine of rupees two lakhs. Continuous contravention imposes additional fine of rupees two lakhs every day during the continuance of default<sup>16</sup>. The offences under this Act are made cognisable and non bailable.<sup>17</sup>

<sup>12</sup> <http://nbaindia.org/uploaded/docs/biological-diversityact-ii.pdf>, last accessed 29<sup>th</sup> September, 2023 at 01.30 p.m.

<sup>13</sup> <https://blog.ipleaders.in/overview-biological-diversity-act-2002/>, last accessed 27<sup>th</sup> September at 11.30 p.m.

<sup>14</sup> Sec. 42 to 44 of Biological Diversity Act, 2002.

Sec.42. Grants to Local Biodiversity Fund.—The State Government may, after due appropriation made by State Legislature by law in this behalf, pay to the Local Biodiversity Funds by way of grants or loans such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

<sup>15</sup> Sec. 52A of Biological Diversity Act, 2002.

<sup>16</sup> Sec. 56, *id.*

<sup>17</sup> Sec. 58 *id.*

### 3.3. STRATEGIC PLANS TAKEN FOR BIODIVERSITY CONSERVATION:

The Central government of India apart from developing strategies, plans and conducting programmes for development and monitoring areas rich in biodiversity, promotes ‘*in situ*’<sup>18</sup> and ‘*ex situ*’<sup>19</sup> conservation. The government also encourages the public to carry out research activities relating to biodiversity, training and awareness programs for biodiversity conservations across the country. The central government is vested with powers to issue directions on the State governments and take ameliorative measures on the preservation of biological diversity sites which are threatened due to over exploitation and neglect. The central government also integrates the conservation, promotion and sustainable use of bio diversity into policies, programmes, sectoral plans. Undertaking measures for assessment of environmental impact of projects that could cause adverse effect on biological diversity, to take up plans that reduce the impact, providing public participation for such assessment and to regulate the affairs related to risk management of living organisms with usage of biotechnology in it. Adequate steps are being taken to protect the traditional knowledge of local people which requires registration of the knowledge at local, state and national levels and measures including *sue generis* system.<sup>20</sup>

### 3.4. NATIONAL BIODIVERSITY AUTHORITY UNDER THE ACT, 2002:

National Biodiversity Authority is a body corporate, having perpetual succession and a common seal. It consists of one chairperson and fifteen other members from various ministries and departments who are experts. It regulates the activities referred to in Section 3, 4 and 6 of the Act, 2002 by issuing guidelines for access and fair and equitable sharing of biological resources, the authority thereby allotting specific functions and powers on the authority<sup>21</sup>. The authority advises the Central Government on matters relating to conservation of biodiversity, sustainable use<sup>22</sup> of its components and equitable sharing of benefits arising out of the use of biological resources; advises the state government in selection of areas of importance for biodiversity and sites to be notified as heritage sites and the management of the same; performing such other functions prescribed under the Act. The authority has powers to oppose the grant of intellectual property rights outside India on biological resource obtained from India or any associated knowledge with biological resource derived from India<sup>23</sup>.

<sup>18</sup> Explanation to Section 36, The Biological Diversity Act, 2002 “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.

<sup>19</sup> Explanation to Section 36, The Biological Diversity Act, 2002, “ex situ conservation” means the conservation of components of biological diversity outside their natural habitats;

<sup>20</sup> S.36. (5) The Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity 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. Explanation.—For the purposes of this section,—

<sup>21</sup> Dr. V.K.Ahuja, “*Law relating to Intellectual Property Rights*”, 2022, LexisNexis, ISBN978-81-3125-165-2, p. 677.

<sup>22</sup> Sec. 2(o), The Biological Diversity Act, 2002 , “sustainable use” 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 future generations;

<sup>23</sup> Section.18, The Biological Diversity Act, 2002.



#### 4. TRADITIONAL KNOWLEDGE AND ITS PROTECTION IN INDIA:

Traditional knowledge, is considered to be a part of cultural traditions of indigenous communities. They are inextricably linked with their cultural values, spiritual beliefs and customs so that they have become a part of identity of these people. They are branded as traditional knowledge since they are traditional to the extent that its creation and usages form part of cultural traditions of community. The term traditional associated with it does not necessarily mean that it is ancient or static.<sup>24</sup> These are not confined to any particular field or activity but they are owned by a particular community and are within the exclusive knowledge of these communities and limited to these members alone.<sup>25</sup> Adequate measures are taken by the government through various practices to curb practices relating to biopiracy. The Act, 2002 provides for certain exemptions. They are categorised as follows. Exemptions are provided to

- i) inhabitants of the area and community for free access towards usage of bio resources within the country of India.
- ii) Growers and cultivators of biodiversity, 'Vaidas' and 'Hakims' for use of biological resources.
- iii) Normally traded commodities through notification under the purview of the Act.
- iv) Collaborative research activities sponsored through government or other approved institutions.<sup>26</sup>

The Act apart from providing exemptions for preserving indigenous community and their traditional knowledge, provides for granting permissions to commercial utilisation of bioresources. Prior intimation to state biodiversity board need to be given if any Indian citizen or a body corporate or organisation registered in India need to commercially utilise biological resource.<sup>27</sup> More particularly, this provision is not applicable to 'vaidas' and 'hakims' who practice indigenous medicines and local people who grow and cultivate in their native areas.

##### 4.1. PROTECTING TRADITIONAL KNOWLEDGE THROUGH TRADITIONAL KNOWLEDGE DIGITAL LIBRARY (TKDL):

The TKDL is a database with thirty-four million pages of databases providing information relating to 2,260,000 medicinal and therapeutic formulations in multiple languages.<sup>28</sup> The TKDL acts as potent tool that aids the patent examiners in conducting a prior art search. It is unique repository which contains Indian medical texts and contents relating to native medicine. The legal encounters relating to patents, which India faced could not have ended up successfully without the TKDL. Dr.R.K.Gupta<sup>29</sup>, is rightly called as the "author and architect" of India's TKDL acclaims that this TKDL plays a very major role in protecting Indian traditional knowledge.

<sup>24</sup> Dr. V.K.Ahuja, "Law relating to Intellectual Property Rights", 2022, LexisNexis, ISBN978-81-3125-165-2, p. 664.

<sup>25</sup> Daniel Gervais, "Traditional Knowledge & Intellectual Property: A Trips Compatible Approach, MICHIGAN STATE LAW REVIEW (Spring 2005), pp. 140-141.

<sup>26</sup> <https://megbiodiversity.nic.in/sites/default/files/biological-act-nutshell.pdf>, last accessed 22<sup>nd</sup> October, 2023 at 02.00 pm,

<sup>27</sup> <http://nbaindia.org/uploaded/docs/bulletin11-salientfeatures.pdf>, last accessed 22<sup>nd</sup> October, 2023 at 02.31 pm,

<sup>28</sup> [https://www.wipo.int/export/sites/www/meetings/en/2011/wipo\\_tkdl\\_del\\_11/pdf/tkdl\\_gupta.pdf](https://www.wipo.int/export/sites/www/meetings/en/2011/wipo_tkdl_del_11/pdf/tkdl_gupta.pdf), last accessed 25<sup>th</sup> October, 2023 at 11.18 p.m.

<sup>29</sup> Dr. V.K Gupta is Senior Advisor & Director of TKDL at the Indian Council of Scientific and Industrial Research (CSIR),

To sum up TKDL established in the year 2001, is a collaborative project between the Council of Scientific and Industrial Research (CSIR) and AYUSH department which ensures world patent offices refrain from granting patents for applications involving Indian traditional knowledge. The works have been translated to other foreign languages like Japanese, French, Spanish, German and English. The TKDL Access agreement that had been signed by the patent offices will have access to the TKDL and a non-disclosure mechanism that helps in safeguarding Indian interests and avoids mis use of the medicinal texts and practices. The usage of the TKDL shall be only for purposes of ‘search and examination’ and it permits revelation to third parties only for citation purposes. India has been the signatory of TKDL Access Agreements with European, German, The United Kingdom, U.S. and the Canadian Patent offices. They are negotiating with other nations too for the access agreements. The TKDL has resulted in successful opposition of patent applications through the submission of Third-Party Oppositions. Thus it could be rightly said that the TKDL acts as a watch dog for regulation of patents for Indian medical systems. As the protection of the traditional knowledge is intrinsic to the preservation of cultural and social value of a nation, a nation like India, need to pay more observance to measures to protect traditional knowledge.

## **5. SCOPE OF ‘ENVIRONMENTAL PROTECTION ACT, 1986’**

The Act was enacted for safe guarding the environment from degradation. Various authorities are being established to monitor all activities relating to environment and tackle the issues revolving around it. The object behind the Act is multi fold and are as follows

- i) To implement decisions passed at the UN conference on human environment
- ii) Establishing authority for protection through governmental agencies.
- iii) Coordination of various activities done under the current legislative set up.
- iv) Enacting potent laws to protect environment effectively.
- v) Providing Stringent punishments for perpetrators of crime involving environmental issues.
- vi) Incorporating sustainable development as a primary goal of the Act which aims at protection of life under Art.21 of Indian Constitution.

## **6. ESTABLISHMENT OF ‘NATIONAL GREEN TRIBUNAL ACT’ :**

The NGT Act was established in the year 2010 vide Art.21 of Indian Constitution. The tribunal is quasi-judicial body to try cases involving environmental issues, forest conservation, awarding of damages for the loss and other connected matters. It covers ‘The Water ( Prevention and Control of Pollution) Act, 1947, ‘The Forest (Conservation) Act, 1980, ‘The Air (Prevention and Control of Pollution) Act, 1981, ‘The Environment (Protection Act’, ‘The Public Liability Insurance Act, 1991’ and ‘The Biological Diversity Act, 2002’. The tribunal consists of judges, environmental experts in its panel to decide cases brought before it.

## **7. PLANT VARIETY PROTECTION AND THE RIGHTS:**

India had adopted a *sui generis* type of legislation on plant variety protection rights and the flora of a nation forms an essential part of biodiversity. A composite variety of plant species and other connected creatures contribute to the wealth of biodiversity of a nation. ‘The Protection of Plant Variety and Farmer’s Rights Act, 2001’ legislated in India grants the IP rights for farmers and breeders. It even has provisions relating to benefit sharing among the cultivators. Thus, it could be rightly said that the Plant variety protection laws are an allied support for biodiversity conservation.



## 8. JUDICIAL PRONOUNCEMENTS ON BIODIVERSITY AND ENVIRONMENTAL ISSUES

### 8.1. Novartis case

In a landmark case, Novartis Vs. Union of India and others<sup>30</sup> decided by the Hon'ble Supreme court of India, dealt with the patenting a medication that was produced from an Indian plant for the treatment of cancer. The Appellant, Novartis contended that the innovation involving the substance was novel and unique. Whereas, the respondents, Government of India argued that traditional Indian medication was involved, hence it is completely ineligible for Biodiversity patent protection. The Hon'ble Apex court confirmed the lower court's decision, refusing to grant patent for the medicine by emphasising that there is no 'legitimate innovation'. Thus, this case had remained as a precedent, that refrains other pharmaceutical companies from seeking patent protection for traditional medicines. There were other criticisms on this judgement, that these kinds of restrictions deter foreign investments and could hinder growth of the nation.

### 8.2. Basmati case

The most sensational India-U.S. Basmati rice dispute<sup>31</sup>, was adjudicated and during late 1997, an American company by name "Rice Tec Inc" was issued a patent protection by the US patent office. This was vehemently opposed and protested by India as the rice variety was traditionally grown in Indian soil. Furthermore, it was contended that granting patent protection to "Rice Tec" violated the provisions of Geographical Indications Act. "Rice Tec's" usage of the word 'Basmati' for a product derived from Indian rice and not grown in India would likely to lead to deception in the minds of the consumers and a violation of Geographical Indications (GI).<sup>32</sup>

### 8.3. GI status of Basmati Rice

The Hon'ble Delhi High Court in this case<sup>33</sup> had accepted the GI status of Basmati rice and this case had reiterated the value and importance of traditional knowledge and the commercial exploitation of the resources on the other hand.

### 8.4. Environment Support Group case

Sec. 40 of the Bio Diversity Act<sup>34</sup> was in question in this case and was appealed to declare it unconstitutional. The concern raised here was that it would cause serious prejudice and jeopardize the national interest. The public agricultural universities were alleged to have been involving in the act of criminal biopiracy of some local varieties especially eggplant. This is rightly referred to as "First Indian biopiracy case"<sup>35</sup>. The petitioners in this case suitably argued that Sec.40 of the Act allows for an unfettered and arbitrary trade of biological wealth.

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<sup>30</sup> [2013] 13 S.C.R. 148,

<sup>31</sup> India – US Basmati Rice dispute, Patent No. US 5663484 A.

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[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1143209#:~:text=Abstract,%22%2C%20India%20objected%20to%20it.,last%20accessed%2027%20October%202023%20at%2009%2050%20pm.](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1143209#:~:text=Abstract,%22%2C%20India%20objected%20to%20it.,last%20accessed%2027%20October%202023%20at%2009%2050%20pm.)

<sup>33</sup> Basmati Rice Export Development Foundation v. Krishi Utpadan Mandi Samiti (2005)

<sup>34</sup> Sec. 40. Power of Central Government to exempt certain biological resources.— Notwithstanding anything contained in this Act, the Central Government may, in consultation with the National Biodiversity Authority, 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.

<sup>35</sup> <https://www.downtoearth.org.in/news/karnataka-high-court-issues-notice-to-national-biodiversity-authority-on-charges-of-paving-way-for-biopiracy-39645>, last accessed 28<sup>th</sup> October, 2023 at 12.11 am.

The petitions were however dismissed, but the concern relating to misuse of Sec.40 remains unaddressed. The Supreme Court of India, in November, 2022 however has ordered the Karnataka High Court to decide the public interest litigation it had sent to the National Green Tribunal in the year 2013. Six varieties of indigenous brinjal seeds were illegally accessed and the seeds of Bt Brinjal<sup>36</sup> was developed here. Honourable Judges of the Supreme Court of India allowed the appeal. It was finally ordered that the High Court to try the petition based on merits.

### 8.5. Pradeep Krishen Vs. Union of India case<sup>37</sup>:

The collection of tendu leaves from nearby biological parks and sanctuaries were involved in this case. Sec.18,<sup>38</sup> 35<sup>39</sup> of the Wild Life (Protection) Act, 1972 were involved. A Public interest litigation under Article. 32 of the Indian Constitution was filed challenging the legality and constitutionality of an order passed by the Madhya Pradesh , department of Forest dated March 28, 1995 which permitted collection of tendu leaves from sanctuaries and national parks. Hence the

Honourable court ordered for the immediate action under Chapter IV of the Act and institute an inquiry. Article 48 A and Article 51 A of the Constitution of India enunciating on the policies and the fundamental duties were also discussed.

8.6. In ‘Pramod Kumar Tyagi Vs. Art of Living International Centre Ors’<sup>40</sup>, the NGT had permitted the respondent to conduct the event in Yamuna flood plains after imposing a fine of Rs. Five crore on the respondent. It had also ruled that the respondents shall undertake remedial actions for restoring the area back to its original position.

### 8.7. ‘Narmada Bachao Andolan Vs. Union of India & others’<sup>41</sup>

An NGO had filed a writ petition against the construction of Sardar Sarovar dam as the project had severe environmental implications. S.C. passed an order to continue with the project after observing certain measures.

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<sup>36</sup> Bt brinjal is the first genetically engineered food crop created specifically for smallholder farmers in a developing nation, and the first genetically engineered food crop adopted for cultivation in Bangladesh. It is a sustainable, environmentally-friendly crop that significantly reduces pesticide use and improves the livelihoods and lives of the smallholder farmers who grow it., [https://agrilinks.org/sites/default/files/faq\\_btbrinjal.pdf](https://agrilinks.org/sites/default/files/faq_btbrinjal.pdf), last accessed 30<sup>th</sup> October, 2023 at 02.57 pm.

<sup>37</sup> <https://indiankanoon.org/doc/1064549/#:~:text=The%20historical%20background%20provided%20by,minor%20forest%20produce%2C%20such%20as%2C>, last accessed 30<sup>th</sup> October, 2023 at 04.08 p.m.

<sup>38</sup> 18. Declaration of sanctuary.—1[

(1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.]

(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area. Explanation.—For the purposes of this section it shall be sufficient to describe the area by roads, rivers, ridges or other well-known or readily intelligible boundaries.

<sup>39</sup> “weapon” includes ammunition, bows and arrows, explosives, firearms, hooks, knives, nets, poison, snares and traps and any instrument or apparatus capable of anaesthetizing, decoying, destroying, injuring or killing an animal; 27[(36) “wild animal” means any animal specified in Schedules I to IV and found wild in nature;] 28[(37) “wild life” includes any animal, aquatic or land vegetation which forms part of any habitat;]

<sup>40</sup> NGT, Dec 7, 2017, <https://www.casemine.com/judgement/in/5c060adfb338d16e11efe5f6>, last accessed 17<sup>th</sup> Jan, 2024

1) <sup>41</sup> ‘AIR 2000 SC 3751

### 8.8. UCC Vs. UOI<sup>42</sup>

The disastrous event that shook the whole world due to poisonous gas leak had claimed several thousands of lives. The case was decided by the Indian courts and the principle of absolute liability was involved. After much chaos the SC had directed the UCC to pay 470 million US dollars as compensation for the disaster.

### 9. LOOPHOLES OF THE ACT:

There are several lacunae with which the 'The Biological Diversity Act, 2002' and 'The Environment Protection Act, 1986' suffers from.

- i. Strong penal actions are not being incorporated in both the legislations, that could be evident from the reduced reporting of cases and low conviction rates.
- ii. The NGT Act lacks judicial independence and the funding it receive is scarce which adds to the huge pendency of cases.
- iii. The 'Environment Protection Act' does not contain potent implementation mechanisms and lacks public awareness.
- iv. Due to the technicalities involved in the litigation, it becomes highly expensive on the complainants to prove the case and get a remedy.
- v. The 'Environmental Protection Act' does not accept the 'polluter pay principle' in its fullest spirits.
- vi. The 'The Biological Diversity Act, 2002' lacks harmonising itself with other legislations passed for the protection of natural resources.
- vii. The provisions of the 'The Biological Diversity Act, 2002' is not potent enough to curb practices of commercial exploitation of biological resources.
- viii. The ultimate aim behind passing 'The Biological Diversity Act, 2002' is to prevent biopiracy by the developed nations and the protection of biodiversity on the other hand, but the provisions of this Act has certain loopholes as discussed earlier that exploit the biological resources of the nation.
- ix. It does not lay down guidelines for assignment of non-monopoly rights and the assessment of contributions made by local communities, individual inventions and firms are not duly addressed.
- x. The underlying concept of uniting the nation and the community especially the indigenous community remains less effective.
- xi. The immediate right holders are not given proper legal backing to protect their rights efficiently.
- xii. People's Biodiversity register remains an empty document without proper sanctity with respect to the information pertaining to benefit sharing recorded in it.

### 9.1. RECOMMENDATIONS FOR BETTER IMPLEMENTATION OF THE ACT:

- i. Incorporating appropriate provisions in the Act like formation of special committees and ad hoc ones for record maintenance of permissible acts and to report the offences under the Act.
- ii. To monitor and coordinate the activities of other departments relating to protection of natural resources i.e. to work in a harmonious manner with other legislations.

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2) <sup>42</sup> AIR 1990 273

- iii. Introduction of provisions that aid in communication of affairs of local bodies to the biodiversity management committee.
- iv. The provisions relating to the usage and regulation of genetic resources in the Act is to be legislated<sup>43</sup>.
- v. Continuous monitoring of the bio sensitive areas and declaring them as sanctuaries, national parks is to be done. Organising awareness camps and programs to enlighten the rights of the local people.

## 10. CONCLUSION

The world has witnessed several technological advancements in almost all the fields. However, biological resources are considered as a most precious wealth of a nation. Huge concerns still remain on the developing nations for the conservation and preservation of biodiversity. Studies reveal that there was a steep 7.8% increase in threatened species in the year 2014-2017<sup>44</sup>. The exploitation could be prevented only by broadening the definition of biological resources and devising a potent tool for implementing the Act. Reports from concerned authority also reveal that the biodiversity resources are underutilised and this result in huge loss. Hence, nations across the globe should continue to take sincere efforts in harmonising the commercial exploitation of resources through grant of intellectual property and the preservation of rights of indigenous people and protection of traditional knowledge. The author indicates that the absence of a specific law regulating the use of bio resources would result in chaos and conflict of interests among the local inhabitants in accessing the bioresources. There should be a close interdependence between the legislations that deal with the protection of biodiversity and environmental protection to witness better implementation of the legislation. Thus conjoint efforts by all the stake holders and the government is needed for the restoration and preservation of bio resources.

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<sup>43</sup> <https://blog.ipleaders.in/overview-biological-diversity-act-2002/>, last accessed 31<sup>st</sup> October, 2023 at 11.55 am.

<sup>44</sup> *ibid*