



**Biodiversity** refers to the varieties of life on earth (wild and domestic, plant and animal including Human and micro-organisms. India is one of the 12-mega biodiversity countries of the world. **India is signatory to Convention on Biological Diversity (CBD)** whose aim is that local communities generate biodiversity, are dependent on it and should continue to benefit from it.

**Three goals of CBD:** 1. Conservation of biodiversity; 2. Sustainable use; 3. Equitable sharing of benefits

**Bio-piracy** is the illegal misuse of life and Traditional Cultural Knowledge that accompanies it. **Bio-prospecting** is search for biological resources and indigenous knowledge for commercial exploitation.

### ***Know the Biological Diversity Act (2002) and the Rules (2004)***

- *The Government of India enacted the Biological Diversity Act in 2002 and notified the Biological Diversity Rules in 2004. The Biological Diversity Act has 12 Chapters and 65 Sections and was published on 5 February, 2003. The Biodiversity Rules were notified on 15 April, 2004.*
- *The Act is implemented at national, State and local levels, through a decentralized three tier system. At the National level, the National Biodiversity Authority (NBA) was established by Government of India under Section 8 of the Act. The NBA is an autonomous and statutory body performing enabling / facilitative, regulatory and advisory role to relevant agencies and Ministries of Government of India on issues of conservation of biodiversity, its sustainable use and ensuring fair and equitable sharing of benefits arising out of such use. The NBA operates through consultative process involving expert committees and stakeholders.*
- *At State level, State Biodiversity Boards (SBBs) are established by the State Governments as per Section 22 of the Act, while at local level the Biodiversity Management Committees (BMCs) are constituted by the Local Bodies as per Section 41 of the Act.*

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Department of Forest, Environment and Wildlife Management, Government of Sikkim  
Forest Secretariat Building, Deorali 737102, Gangtok, Sikkim, Email: sbbsikkim@gmail.com



## ***Salient features of Biological Diversity Act, 2002***

*After an extensive and intensive consultation process involving the stakeholders, the Government of India has brought the BD Act, 2002*

- *To regulate access to biological resources of the country.*
- *To conserve and sustainable use of biological diversity.*
- *Setting up of NBA, SBB and BMCs.*
- *NBA and SBB are required to consult BMCs in decision making related to bio-resources / related knowledge within their jurisdiction.*
- *To respect and protect knowledge of local communities traditional knowledge related to biodiversity.*
- *To secure sharing of benefits with local people as conservers and knowledge holders of biological resources.*
- *All foreign nationals / organizations require prior approval of NBA for obtaining biological resources and / or associated knowledge for use.*
- *Indian scientists / individuals require approval of NBA for transferring results of research to foreign nationals / organizations.*
- *To conserve and develop areas of importance by declaring them as biological heritage sites.*
- *Protection and rehabilitation of threatened species.*
- *Involvement of institutions of State Government in the implementation of the BD Act through constitution of committees*
- *Protect India's rich biodiversity and associated knowledge against their use by foreign individuals or organizations without sharing benefits arising out of such use and check bio-piracy.*
- *Indian industry needs prior intimation to SBB to obtain bio-resource. SBB has right to restrict if found to violate conservation and sustainable use and benefit sharing.*
- *Provisions for notifying heritage sites by State Government in consultation with local body.*
- *Creation of National, State and Local Biodiversity Fund and its for conservation of biodiversity.*
- *Prior approval is needed from NBA for IPRs in any invention in India or outside India on bio-resources.*

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## ***Salient features of Biological Diversity Rules, 2004***

*To implement the Biological Diversity Act 2002, Rules have been notified in 2004. The salient features of BD Rules 2004 are:*

- *Procedures for appointment of Chairperson and Members of the Authority, conduct of authority meetings, and general functions of the authority are described in the Rules 3-8, 10 and 12 respectively.*
- *The process to regulate activities for access to biological resources and associated traditional knowledge in accordance with the Sections 3 (Access to Biological Resources), 4 (Transfer of Research Results) and 6 (Seeking 'No objection Certificate' for obtaining patent) under the Biological Diversity Act, 2002, are given in Rule 14, 17 and 18 respectively.*
- *The Procedure to revoke written agreements, action in prohibiting access and recovery of damages (Rule 15)*
- *Restricting access of endangered, endemic and rare species, restricting access incase of adverse environmental impact, genetic erosion, ecosystem function and purposes contrary to national interest as well as international agreements (Rule 16)*
- *Imposing terms and conditions for ensuring equitable sharing of benefits on access, transfer of results of research, application for patent / IPR claims (Rule 20)*
- *Constitution of Biodiversity Management Committee (BMC) and Preparation, maintenance and validation of People's Biodiversity Register (PBR) in consultation with the local people should be done as per Rules 22(2) and 22(6) respectively .*
- *Appeal for settlement of disputes between NBA and SBB or between SBBs are dealt under Rules 23.*

*The Rules also have prescribed formats viz, Form-I (Access to Biological resources and associated traditional knowledge), Form-II (Transfer of Research results), Form-III (Seeking 'No objection Certificate' for obtaining patent) and Form-IV (Seeking approval for Third Party Transfer)*

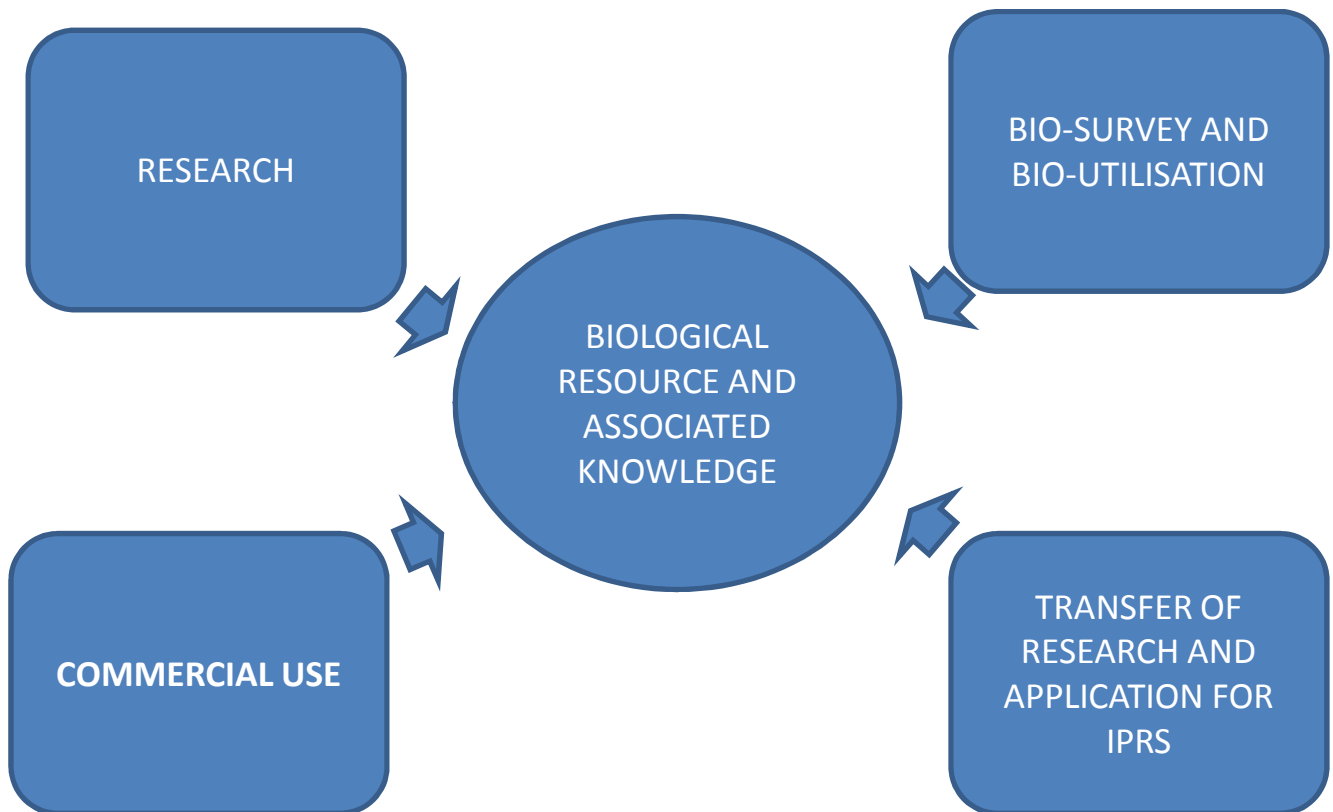
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## What is covered by Biological Diversity Act?

*The Act covers 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-utilisation. It provides a framework for access to biological resources and sharing the benefits arising out of such access and use. The Act also includes in its ambit the transfer of research results and application for intellectual property rights (IPRs) relating to Indian biological resources.*



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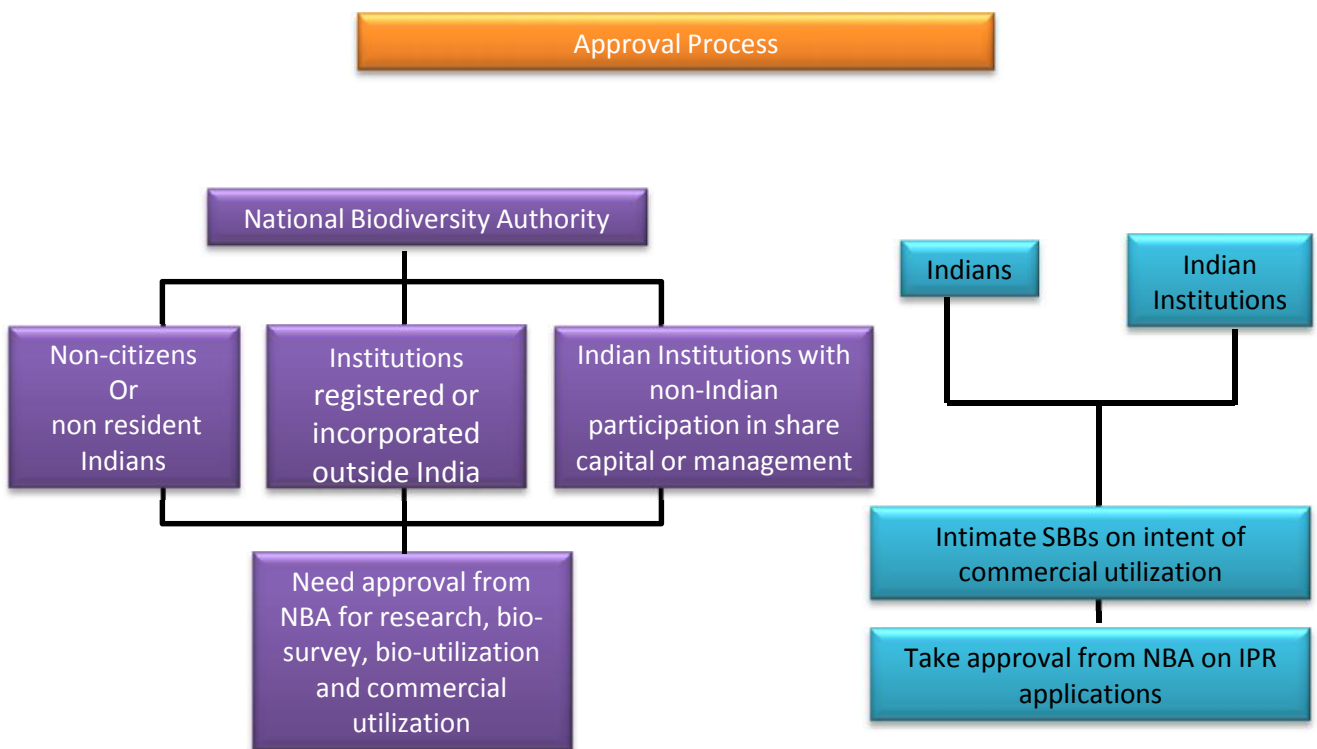
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## Who is covered by the Biological Diversity Act and what do they require?

*The Act covers foreigners, non-resident Indians, body corporate, association or organization that is either not incorporated in India or incorporated in India with non-Indian participation in its share capital or management. These individuals or entities require the approval of the National Biodiversity Authority when they access/ use biological resources and associated knowledge occurring in India for commercial or research purposes or for the purposes of bio-survey or bio-utilisation (Section 3).*

*Indians and Indian institutions do not require the approval of the National Biodiversity Authority when they engage in the above mentioned activities. However they would need to inform the State Biodiversity Boards prior to undertaking any research with the intent of commercialisation (Section 7). Any application for IPR based on biological resources should be approved by NBA.*



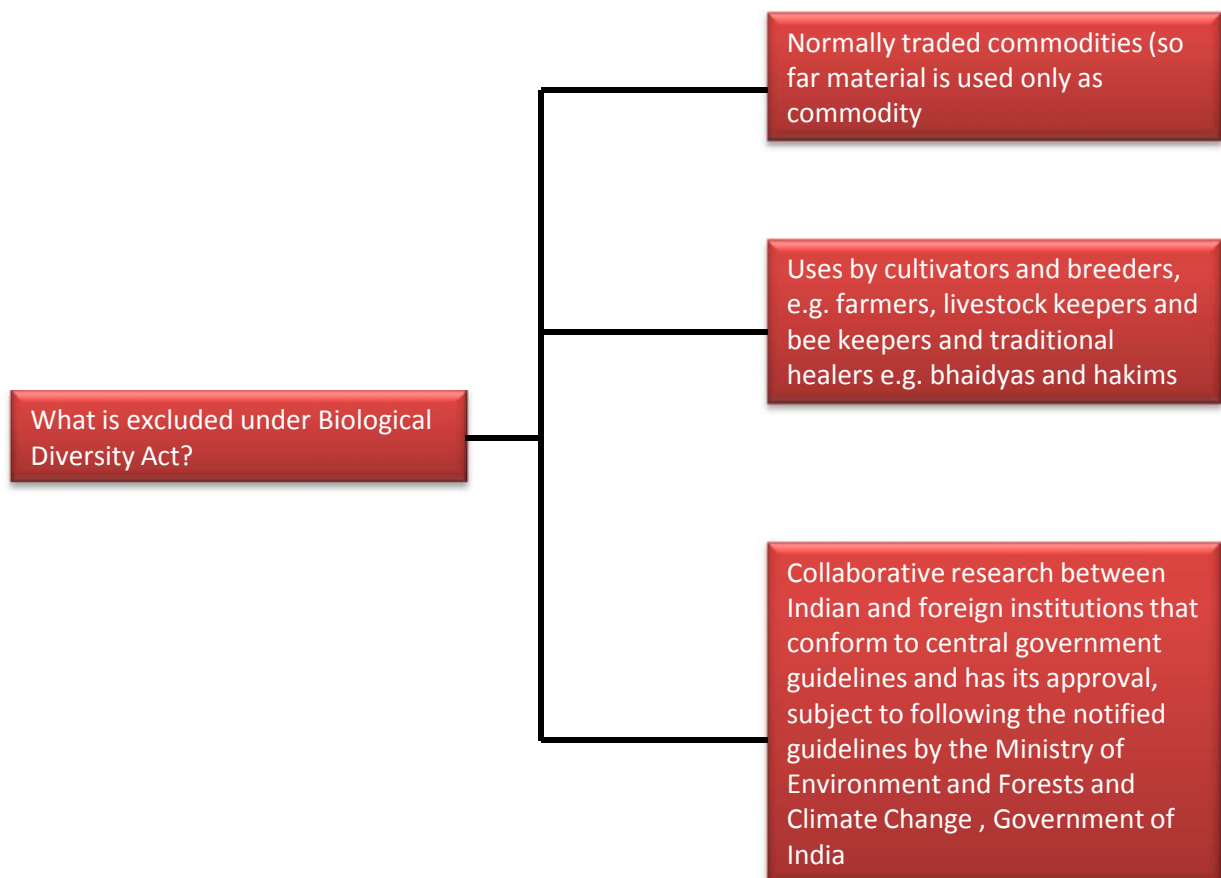
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Forest Secretariat Building, Deorali 737102, Gangtok, Sikkim, Email: sbbsikkim@gmail.com



## Who and what is excluded by the Biological Diversity Act?

*The Act excludes Indian biological resources that are normally traded as commodities. Such exemption holds only so far the biological resources are used as commodities and for no other purpose. The Act also excludes traditional uses of Indian biological resources and associated knowledge and when they are used in collaborative research projects between Indian and foreign institutions with the approval of the central government.*



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## **State Biodiversity Board (SBB)**

*The SBBs are established by the State Governments by official gazette notification in accordance with Section 22 of the Act. The Board will have a Chairperson, five ex officio members representing the concerned departments and five members appointed from experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources.*

### **The functions of SBBs**

*Advising the State Governments, subject to guidelines issued by the Central Government, on matters relating to conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of utilization of biological resources.*

*Regulating by granting approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians.*

*Performing such other functions as necessary to carry out the provisions of this Act or as prescribed by the State Government.*

### **What is the State Biodiversity Board required to do when it receives an application for approval to use Indian biological resources and associated knowledge?**

*The State Biodiversity Board in consultation with the concerned local bodies and after making enquiries and hearing to the applicants may prohibit or restrict the use of biological resources and associated knowledge if it finds such activity detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity.*

### **What are the consequences of lack of compliance with the Biological Diversity Act?**

*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 both.*

*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.*

*Any offence under the Act is cognizable and non bailable.*

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## ***Biodiversity Management Committees (BMCs)***

*According to Section 41 of the Act, every local body shall constitute the BMC 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 microorganisms and chronicling of knowledge relating to biological diversity.*

### ***The functions of BMCs***

- *Preparing, maintaining and validating People's Biodiversity Register (PBR) in consultation with the local people.*
- *Maintaining a Register giving information about the details of access to biological resources and traditional knowledge granted, details of the collection fee imposed and details of the benefits derived and the mode of their sharing.*
- *Advising on any matter referred to it by the State Biodiversity Board or Authority for granting approval, to maintain data about the local bhaidyas and practitioners using the biological resources.*



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## ***People's Biodiversity Registers (PBRs)***

*The main function of the BMC is to prepare People's Biodiversity Register in consultation with local people. The Register shall contain comprehensive information on the availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them.*

*The PBRs focus on participatory documentation of local biodiversity, traditional knowledge and practices. They are seen as key legal documents in ascertaining the rights of local people over the biological resources and associated traditional knowledge.*

*National Biodiversity Authority has issued guidelines on PBRs in 2009.*

### ***Step - wise PBR Preparation Process***

- *Formation of Biodiversity Management Committee (BMC)*
- *Sensitization of the public about the study, survey and possible management*
- *Training of members in identification and collection of data on biological resources and traditional knowledge*
- *Collection of data. Data collection includes review of literature on the natural resources of the districts, Participatory Rural Appraisal (PRAs) at village level, household interviews, individual interviews with village leaders and knowledgeable individuals, household heads, key actors of the Panchayat raj institutions and NGOs and direct field observations*
- *Analysis and validation of data in consultation with technical support group and BMC*
- *Preparation of People's Biodiversity Register*
- *Computerization of information and resources*



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## **Biodiversity Heritage Sites (BHS)**

*Under Section 37 of Biological Diversity Act, 2002 the State Government in consultation with local bodies may notify in the official gazette, areas of biodiversity importance as Biodiversity Heritage Sites. The National Biodiversity Authority issued guidelines for the selection and management of BHS in 2009.*

### **Definition of BHS**

*“Biodiversity Heritage Sites” are well defined areas that are unique, ecologically fragile ecosystems - terrestrial, coastal and inland waters and, marine having rich biodiversity comprising of any one or more of the following components: richness of wild as well as domesticated species or intra-specific categories, high endemism, presence of rare and threatened species, keystone species, species of evolutionary significance, wild ancestors of domestic/cultivated species or their varieties, past pre-eminence of biological components represented by fossil beds and having significant cultural, ethical or aesthetic values and are important for the maintenance of cultural diversity, with or without a long history of human association with them. Areas having any of the following characteristics may qualify for inclusion as BHS.*

### **Criteria for BHS**

- *Areas that contain a mosaic of natural, semi-natural, and manmade habitats, which together contain a significant diversity of life forms.*
- *Areas that contain significant domesticated biodiversity component and /or representative agro ecosystems with ongoing agricultural practices that sustain this diversity.*
- *Areas that are significant from a biodiversity point of view as also are important cultural spaces such as sacred groves/trees and sites, or other large community conserved areas.*
- *Areas including very small ones that offer refuge or corridors for threatened and endemic fauna and flora, such as community conserved areas or urban greens and wetlands.*
- *All kinds of legal land uses whether government, community or private land could be considered under the above categories.*
- *As far as possible those sites may be considered which are not covered under Protected Area network under the Wildlife Protection Act 1972 as amended.*
- *Areas that provide habitats, aquatic or terrestrial, for seasonal migrant species for feeding and breeding.*
- *Areas that are maintained as preservation plots by the research wing of Forest department.*
- *Medicinal Plant Conservation Areas.*

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## ***The important roles of the Central and State Governments***

*As per Section 36 of the Act the important duties of the Central and State Governments are:*

- *Developing national strategies, plans, programmes for the conservation, promotion and sustainable use of biological diversity.*
- *Issuing directives to the concerned State Governments to take immediate ameliorative measures for protection of biodiversity rich habitats, threatened by overuse, abuse or neglect.*
- *Integrating of the conservation, promotion and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies. Endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the NBA.*
- *Assessing the impact of projects on environment and biodiversity, and regulate, manage or control the risks or adverse impact of use and release of living modified organisms on conservation; and sustainable use of biological diversity and human health.*

## ***The Central Government may, in consultation with NBA***

- *notify threatened species and prohibit or regulate their collection, rehabilitation and conservation;*
- *designate institutions as repositories for different categories of biological resources; and*
- *exempt certain biological resources as normally traded as commodities.*

## ***The State Governments, in consultation with the local bodies***

- *may notify biodiversity heritage sites*
- *frame Rules for management and conservation of all the heritage sites (in consultation with Central Government)*
- *launch schemes for compensation / rehabilitation of affected people*

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