

From
Bring Back Green Foundation
Trivandrum
Kerala

To
JOINT SECRETARY (JM),
LOK SABHA SECRETARIAT, ROOM No, 440, PARLIAMENT HOUSE
ANNEXE,
NEW DELHI-110001

Subject: Suggestions on the 'Biological Diversity (Amendment) Bill 2021

Dear Sir/Madam,

Kindly find enclosed with this email, our thoughts and suggestions on the 'Biological Diversity (Amendment) Bill 2021'.

Sincere Regards

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Bring Back Green Foundation
Date: 31/01/2022

The Biological Diversity Amendment Bill 2021 has been introduced without seeking public comments as required under the pre-legislative consultative policy.

The bill focuses on regulating who can access biological resources and knowledge and how access will be monitored. Ayush practitioners have been exempted from the ambit of the Act, a huge move because the Ayush industry benefits greatly from biological resources in India. The role of state biodiversity boards has been strengthened and better clarified in the bill. There are also significant changes proposed in the offences section. Violations of the law related to access to biological resources and benefit-sharing with communities, which are currently treated as criminal offences and are non-bailable, have been proposed to be made civil offences.

This bill would have been an important opportunity to reconcile the domestic law with free prior informed consent requirements of the 2010 Nagoya Protocol on ABS. However, this has been a missed opportunity as the proposed amendments continue to marginalise biodiversity management committees (BMCs). Their powers have not been enhanced, and the proposed amendments also allow for state biodiversity boards to represent BMCs to determine terms of benefit sharing.

Under the Biodiversity Act 2002, national and state biodiversity boards are required to consult the biodiversity management committees (constituted by every local body) while taking any decision relating to the use of biological resources.

One of the major changes in the new bill is that registered Ayush practitioners who have been practising indigenous medicine can access any biological resource and its associated knowledge for commercial utilisation, without giving prior intimation to the state biodiversity board. The amendment seems to be done with the sole intention of providing benefit to the Ayush industry. The main focus of the bill is to facilitate trade in biodiversity as opposed to conservation, protection of biodiversity and knowledge of the local communities. The amendments are completely contrary to the aim and objective of the Biological Diversity Act, 2002.

Bio-utilization is an important element in the Act. Leaving out bio utilization would leave out an array of activities like characterization, inventorisation and bioassay which are undertaken with commercial motive

The bill also exempts cultivated medicinal plants from the purview of the Act but it is practically impossible to detect which plants are cultivated and which are from the wild. This provision could allow large companies to evade the requirement for prior approval or share the benefit with local communities under the access and benefit-sharing provisions of the Act.

Under the Convention of Biological Diversity, and the Nagoya Protocol on Access and Benefit Sharing to which India is a party, it is mandated that benefits derived from the use of biological resources are shared in a fair and equitable manner among the indigenous and local communities. When an Indian or foreign company or individual accesses biological resources such as medicinal plants and associated knowledge, it has to take prior consent from the national biodiversity board. The board can impose a benefit-sharing fee or royalty or impose conditions so that the company shares the monetary benefit from commercial utilisation of these resources with local people who are conserving biodiversity in the region.

The December 2018 judgement of Uttarakhand high court in the Divya Pharmacy matter clarifies that the board has a core function of regulation, which also includes asking for benefit sharing and determining the terms and conditions to be imposed on the user/accessor against access said legal researchers, Kanchi Kohli and Shalini Bhutani.

According to the statement of object and reasons, the Bill's purpose is to ease certain provisions of the Act for "foreign investment" and to "facilitate fast-tracking" of research and the patent application process.

One change the new amendment proposes pertains to a provision under the extant Biological Diversity Act – that any corporate body, organisation or company that is not registered in India, or whose

management or shareholders include foreign nationals, will need to seek approval from the NBA. The Bill changes this portion to say “foreign-controlled companies” incorporated or registered in India will need to seek approvals for resource-use from the NBA.

That is, the new Bill doesn't talk of companies registered in India that have foreign stakeholders or management needing approval from the NBA.

If the Bill is passed, this change will significantly dilute the restrictions that currently exist for companies that are registered in India and whose management or shareholders include foreign nationals, Debadityo Sinha, a policy researcher at the Delhi-based Vidhi Centre for Legal Policy.

As a hypothetical example, a company under foreign management but registered in India wouldn't need to seek permission from the NBA to use a specific resource and develop a product from it – say, a drug extracted from the leaves of a specific plant. And without the NBA's cognisance, any monetary benefits that arise from sale of the product won't reach the local communities that have taken care of the ecosystem where the plant grows and shared their knowledge about it.