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INTELLECTUAL PROPERTY RIGHTS -LAW & PRACTICE

**(Supplement Covers Amendments / Developments from
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GROUP 1 ELECTIVE PAPER 4.3

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Lesson – 4

INDIAN PATENT LAW AND ITS DEVELOPMENTS

THE PATENTS ACT, 1970

The Central Government published the Jan Vishwas (Amendment of Provisions) Act, on 11th August, 2023. It is an Act to amend certain enactments for decriminalising and rationalising offences to further enhance trust-based governance for ease of living and doing business. Under this **The Patents Act, 1970** was also amended. Amendments to the Act are as follows-

Section 120- Unauthorised claim of patent rights.

If any person falsely represents that any article sold by him is patented in India or is the subject of an application for a patent in India, he shall be liable to penalty which may extend to ten lakh rupees, and in case of the continuing claim, a further penalty of one thousand rupees for every day after the first during which such claim continues.

Explanation 1.--For the purposes of this section, a person shall be deemed to represent--

- a) that an article is patented in India if there is stamped, engraved or impressed on, or otherwise applied to, the article the word "patent" or "patented" or some other word expressing or implying that a patent for the article has been obtained in India;
- b) that an article is the subject of an application for a patent in India, if there are stamped, engraved or impressed on, or otherwise applied to, the article the words "patent applied for", "patent pending", or some other words implying that an application for a patent for the article has been made in India.

Explanation 2.--The use of words "patent", "patented", "patent applied for", "patent pending" or other words expressing or implying that an article is patented or that a patent has been applied for shall be deemed to refer to a patent in force in India, or to a pending application for a patent in India, as the case may be unless there is an accompanying indication that the patent has been obtained or applied for in any country outside India.

Section 121 - (Unauthorised claim of patent rights) shall be omitted.

Section 122 - Refusal or failure to supply information.

(1) If any person refuses or fails to furnish:--

- a) to the Central Government any information which he is required to furnish under subsection (5) of section 100;
- b) to the Controller any information or statement which he is required to furnish by or under section 146,

he shall be liable to penalty which may extend to one lakh rupees, and in case of the continuing refusal or failure, a further penalty of one thousand rupees for every day after the first during which such refusal or failure continues.;

(2) If any person, being required to furnish any such information as is referred to in sub-section (1), furnishes information or statement which is false, and which he either knows or has reason to believe to be false or does not believe to be true, he shall be liable to penalty for a sum equal to one half per cent. of the total sale or turnover, as the case may be, of business or of the gross receipts in profession as computed in the audited accounts of such person, or a sum equal to five crore rupees, whichever is less.

Section 123 -Practice by non-registered patent agents.

If any person contravenes the provisions of section 129, he shall be liable to penalty, which may extend to five lakh rupees, and in case of the continuing default, a further penalty of one thousand rupees for every day after the first during which such default continues.

Section 124A. - Adjudication of penalties.

The Controller may, by an order, authorise an officer referred to in section 73, to be the adjudicating officer for holding an inquiry and imposing penalty under the provisions of this Act, in the manner as may be prescribed, after giving the person concerned a reasonable opportunity of being heard.

Section 124B. - Appeal.

- (1) Whoever aggrieved by an order of the adjudicating officer under section 124A may prefer an appeal to the appellate authority, who shall be an officer at least one rank above the adjudicating officer, within a period of sixty days from the date of receipt of the order, as the Central Government may by notification authorise in this behalf.
- (2) Every appeal under this section shall be preferred in such form and manner as may be prescribed.
- (3) An appeal may be admitted after the expiry of the period of sixty days if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.
- (4) No appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.
- (5) The appellate authority referred to in sub-section (1) shall dispose of the appeal within sixty days from the date of filing the appeal.
- (6) Notwithstanding anything contained in this Act, if the person fails to comply with the order of the adjudicating officer under section 124A or the order of the appellate authority under this section, as the case may be, within ninety days of such order, he shall, in addition to the penalty, be punishable with fine of one lakh rupees or imprisonment for a term which may extend to one year, or with both."

Section 159- Power of Central Government to make rules

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) Without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:--

- (i) the form and manner in which any application for a patent, any specifications or drawings and any other application or document may be filed in the patent office;
- (ia) the period which the Controller may allow for filing of statement and undertaking for in respect of applications under sub-section (1), the period within which the details relating to processing of applications may be filed before the Controller and the details to be furnished by the applicant to the Controller under sub-section (2) of section 8;
- (ib) the period within which a reference to the deposit of materials shall be made in the specification under sub-clause (A) of clause (ii) of the proviso to sub-section (4) of section 10;
- (ic) the period for which application for patent shall not be open to the public under sub-section (1) and the manner in which the applicant may make a request to the Controller to publish his application under subsection (2) of section 11A;
- (id) the manner of making the request for examination for an application for patent and the period within which such examination shall be made under sub-sections (1) and (3) of section 11B;
- (ie) the manner in which an application for withdrawal of an application for grant of a patent shall be made and the period within which a request for examination from the date of revocation of secrecy directions shall be made under the proviso to sub-section (4) of section 11B.
- (ii) the time within which any act or thing may be done under this Act, including the manner in which and the time within which any matter may be published under this Act;
- (iii) the fees which may be payable under this Act and the manner and time of payment of such fees;
- (iv) the matters in respect of which the examiner may make a report to the Controller;
- (v) the manner in which and the period within which the Controller shall consider and dispose of a representation under sub-section (1) of section 25;
- (va) the period within which the Controller is required to dispose of an application under section 39;
- (vi) the form and manner in which and the time within which any notice may be given under this Act;
- (vii) the provisions which may be inserted in an order for restoration of a patent for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased;
- (viii) the establishment of branch offices of the patent office and the regulation generally of the business of the patent office, including its branch offices;
- (ix) the maintenance of the register of patents and the safeguards to be observed in the maintenance of such register in computer floppies, diskettes or any other electronic form and the matters to be entered therein;
- (x) the matters in respect of which the Controller shall have powers of a civil court;
- (xi) the time when and the manner in which the register and any other document open to inspection may be inspected under this Act;
- (xii) the qualifications of, and the preparation of a roll of, scientific advisers for the purpose of section 115;

(xiii) the manner in which any compensation for acquisition by Government of an invention may be paid;

(xiiia) the manner of holding inquiry and imposing penalty under section 124A;

(xiiib) the form and manner of preferring appeal under sub-section (2) of section 124B;

(xiv) the manner in which the register of patent agents may be maintained under sub-section (1) of section 125 and the safeguards to be observed in the maintenance of such register of patent agents on computer floppies, diskettes or any other electronic form under sub-section (2) of that section the conduct of qualifying examinations for patent agents; and matters connected with their practice and conduct, including the taking of disciplinary proceedings against patent agents for misconduct;

(xv) the regulation of the making, printing, publishing and selling of indexes to, and abridgments of, specifications and other documents in the patent office; and the inspection of indexes and abridgments and other documents;

(xvi) any other matter which has to be or may be prescribed.

(3) The power to make rules under this section shall be subject to condition of the rules being made after previous publications:

Provided that the Central Government may, if it is satisfied that the circumstances exist which render it practically not possible to comply with such condition of previous publication, dispense with such compliance.

For further details, refer- <https://egazette.gov.in/WriteReadData/2023/248047.pdf>

Lesson -7

TRADEMARKS

THE TRADE MARKS ACT, 1999

The Central Government published the Jan Vishwas (Amendment of Provisions) Act, on 11th August, 2023. It is an Act to amend certain enactments for decriminalising and rationalising offences to further enhance trust-based governance for ease of living and doing business. Under this **The Trade Marks Act, 1999** was also amended. Amendments to the Act are as follows-

Section 106 (Penalty for removing piece goods, etc., contrary to section 81) shall be omitted.

Section 107 - Penalty for falsely representing a trade mark as registered.

- (1) No person shall make any representation--
 - (a) with respect to a mark, not being a registered trade mark, to the effect that it is a registered trade mark; or
 - (b) with respect to a part of a registered trade mark, not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark; or
 - (c) to the effect that a registered trade mark is registered in respect of any goods or services in respect of which it is not in fact registered; or
 - (d) to the effect that registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitation entered on the register, the registration does not in fact give that right.
- (2) If any person contravenes any of the provisions of sub-section (1), he shall be liable to penalty of a sum equal to one half per cent. of the total sales or turnover, as the case may be, in business or of the gross receipts in profession, as computed in the audited accounts of such person, or a sum equal to five lakh rupees, whichever is less.
- (3) For the purposes of this section, the use in India in relation to a trade mark of the word "registered", or of any other expression, symbol or sign referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except--
 - (a) where that word or other expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or
 - (b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

- (c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside India and in relation solely to goods to be exported to that country or in relation to services for use in that country.

Sections 108 (Penalty for improperly describing a place of business as connected with the Trade Marks Office) and 109 (Penalty for falsification of entries in the register) shall be omitted.

Section 112A.- Adjudication of penalties.

The Registrar may, by an order, authorise an officer referred to in section 3, to be adjudicating officer for holding an inquiry and imposing penalty under the provisions of this Act, in the manner as may be prescribed, after giving a reasonable opportunity of being heard.

Section 112B.- Appeal.

- (1) Whoever aggrieved by an order of the adjudicating officer under section 112A may prefer an appeal to the appellate authority, who shall be an officer at least one rank above the adjudicating officer, within a period of sixty days from the date of receipt of the order, as the Central Government may by notification authorise in this behalf.
- (2) Every appeal under this section shall be preferred in such form and manner as may be prescribed.
- (3) An appeal may be admitted after the expiry of the period of sixty days if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.
- (4) No appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.
- (5) The appellate authority referred to in sub-section (1) shall dispose of the appeal within sixty days from the date of filing.
- (6) Notwithstanding anything contained in this Act, if the person fails to comply with the order of the adjudicating officer under section 112A or the order of the appellate authority under this section, as the case may be, within ninety days of such order, he shall, in addition to the penalty, be punishable with fine of one lakh rupees or imprisonment for a term which may extend to one year, or with both.

Section 140 - Power to require information of imported goods bearing false trade marks,

1. The proprietor or a licensee of a registered trade mark may give notice in writing to the Collector of Customs to prohibit the importation of any goods if the import of the said goods constitute infringement under clause (c) of sub-section (6) of section 29.
2. Where goods, which are prohibited to be imported into India by notification of the Central Government under clause (n) of sub-section (2) of section 11 of the Customs Act, 1962 (52 of 1962), for the protection of trade marks, and are liable to confiscation on importation under that Act, are imported into India, the Commissioner of Customs if, upon representation made to him, he has reason to believe that the trade mark

complained of is used as a false trade mark, may require the importer of the goods, or his agent, to produce any documents in his possession relating to the goods and to furnish information as to the name and address of the person by whom the goods were consigned to India and the name and address of the person to whom the goods were sent in India.

3. The importer or his agent shall, within fourteen days, comply with the requirement as aforesaid, and if he fails to do so, he shall be liable to penalty of ten thousand rupees: Provided that the penalty under this section shall be levied and recovered by such authority under the Customs Act, 1962 (52 of 1962) for this purpose
4. Any information obtained from the importer of the goods or his agent under this section may be communicated by the Commissioner of Customs to the registered proprietor or registered user of the trade mark which is alleged to have been used as a false trade mark.

Section 157 -Power to make rules.

(1) The Central Government may, by notification in the Official Gazette and subject to the conditions of previous publication, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(i) the matters to be included in the Register of Trade Marks under sub-section (1) of section 6, and the safeguards to be observed in the maintenance of records on computer floppies or diskettes or in any other electronic form under sub-section (2) of that section;

(ii) the manner of publication of alphabetical index of classification of goods and services under sub-section (1) of section 8;

(iii) the manner in which the Registrar may notify a word as an international non-proprietary name under section 13;

(iv) the manner of making an application for dissolution of an association under sub-section (5) of section 16;

(v) the manner of making an application for registration of a trade mark under sub-section (1) of section 18;

(vi) the manner of advertising of an application for registration under sub-section (1), and the manner of notifying corrections or amendments under sub-section (2), of section 20;

(vii) the manner of giving a notice of opposition and the fee payable for such notice under sub-section (1) and sending counter-statement under sub-section (2) and submission of evidence and the time therefor under sub-section (4) of section 21;

(viii) the form of certificate of registration under sub-section (2), and the manner of giving notice to the applicant under sub-section (3) of section 23;

(ix) the forms of application for renewal and restoration the time within which such application is to be made and fee and surcharge if any payable with each application, under section 25 and the time within which the Registrar shall send a notice and the manner of such notice under sub-section (3) of that section;

(ixa) the time within which the international application is to be forwarded to the International Bureau and the manner of certifying the particulars by the Registrar under sub-section (4) of section 36D;

- (ixb) the manner of keeping a record of particulars of an international registration under sub-section (1) of section 36E;
- (ixc) the manner of informing the International Bureau under sub-section (2) of section 36E;
- (ixd) the manner of advertising the international registration and the time within which the international registration shall be advertised under sub-section (3) of section 36E;]
- (x) the manner of submitting statement of cases under sub-section (2) of section 40;
- (xi) the manner of making an application by the proprietor of a trade mark under section 41;
- (xii) the manner of making an application for assignment or transmission of a certification trade mark under section 43;
- (xiii) the manner of making an application to the Registrar to register title under sub-section (1) of section 45;
- (xiiia) the period within which the Registrar shall dispose of an application under sub-section (3) of section 45;
- (xiv) the manner in which and the period within which an application is to be made under sub-section (4) of section 46;
- (xv) the manner of making an application under sub-section (2) of section 47;
- (xvi) the manner of making an application, documents and other evidence to accompany such application under sub-section (1) and the manner in which notice is to be issued under sub-section (3) of section 49;
- (xvii) the manner of making an application under sub-section (1), the manner of issuing a notice under sub-section (2) and the procedure for cancelling a registration under sub-section (3) of section 50;
- (xviii) the manner of making applications under sub-sections (1) and (2), the manner of giving notice under sub-section (4) and the manner of service of notice of rectification under sub-section (5) of section 57;
- (xix) the manner of making an application under section 58;
- (xx) the manner of making an application under sub-section (1), the manner of advertising an application, time and manner of notice by which application may be opposed under sub-sections (2) and (3) of section 59;
- (xxi) the manner of advertisement under sub-section (2) of section 60;
- (xxii) the other matters to be specified in the regulations under sub-section (2) of section 63;
- (xxiii) the manner of making an application under sub-section (1) of section 71;
- (xxiv) the manner of advertising an application under section 73;
- (xxv) the manner of making an application under section 77;
- (xxix) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson, Vice-Chairperson and other Members under sub-section (1) of section 88;
- (xxx) the procedure for investigation of misbehavior or incapacity of the Chairperson, Vice-Chairperson and other Members under sub-section (3) of section 89;
- (xxxiii) the form in which and the particulars to be included in the application to the High Court under sub-section (1) of section 97;
- (xxxiiia) the manner of holding inquiry and imposing penalty under section 112A;
- (xxxiiib) the form and manner of preferring appeal under sub-section (2) of section 112B;

- (xxxiv) the manner of making an application for review under clause (c) of section 127;
- (xxxv) the time within which an application is to be made to the Registrar for exercising his discretionary power under section 128;
- (xxxvi) the manner of making an application and the fee payable therefor under sub-section (1) of section 131;
- (xxxvii) the manner of making an application under sub-section (1) and the period for withdrawal of such application under sub-section (2) of section 133;
- (xxxviii) the manner of authorising any person to act and the manner of registration as a trade mark agent under section 145;
- (xxxix) the conditions for inspection of documents under sub-section (1) and the fee payable for obtaining a certified copy of any entry in the register under sub-section (2) of section 148;
- (xl) the fees and surcharge payable for making applications and registration and other matters under section 150;
- (xli) any other matter which is required to be or may be prescribed.
- (3) The power to make rules conferred by this section shall include the power to give retrospective effect in respect of the matters referred to in clauses (xxix) and (xxxix) of sub-section (2) from a date not earlier than the date of commencement of this Act, but no retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom sub-rule may be applicable.
- (4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

For further details, refer- <https://egazette.gov.in/WriteReadData/2023/248047.pdf>

Lesson -8

COPYRIGHTS

THE COPYRIGHT ACT, 1957

In Section 68 in principal Act, (Penalty for making false statements for the purpose of deceiving or influencing any authority or officer) shall be omitted as per Jan Vishwas (Amendment of Provisions) Act, 2023

For further details, refer- <https://egazette.gov.in/WriteReadData/2023/248047.pdf>

Lesson -10

GEOGRAPHICAL INDICATIONS

THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

The Central Government published the Jan Vishwas (Amendment of Provisions) Act, on 11th August, 2023. It is an Act to amend certain enactments for decriminalising and rationalising offences to further enhance trust-based governance for ease of living and doing business. Under this **The Geographical Indications of Goods (Registration and Protection) Act, 1999** was also amended. Amendments to the Act are as follows-

Section 37A. - Adjudication of penalties.

The Registrar may, by an order, authorise an officer referred to in section 3, to be adjudicating officer for holding an inquiry and imposing penalty under the provisions of this Act, in the manner as may be prescribed, after giving a reasonable opportunity of being heard.

Section 37B. Appeal.—

- (1) Whoever aggrieved by an order of the adjudicating officer under section 37A may prefer an appeal to the appellate authority, who shall be an officer at least one rank above the adjudicating officer, within a period of sixty days from the date of receipt of the order, as the Central Government may by notification authorise in this behalf.
- (2) Every appeal under this section shall be preferred in such form and manner as may be prescribed.
- (3) An appeal may be admitted after the expiry of the period of sixty days if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.
- (4) No appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.
- (5) The appellate authority referred to in sub-section (1) shall dispose of the appeal within sixty days from the date of filing.
- (6) Notwithstanding anything contained in this Act, if the person fails to comply with the order of the adjudicating officer under section 37A or the order of the appellate authority under this section, as the case may be, within ninety days of such order, he shall, in addition to the penalty, be punishable with fine of one lakh rupees or imprisonment for a term which may extend to one year, or with both."

Section 42- Penalty for falsely representing a geographical indication as registered.

- (1) No person shall make any representation--
 - a) with respect to a geographical indication, not being a registered geographical indication, to the effect that it is a registered geographical indication; or
 - b) to the effect that a registered geographical indication is registered in respect of any goods in respect of which it is not in fact registered; or

- c) to the effect that registration of a geographical indication gives an exclusive right to the use thereof in any circumstances in which having regard to limitation entered on the register, the registration does not in fact give that right.
- (2) If any person contravenes any of the provisions of sub-section (1), he shall be liable to penalty of a sum equal to one-half per cent. of the total sales or turnover, as the case may be, in business or of the gross receipts in profession as computed in the audited accounts of such person, or a sum equal to five lakh rupees, whichever is less.
- (3) For the purposes of this section the use in India in relation to a geographical indication of the words "registered geographical indication" or any other expression, symbol or sign like "R.G.I." referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except-
- a) where that word or other expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference to registration as a geographical indication under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or
 - b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or
 - c) where that word is used in relation to a geographical indication registered under the law of a country outside India and in relation solely to goods to be exported to that country for use in that country.

Sections 43(Penalty for improperly describing a place of business as connected with the Geographical Indications Registry) and **Section 44**(Penalty for falsification of entries in the register) shall be omitted.

Section 87 – Power to make rules.

(1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

- (a) the matters to be included in the Register of Geographical Indications under sub-section (1), and the safeguards to be observed in the maintenance of such register in computer floppies or diskettes under sub-section (2) of section 6;
- (b) the manner of incorporation of particulars relating to registration of geographical indications in Part A under sub-section (2) and the manner of incorporation of particulars relating to the registration of the authorised users under sub-section (3) of section 7;
- (c) the classification of goods and the manner of publication of the alphabetical index of classification of goods and the definite territory or locality or region for the purpose of registration of geographical indications under sub-section (1) of section 8;

(d) the form in which and the manner in which an application for registration of a geographical indication may be made and the fees which may accompany the application under sub-section (1) and the particulars to be made in the statement of producers of goods who proposes to be initially registered with the registration under clause (f) of sub-section (2) of section 11;

(e) the manner of publication of advertisement of accepted application, for registration of geographical indications, etc., under sub-section (1), and the manner of notifying the corrections or amendments made in the application under sub-section (2) of section 13;

(f) the manner in which and the fee which may accompany an application and the manner of giving notice under sub-section (1) and the manner of sending counter statement under sub-section (2) and the manner of submission of evidence and the time therefor under sub-section (4) of section 14;

(g) the form of certificate of registration under sub-section (2) and the manner of giving notice to the applicant under sub-section (3) of section 16;

(h) the manner of applying for registration as an authorised user under sub-section (1) and the manner of submitting statements and documents along with such application and the fee which may accompany such application under sub-section (2) of section 17;

(i) the manner of making application, the time within which such application is to be made and the fee payable with each application, under sub-section (3) and the time within which the Registrar shall send notice and the manner of such notice under sub-section (4) and the form in which and the fee which may accompany an application for renewal to be made under sub-section (5) of section 18;

(j) the manner of making applications under sub-sections (1) and (2), the manner of giving notice under sub-section (4) and the manner of service of notice of rectification under sub-section (5) of section 27;

(k) the manner of making an application for correction, etc., under section 28;

(l) the manner of making an application under sub-section (1), the manner of advertising an application under sub-section (1), the time and manner of notice by which an application may be opposed under sub-sections (2) and (3) of section 29;

(m) the manner of advertisement under sub-section (2) of section 30;

(o) the form in which an application for rectification shall be made, under sub-section (1) of section 34;

(oa) the manner of holding inquiry and imposing penalty under section 37A;

(ob) the form and manner of preferring appeal under sub-section (2) of section 37B

(p) the manner of making an application for review under clause (c) of section 60;

(q) the time within which an application is to be made to the Registrar for exercising his discretionary power under section 61;

(r) the manner of making an application and the fee payable therefore under sub-section (1) of section 64;

(s) the manner of authorising any person to act and the manner of registration of a geographical indications agent under section 76;

(t) the fee and surcharge payable for applications and registrations and other matters under sub-section (1) of section 80;

(u) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

For further details, refer- <https://egazette.gov.in/WriteReadData/2023/248047.pdf>

Lesson -13

BIOLOGICAL DIVERSITY

THE BIOLOGICAL DIVERSITY (AMENDMENT) ACT, 2023

The Central Government published an Act further to amend the Biological Diversity Act, 2002. This Act may be called the **Biological Diversity (Amendment) Act, 2023** and received the assent of the President on the 3rd August, 2023. Under this act, the amendments are as follows-

Section 2 - Definitions

(a) "access" means collecting, procuring or possessing any biological resource occurring in or obtained from India or traditional knowledge associated thereto, for the purposes of research or bio-survey or commercial utilisation;

(aa) "benefit claimers" means the conservers of biological resources, their by-products, creators or holders of traditional knowledge associated thereto (excluding codified traditional knowledge only for Indians) and information relating to the use of such biological resources, innovations and practices associated with such use and application;'

(b) "biological diversity or biodiversity" means the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of eco-systems

(c) "biological resources" include plants, animals, micro-organisms or parts of their genetic material and derivatives (excluding value added products), with actual or potential use or value for humanity, but does not include human genetic material;'

(d) "bio-survey and bio-utilisation" means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterisation, inventorisation and bioassay;

(e) "Chairperson" means the Chairperson of the National Biodiversity Authority or, as the case may be, of the State Biodiversity Board;

(ea) "codified traditional knowledge" means the knowledge derived from authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940;

(f) "commercial utilisation" means end uses of biological resources for commercial utilisation such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping;

(fa) "derivative" means a naturally occurring biochemical compound or metabolism of biological resources, even if it does not contain functional units of heredity;

(g) "fair and equitable benefit sharing" means sharing of benefits as determined by the National Biodiversity Authority under section 21;

(ga) "folk variety" means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;

(gb) "India" means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, and the air space above its territory;

(gc) "landrace" means primitive cultivar that was grown by ancient farmers and their successors;

(h) "local bodies" means Panchayats and Municipalities, by what ever name called, within the meaning of clause (1) of article 243B and clause (1) of article 243Q of the Constitution and in the absence of any Panchayats or Municipalities, institutions of self-government constituted under any other provision of the Constitution or any Central Act or State Act;

(i) "member" means a member of the National Biodiversity Authority or a State Biodiversity Board and includes the Chairperson;

(ia) "Member-Secretary" means the full time Secretary of the National Biodiversity Authority, or of the State Biodiversity Board, as the case may be;

(j) "National Biodiversity Authority" means the National Biodiversity Authority established under section 8;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "regulations" means regulations made under this Act;

(m) "research" means study or systematic investigation of any biological resource or technological application, that uses biological systems, living organisms or derivatives thereof to make or modify products or processes for any use;

(n) "State Biodiversity Board" means the State Biodiversity Board established under section 22;

(o) "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;

(p) "value added products" means products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form.

In Chapter II of the principal Act, in the Chapter heading, for the word "DIVERSITY", the word "RESOURCES" shall be substituted.

Section 3- Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority.

(1) No person referred to in sub-section (2) shall, without previous approval of the National Biodiversity Authority, obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilisation or for bio-survey and bio-utilisation.

(2) The persons who shall be required to take the approval of the National Biodiversity Authority under sub-section (1) are the following, 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 section 2 of the Income-tax Act, 1961 (43 of 1961);

- c. a body corporate, association or organisation--
 - i. not incorporated or registered in India; or
 - ii. incorporated or registered in India under any law for the time being in force, which is controlled by a foreigner within the meaning of clause (27) of section 2 of the Companies Act, 2013.

Section 4- Results of research not to be transferred to certain persons without approval of National Biodiversity Authority.

No person or entity shall share or transfer any result of the research on any biological resource occurring in, or obtained or accessed from, India or traditional knowledge associated thereto, for monetary consideration or otherwise, to a person or body corporate referred to in sub-section (2) of section 3, without the prior written approval of the National Biodiversity Authority, except the codified traditional knowledge which is only for Indians:

Provided that the provisions of this section shall not apply if publication of research papers or dissemination of knowledge in any seminar or workshop involving financial benefit is as per the guidelines issued by the Central Government:

Provided further that where the results of research are used for further research, then, the registration with the National Biodiversity Authority shall be necessary: Provided also that if the results of research are used for commercial utilisation or for obtaining any intellectual property rights, within or outside India, prior approval of the National Biodiversity Authority shall be required to be taken in accordance with the provisions of this Act.”

Section 5 - Certain provisions not to apply to certain collaborative research projects. of the principal Act,—

- (1) The provisions of section 3 shall not apply to collaborative research projects involving transfer or exchange of biological resource or traditional knowledge associated thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in sub-section (3).
- (2) All collaborative research projects, other than those referred to in sub-section (1) which are based on agreements concluded before the commencement of this Act and in force shall, to the extent the provisions of agreement are inconsistent with the provisions of this Act or any guidelines issued under clause (a) of sub-section (3), be void.
- (3) For the purposes of sub-section (1), collaborative research projects shall--
 - a. conform to the policy guidelines issued by the Central Government in this behalf;
 - b. be approved by the Central Government.

Section 6 - Application for intellectual property rights not to be made without approval of National Biodiversity Authority

(1) Any person or entity covered under sub-section (2) of section 3 applying for an intellectual property right, by whatever name called, in or outside India, for any invention

based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or traditional knowledge associated thereto, shall obtain prior approval of the National Biodiversity Authority before grant of such intellectual property rights.

(1A) Any person covered under section 7 applying for any intellectual property right, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or traditional knowledge associated thereto, shall register with the National Biodiversity Authority before grant of such intellectual property rights.

(1B) Any person covered under section 7 who has obtained intellectual property right, by whatever name called, in or outside India, for any invention based on any research or information on a biological resource which is accessed from India, including those deposited in repositories outside India, or traditional knowledge associated thereto, shall obtain prior approval of the National Biodiversity Authority at the time of commercialisation.

(2) The National Biodiversity Authority may, while granting the approval under this section, impose benefit sharing fee or royalty or both or impose conditions including the sharing of financial benefits arising out of the commercial utilisation of such rights.

(3) The provisions of this section shall not apply to any person making an application for any right under any law relating to protection of plant varieties.

(4) Where any right is granted under law referred to in sub-section (3), the concerned authority granting such right shall endorse a copy of such document granting the right to the National Biodiversity Authority.

Section 7- Prior intimation to State Biodiversity Board for obtaining biological resource for certain purposes.

(1) No person, other than the person covered under sub-section (2) of section 3, shall access any biological resource and its associated knowledge for commercial utilisation, without giving prior intimation to the concerned State Biodiversity Board, but such access shall be subject to the provisions of clause (b) of section 23 and sub-section (2) of section 24:

Provided that the provisions of this section shall not apply to the codified traditional knowledge, cultivated medicinal plants and its products, local people and communities of the area, including growers and cultivators of biodiversity and to vaidas, hakims and registered AYUSH practitioners only who have been practicing indigenous medicines, including Indian systems of medicine as profession for sustenance and livelihood.

(2) In the case of cultivated medicinal plants, the exemption under sub-section (1) shall be available only if a certificate of origin is obtained from the Biodiversity Management Committee in such manner as may be prescribed.

(3) The Biodiversity Management Committee shall, on the basis of entries made in such books, maintained in such manner, issue the certificate of origin under subsection (2) in such manner as may be prescribed.

Section 8- Establishment of National Biodiversity Authority.

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established by the Central Government for the purposes of this Act, a body to be called the National Biodiversity Authority.

(2) The National Biodiversity Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The Head office of the National Biodiversity Authority shall be at Chennai and the Central Government may, by notification in the Official Gazette, establish regional offices in other places in India.

(4) The National Biodiversity Authority shall consist of the following members, namely:--

(a) a Chairperson, who shall be an eminent person having adequate knowledge, expertise and experience in the conservation and sustainable use of biological diversity and in matters relating to fair and equitable sharing of benefits, to be appointed by the Central Government;

(b) sixteen ex officio members to be appointed by the Central Government, representing the Ministries dealing with—

- i. Agricultural Research and Education;
- ii. Agriculture and Farmers Welfare;
- iii. Ayurveda, Unani, Siddha, Sowa Rigpa, Yoga and Naturopathy and Homoeopathy;
- iv. Biotechnology;
- v. Environment and Climate Change;
- vi. Forests and Wildlife;
- vii. Indian Council of Forestry Research and Education;
- viii. Earth Sciences;
- ix. Pachayati Raj;
- x. Science and Technology;
- xi. Scientific and Industrial Research;
- xii. Tribal Affairs;

(c) four representatives from State Biodiversity Boards on rotational basis;";

(d) five non-official members to be appointed from amongst experts including legal experts and scientists having special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge-holders of biological resources.

(e) a Member-Secretary, who shall have experience in matters relating to biodiversity conservation, to be appointed by the Central Government.

Section 9- Conditions of service of Chairperson, members and Member-Secretary

The term of office and conditions of service of the Chairperson and the other members other than *ex officio* members of the National Biodiversity Authority and of Member-Secretary shall be such as may be prescribed by the Central Government.

After section 10 the following section shall be inserted, namely:—

Section 10A- (1) The Member-Secretary shall be the chief coordinating officer and the convener of the National Biodiversity Authority and shall assist that Authority in the discharge of its functions under this Act.

(2) The Member-Secretary shall perform such other functions as may be prescribed.

Section 13 - Committees of National Biodiversity Authority

(1) The National Biodiversity Authority may constitute a committee to deal with agro-biodiversity.

Explanation.--For the purposes of this sub-section, "agro-biodiversity" means biological diversity of agriculture related species and their wild relatives.

(2) The National Biodiversity Authority may also constitute such number of committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act.

(3) A committee constituted under this section shall co-opt such number of persons, who are not the members of the National Biodiversity Authority, as it may think fit and the persons so co-opted shall have the right to attend the meetings of the committee and take part in its proceedings but shall not have the right to vote.

(4) The persons appointed as members of the committee under sub-section (2) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.

Section 15 - Authentication of orders and decisions of National Biodiversity Authority.

All orders and decisions of the National Biodiversity Authority shall be authenticated by the signature of the Chairperson or Member-Secretary or any other member authorised by the National Biodiversity Authority in this behalf and all other instruments executed by the National Biodiversity Authority shall be authenticated by the signature of Member-Secretary or an officer of the National Biodiversity Authority authorised by it in this behalf.

Section 16- Delegation of powers.

The National Biodiversity Authority may, by general or special order in writing, delegate to any member or Member-Secretary, officer of the National Biodiversity Authority or any other person subject to such conditions, if any, as may be specified in the order, such of the powers and functions under this Act (except the power to prefer an appeal under section 50 and the power to make regulations under section 64) as it may deem necessary.

Section 18 - Functions and powers of National Biodiversity Authority

- (1) The National Biodiversity Authority shall, with the approval of the Central Government, make regulations to provide for access to biological resources and traditional knowledge associated thereto, and for determination of fair and equitable sharing of benefits.
- (2) It shall be the duty of the National Biodiversity Authority to regulate any activity referred to in sections 3, 4 and 6 by granting or rejecting approvals.";
- (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 fair and equitable sharing of benefits arising out of the utilisation of biological resources;
 - (b) advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as biodiversity heritage sites and measures for the management of such heritage sites;
 - (ba) advise the State Biodiversity Boards on any matter relating to the implementation of the Act;"
 - (c) perform 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 rights in any country outside India on any biological resource which is found in or brought from India, including those deposited in repositories outside India, or traditional knowledge associated thereto accessed.

Section 19 - Approval by National Biodiversity Authority for undertaking certain activities.

- (1) Any person referred to in sub-section (2) of section 3 who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilisation or for bio-survey and bio-utilisation or transfer the results of any research relating to biological resources occurring in, or obtained from, India, shall make application in such form and payment of such fees as may be prescribed, to the National Biodiversity Authority.
- (2) Any person referred to in sub-section (2) of section 3 who intends to apply for a patent or any other form of intellectual property rights, whether in India or outside India, referred to in sub-section (1) of section 6, may make an application to the National Biodiversity Authority in such form, on payment of such fee, and in such manner, as may be prescribed.
- (2A) Any person referred to in sub-section (1A) of section 6 shall register with the National Biodiversity Authority at the time of making application under sub-section (2), and persons referred to in sub-section (1B) of section 6 shall obtain prior approval from the National Biodiversity Authority at the time of commercialisation.
- (3) On receipt of an application under sub-section (1) or sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to any regulations made in this behalf and subject to such terms and conditions as it

may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

(3A) The National Biodiversity Authority shall, while granting approval under this section, determine the benefit sharing in such manner as may be specified by regulations made in this behalf:

Provided that if the National Biodiversity Authority is of the opinion that such an activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or fair and equitable sharing of benefits arising out of such activity, it may, by order, for reasons to be recorded in writing, prohibit or restrict any such activity:

Provided further that no such order for rejection shall be made without giving an opportunity of being heard to the person concerned.

(4) The National Biodiversity Authority shall place in public domain details of every approval granted or rejected under this section.

Section 20 - Transfer of results of research

(1) Any person or entity who intends to transfer the results of any research on biological resources, which are found in or brought from India, including those deposited in repositories outside India or traditional knowledge associated thereto, to persons referred to under sub-section (2) of section 3 for monetary consideration or otherwise, he shall make an application to the National Biodiversity Authority in such form, and on payment of such fee, as may be prescribed.";

(2) Any person who intends to transfer the results of research referred to in sub-section (1) shall make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(3) On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquiries, as it deems fit, by order, grant approval, subject to such terms and conditions, as it may deem fit, including benefit sharing or otherwise, as per the guidelines or for reasons to be recorded in writing, or reject the application:

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person concerned.

(4) The National Biodiversity Authority shall place in public domain the details of every approval granted or rejected under this section.

Section 21 - Determination of fair and equitable benefit sharing by National Biodiversity Authority.

(1) The National Biodiversity Authority shall, while determining benefit sharing for the approval granted under this Act, ensure that the terms and conditions subject to which the approval is granted secures fair and equitable sharing of benefits arising out of the use of

accessed biological resources, their derivatives, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval, and the Biodiversity Management Committee represented by the National Biodiversity Authority.

(2) The National Biodiversity Authority shall, subject to any regulations made in this behalf, determine the benefit sharing which shall be given effect in all or any of the following manner, namely:--

(a) grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers;

(b) transfer of technology;

(c) location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;

(d) association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilisation;

(e) setting up of venture capital fund for aiding the cause of benefit claimers;

(f) payment of monetary compensation and other non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.

(3) Where any amount of money is ordered by way of benefit sharing, the National Biodiversity Authority may direct the amount to be deposited in the National Biodiversity Fund:

Provided that where biological resource or associated knowledge was a result of access from an individual or group of individuals or organisations, the National Biodiversity Authority may direct that the amount shall be paid directly to such benefit claimer or organisation in accordance with the terms of any agreement and in such manner as it deems fit.

(4) For the purposes of this section, the National Biodiversity Authority shall, in consultation with the Central Government, by regulations, frame guidelines.

Section 22 - Establishment of State Biodiversity Board

(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established by that Government for the purposes of this Act, a Board for the State to be known as the_____ (name of the State) Biodiversity Board.

(2) Notwithstanding anything contained in this section, no State Biodiversity Board shall be constituted for a Union territory and in relation to a Union territory, the National Biodiversity Authority shall exercise the powers and perform the functions of a State Biodiversity Board for that Union territory:

Provided that in relation to any Union territory, the National Biodiversity Authority may delegate all or any of its powers or functions under this sub-section to such person or group of persons or body as the Central Government may specify.

The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(4) The Board shall consist of the following members, namely:--

- a. a Chairperson, who shall be an eminent person having adequate knowledge, expertise and experience in the conservation and sustainable use of biological diversity and in matters relating to fair and equitable sharing of benefits, to be appointed by the State Government;
- b. not more than seven ex officio members to be appointed by the State Government to represent the concerned departments of the State Government, including departments dealing Panchayati Raj and tribal affairs;
- c. not more than five non-official members to be appointed from amongst experts, including legal experts, scientists having special knowledge, expertise and work experience in matters relating to conservation of biological diversity, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources.

(5) The head office of the State Biodiversity Board shall be at such place as the State Government may, by notification in the Official Gazette, specify.

Section 23 - Functions of State Biodiversity Board

The functions of the State Biodiversity Board shall be to--

- (a) advise the State Government on matters relating to the conservation of biodiversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the utilisation of biological resources or traditional knowledge associated thereto, in conformity with the regulations or guidelines if any, issued by the Central Government or the National Biodiversity Authority;
- (b) regulate any activity referred to in section 7 by granting or rejecting approvals;
- (ba) determine the fair and equitable sharing of benefits as provided under the regulations made in this behalf by the National Biodiversity Authority while granting approvals;
- (c) perform such other functions as may be necessary to carry out the provisions of this Act or as may be prescribed by the State Government.

Section 24 - Power of State Biodiversity Board to restrict certain activities violating the objectives of conservation, etc.

(1) Any person other than the person referred to in sub-section (2) of section 3, intending to undertake any activity covered under section 7, shall give prior intimation to the State Biodiversity Board, in such form as may be prescribed by the State Government.

(2) If the State Biodiversity Board is of the opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity of fair and

equitable sharing of benefits arising out of such activity, it may by order, restrict or reject such activity:

Provided that no such order or rejection shall be made without giving an opportunity of being heard to the person concerned.

(3) The State Biodiversity Board shall place in public domain the details of every approval granted or rejected under this section.

Section 27 - Constitution of National Biodiversity Fund

(1) There shall be constituted a Fund to be called the National Biodiversity Fund and there shall be credited thereto--

- a. any grants and loans made to the National Biodiversity Authority under section 26;
- b. all sums including charges and benefit sharing amount received by the National Biodiversity Authority;
- c. all sums received by the National Biodiversity Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be utilised for--

- a. channeling benefits to the benefit claimers;
- b. conservation, promotion and sustainable use of biological resources;
- c. socio-economic development of areas from where such biological resources or traditional knowledge associated thereto have been accessed in consultation with the Biodiversity Management Committee:

Provided that when it is not possible to identify the area from where the biological resources or traditional knowledge associated thereto have been accessed, the fund shall be utilised for socio-economic development of the area where such biological resources occur;

- d. activities to meet the purposes of the Act.

Section 32 - Constitution of State Biodiversity Fund.

(1) There shall be constituted a Fund to be called the State Biodiversity Fund and there shall be credited thereto --

- (a) any grants and loans made to the State Biodiversity Board under section 31;
- (b) any grants or loans made by the National Biodiversity Authority;
- (c) all sums including charges and benefit sharing amount received by the State Biodiversity Board and from such other sources as may be decided by the State Government;

(2) The State Biodiversity Fund shall be utilised for--

- (a) the management and conservation of heritage sites;
- (aa) channelling benefits to the benefit claimers;
- (b) compensating or rehabilitating any section of the people economically affected by notification under sub-section (1) of section 37;
- (c) conservation, promotion and sustainable use of biological resources;

(d) socio-economic development of areas from where such biological resources or traditional knowledge associated thereto have been accessed in consultation with the Biodiversity Management Committee or local body concerned:

Provided that when it is not possible to identify the area from where the biological resources or associated knowledge have been accessed, the fund shall be utilised for socio-economic development of the area where such biological resources occur;

(e) making grants or loans to the Biodiversity Management Committees;

(f) the activities to meet the purposes of the Act.

Section 36 - Central Government to develop national strategies and plans for conservation, promotion and sustainable use of biological diversity.

(1) The Central Government shall in consultation with the State Government and Union territories develop national strategies, plans, programmes for the conservation and promotion 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, including cultivars, folk varieties and landraces, incentives, incentives for research, training and public education to increase awareness with respect to biodiversity.

(2) Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, 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.

(3) The Central Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral policies or cross-sectoral plans and programmes.

(4) The Central Government shall undertake measure,--

(i) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimise such effects and where appropriate provide for public participation in such assessment;

(ii) to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

(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.

6) The Central Government shall involve the National Biodiversity Authority or State Biodiversity Boards to undertake measures for conservation and sustainable use of biological diversity or traditional knowledge associated thereto.

Explanation. -- For the purposes of this section,--

(a) "*ex situ* conservation" means the conservation of components of biological diversity outside their natural habitats;

(b) "*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.

Section 36A. - The Central Government may authorise National Biodiversity Authority or any other organisation to take any measure necessary to monitor and regulate within the territory of India, the access and utilisation of biological resources obtained from a foreign country in order to meet the international obligations to which India is a signatory.

Section 36B.- (1) The State Government shall develop strategies, plans, programmes for the conservation and promotion 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, including cultivars, folk varieties and landraces, incentives for research, training and public education to increase awareness with respect to biodiversity, in conformity with the national strategies, plans and programmes.

(2) The State Government shall, as far as practicable, wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral policies or cross-sectoral plans and programmes.

Section 37 - Biodiversity heritage sites.

(1) Without prejudice to any other law for the time being in force, based on the recommendations of the State Biodiversity Board, the State Government may, from time to time, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act:

Provided that the State Biodiversity Board shall consult the local body and the Biodiversity Management Committee concerned before making such recommendations.

(2) The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the biodiversity heritage sites.

(3) The State Government shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.

Section 38- Power of Central Government to notify threatened species.

Without prejudice to the provisions of any other law for the time being in force, the Central Government, in consultation with the concerned State Government, may from time to time notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species.

Provided that the Central Government may delegate such power to the State Government: Provided further that where such power is delegated to the State Government, it shall consult the National Biodiversity Authority before issuing any such notification.

Section 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 all or any of the provisions of this Act shall not apply to biological resources when normally traded as commodities or to the items derived from them, including agricultural wastes, as notified and cultivated medicinal plants and their products for entities covered under section 7, registered as per the regulations made or as prescribed:

Provided that no exemption shall be made for the activities referred to in sub-sections (1) and (2) of section 6.

Section 41- Constitutions of Biodiversity Management Committees.

(1) Every local body at the Gram Panchayat level in the rural areas and at the Nagar Panchayat or Municipal Committee at Municipal Corporation level in the urban areas shall constitute a Biodiversity Management Committee (by whatever name called) 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, farmers' varieties, and cultivars, domesticated stocks and breeds of animals, living things in water bodies and microorganisms and chronicling of knowledge relating to biological diversity:

Provided that the State Government may constitute Biodiversity Management Committees at the intermediate or district Panchayat level for achieving the objectives of the Act.

(1A) The functions of Biodiversity Management Committee so constituted shall include conservation, sustainable use and documentation of biological diversity, including conservation of habitats, landraces, folk varieties, cultivars, domesticated breeds of animals, and microorganisms, and chronicling of traditional knowledge associated thereto relating to biological diversity.

(1B) The composition of the Biodiversity Management Committee shall be such as may be prescribed by the State Government: Provided that the number of members of the said Committee shall not be less than seven and not exceeding eleven.

(2) The National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources or traditional knowledge associated thereto occurring within the territorial jurisdiction of the Biodiversity Management Committee.

(3) The Biodiversity Management Committees may levy charges by way of collection fees from any person for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction.

Explanation.—For the purposes of this section—

- (a) "cultivar" means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation;
- (b) "folk variety" means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;
- (c) "landrace" means primitive cultivar that was grown by ancient farmers and their successors;
- (d) "farmers' variety" means a variety which—
 - i. has been traditionally cultivated and evolved by the farmers in their field; or
 - ii. is a wild relative or landrace of a variety about which the farmers possess the common knowledge.

Section 43- Constitution of Local Biodiversity Fund

(1) There shall be constituted a Fund to be called the Local Biodiversity Fund at every area notified by the State Government where any institution of self-government is functioning and there shall be credited thereto--

- a. any grants and loans made under section 42;
- b. any grants or loans made by the National Biodiversity Authority;
- c. any grants or loans made by the State Biodiversity Boards;
- d. fees referred to in sub-section (3) of section 41 received by the Biodiversity Management Committees;
- e. benefit sharing amount and all other sums received by the Local Biodiversity Fund from such other sources as may be decided by the State Government.

Section 44 - Application of Local Biodiversity Fund.

(1) The Local Biodiversity Fund shall be utilised in accordance with the regulations and the guidelines made in this behalf, for—

- (a) the conservation and promotion of biodiversity including restoration of areas falling within the jurisdiction of concerned local body;
- (b) the socio-economic development of the community without compromising the conservation concerns; and
- (c) the administrative expenses of the Biodiversity Management Committee.

(2) The Fund shall be utilised in such manner as may be prescribed by the State Government.

Section 45- Annual report of Biodiversity Management Committees.

The custodian of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time as may be prescribed by the State Government, its annual statement giving a full account of its activities during the previous financial year, and submit the same to the local body concerned with a copy to the State Biodiversity Board.

Section 46- Audit of accounts of Biodiversity Management Committees.

(1) The Biodiversity Management Committee shall maintain the accounts which shall be audited in such manner as may be prescribed by the State Government.

(2) The Biodiversity Management Committee shall furnish to the local body concerned and to the State Biodiversity Board, before such date as may be prescribed by the State Government, its audited copy of accounts together with auditor's report thereon.

Section 50- Settlement of disputes

(1) If a dispute arises between the National Biodiversity Authority and a State Biodiversity Board, the said Authority or the Board, as the case may be, may prefer an appeal to the Central Government within such time as may be prescribed.

(2) Every appeal made under sub-section (1) shall be in such form as may be prescribed by the Central Government.

(3) The procedure for disposing of an appeal shall be such as may be prescribed by the Central Government:

Provided that before disposing of an appeal, the parties shall be given a reasonable opportunity of being heard.

(4) If a dispute arises between the State Biodiversity Boards, the Central Government shall refer the same to the National Biodiversity Authority.

(5) While adjudicating any dispute under sub-section (4), the National Biodiversity Authority shall be guided by the principles of natural justice and shall follow such procedure as may be prescribed by the Central Government.

(6) The National Biodiversity Authority shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:--

- a. summoning and enforcing the attendance of any person and examining him on oath;
- b. requiring the discovery and production of documents;
- c. receiving evidence on affidavits;
- d. issuing commissions for the examination of witnesses or documents;
- e. reviewing its decisions;
- f. dismissing an application for default or deciding it *ex parte*;
- g. setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;
- h. any other matter which may be prescribed.

(7) Every proceeding before the National Biodiversity Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the National Biodiversity Authority

shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXV1 of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 52 - Appeal.

Any person, aggrieved by any determination of fair and equitable sharing of benefits or order or direction of the National Biodiversity Authority or a State Biodiversity Board under this Act, may file an appeal to the High Court within thirty days from the date of communication to him, of the determination or order of the National Biodiversity Authority or the State Biodiversity Board, as the case may be:

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.

Provided further that nothing contained in this section shall apply on and from the commencement of the National Green Tribunal Act, 2010 (19 of 2010):

Provided also that any appeal pending before the High Court, before the commencement of the National Green Tribunal Act, 2010 (19 of 2010), shall continue to be heard and disposed of by the High Court as if the National Green Tribunal had not been established under section 3 of the National Green Tribunal Act, 2010.

Section 53 - Execution of determination or order

Every determination of fair and equitable sharing of benefits or order made by the National Biodiversity Authority or a State Biodiversity Board under this Act or the order made by the High Court or the National Green Tribunal in any appeal against any determination or order of the National Biodiversity Authority or a State Biodiversity Board shall, on a certificate issued by any officer of the National Biodiversity Authority or a State Biodiversity Board or the Registrar of the High Court or the Registrar of the National Green Tribunal, as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court.

Explanation.--For the purposes of this section and section 52, the expression "State Biodiversity Board" includes the person or group of persons or body to whom the powers or functions under sub-section (2) of section 22 have been delegated under the proviso to that sub-section and the certificate relating to such person or group of persons or body under this section shall be issued by such person or group of persons or body, as the case may be.

Section 55 - Penalties

If any person or entity covered under sub-section (2) of section 3 or section 7 contravenes or attempts to contravene or abets the contravention of the provisions of section 3 or section 4 or section 6 or section 7, such person shall be liable to pay penalty which shall not be less than one lakh rupees, but which may extend to fifty lakh rupees, but where the damage caused exceeds the amount of penalty, such penalty shall be commensurate with the damage caused, and in case, the failure or contravention continues, an additional penalty may be imposed, which shall not exceed one crore rupees and such penalty shall be decided by the adjudicating officer appointed under section 55A.

Section 55A. - (1) For the purposes of determining the penalties under section 55, the Central Government may appoint an officer not below the rank of Joint Secretary to the

Government of India or a Secretary to the State Government to be the adjudicating officer, to hold inquiry in the prescribed manner and to impose the penalty so determined:

Provided that the Central Government may appoint as many adjudicating officers as may be required.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for, or relevant to, the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person concerned has failed to comply with the provisions of section 3 or section 4 or section 6 or section 7, he may impose such penalty as he thinks fit in accordance the provisions of section 55:

Provided that no such penalty shall be imposed without giving the person concerned an opportunity of being heard in the matter.

(3) Any person aggrieved by the order made by the adjudicating officer under sub-section (2) may prefer an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010.

(4) Every appeal under sub-section (3) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person.

(5) The National Green Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

Section 55B - Any authority or officer empowered by the Central Government may, for the purposes of carrying out inspection, survey or any such activity, have all or any of the following powers, namely:—

- (a) the power to enter upon any land, vehicle, or premises and to inspect, investigate, survey and collect information and make a map of the same and seize the materials and records;
- (b) the powers of a civil court to compel the attendance of anyone, including witnesses and production of documents and materials objects;
- (c) the power to issue a search-warrant;
- (d) the power to hold an inquiry and in the course of such inquiry, receive and record evidence;
- (e) such other power as may be prescribed."

Section 58 (Offences to be cognizable and non-bailable) of the principal Act shall be omitted.

Section 59A - The provision of this Act shall not apply to any person who has been given any approval or granted any right under any law relating to protection of plant varieties enacted

by Parliament to the extent that such approvals or rights given under that Act does not require similar approval under this Act.

Section 61 - Cognizance of offences.

No Court shall take cognizance of any offence under this Act except on a written complaint made by-

- a) the Central Government or any authority or officer authorised in this behalf by that Government; or
- b) any person or a benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

Section 62- Power of Central Government to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

- (a) the manner of obtaining the certificate of origin under sub-section (2) of section 7;
- (aa) the books on the basis of which the certificate of origin to be issued, the manner of maintaining such books and the manner of issuing such certificate under sub-section (3) of section 7;
- (ab) the terms and conditions of service of the Chairperson, Member-Secretary and other members under section 9;
- (b) powers and duties of the Chairperson under section 10;
- (ba) the other functions to be performed by the Member-Secretary;
- (c) procedure under sub-section (1) of section 12 in regard to transaction of business at meetings;
- (d) form of application and payment of fees for undertaking certain activities under sub-section (1) of section 19;
- (e) the form and manner of making an application and payment of fees under sub-section (2) of section 19;
- (ea) form of application and payment of fees under sub-section (1) of section 20;
- (f) form of application and the manner for transfer of biological resource or knowledge under sub-section (2) of section 20;
- (g) form in which, and the time of each financial year at which, the annual report of the National Biodiversity Authority shall be prepared and the date before which its audited copy of accounts together with auditor's report thereon shall be furnished under section 28;
- (h) form in which the annual statement of account shall be prepared under sub-section (1) of section 29;
- (i) the time within which and the form in which, an appeal may be preferred, the procedure for disposing of an appeal and the procedure for adjudication, under section 50;

- (j) the additional matter in which the National Biodiversity Authority may exercise powers of the civil court under clause (h) of sub-section (6) of section 50;
- (ja) the manner of holding inquiry by the adjudicating officer under section 55A;
- (jb) the other power under clause (e) of section 55B;
- (k) the manner of giving notice under clause (b) of section 61;
- (l) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this section and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session or a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Section 63- Power of State Government to make rules

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

- (a) the other functions to be performed by the State Biodiversity Board under clause (c) of section 23;
- (b) the form in which the prior intimation shall be given under sub-section (1) of section 24;
- (c) the form in which, and the time of each financial year at which, the annual report shall be prepared under section 33;
- (d) the manner of maintaining and auditing the accounts of the State Biodiversity Board and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 34;
- (e) management and conservation of national heritage sites under section 37;
- (ea) the composition of the Biodiversity Management Committee under sub-section (1B) of section 41;
- (f) the manner of management and custody of the Local Biodiversity Fund and the purposes for which such Fund shall be utilised under sub-section (1) of section 44;
- (g) the form of annual statement and the time at which such report shall be prepared during each financial year under section 45;
- (h) the manner of maintaining and auditing the accounts of the Local Biodiversity Fund and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 46;

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

For details- <https://egazette.gov.in/WriteReadData/2023/247815.pdf>