

## THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL, 2021

**Question 1:** Why was the amendment to the Biological Diversity Act, 2002 proposed?

The following are the objectives of the Biological Diversity (Amendment) Bill, 2021:

- i. reduce the pressure on wild medicinal plants by encouraging cultivation of medicinal plants;
- ii. encourage Indian system of medicine;
- iii. facilitate fast-tracking of research, patent application process, transfer of research results while utilising the biological resources available in India without compromising the objectives of United Nation Convention on Biological Diversity and its Nagoya Protocol;
- iv. decriminalise certain provisions;
- v. bring more foreign investments in the chain of biological resources, including research, patent and commercial utilisation, without compromising the national interest.

**Question 2:** Why did the Biological Diversity (Amendment) Bill, 2021 face opposition?

There is a general concern that the amendment focusses on commercial exploitation without benefit sharing which is against the essence of the Act. Some of the reasons why the Bill faced opposition are as follows:<sup>1</sup>

### 1. Ambiguity in the term ‘codified traditional knowledge’

Under the 2002 Act, users of biological resources and associated knowledge were mandated to share benefits with the local communities. However, under the Bill, exemption has been provided to users of ‘codified traditional knowledge’. The term is neither defined in the Bill nor in the Convention on Biological Diversity. Reference may be made to the definition provided by the World Intellectual Property Organization (WIPO). As per WIPO, ‘codified traditional knowledge’ is traditional knowledge which is in some systematic and structured form, in which the knowledge is ordered, organised, classified and categorised in some manner.

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<sup>1</sup> Legislative Brief, The Biological Diversity (Amendment) Bill, 2021, PRS India, Available at: <https://prsindia.org/billtrack/prs-products/prs-legislative-brief-3940>.

It may lead to commercial exploitation through development of products, without obtaining the consent or sharing benefits with the local communities. Under Section 41 of the Act, local bodies are mandated to create Biodiversity Management Committee, which are tasked with the preparation of the People's Biodiversity Register. As this register would have record of the local biological resources and traditional knowledge, the contents of the register will be 'codified traditional knowledge' as per the definition provided by WIPO. Consequently, local communities will be bereft of the benefit sharing arrangements with respect to 'codified traditional knowledge'.

## **2. Removal of local communities' stake in benefit sharing arrangements**

Under Section 21, the National Biodiversity Authority is responsible to approve the benefit sharing terms as decided mutually by the applicant, local body, and the benefit claimers *i.e.* local communities. The Bill seeks to amend this provision and the mutually decided terms would be between the applicant and the Biodiversity Management Committee, in effect, leaving out the benefit claimers and local communities.

Moreover, under the Nagoya Protocol, prior informed consent or approval of the local and indigenous community is mandatory for access to genetic resources and traditional knowledge. However, the Bill has removed the requirement of seeking prior informed consent of the local and indigenous community, which has the potential for depriving them of the benefits.

## **3. Offences and Penalties**

Under the Act, offences are punishable with imprisonment of up to five years, or a fine, or both. The Bill decriminalizes the offences and the prescribed punishment is a penalty ranging from one lakh rupees to fifty lakh rupees. In case of repeated contravention, additional penalty up to one crore rupees may also be imposed. Decisions pertaining to penalty shall be taken by an adjudicating officer who shall not be below the rank of Joint Secretary in the Central Government or Secretary in the state government. The Bill lacks sufficient nuance in prescribing the penalty and also does not provide guidance to the adjudicating officer to decide the penalty.

## **4. Dilution of the approval process**

Those practicing traditional medicine including *vaid*s, *hakims*, AYUSH practitioners etc. need not seek permission from the National Biodiversity Authority before using biological resources. This has the potential to bring out more instances of ‘bio-piracy’.

**Question 3:** How many times were the consultations, if any, were made before the Bill was introduced?

No public consultations were held prior to introduction of the bill before the Lok Sabha on 16<sup>th</sup> December, 2021.

**Question 4:** What are the amendments proposed in the Biological Diversity (Amendment) Bill, 2021?

Provision	Biological Diversity Act, 2002	Biological Diversity (Amendment) Bill, 2022
2(a)	“benefit claimers” means the conservers of biological resources, their by-products, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application.	(a) “access” means collecting, procuring or possessing any biological resource occurring in or obtained from India or associated traditional knowledge 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 associated traditional knowledge 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.
2 (c)	“biological resources” means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding	“biological resources” include plants, animals, micro-organisms or parts of their genetic material, derivatives (excluding value added products),

	value added products) with actual or potential use or value, but does not include human genetic material.	with actual or potential use or value for humanity, but does not include human genetic material.
2 (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.	“bio-survey” means survey or collection of any taxa, varieties, genes, components and extracts of biological resource for any purpose.
2 (fa)		“derivative” means a naturally occurring biochemical compound or metabolism of biological resources, even if it does not contain functional units of heredity.
2 (ga), (gb), (gc)		<p>(ga) “folk variety” means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;</p> <p>(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;</p> <p>(gc) “landrace” means primitive cultivar that was grown by ancient farmers and their successors.</p>
2 (ia)		“Member-Secretary” means the full time Secretary of the National Biodiversity Authority,

		or of the State Biodiversity Board, as the case may be.
3 (2) (c) (ii)	incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management.	incorporated or registered in India under any law for the time being in force, which is a foreign controlled company.  Explanation.—For the purposes of this section,— (a) “associated knowledge” shall include traditional knowledge or contemporary knowledge in any form relating to the biological resources; (b) “foreign controlled company” means a foreign company within the meaning of clause (42) of section 2 of the Companies Act, 2013 which is under the control of a foreigner.
4	No person shall, without the previous approval of the National Biodiversity Authority, transfer the results of any research relating to any biological resources occurring in, or obtained from, India for monetary consideration or otherwise to any person who is not a citizen of India or citizen of India who is non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961 (43 of 1961) or a body corporate or organisation which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management. Explanation.—For the purposes of this section, “transfer” does not include publication of research papers or dissemination of knowledge in any seminar or workshop, if such publication is as per the guidelines issued by the Central Government.	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 associated traditional knowledge thereto, for monetary consideration or otherwise, to a person 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 National Biodiversity Authority shall be necessary: Provided also that if the results of

		<p>research are used for commercial utilisation or for obtaining any intellectual property rights, within or outside India, prior approval of National Biodiversity Authority shall be required to be taken in accordance with the provisions of this Act.</p>
5 (1)	<p>The provisions of sections 3 and 4 shall not apply to collaborative search projects involving transfer or exchange of biological resources or information relating 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).</p>	<p>The provisions of clause (a) of sub-section (1) of section 3 shall not apply to collaborative research projects involving transfer or exchange of biological resource or associated traditional knowledge 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).</p>
6 (1)	<p>No person shall apply 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 obtained from India without obtaining the previous approval of the National Biodiversity Authority before making such application: Provided that if a person applies for a patent, permission of the National Biodiversity Authority may be obtained after the acceptance of the patent but before the sealing of the patent by the patent authority concerned: Provided further that the National Biodiversity Authority shall dispose of the application for permission made to it within a period of ninety days from the date of receipt</p>	<p>Any person or entity applying for an intellectual property right, covered under sub-section (2) of section 3, 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 associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority before grant of such intellectual property rights. (1A) Any person applying for any intellectual property right, covered under section 7, 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</p>

	thereof.	outside India, or associated traditional knowledge 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 associated traditional knowledge thereto, shall obtain prior approval of the National Biodiversity Authority at the time of commercialisation.
7	No person, who is a citizen of India or a body corporate, association or organisation which is registered in India, shall obtain any biological resource for commercial utilisation, or bio-survey and bio-utilisation for commercial utilisation except after giving prior intimation to the State Biodiversity Board concerned: Provided that the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and vaidas and hakims, who have been practicing indigenous medicine.	<p>(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, 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, vaidas, hakims and registered AYUSH practitioners who have been practicing indigenous medicines, including Indian systems of medicine for sustenance and livelihood.</p> <p>(2) The manner of issuing certificate of origin for cultivated medicinal plants shall be such as may</p>

		be prescribed.
8 (3)	The head office of the National Biodiversity Authority shall be at Chennai and the National Biodiversity Authority may, with the previous approval of the Central Government, establish offices at other places in India.	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.
8 (4) (a), (b), (c),	<p>(a) a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the Central Government;</p> <p>(b) three ex officio members to be appointed by the Central Government, one representing the Ministry dealing with Tribal Affairs and two representing the Ministry dealing with Environment and Forests of whom one shall be the Additional Director General of Forests or the Director General of Forests;</p> <p>(c) seven ex officio members to be appointed by the Central Government to represent respectively the Ministries of the Central Government dealing with— (i) Agricultural Research and Education; (ii) Biotechnology; (iii) Ocean Development; (iv) Agriculture and Cooperation; (v) Indian Systems of Medicine and Homoeopathy; (vi) Science and Technology; (vii) Scientific and Industrial Research.</p>	<p>(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;</p> <p>(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) Panchayati Raj; (x) Science and Technology; (xi) Scientific and Industrial Research; (xii) Tribal Affairs;</p> <p>(c) four representatives from State Biodiversity Boards on rotational basis</p>



8 (4) (e)		a Member-Secretary, who shall have experience in matters relating to biodiversity conservation, to be appointed by the Central Government.
10A		<p>(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.</p> <p>(2) The Member-Secretary shall perform such other functions as may be prescribed.</p>
13 (2)	Without prejudice to the provisions of subsection (1), the National Biodiversity Authority may constitute such number of committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act.	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.
15	All orders and decisions of the National Biodiversity Authority shall be authenticated by the signature of the Chairperson or any other member authorised by the National Biodiversity Authority in this behalf and all other 9 instruments executed by the National Biodiversity Authority shall be authenticated by the signature of an officer of the National Biodiversity Authority authorised by it in this behalf.	All orders and decisions of the National Biodiversity Authority shall be authenticated by the signature of the Member Secretary or any other member authorised by the National Biodiversity Authority in this behalf and all other 9 instruments executed by the National Biodiversity Authority shall be authenticated by the signature of Member Secretary an officer of the National Biodiversity Authority authorised by it in this behalf.
16	The National Biodiversity Authority may, by general or special order in writing, delegate to any member, officer of the National	The National Biodiversity Authority may, by general or special order in writing, delegate to any member or Member Secretary 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.	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.
18 (1), (2)	<p>(1) It shall be the duty of the National Biodiversity Authority to regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing.</p> <p>(2) The National Biodiversity Authority may grant approval for undertaking any activity referred to in sections 3, 4 and 6.</p>	<p>(1) The National Biodiversity Authority shall, with the approval of the Central Government, make regulations to provide for access to biological resources and associated traditional knowledge thereto, and for determination of fair and equitable sharing of benefits.</p> <p>(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.</p>
18 (3)	The National Biodiversity Authority may— (a) advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the 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 heritage sites and measures for the management of such heritage sites; (c) perform such other functions as may be necessary to carry out the provisions of this Act.	(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; (c) perform such other functions as may be necessary to carry out the provisions of this Act.

18 (4)	<p>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 obtained from India or knowledge associated with such biological resource which is derived from India.</p>	<p>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 associated traditional knowledge thereto accessed</p>
19 (1), (2)	<p>(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 who intends to apply for a patent or any other form of intellectual property protection whether in India or outside India referred to in sub-section (1) of section 6, may make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.</p>	<p>(1) Any person referred to in sub-section (2) of section 3 who intends to access biological resource or associated traditional knowledge thereto for commercial utilisation, shall make an application to the National Biodiversity Authority, in such form and on payment of such fee, as may be prescribed.</p> <p>(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.</p> <p>(2A) Any person referred to in sub-section (1A) of section 6 shall register with 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 National Biodiversity Authority at the time of commercialisation.</p>

19 (3A)		<p>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.</p>
19 (4)	<p>The National Biodiversity Authority shall give public notice of every approval granted by it under this section.</p>	<p>The National Biodiversity Authority shall place in public domain details of every approval granted or rejected under this section.</p>
20 (1)	<p>No person who has been granted approval under section 19 shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval except with the permission of the National Biodiversity Authority.</p>	<p>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 associated traditional knowledge 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.</p>
20 (2)	<p>Any person who intends to transfer any biological resource or knowledge associated</p>	<p>Any person who intends to transfer “the results of research referred to in sub-section (1) shall make</p>

	<p>thereto 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.</p>	<p>an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.</p>
20 (3), (4)	<p>(3) On receipt of an application under 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 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.</p> <p>(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.</p>	<p>(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, Amendment of section 19. Amendment of section 20. 10 20 25 30 35 40 5 15 45 8 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.</p> <p>(4) The National Biodiversity Authority shall place in public domain the details of every approval granted or rejected under this section.</p>
21 (1)	<p>The National Biodiversity Authority shall while granting approvals under section 19 or section 20 ensure that the terms and conditions subject to which approval is granted secures equitable sharing of benefits arising out of the use of accessed biological resources, their by-products, 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, local</p>	<p>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</p>

	bodies concerned and the benefit claimers.	such approval, and the Biodiversity Management Committee represented by the National Biodiversity Authority
21 (3)	Provided that where biological resource or knowledge was a result of access from specific individual or group of individuals or organisations, the National Biodiversity Authority may direct that the amount shall be paid directly to such individual or group of individuals or organisations in accordance with the terms of any agreement and in such manner as it deems fit.	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.
22 (2)	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 as the Central Government may specify.	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.
22 (4)	The Board shall consist of the following members, namely:— (a) a Chairperson who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the State Government; (b) not more than five ex officio members to be appointed by the State Government to represent the concerned Departments of the State Government; (c) not more than five members to be appointed from	(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 with Panchayati Raj and tribal affairs; (c) not more than five non-official members to be appointed from amongst

	amongst experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources.	specialists, legal experts, scientists having special knowledge 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.
23 (a), (b)	<p>The functions of the State Biodiversity Board shall be to—</p> <p>(a) advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilisation of biological resources;</p> <p>(b) regulate by granting of approvals or otherwise requests for commercial utilisation or bio-survey and bio-utilisation of any biological resource by Indians.</p>	<p>(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 associated traditional knowledge thereto, in conformity with the regulations or guidelines, if any, issued by the Central Government or the National Biodiversity Authority;</p> <p>(b) regulate any activity referred to in section 7 by granting or rejecting approvals;</p> <p>(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.</p>
24 (1)	Any citizen of India or a body corporate, organisation or association registered in India intending to undertake any activity referred to in section 7 shall give prior intimation in such form as may be prescribed by the State Government to the State Biodiversity Board.	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.
24 (3)	Any information given in the form referred to in sub-section (1) for prior intimation shall be	If the State Biodiversity Board is of the opinion that such activity is detrimental or contrary to the

	<p>kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.</p>	<p>objectives of conservation and sustainable use of biodiversity or 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 of rejection shall be made without giving an opportunity of being heard to the person concerned.</p> <p>(4) The State Biodiversity Board shall place in public domain the details of every approval granted or rejected under this section.</p>
<p>27 (1)</p>	<p>(1) There shall be constituted a Fund to be called the National Biodiversity Fund and there shall be credited thereto—</p> <p>(a) any grants and loans made to the National Biodiversity Authority under section 26;</p> <p>(b) all charges and royalties received by the National Biodiversity Authority under this Act; and</p> <p>(c) all sums received by the National Biodiversity Authority from such other sources as may be decided upon by the Central Government.</p>	<p>(1) There shall be constituted a Fund to be called the National Biodiversity Fund and there shall be credited thereto—</p> <p>(a) any grants and loans made to the National Biodiversity Authority under section 26;</p> <p>(b) all sums including charges and benefit sharing amount received by the National Biodiversity Authority; and</p> <p>(c) all sums received by the National Biodiversity Authority from such other sources as may be decided upon by the Central Government.</p>
<p>27 (2)</p>	<p>(2) The Fund shall be applied for—</p> <p>(a) channeling benefits to the benefit claimers;</p> <p>(b) conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed;</p>	<p>(2) The Fund shall be utilised for—</p> <p>(a) channeling benefits to the benefit claimers;</p> <p>(b) conservation and sustainable use of biological resources;</p> <p>(c) socio-economic development of areas from</p>



	<p>(c) socio-economic development of areas referred to in clause (b) in consultation with the local bodies concerned.</p>	<p>where such biological resources or associated traditional knowledge 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 traditional knowledge have been accessed, the fund shall be utilised for socio-economic development of the area where such biological resources occur;</p> <p>(d) activities to meet the purposes of the Act.</p>
32 (1)	<p>(1) There shall be constituted a Fund to be called the State Biodiversity Fund and there shall be credited thereto—</p> <p>(a) any grants and loans made to the State Biodiversity Board under section 31;</p> <p>(b) any grants or loans made by the National Biodiversity Authority;</p> <p>(c) all sums received by the State Biodiversity Board from such other sources as may be decided upon by the State Government.</p>	<p>(1) There shall be constituted a Fund to be called the State Biodiversity Fund and there shall be credited thereto—</p> <p>(a) any grants and loans made to the State Biodiversity Board under section 31;</p> <p>(b) any grants or loans made by the National Biodiversity Authority;</p> <p>(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.</p>
32 (2)	<p>The State Biodiversity Fund shall be applied for— (a) the management and conservation of heritage sites; (b) compensating or rehabilitating any section of the people economically affected by notification under sub-section (1) of section 37; (c) conservation and promotion of biological resources; (d)</p>	<p>The State Biodiversity Fund shall be utilised for —</p> <p>(a) the management and conservation of heritage sites;</p> <p>(aa) channelling benefits to the benefit claimers;</p>

	<p>socio-economic development of areas from where such biological resources or knowledge associated thereto has been accessed subject to any order made under section 24, in consultation with the local bodies concerned;</p> <p>(e) meeting the expenses incurred for the purposes authorised by this Act.</p>	<p>(b) compensating or rehabilitating any section of the people economically affected by notification under sub-section (1) of section 37;</p> <p>(c) conservation and sustainability of biological resources;</p> <p>(d) socio-economic development of areas from where such biological resources or associated traditional knowledge 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 traditional knowledge have been accessed, the fund shall be utilised for socio-economic development of the area where such biological resources occur;</p> <p>(e) making grants or loans to the Biodiversity Management Committees;</p> <p>(f) the activities to meet the purposes of the Act.</p>
36 (1)	<p>The Central Government shall 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, 14 conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity.</p>	<p>The Central Government shall 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, 14 conservation of biological resources, including cultivars, folk varieties and landraces, incentives for research, training and public education to increase awareness with respect to</p>

		biodiversity.
36 (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 or cross-sectoral plans, programmes and policies.	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.
36 (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 associated traditional knowledge thereto.
36A		The Central Government may authorise National Biodiversity Authority or any other organisation to take any measures 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.
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

		<p>education to increase awareness with respect to biodiversity, in conformity with the national strategies, plans and programmes.</p> <p>(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.</p>
37 (1), (2)	<p>(1) Without prejudice to any other law for the time being in force, the State Government may, from time to time in consultation with the local bodies, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act.</p> <p>(2) The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the heritage sites.</p>	<p>(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.</p> <p>(2) The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the biodiversity heritage sites.</p>
38		<p>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.</p>

40	<p>Notwithstanding anything contained in this Act, the Central Government may, in consultation with the National Biodiversity Authority, by notification in the Official Gazette, declare that the provisions of this Act shall not apply to any items, including biological resources normally traded as commodities.</p>	<p>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.</p>
41 (1)	<p>(1) Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity. Explanation.—For the purposes of this sub-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</p>	<p>(1) Every local body at the Gram Panchayat level in the rural areas and at the Nagar Panchayat or Municipal Committee or 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 of landraces, folk varieties, farmers’ varieties, and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity sustainable use and documentation of biological diversity:</p> <p>Provided that the State Government may constitute Biodiversity Management Committees at the intermediate or district Panchayat level for achieving the objectives of this Act.</p> <p>(1A) The functions of Biodiversity Management</p>

	<p>cultivar that was grown by ancient farmers and their successors.</p>	<p>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 associated traditional knowledge thereto relating to biological diversity.</p> <p>(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.</p>
<p>41 (2)</p>	<p>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 and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee.</p>	<p>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 associated traditional knowledge thereto occurring within the territorial jurisdiction of the Biodiversity Management Committee.</p>
<p>Explanation to 41</p>		<p>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’</p>

		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.
43 (1) (e)	all sums received by the Local Biodiversity Fund from such other sources as may be decided upon by the State Government.	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.
44 (1)	Subject to the provisions of sub-section (2), the management and the custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied, be in the manner as may be prescribed by the State Government.	<p>The Local Biodiversity Fund shall be utilised in accordance with the regulations and the guidelines made in this behalf, for—</p> <p>(a) the conservation of biodiversity including restoration of areas;</p> <p>(b) the socio-economic development of the community without compromising the conservation concerns; and</p> <p>(c) the administrative expenses of the Biodiversity Management Committee.</p> <p>(2) The Fund shall be utilised in such manner as may be prescribed by the State Government.</p>
45	The person holding the custody of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time as 16 may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the concerned local body.	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.
46	The accounts of the Local Biodiversity Fund shall be maintained and audited in such manner as may, in consultation with the Accountant-General of the State, be prescribed and the person holding the custody of the Local Biodiversity Fund shall furnish, to the concerned local body, before such date as may be prescribed, its audited copy of accounts together with auditor's report thereon.	(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.
52 (1)	Any person, aggrieved by any determination of benefit sharing or order 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	Any person, aggrieved by any determination of benefit sharing 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
53	Every determination of benefit sharing or order made by the National Biodiversity Authority or a State Biodiversity Board under this Act or the order made by the High Court 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, as	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



	<p>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 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 under this section shall be issued by such person or group of persons, as the case may be.</p>	<p>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 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, as the case may be.</p>
55	<p>(1) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 3 or section 4 or section 6 shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten lakh rupees and where the damage caused exceeds ten lakh rupees such fine may commensurate with the damage caused, or with both. (2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 7 or any order made under sub-section (2) of section 24 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.</p>	<p>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 clauses (a) and (b) of sub-section (1) 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. 55A. (1) For the purposes of determining the penalties under section 55, the Central Government may appoint an officer not below the</p>

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 clauses (a) and (b) of sub-section (1) 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)

		<p>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. 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 material 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.</p>
59A		<p>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.</p>
61	<p>No Court shall take cognizance of any offence under this Act except on a complaint made by —</p> <p>(a) the Central Government or any authority or officer authorised in this behalf by that</p>	<p>No Court shall take cognizance of any offence under this Act except on a written complaint made by—</p> <p>(a) the Central Government or any authority or officer authorised in this behalf by that</p>

	Government; or 19  (b) any 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.	Government; or 19  (b) any person or 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.
62 (2) (a)	(a) terms and conditions of service of the Chairperson and members under section 9	(a) the manner of issuing certificate of origin for cultivated medicinal plants under sub-section (2) of section 7;  (aa) the terms and conditions of service of the Chairperson, Member Secretary and other members under section 9.
62 (2) (ba)		the other functions to be performed by the Member-Secretary.
62 (2) (e)	the form and manner of making an application under sub-section (2) of section 19	the form and manner of making an application and payment of fees under sub-section (2) of section 19
62 (2) (ea)		form of application and payment of fees under sub-section (1) of section 20.
62 (2) (ja), (jb)		“(ja) the manner of holding inquiry by the adjudicating officer under section 55A;  (jb) the other power under clause (e) of section 55B
63 (2) (ea)		the composition of the Biodiversity Management Committee under sub-section (1B) of section 41.

63 (2) (f), (g)	(f) the manner of management and custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied under sub-section (1) of section 44;  (g) the form of annual report and the time at which such report shall be prepared during each financial year under section 45	(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
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**Question 5:** What is the current status of the Biological Diversity (Amendment) Bill, 2021?

The Biological Diversity (Amendment) Bill, 2021 was introduced before the Lok Sabha on 16<sup>th</sup> December, 2021. It was referred to a Joint Parliamentary Committee on 20<sup>th</sup> December, 2021. The Committee Report is awaited.