

Two-Day International Webinar
on
**Implementation of Access and Benefit Sharing:
Sustaining Indian Biodiversity**

jointly organised by

**Centre for Environmental Law
Maharashtra National Law University, Nagpur**



Maharashtra State Biodiversity Board, Nagpur



November 12-13, 2021 (Friday and Saturday)

PROLOGUE

The catastrophic loss of biodiversity is largely caused by human activity concerning land use change, climate change, pollution, overexploitation, and invasive alien species among others. States have sought to address this problem by implementing the UN Convention on Biological Diversity (CBD), its protocols and targets, as well as other multilateral environmental agreements. However, biodiversity loss continues, and it has become clear that the objectives of the CBD can only be met by instituting transformative economic, social, environmental, legal, political, and technological changes in a whole-of-society approach.

States, corporate houses, international organizations, and other actors have procedural and substantive obligations and responsibilities under both international and municipal laws to address biodiversity loss, to prevent its negative impacts, and to ensure fulfilment of primary objectives of CBD that include promoting conservation of biological diversity, sustainable use of the components of biological diversity, and a fair and equitable sharing of benefits arising out of the utilization of genetic resources.

In pursuance of the third objective relating to fair and equitable sharing of the benefits arising out of the utilization of genetic resources, the ‘Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization’ (Nagoya Protocol) provides a legal framework for the effective implementation of this objective. Access to genetic resources and ‘fair and equitable’ sharing of benefits (ABS) requires that the holders and seekers of genetic resources should arrive at an arrangement to share the resources on the basis of ‘prior informed consent’ (PIC) and ‘mutually agreed terms’ (MAT).

India became a member of the CBD in 1993, and prepared its first ‘National Policy and Macro Level Action Strategy on Biodiversity’ in 1999 and enacted the Biological Diversity Act 2002 to fulfil its commitments under the CBD. It obligates government authorities to integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.’ The Biological Diversity Act 2002 and rules made thereunder, and the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations 2014 create the administrative infrastructure for implementing ABS. National Biodiversity Authority (NBA) is constituted by the Central Government to regulate activities regarding access to biological resources and for fair and equitable benefit sharing. It performs advisory and supervisory functions as well. State Biodiversity Boards (SBBs) are constituted by the respective State Governments to perform regulatory, advisory and other functions as required for conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of biological resources. Finally, at the local level, Biodiversity Management Committees (BMCs) are constituted for 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.

To guarantee access to justice and effective remedies with the balance of interest, the equitable actions towards recognizing the economic and social needs of developing countries, Access and Benefit Sharing Mechanism is a tool for distributive justice. However, due to weak enforcement, lack of will and awareness among the benefit claimers, benefit is not reaching relevant stakeholders. For implementing CBD in true spirit, there is a requirement to make the administrative and legal system robust, remove existing gaps, and sensitise the stake-holders, and to make them aware of their duties and rights respectively.

ABOUT MAHARASHTRA NATIONAL LAW UNIVERSITY, NAGPUR

Since its inception in 2016, Maharashtra National Law University, Nagpur has made multifarious achievements, providing a strong platform for activities that encourage excellence in the spheres of academics, co-curricular and extra-curricular activities. The University is presently offering B.A.LL.B.(Hons.) Five-Year Integrated Degree Course, B.A.LL.B.(Hons. in Adjudication and Justicing) Five-Year Integrated Degree Course, LL.M. One-Year Postgraduate Degree Course, Ph.D. having interface with law and all legal issues, besides Diploma and Certificate Courses. While it has a strong student-centric focus, it focuses extensively on the all-round development of its bright and diligent faculty members, motivating them to attain new heights. Besides the common objective of any educational institution to achieve the highest academic standards, the University realizes its responsibility, as a social entity of national character, towards national development by strengthening society through all possible means and resources possessed by the University. To realise the holistic vision and keeping in view the spirit of the constitution, the University has established a University Social Responsibility Cell (USRC). The University has taken a dynamic and intensive approach to research in law and its allied disciplines by establishing various centres for advance research and advocacy, thereby creating an environment of learning and innovation.

Owing to the above responsibilities, the University has designed a comprehensive institutional plan to provide a platform for socio-legal research, exchange of ideas, best practices, identify issues and challenges, and to offer solutions regarding Bio-diversity regime and therefore, the University through its Centre for Environmental Law is organising an International Webinar on **‘Implementation of Access and Benefit Sharing: Sustaining Indian Biodiversity’** in virtual mode in collaboration with Maharashtra State Biodiversity Board, Nagpur to promote socio-legal research and capacity building program towards the development of a smart and sustainable use of biological resources.

ABOUT MAHARASHTRA STATE BIODIVERSITY BOARD, NAGPUR

Maharashtra State Biodiversity Board, a statutory autonomous body established under section 22(i) of Biological Diversity Act 2002, is in existence since January 02, 2012. It is mandated to conserve biological diversity and secure its sustainable management. Equitable distribution of benefits due to access of biological resources is to be shared with the protectors of biodiversity. This Access Benefit Sharing (ABS) involves diverse stakeholders. Under the inspiring guidance of Hon’ble Chief Minister of Maharashtra State, Shri Uddhavji Balasaheb Thackeray, the Board is committed to secure effective implementation of Biological Diversity Act 2002. Eco-restoration of biodiversity by 2030 is the immediate mandate of the Board. The

state has 28649 operational Biodiversity Management Committees (BMCs) covering all Village Panchayats and Municipal Councils/ Municipal Corporations. Consultation with stakeholders becomes essential prerequisite to facilitate conflict resolution in the existing ABS stalemate scenario. Synergy among stakeholders is sure to restore and stabilize declining biological diversity of the State. Guidance of Chairman, National Biodiversity Authority, Dr. V.B. Mathur, and the Chairman of Maharashtra State Biodiversity Board, Dr. S.H Patil impelled the Member Secretary, Maharashtra State Biodiversity Board, Shri Praveen Srivastava to collaborate with National Law School for organising the webinar of stakeholders.

ABOUT THE WEBINAR

MNLU, Nagpur and Maharashtra State Biodiversity Board are jointly organizing International Webinar on **Implementation of Access and Benefit Sharing: Sustaining Indian Biodiversity** in virtual mode on **November 12-13, 2021 (Friday and Saturday)**. There is a need to implement access and benefit sharing mechanism under UN Convention on Biodiversity 1992 and its supplementary Nagoya Protocol 2010 to attain distributive justice in the context of biodiversity.

The Webinar is organized to meet the following objectives:

1. To develop the jurisprudence of ABS mechanism in India by critically examining existing knowledge on biodiversity and its conservation;
2. To identify gaps in legal and institutional framework on ABS mechanism in India; and
3. To discuss new and emerging issues in this area like bio-piracy, conflict with IPR, reluctance of Indian corporations and research institutions, etc.

In this scenario, issues and challenges relating to the following sub-themes are identified for deliberation:

Human Rights and Biodiversity

Biodiversity loss may disproportionately harm the human rights of indigenous people, local communities, women and girls, children and youth, the poor, and persons, groups and people's in vulnerable situations. Deliberation on this causal relationship is expected in this section.

Distributive Bio-justice and Sustainable Development

Since ABS talks about providing access to corporations and research institutions to bio-resources that belong to the State and indigenous/local/tribal people residing there, it is a duty on corporations and these research bodies to share the benefits earned by them on commercial utilization of these bio-resources with the State as well as other relevant stakeholders. The distribution of benefits with all relevant stakeholders will assure distributive justice and since it is being done in the area of biodiversity, it's distribution is distributive bio-justice. This will also help us in achieving all-inclusive sustainable development which is accepted as part of environmental jurisprudence in India.

Identification and Education of Stakeholders

ABS aims inclusivity but whose inclusion and exclusion, is still a grey area. We need to precisely define all the stakeholders other than State. Section 2(a) of the Biodiversity Act 2002 defines benefit claimers as *“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.” This definition lacks clarity and hence it can be easily abused. Once the stakeholders are identified, they need to be educated about their rights as benefit claimers under benefit sharing agreements signed by biodiversity boards across India and users of bio-resources. At present, lack of awareness among these vulnerable populations of our country is one of the major hindrances in effectively implementing ABS in India and fixing accountability among the users and the boards.

Valuation of Biodiversity

UN Convention on Biodiversity 1992, in its Preamble, recognizes the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components. Determination of value of biodiversity is the first step and hence sine qua non for effective and equitable benefit sharing with stakeholders.

ABS and Biodiversity Act 2002 and Guidelines of 2014: Exploring the Legal Gaps

There are many provisions under the Biodiversity Act 2002 and rules 2004 as well as the Guidelines of 2014 that requires elucidation and simplification. Ambiguous provisions and complicated wordings creates a perplexing situation for the Biodiversity Boards who, due to legal and technical incapacity, even when they want to implement the Act and undertake fair and equitable sharing with the benefit claimers, are unable to do so.

ADR and Clinical Legal Aid

As affirmed by CBD in its Preamble, there is general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures. To address this situation, there is a need to develop ADR methods and provide extensive legal aid at the grassroot level. Deliberation on use of ADR in implementing ABS is expected in this section.

Biopiracy: Crime against State and Indigenous People

Biopiracy is defined as the act of taking over natural resources and traditional knowledge from local stakeholders without their Prior Informed Consent and Benefit Sharing agreement when relevant. Biopiracy results in violation of the rights of indigenous peoples, enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007 as well as the Convention on Biological Diversity (CBD) 1992 and its Nagoya Protocol. It also violates environmental legislations in India like Biodiversity Act 2002, Guidelines 2014, Forest Rights Act 2006 etc. The issue of bio-piracy has to be effectively linked with ABS mechanism for complete elimination of this inflating environmental crime.

ABS' tryst with Intellectual Property Rights: Conflict or Convergence

Intellectual Property (IP) in relation to bio-resources, used in pharmaceutical, agricultural and cosmetics sectors particularly, create a major roadblock in implementation of ABS in India. Since IP is individual oriented and ABS is community oriented, their harmonization is a cumbersome task. There are many issues looming in the area of ABS that require management of IP rights like non-commercial and commercial ABS agreements, licensing and ownership of and transfer of IP rights to third parties, etc.

ABS Litigation in India

At present, there are only handful of cases decided on ABS in India. Given the obscurity of laws in this area, the scope of litigation is immense and judiciary can contribute extensively through constructively interpreting the provisions of the Act and the guidelines. A critical appraisal of the role of judiciary played by far and its' future potential in this area is anticipated from the participants.

Interface between Corporate Social Responsibility and ABS

Only 2-3% of all India's CSR funding goes towards biodiversity related activities. High earning companies must pay 2% of three-year average annual profits. This mode of generating biodiversity finance can help immensely in implementation of ABS.

Any other suitable themes or sub-themes relating to significant aspects of access and benefit sharing mechanism is also appreciated.

EXPECTED OUTCOME

Expected results shall include, but not limit to, a better understanding of potential models for access and benefit sharing mechanism in India, enhanced understanding of roles and responsibilities of National Biodiversity Board, State Biodiversity Boards and Biodiversity Management Committees in India, better understanding of the role (progressive or regressive) of the corporations and research institutions in India and abroad in benefit sharing in India. It is expected that facilitated sharing of knowledge and jurisprudence in this area will lead to improved understanding of the underlying issues and challenges relating to ABS and will benefit not just the benefit claimers but also the Boards which are losing humungous amount of money every year due to non-implementation of the Act and the guidelines. It is expected that these discussions and deliberations will lead to the development of a more efficient and equitable ABS in India.

PROCEDURE FOR SUBMISSION OF ABSTRACTS

An abstract of 400-500 words with 5-7 keywords should be submitted as an attachment in a word file. The abstract shall clearly state the aim, methodology, and position/ theoretical approach of the research. A separate covering letter containing following information, in the given format, should be sent along with the abstract:

- Title of Abstract
- Name of the Author (s)
- Designation / Institution Details, Address and Email ID
- Mobile Number

Abstract along with covering letter shall be e-mailed to: cenvir@nlunagpur.ac.in Abstracts will be peer reviewed by the organizing committee and only shortlisted abstracts will be invited to submit final papers. The final paper should be submitted after the intimation of acceptance of abstract. The final submission shall be concluded within the *prescribed deadline*. Authors and Co-authors have to register separately. All registered candidates will get certificates, but the organisers reserve the right to publish the selected papers. Webinar papers are invited from Experts, Academicians, Research Scholars, Professionals, Advocates/Practitioners, students and other stakeholders working in this area.

GUIDELINES FOR SUBMISSION OF PAPERS/ABSTRACTS

- The full paper should be prepared (1) in the MS-Word format, (2) Font: Times New Roman, (3) Title of the paper: Font 14, (4) Subtitles: Font 13, (5) Body text: Font 12, (5) Spacing: 1.5 lines, and (6) shall range between 4,000 to 8,000 words (including footnotes).
- Submission of a paper amounts to consent to such publication and transfer of copyright to Maharashtra National Law University (MNLU), Nagpur and consent to edit the paper as may be required. The author shall cooperate with the editor, in respect of such editing.
- All references must be in the form of footnotes with font size 10 and should be according to MNLU Citation Style as available on the website of the University.
<https://www.nlunagpur.ac.in/PDF/2019/MNLU%20Mode%20of%20Citation%20and%20Guideline%20for%20Researchers.pdf>
- The work should be original, previously unpublished and must not be in the stage of submission/ consideration elsewhere.
- No abstract or full paper shall be accepted after the respective last dates of submission.
- Participants/Paper Presenters have to register after the acceptance of abstract with payment of required fees.
- For participation, **registration is mandatory on confirmation of the participation.** The registration fee is **non-refundable**.

Note: Selected papers shall be published in a special issue of Contemporary Law Review (CLR). CLR provides a platform for cutting-edge research into socio-legal issues, healthy dialogue, and exchange of ideas, identification of issues and challenges, and formulation of creative and pragmatic solutions.

REGISTRATION FEE

For Presenting a Paper

Students: Rs. 200/-

Faculties/Research Scholars/Professionals/Others: Rs. 500/-

Mode of Payment:

The participants can pay the registration fee by using the below link:

<https://www.onlinesbi.com/sbicollect/icollecthome.htm>

IMPORTANT DATES

- Deadline for Submission of Abstract : October 02, 2021
- Confirmation of Abstract Selection : October 05, 2021
- Deadline for Submission of Full Paper : November 05, 2021
- Last Date for Registration : November 05, 2021
- Webinar Date : November 12-13, 2021

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