The Amended Biological Diversity Act Puts Profit Over People

WRITTEN BY
PRIYANSHA CHOUHAN

Edited and Designed by: Nayla Khwaja

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The parliament recently amended the Biological Diversity Act, 2002. Set to come into force on April 1, 2024, the amendment changes the original law for ‘ease of doing business’. The amendment excludes the traditional medicine manufacturers from the obligation to pay a small portion of their profits - Access and Benefit Sharing (ABS) - towards conservation of herbs and sustenance of communities conserving these herbs. All the offences under the Act will be decriminalised by prescribing only fines for the violations of the Act.

This amendment is also being seen as dilution of the landmark judgement of the Uttarakhand High Court. The court, in 2018, held the Patanjali Group’s Divya Pharmacy liable for extracting herbs without the mandatory intimation to the state authorities and non-payment of ABS. The minutes of meetings, file notings and correspondences for the amendment, reviewed using the Right to Information (RTI) Act, revealed lobbying by the traditional medicine manufacturers with the Environment ministry officials. This triggered the process of amendment. Objections by the Tribal Ministry, an Expert Committee tasked to give recommendations, several government officials and activists were bypassed to give way to this amendment.
BACKGROUND

- History and origin
In 1992, the International Convention on Biological Diversity came into force, with its global objectives centred on conservation of natural resources and fair and equitable sharing of those resources. Consequently, the 2002 Act was enacted in India. Later in 2014, as a party to Nagoya Protocol - a supplementary agreement to the convention - India enacted 2014 guidelines on Access and Benefit Sharing (ABS). These guidelines serve as the regulations for determining and disbursing the ABS amount by commercial exploiters of biological resources to the communities that traditionally utilised and conserved such resources. The enactment and evolution of ABS represent the outcome of advocacy by developing countries like India. The objective was to bring home the rightful entitlements for the resources used and extracted by the corporates and other entities for research or commercial purposes.

- ABS - concept and meaning:
The 2002 Act has established a three tier governance body to oversee the implementation of the Act - National Biodiversity Authority (NBA), State Biodiversity Boards (SBBs) and Biodiversity Management Committees (BMCs). The companies have two major statutory obligations regarding ABS - prior intimation and payment of ABS to SBBs (state level bodies).
Among the amendments to the principal Act of 2002 was the exemption granted to “AYUSH practitioners and traditional knowledge holders” from paying Access and Benefit Sharing (ABS), a compensatory amount paid to tribal and other communities who traditionally gather, protect, and use herbs and medicinal plants that are also important for the AYUSH industry.

- The economics of bio resources conservation:

The Ministry of AYUSH is one of the newest ministries formed by the Modi government in 2014, with a vision of “reviving the profound knowledge of our ancient medicine system”. In November 2022, AYUSH Minister Saraband Sonowal projected a $23 billion global market for the AYUSH industry by 2023, with “many initiatives” underway to achieve that objective within the time frame. Since 2014, the AYUSH industry has been growing at a compound annual growth rate of 17 per cent.

The amount collected by the SBBs as ABS is used for the conservation of biodiversity and repayment to tribal and conserver communities. Thus ensuring fulfilment of the dual objective of the Act. The annual turnovers of major ayurvedic companies like Divya Pharmacy Ltd and Dabur in 2022-23 was Rs.10,66,446 cr and Rs.11,529 cr respectively. A small percentage of this turnover as ABS would be in crores pointing towards the possible objective behind lobbying by the industry.
Divya Pharmacy v Union of India and the aftermath

On December 21, 2018, the Uttarakhand High Court delivered a landmark judgment that held the multi-crore conglomerate Divya Pharmacy accountable on two counts—extracting the herbs for ‘commercial utilisation’ without prior intimidation to SBBs and non-payment of ABS.

A fortnight later, on January 7, 2019, an internal meeting was held by the Ministry of Environment Forest and Climate Change (MoEFCC) with the Ministry of AYUSH (Ayurveda Yoga and Naturopathy Unani Siddha and Homeopathy) and traditional medicine Manufacturers. ‘Grievances’ regarding ‘harassment’ by the SBBs were narrated by the industry representatives. Resultantly, MOEFCC passed ‘directions’ to form an Expert Committee. It was tasked to give recommendations to exempt the AYUSH industries from payment of ABS within a month’s time. Inspection of internal documents and appeal under the Right to Information Act, 2005 revealed that minutes and names of members of the meeting were never recorded.
EMERGING ISSUES
THE IMPACT OF POLICIES ON THE GROUND

• Endorsement and lobbying

The demand to exempt the AYUSH industries from payment of ABS was raised in a stakeholder meeting by the AYUSH industry associations. They alleged that the SBBs are ‘selective’ and ‘harass’ them and the obligation of ABS is ‘additional’ and ‘tax’ like.
This demand was endorsed by the National Medicinal Plant Board (NMPB)-government body overseeing matters relating to the development of medicinal plants at the Ministry of AYUSH.

• Objections overruled:

Several demands and concerns against the proposed amendments were raised during the brainstorming sessions and consultations with various ministries and departments. Secretary to the Ministry of Tribal Affairs R. Jaya demanded that tribal and traditional conserver communities should be consulted in determining the ABS amount before extracting the herbs. However, these concerns and objections were overlooked and bypassed to insert the term ‘AYUSH practitioner’ in the list of people exempted from obligation of ABS payments and requirement of intimating SBBs. Broader interpretation of ‘AYUSH practitioners’ has the effect of excluding the AYUSH manufacturing industries, one of the major extractive industries, from the necessary compliance mechanism and payment of ABS. This increases the threat to biodiversity conservation and sustenance of tribal and conserver communities.
The amendment was enacted for ‘ease of doing business’ which is not aligned with the main objectives of the principal Act- conservation and ABS. For this end, all the offences and contraventions under the Act previously punished with imprisonment of three to five years are now punished solely with fine. The decriminalisation of offences increases the possibility for corporations to avoid accountability by simply paying fines.
RECOMMENDATIONS

- The term ‘AYUSH practitioners’ need to be defined to determine the expanse of exemption clause for the approval for commercial utilisation of the resources and payment of ABS.
- Decriminalisation of offences by punishing with a penalty could enable violators to escape by merely paying the fine. This change needs to be reconsidered in consultation with experts.
- Local bodies and Biodiversity Management Committees (BMCs) along with the tribes and conserver communities should be involved in the decision making for determining the ABS amount as well as in the usage of biological resources.
- Authority and stature of SBBs under the Act need to be empowered to address the issue of structural weakness of the state level body.

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