

LAW COMMISSION HOME PAGE

LAW COMMISSION OF INDIA

ONE HUNDRED SEVENTY FIRST REPORT

ON

BIODIVERSITY BILL

JANUARY 2000

No.6(3)(6)/99-LC(LS)

January 19, 2000

Dear Shri Jethmalani Ji,

I am forwarding herewith the 171st Report on the Bio-diversity Bill.

2. The Department-related Parliamentary Standing Committee on Home Affairs on the Demands for Grants (1998-99) of the Ministry of Law, Justice and Company Affairs desired, in paragraph 28 of their 45th Report, that the Law Commission should undertake study in the field of intellectual property rights, laws relating to trade and investment and other matters pertaining to World Trade Organisation (WTO).

3. The Commission, in its response to Department of Legal Affairs, expressed its readiness and willingness to undertake the study of the subject but indicated that there was need for laying down appropriate terms of reference for such a study and for providing services of a full-time technical expert in the field as the subjects might involve policy issues. Thereafter, the Commission did not hear in the matter. As such, the Commission decided not to wait any longer and proceeded to take up the specific issue of biodiversity legislation. Earlier, the Commission had also forwarded its 167th Report on "The Patents (Amendment) Bill, 1998" which relates to intellectual property rights and the WTO regime.

4. Recently, December 29, 1999 was observed, all over the world, as the international day for biological diversity. The Convention on Biodiversity which entered into force on this day in 1993 is the main instrument that the international community has given to itself with which to preserve the fragile web of life of our one and only earth. There

are now 176 parties to the Convention which has three main objectives: the conservation of biological diversity; the sustainable use of its components; and fair and equitable sharing of the benefits arising from the utilisation of genetic resources. These three areas are interdependent and progress in each area is essential to make the Convention successful. In a communique of the Meeting of the Commonwealth Law Ministers, Port of Spain, Trinidad and Tobago held on May 5-7, 1999, the Ministers recognized the importance of the provisions relating to access to biological resources in article 15 of the said Convention. It was observed that though many developing countries were rich in biological diversity, relatively few had taken steps to implement the provisions of article 15 in the national legislation and practice. The Meeting also noted the significance of the Convention's provisions relating to intellectual property rights, not least in the context of rights in plants used in traditional medicines. The Commonwealth Secretariat was asked to render advice and assistance in the implementation of the Convention (Commonwealth Law Bulletin, vol. 25, Spring 1999, p.563).

5. The Commission undertook the study of Biodiversity Bill as is understood to have been prepared by the Ministry of Environment and Forests. With a view to achieving the objectives of the legislation, a large number of additions, alterations and amendments in the Bill have been recommended. The role of the specified authorities has been straightened and provisions relating to access to the biodiversity have been made more specific. In order to provide teeth, several offences have been created to provide safeguards against unauthorised exploitation of biodiversity and theft of traditional knowledge and knowledge of local communities. The provisions of the Bill also seek to entitle the local communities to the benefit sharing where they are made to part with their knowledge. We had the benefit of research done in this behalf in several countries including Australia, Brazil, South Africa and Columbia. We have also taken into consideration the Report of the Expert Committee on Biodiversity Legislation headed by Dr. M.S. Swaminathan as well as materials received from various other quarters. The changes and additions made by us make the Bill more methodological and expansive to take care of most of our concerns in the field of biodiversity.

6. The Bill prepared by us is enclosed with the brief Report and the provisions thereof speak for themselves.

With regards,

Yours sincerely,

(B.P. Jeevan Reddy)

Shri Ram Jethmalani,

Minister for Law, Justice and

Company Affairs,

Shastri Bhavan,

NEW DELHI

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REPORT ON BIODIVERSITY BILL

The Department-related Parliamentary Standing Committee on Home Affairs on the Demands for Grants (1998-1999) of the Ministry of Law, Justice and Company Affairs desired, in their 45th Report, that the Law Commission of India should undertake study in the field of intellectual property rights, laws relating to trade and investment and other matters pertaining to World Trade Organization (WTO) regime. Para 28 which occurs under the heading 'General Recommendations' of the said Report (which was forwarded to the Law Commission by the Ministry of Law, Justice and Company Affairs, Department of Legal Affairs, through their letter dated 3/5.8.1998) reads as follows:-

"28. Under the World Trade Organisation regime, the country

is entering into important international agreements which will have tremendous impact on our normal commercial activities. For example, laws relating to the intellectual property rights, laws relating to trade and investment, which were not very much in the focus until the recent past, have become priority items in the economic agenda of the country. In the light of this background, the Committee recommends that the Law Commission should undertake study in this field and come out with appropriate recommendations within a given time frame."

The Law Commission of India had written to the Ministry of Law, Justice and Company affairs, Department of Legal Affairs (vide letter F.No.G-20011/1/98-LC dated 21st September, 1998) expressing our readiness and willingness to undertake the study and make the appropriate recommendations, as desired by the Parliamentary Standing Committee, if appropriate terms of reference for such a study are indicated to it and the services of a full time technical expert in the field are provided as the subjects may involve policy matters as well. It was also requested that the Law Commission of India may be apprised with the progress made up to date by the concerned Ministries/Departments to avoid duplication of the work already done. There has been no response to our letter.

Indeed, the terms of reference given to the present Law Commission while constituting it, do also oblige, and empower, this commission to undertake the present study and make the accompanying recommendations.

In the above circumstances, the Commission thought it advisable not to wait any longer and to proceed with the work on its own after obtaining copies of the bills already prepared, if any, by the concerned Ministries on various topics and to express its views thereon along with its own suggestions for amendments, changes and modifications in the bills prepared by the concerned Ministries. Accordingly, the Law Commission had submitted its 167th Report on "The Patents (amendment) Bill, 1998", a copy of which was forwarded to the Hon'ble Minister of Industry also, inasmuch as

the Industry Ministry had prepared the said Bill and the Hon'ble Minister of Industry was piloting the Bill in the Parliament.

The Law Commission of India has now taken up the study of the Bio-Diversity Bill understood to have been prepared by the Ministry of Environment and Forests and is recommending herewith several additions, alterations and amendments, which in our opinion, are called for in the draft Bill prepared by the said Ministry to better achieve the objectives of the legislation. The objectives of the proposed legislation have been adumbrated in the preamble to the Bill, as well as in the Preamble to the Convention on Biological Diversity (1992) and in the various articles of the said convention particularly in Articles 1, 3 and in paras (1) and (5) of Article 15. We have added a large number of new definitions. We have also straightened the respective fields of jurisdiction between the Central Government and the National Authority. With a view to make the National Authority truly effective, we have made some changes in its composition and increased the powers of the National Authority substantially. The provisions relating to access to bio-diversity have been made more specific and several offences have been created to safeguard against unauthorised exploitation of bio-diversity and theft of traditional knowledge and knowledge of local communities. In short, the present exercise is aimed at formulating the structure and process so to ensure conservation and sustainable utilisation of biological diversity as well as fair and equitable sharing of its benefits. One of the objects of our exercise has also been to entitle the local communities to the benefit-sharing where they are made to part with their knowledge. The changes made by us in the Bill speak for themselves and it is not necessary to set out each and every change in this part, particularly because they are highly technical in nature and do not bear abridgement or summarisation. While recommending the proposed legislation, we have kept in view the research work done in this behalf in several countries including Australia, Brazil, South Africa and Columbia. We found the Columbian law very helpful in this behalf. The work done in Australia is particularly useful. The Law Commission has also taken into consideration the Report of the Expert Committee on Biodiversity Legislation constituted by the Ministry of Environment and Forests under the Chairmanship of Dr. M.S. Swaminathan as well as the vast amount of literature published by various expert bodies, non-governmental organisations and other experts in the field, both within the country and abroad. We may point out in particular that section 3 in our draft, which speaks of application of Uruguay Round Agreements corresponds to section 102 of Uruguay Round Agreements Act, 1994 of U.S.A.

It may be stated that the accompanying Bill has taken the Bill prepared by the Ministry of Environment as its basis, with a view to avoid repetition of work. We have suggested additions and alterations consistent with the Convention on Biological Diversity, 1992 and our national interests. The changes and additions made by us are

not only extensive but seek to make the Bill more methodical and expansive to take care of most of our concerns in the field of biotechnology.

The Bill finally prepared by us is enclosed herewith as **Annexure-A**.

We recommend accordingly.

(MR. JUSTICE B.P. JEEVAN REDDY) (RETD.)

CHAIRMAN

(MS. JUSTICE LEILA SETH) (RETD.) (DR. N.M. GHATATE) (DR. SUBHASH C. JAIN)

MEMBER MEMBER MEMBER SECRETARY

DATED: 17 JANUARY. 2000.

THE BIOLOGICAL DIVERSITY BILL, 2000

A Bill to provide for conservation of biological diversity, sustainable use of its components and equitable sharing of benefits arising out of the use of biological resources in India.

WHEREAS there is an urgent need for conservation of biological diversity and associated traditional and contemporary rich knowledge in India and to take steps for its sustainable utilisation and equitable sharing of benefits out of such utilisation.

AND WHEREAS there is urgent need to develop scientific, technical and institutional capacities so as to anticipate, prevent and attack the causes of significant reduction and loss of biological diversity at source in India;

AND WHEREAS the United Nations Convention on Biological Diversity which entered into force on 23rd

December, 1993 and to which India is a party reaffirms that the States have sovereign rights over their own biological resources and that they are responsible for conserving their biological diversity and using their biological resources in a sustainable manner; and also for fair and equitable sharing of the benefits arising out of utilisation of biological and genetic resources;

AND WHEREAS India recognises the prime need to protect, preserve and promote the health, environment and the food security of its citizens including the bio-safety of its population and the traditional knowledge and practices of its people.

AND WHEREAS it is considered necessary to;

- (A) secure national legal commitment for protection of biological diversity and the maintenance of ecological processes and systems;
- (B) establish a national legislative framework for the conservation of biological diversity and the ecologically sustainable development of its components;
- (C) ensure that safe biodiversity conservation standards for decision-making and activities are established as a means of operationalising the precautionary principle in order to anticipate, prevent and attack the causes of significant reduction and loss of biological diversity in the face of scientific uncertainty;
- (D) prevent species and ecological communities from becoming vulnerable and to protect critical habitat;
- (E) codify national institutional and administrative arrangements necessary to implement the United Nations Convention on Biological Diversity;
- (F) establish awareness to care for the environment among all natural resource owners, managers, users and others whose actions could foreseeably harm the environment;
- (G) ensure adequate funding for achievement of the above objects.

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:-

CHAPTER-I
PRELIMINARY

1. Short title:
extent, application and commencement.-

(1) This Act may be called the Biological

Diversity Act, 2000.

(2) It extends to the whole of India including the maritime exclusive economic zone.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

(4) It shall apply to

- (a) all varieties of life-forms including plants and animals and micro-organisms belonging to all general species, wild or cultivated, occurring naturally or modified in any manner through any process, in relation to their cell lives, generic material, characteristics, traits, products and the processes involved therein.
- (b) any level of continental, pelagic, coastal or insular biological organisation that is found in national territory and in the waters under its jurisdiction.

Explanation: The expression "continental, pelagic, coastal or insular biological organisation" shall mean and include fungi, algae, micro-organisms, animal and vegetable species and lineages, whether native, undomesticated, cultivated, bred or escaped from domestication.

2. Definitions.-

(1) In this Act, unless the context otherwise requires,-

(a) "access" means (a) obtaining, for whatever purpose, samples of biotic, genetic and transgenic resources, their products, sub-products, derivatives and resulting synthetic products, as well as the knowledge, innovations and practices associated with them; (b) activities leading to knowledge, exploration, research, collection, gathering, transformation, utilisation, mobilization, commercialisation and industrial application of or into those resources as well as the utilization of populations, individuals, organisms or parts of these as a source of biological, genetic and transgenic resources.

(ai) "Act" means the Biological Diversity Act, 2000;

(b) "Alien species" means a species occurring in an area outside its historically known natural range as a result of intentional or accidental dispersal by human activities (including exotic organisms, genetically modified organisms and translocated species);

(bi) "benefits" shall mean the benefits to be made

available to owners of biological resources and shall also include; (a) the results of the application of an improvement of a component of bio-diversity which may be of social or environmental utility and (b) economic values, information, and access to technologies.

(c) "Biodiversity Management Committees" means the Biodiversity Management Committees constituted under Section 14;

(d) "Biological Diversity" means the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part including diversity within species, between species and of ecosystems including genetic diversity;

(e) "Biological Resources" means plants, animals and micro-organisms, or parts thereof, and their genetic material and by-products, with actual or potential use or value or any other biotic component of ecosystems with actual or potential use or value for humanity.

Explanation: Wild, native and domesticated organism originating in India, irrespective of whether they currently occur in India or not and the foreign repositories of germ-plasm originating in India shall be deemed to be included within the expression "biological resources".

(f) "Bio-prospecting" means survey and collection of species, sub-species genes, compounds and extracts of biological resource for any purpose and includes characterisation, inventorisation and bio-assay and shall include exploration, research, gathering, making of inventories, taking of samples and taxonomic identification of biotic and genetic resources, ethno-biological knowledge and other associated activities destined, directly or indirectly, for the identification of promising or effective sources for products or processes.

(g) "Bio-region" means a territory defined by a combination of biological, social and geographic criteria, as may be declared as such by notification in the Official Gazette;

(h) "Bioregional planning" includes the integration and coordination of measures to conserve biodiversity in an ecologically sustainable development and biophysical framework;

(i) "Biosurvey" and "bioutilisation" means survey or/and collection of species, sub-species, genes, compounds and extracts of biological resource for any purpose and includes characterisation, inventorisation and bioassay.

(j) "bio-technology" shall mean every technological

application which utilizes biological systems, parts of live organisms or their derivatives for the creation or modification of products or processes;

(k) "Byproduct" means a compound, molecule or any extract of a living or dead organism resulting from any metabolic process;

(l) "Conservation of biological diversity" means the management of human interactions and genes, species and ecosystems to ensure the greatest sustainable benefit to current generations while maintaining their potential to meet the needs of future generations and shall include the protection, preservation, maintenance, rehabilitation, restoration and enhancement of biological diversity;

(m) "Convention on Biological Diversity" means the Convention on Biological Diversity opened for signature on 5th June, 1992 at the United Nations Conference on Environment and Development held in Rio de Janeiro in Brazil in June, 1992 and which entered into force with effect from 29th December, 1993;

(ma) "eco-system" means a dynamic complex of vegetable, animal and micro-organism communities and their non-living environment which interact as a functional unit, including human beings.

(n) "Equitable Benefit Sharing" means the sharing of benefits mutually agreed upon by the National Authority and where relevant in consultation with local bodies and/or individuals and the applicant for the accessed biological resources, their by-products, knowledge, innovations and practices associated with their use and application;

(o) "Ex-situ Conservation" means the conservation of components of biological diversity outside their natural habitats and "ex-situ Conservation Centre" shall mean any place where biological and genetic resources are conserved away from their insitu conditions including botanical gardens, herbariums, centres of cultivation and germplasm banks.

(p) "Genetic material" means any material or plant, animal, microbial or other origin containing functional units of heredity including genetic material contained in soil and sediment and "genetic resources" means genetic material of actual or potential value;

(q) "Heritage sites" means areas important from the standpoint of biological diversity with respect to its conservation and sustainable use, notified under the present Act by the State Government;

(r) "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;

(s) "Knowledge" includes oral knowledge required through or passed on from generation to generation;

(si) "local community" shall mean human groups whose social, cultural and economic conditions distinguish it from other sectors of national collectivity and which is completely or partially governed by its own customs or traditions or by a special legislation.

(t) "National Bio-diversity Authority" means the National Biodiversity Authority established under section 4;

(u) "Prescribed" means prescribed by Rules made under this Act;

(v) "Principles of ecologically sustainable development" include the effective integration of long term environmental and economic considerations into decision-making processes in order to promote the objective of environmental protection which shall be achieved through the implementation of, amongst other things, the following principles and programmes:-

(i) The precautionary principle, implying that if there is a threat of significant reduction or loss of biological diversity or a threat of serious or irreversible environmental damage, lack of full scientific certainty shall not be a ground for postponing measures to prevent or minimise such a threat;

(ii) inter-generational equity, meaning that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

(iii) conservation of biological diversity and ecological integrity as a fundamental and primary consideration;

(iv) improved valuation and pricing of environmental resources;

(v) recognition that the environmental impact of actions and policies occurs at local, regional and global levels; and

(vi) the relevance of community participation in the decision-making processes and the formulation of policies, programmes and plans.

(w) "Prior Informed Consent" means the consent of the National Authority for granting access to biological resources and/or knowledge related thereto, based on the information provided by the applicant, disclosing fully the intent of the access and other particulars specified by this Act and the Rules made thereunder.

(x) "Protected area" means a geographically defined area which is designated or regulated and managed to achieve specific conservation projects;

(y) "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;

(z) "Rules" means the rules framed under the Act.

(za) "Regulations" means the regulations framed by the National Biodiversity Authority;

(zb) "State Biodiversity Board" means a Board established under section 12;

(zc) "Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations;

(zd) "Threatened species" means species that are in immediate danger of extinction or likely to become extinct or are in danger of becoming extinct in the near future as notified by the Central Government or a State Government from time to time;

(ze) "Uruguay Round Agreements" mean and include all agreements signed by India during the Uruguay Round of Negotiations under the auspices of GATT/WTO.

(zf) "Voucher specimen" means a reference sample;

(2) Words and expressions not defined herein shall respectively carry the meaning assigned to them in the Convention on Biological Diversity;

3. Application of Uruguay Round Agreements.- No provision of any of Uruguay Round Agreements including the Agreement on Trade Related Intellectual Property Rights in so far it is inconsistent with any of the provisions of this Act, shall have effect.

CHAPTER II
ESTABLISHMENT AND CONSTITUTION OF
NATIONAL AUTHORITY

4. Establishment and constitution of National Biodiversity Authority.-

- (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purpose of this Act, a National Authority to be called the National Biodiversity Authority.
- (2) The National 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 enter into contract, and shall by the same name sue and be sued.
- (3) The Head Office of the National Authority shall be at New Delhi and the National Authority may, establish offices or agencies at other places in or outside India with the approval of the Central Government.
- (4) The National Authority shall consist of the following members:-
 - (a) The Chairperson, to be appointed by the Central Government, who shall be a person of eminence with such expertise and experience as may be prescribed;
 - (b) two members to be appointed by the Central Government from among the officers of the Ministry of Environment & Forests, one of whom shall be from the discipline of botany or zoology;
 - (c) five members, ex-officio, to be appointed by the Central Government from among its officers belonging to each of the following disciplines:
 - (i) Agricultural research and education;
 - (ii) Biotechnology;
 - (iii) Ocean Development;
 - (iv) Law; and
 - (v) Patents.
 - (d) five members, to be appointed by the Central Government from amongst specialists and scientists who are conversant with and have expertise in matters relating to,-
 - (i) conservation of biological diversity;
 - (ii) sustainable use of biological resources and equitable sharing of benefits arising out of such use;
 - (iii) conservation and creation of biological resources, and holding knowledge and information relating to such use;

- (iv) legal expertise in the aforesaid matters; and
- (v) industry and commerce.

- (5) The Chairperson and the members appointed under clause (b) and (c) of sub-section (4) shall be full time members of the National Authority and the term of their appointment shall be four years from the date of their appointment.
- (6) The Chairperson and the non-official members shall be eligible for reappointment for another term subject to the age of superannuation, if any, as may be prescribed.
- (7) No act or proceeding of the National Authority or any committee appointed by it under section 8 shall be invalid merely by reason of,-
 - (a) any vacancy in, or any defect in the constitution of the National Authority or such committee; or
 - (b) any irregularity in the procedure of the Authority or such committee not affecting merits of the case.
- (8) The National Authority shall meet at such time and place and shall observe such rules of procedure in regard to transaction of business at its meetings (including the quorum) as may be prescribed by the regulations.
- (9) The Central Government may remove from office, the Chairperson or any non-official member, who
 - (a) has been adjudged as insolvent; or
 - (b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or
 - (c) has become physically or mentally incapable of acting as a member; or
 - (d) has acquired such financial or other interests as are likely to affect prejudicially his functions as a member; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

5. Salary, allowances and other conditions of service of Chairperson and members.-

- (1) The Chairperson and members shall be entitled to such salary and allowance and shall be subject to such conditions of service in respect of leave, pension, provident fund and other matters as may, from time to time, be prescribed.

(2) The members appointed under clauses (b) and (c) of sub-section (4) of section 4 shall receive such allowances and shall be subject to such terms and conditions as may be prescribed.

(3) The member, other than a member appointed under clauses (b) or (c) of sub-section (4) of section 4, may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, the member shall be deemed to have vacated his office.

6. Chairperson to be Chief Executive.-

The Chairperson shall be the Chief Executive Officer of the National Authority and shall exercise such powers and perform such duties as may be prescribed.

7. Secretary, Chief Accountants and Finance Officer and other staff.-

(1) The Central Government shall appoint a Secretary and a Chief Accounts and Finance Officer to the National Authority who shall exercise such powers and perform such duties as may be prescribed or as may be delegated to them by the Chairperson.

(2) The Secretary and the Chief Accounts and Finance Officer shall be subject to such conditions of service in respect of leave, pension, provident fund and other matters as may, from time to time, be fixed by the Central Government.

(3) The National Authority may appoint such other officers and employees, as may be necessary, for the efficient performance of its functions and the method of appointment, the scale of pay and allowances and other conditions of service of such other officers and employees of the National Authority shall be such as may be provided by the Authority by regulations.

7A. Bar to undertake any other work.-

The Chairperson, members appointed under clauses (b) and (c) of sub-section (4) of section 4, the Secretary, the Chief Accounts and Finance Officer and other officers and employees of the National Authority shall not undertake any work unconnected with their duties under this Act, except with the permission of the Central Government.

8. Committees of National Authority.-

(1) The National Authority may create such committees as

may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

(2) The National Authority shall have the power to co-opt as members of any committee created under sub-section (1) such number of persons, who are not members of the National 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.

(3) The persons co-opted as members of a committee under sub-section (2) shall be entitled to receive such allowances for attending meetings of the committee as may be fixed by the National Authority.

Chapter III

Responsibilities of the Central Government

9. General Measures for conservation and sustainable use.-

(1) The Central Government shall in consultation with the National Authority and keeping in view the particular conditions and capabilities of different regions in the country,

(a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity and to adapt for this purpose existing strategies, plans or programmes; and

(b) Promote programmes oriented towards the improvement of the methods of production, conservation and distribution of foods with the full utilisation of national and international technical and scientific knowledge which is environmentally and culturally clean and secure and shall also work towards perfecting the present agrarian regime consistent with the objectives of social and economic justice.

(c) Prohibit by order in writing grant of patents or other individual intellectual property rights on cultivated species or substances improved on breeding farms which are used as an alimentary or medicinal base or have a cultural use if such grant constitutes or is likely to constitute a serious threat to the environmental security of crops or animal species or to national integral bio-safety.

Provided that the affected party shall be given an opportunity to make a

representation before the decision is taken by the Central Government.

Explanation- The prohibition under this clause shall also apply to exclusive marketing rights which may be available under the Patents Act, 1970.

- (d) Determine the manner in which the National Biodiversity Fund shall be utilised;
- (e) Determine its response in the matter of grant of intellectual property protection on biological resource and associated knowledge obtained from India whether by any person whether citizen, non-citizen resident or a non-resident and
- (f) Take steps for developing natural resource accounting systems and techniques and to conserve representative eco-system such as wetlands, mangroves and coral reefs.
- (g) Take steps to promote and encourage understanding of the importance of and the measures required for, the conservation of biological diversity including its propagation through media and other educational programmes.
- (h) Adopt measures to regulate any activity involving the exploration and exploitation of the sea-bed or of its sub-soil or the modification of the configuration of the bottom of the sea in coastal and marine areas.

FUNCTIONS AND POWERS OF THE NATIONAL AUTHORITY

10. Functions of National Authority.-

(1) Subject to such directions as may be issued by the Central Government under this Act, it shall be the responsibility of the National Authority to undertake and implement measures as may be required for an effective implementation of this Act and for that purpose to make appropriate orders and give appropriate directions for the protection of biodiversity of India and its sustainable use.

(2) Without prejudice to the generality of the powers conferred under sub-section(1), the National Authority shall take steps to,-

- (a) identify components of biological diversity important for its conservation and sustainable use having regard to (i) ecosystems and habitats

containing high diversity, large numbers of endemic or threatened species, or wilderness, those required by migratory species or which are of social, economic, cultural or scientific importance or, which are representative, unique or associated with key evolutionary or other biological processes; (ii) species and communities which are threatened and wild relatives of domesticated or cultivated species or which are of medicinal, agricultural or other economic value or of social, scientific or cultural importance or of importance for research into the conservation and sustainable use of biological diversity, such as indicator species; and (iii) described genomes and genes of social, scientific or economic importance;

- (b) monitor through sampling and other techniques, the components of biological diversity identified pursuant to clause (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (c) identify processes and categories or activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and
- (d) maintain and organize, by any mechanism, the data derived from the identification and monitoring activities pursuant to clauses (a), (b) and (c) above;
- (e) establish a system of protected area or areas where special measures need to be taken to conserve biological diversity in co-ordination with the concerned authorities in environmental, forest and other concerned sectors;
- (f) develop, where necessary, guidelines for the selection, establishment and management of protected area or areas where special measures need to be taken to conserve biological diversity;
- (g) regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use and to establish a system of registry of all biological and genetic resources available within the country and containing such particulars as may be prescribed;
- (h) promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

- (i) promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;
- (j) rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies;
- (k) establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;
- (l) prevent the introduction of, and control or eradicate alien species which threaten ecosystems, habitats or species;
- (m) endeavour to provide the conditions needed for compatibility between present uses and conservation of biological diversity and the sustainable use of its components;
- (n) preserve and maintain knowledge, innovations and practices of local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices; identify the owners of biological resources and make appropriate orders regarding benefit sharing subject to the provisions of section 18;
- (o) develop and maintain necessary regulatory provisions for the protection of threatened species and populations;
- (p) adopt measures for the ex-situ conservation of components of biological diversity;
- (q) establish and maintain facilities for ex-situ conservation of and research on plants, animals and micro-organisms;
- (r) adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions;

- (s) regulate and manage collection of biological resources from natural habitats for purposes of ex-situ conservation and so as not to threaten ecosystems and in-situ populations of species, except where special temporary ex-situ measures are required under subparagraph (c) above.
- (t) Integrate, as far as possible, and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies;
- (u) undertake measures for environmental impact assessment of proposed projects that are likely to have adverse effects on biological diversity with a view to avoiding or minimising such effects and, where appropriate, allow public participation in such procedures;
- (v) undertake steps for inventorisation and monitoring of components of biodiversity and of processes adversely impacting it, for restoration of degraded ecosystems and recovery of endangered species and for developing educational and public awareness programmes with respect to conservation and sustainable use of biodiversity;
- (w) take measures to regulate, manage and control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health.
- (x) establish and maintain programmes for scientific and technical education and training in measures aimed at the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training for the specific needs of each State;
- (y) promote and encourage research which contributes to the conservation and sustainable use of biological diversity, in each state;
- (z) promote and cooperate in the use of scientific advances in biological diversity, research in developing methods for conservation and sustainable use of biological resources.
- (za) notify, in consultation with the Central Government, national parks and other units of conservation;

(zb) such other functions as may be assigned to it by the Central Government.

11. Guidelines for benefit sharing biological resources.-

(1) The National Authority shall frame guidelines,-

(a) governing access to and benefit sharing of biological resources consistent with the objectives of this Act, without adversely affecting the rights of the local people to non-timber forest produce available to them under the laws and prevailing customs in the State;

(b) for developing methodology for bio-regional planning and strategies for its implementation as a matter of urgency. For this purpose, it shall be competent for the National Authority to identify and declare bio-regions and protected areas and to adopt the precautionary principle as a fundamental consideration underlying bio-regional planning and to hold consultations with the concerned groups to evolve the best strategies to protect and maintain the biodiversity within a bio-region and protected areas;

(c) providing for the organisation, maintenance and public accessibility of data collected including the data collected by the State and Union territory Biodiversity Boards; and

(d) regulating access to biological diversity on a national basis, providing inter-alia for prior informed consent of the "owners" of biological resources, wherever deemed necessary.

(e) providing direction to the State Biodiversity Boards constituted under section 12 in respect of the functions to be undertaken and powers to be exercised by them.

CHAPTER V

STATE BIODIVERSITY BOARD AND

BIODIVERSITY MANAGEMENT COMMITTEES

12. State Biodiversity Board.-

(1) Each State and Union territory Administration may constitute a body to be known as the ----(name of the State) Biodiversity Board to exercise the powers conferred upon and to perform the functions assigned to State Biodiversity Boards under this Act.

- (2) The terms of reference, the constitution and composition of the Board shall be such as may be prescribed by the State Government by rules framed in that behalf.
13. Functions of the State Boards.-
- (1) The State and Union territory Administration Biodiversity Boards shall function in accordance with the guidelines provided by the National Authority under section 11.
- (2) It shall be the duty of the State and Union territory Administration Biodiversity Boards to advise the State Government on,-
- (a) matters relating to the conservation of biological diversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilisation of biological resources; and
- (b) utilisation of State or Union Territory Biodiversity Fund as the case may be.
14. Biodiversity Management Committees in Municipalities and Panchayats.-
- (1) The State Governments and Union territory Administrations shall constitute Biodiversity Management Committees (BMCs) in every Municipality and Panchayat within sixty days of coming into force of this Act, for the purpose of promoting the conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, conservation of domesticated stocks and breeds of animals, and conservation of micro-organisms as well as chronicling of biodiversity resources and knowledge/uses relating thereto.
- (2) The Biodiversity Management Committees shall be consulted by the National Authority and State and Union territory Administration Biodiversity Boards before taking decisions relating to use of biological resources and associated knowledge within their jurisdiction.
- (3) The Biodiversity Management Committees shall perform such other functions as may be assigned to it by the National authority or the State Biodiversity Board as the case may be, by regulations made in that behalf.

GENERAL POWERS OF THE NATIONAL AUTHORITY
IN OTHER MATTERS

15. Protection of knowledge of local people relating to
Biodiversity.-

The National Authority shall -

(a) protect the knowledge and rights of local people and local communities relating to biodiversity through measures such as registration of such knowledge in such manner as may be prescribed, at local, State and national levels;

(b) protect and promote the cultural rights of local communities;

(c) take steps to ensure that the local communities develop their own productive and cultural initiatives for the use and conservation of biological diversity and related matters; and

(d) take steps to ensure that the local communities are compensated for their constant task of conserving biodiversity and for their work of improving and selecting cultivated or domestic lineages or races.

(e) take steps to evolve a national programme of stimuli, incentives, legal support and supervision intended to promote the development of the knowledge and traditional practices of the local communities [through projects formulated and carried out by the local communities].

(2) The National Authority shall take all necessary steps for defending and protecting the traditional and collective knowledge of local communities and local people whether by means of sui generis system of collective intellectual property rights or in any other manner and to prevent bio-piracy and theft of knowledge of local communities.

16. Activities with prior informed consent.-

(1) No person who is not a permanent resident or a citizen of India, or any body corporate, association or organisation which is not registered in India, or which is registered in India but has foreign citizen participation in equity or management, shall obtain or be granted or given access to any biological resource occurring in India and any associated knowledge for research,

commercial utilization, or undertake bio-prospecting, biosurvey or bioutilisation without the prior approval of the National Authority.

(2) No citizen of India, who is a non-resident as defined in clause (30) of section 2 of the Income Tax Act, 1961, shall obtain or be granted any biological resource occurring in India and any associated knowledge for research, commercial utilisation or bio-survey and bioutilisation without prior approval of the National Authority.

3(a) No citizen of India, any body corporate, association or organisation registered in India shall transfer any result of research with respect to any biological resource conducted by him or it, without obtaining the prior approval of the National Authority to the following:-

- (i) any person who is not a citizen of India;
- (ii) any person who is a citizen of India but is ordinarily staying outside India;
- (iii) any body corporate, association or organisation which is not registered in India;
- (iv) any body corporate, association or organisation which is registered in India but has foreign citizen participation in capital or management:

Provided that sharing of knowledge through seminars and publications shall be excluded from the purview of this sub-section where such publications are in public domain and papers presented in such seminars or other media are widely circulated or published in relevant journals:

Provided further that collaborative research projects involving transfer and exchange of biological resources, and information relating to them, between institutions including Government sponsored institutions in India and similarly placed institutions in other countries, shall also be excluded from the provisions of sub-sections(1) and (2), subject to the condition that such collaborative research projects have been drawn up in accordance with the overall policy guidelines of the National Authority and have received the approval of the Central Government.

(4) The provisions in sub-sections (!), (2) and (3) shall also apply to third party transfers of accessed biological resource and associated knowledge.

5(a) Any citizen of India, body corporate, association or organisation which is registered in India, seeking access to biological or genetic resources, shall apply to the National Authority through the State or Union territory

Administration Biodiversity Board, in the prescribed form containing prescribed particulars. Separate applications shall be filed for access to resources associated with traditional knowledge to be dealt with under 'Special Regime of Access' and for access to resources which do not involve traditional knowledge to be dealt with under 'General Regime of Access'. On receiving such application, the concerned Board shall forward its comments with respect to each of the particulars contained in the application to the National Authority within a period of 30 days. After receiving such comments or on the expiry of 30 days if no such comments are received, the National Authority shall consider such application. In the light of the provisions of this Act and the rules made thereunder and after making such enquiry as may be found appropriate, the Authority shall either grant the application subject to such conditions as may be found appropriate or reject it as the case may be;

Provided that where the application is filed under the Special Regime of Access, the local community or local people, who are the owners of such traditional knowledge resources, shall be heard before granting access under the said regime.

(b) Where the application is filed under the Special Regime of Access, the contract, in case access is granted, shall be a tripartite one i.e. between the Authority, the local community/people supplying the resources and knowledge and the Receiver. In other cases, the contract shall be between the Authority and the Receiver, unless otherwise specified by the Authority.

(c) Any application for bio-prospecting, Bio-survey or bio-utilisation shall be dealt with in the like manner.

(6) The concerned Board may, before offering its comments on the applications filed under the preceding sub-section, make enquiries as deemed fit in consultation with the concerned local body or institution of self-government in this regard.

(7) (a) Applications to the National Authority for seeking approval in accordance with sub-sections (1), (2), (3) and (5) shall be submitted in the prescribed form containing such particulars as may be prescribed.

(b) After making such enquiries as it deems fit and after considering the material placed before it, the National Authority shall communicate its rejection or approval, as the case may be, on such terms and conditions as it may deem fit, including the imposition of charges by way of royalty in accordance with a scheme to be notified by the National Authority with the approval of the Central Government. The National Authority shall be competent to review, revise or recall any order passed by it, whether on the application of a person or suo motu, if any new material is brought to its notice which calls for such

review, revision or recall, as the case may be.

(8) The National Authority shall maintain a register wherein the operative portion of the orders made under clause (b) of sub-section (7) shall be entered promptly. Such register shall be open to public and copies of entries made therein shall be supplied on payment of charges specified by notification in that behalf by the National Authority.

17. Penalties.-

(1) Any person, body corporate, association or organisation committing or abetting the committing of any act prohibited by sub-sections (1) to (4) of section 16 shall be punished with rigorous imprisonment for a term which shall not be less than one year and which may extend to five years and with fine.

(2) Any person, body corporate, association or organisation committing or abetting the committing of any act contrary to sub-section (5) of section 16 shall be punished with imprisonment of either description for a term which may extend to three years and with fine.

(3) In the case of an offence committed by a body corporate, association or organisation, the punishment shall be imposed upon the principal individual incharge of such body corporate, association or organisation. If no individual is specified as such or is not available in India, any and every person acting as director, trustee or member of the managing committee or who is associated with the management of such body corporate, association or organisation, shall be liable to be punished.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences under this Act shall be tried by the Assistant Sessions Judge. The provisions contained in Chapters XVI and XVII of the said Code shall be applicable for this purpose. There shall be no ceiling on the amount of fine to be imposed. The amount of fine shall depend upon the circumstances of the case including the nature of the act and the amount of loss or prejudice caused thereby.

18. Equitable Sharing of Benefits.-

(1) While granting approvals under section 16, the National Authority shall ensure that the terms and conditions of approval secure equitable sharing of benefits arising out of the use of biological resources and knowledge relating to them.

(2) Such benefits may include transfer of technology, location of research and development, association of Indian scientists and local people or local communities with research and development and biosurvey and bioutilisation,

location of production units, setting up of venture capital funds, direct monetary compensation and other non-monetary benefits as may be appropriate for the entity from where it has been accessed.

(3) Direct monetary benefits shall be deposited in the National Biodiversity Fund except in cases where biological resources or knowledge is accessed from specific individual(s) or group of individuals or local communities or organisations, in which case the money may be directly paid to such providers of resources in accordance with the terms of agreement. The nature of combination of benefits will be determined in accordance with the merits of each case.

(4) The National Authority shall publish information regarding granting of approvals in the manner specified by it in the guidelines framed in this behalf.

19. Prior Permission Regarding Commercial Application.-

(1) Any person intending to apply for any form of intellectual property right in or outside India for any invention based on any research or information on a biological resource occurring in India shall be required to obtain prior permission for such application from the National Authority in the prescribed form.

(2) While granting permission, the National Authority may impose benefit sharing fee or royalty or such other conditions as may be found advisable with respect to the disposal of the financial benefits arising out of the commercial utilisation of such right.

(3) If any person fails to comply with the requirement of sub-section (1), he shall be punished with imprisonment of either description which may extend to five years and with fine.

20. Biological Diversity Heritage Sites.-

(1) Without prejudice to any other law for the time being in force, a State Government may from time to time, in consultation with the concerned Panchayat or Municipality notify areas of biodiversity importance as Biological Diversity Heritage Sites in addition to Heritage sites already declared, if any, by the Government of India or UNESCO.

(2) The State Government, in consultation with the National Authority, may frame rules for the selection, management and conservation of Heritage Sites.

(3) The State Government shall take measures for appropriately compensating any section of people being economically affected by such declaration.

21. Power to Notify Threatened Species.-

Without prejudice to the provisions of any other law for the time being in force, the Central Government or any State Government may, from time to time, notify threatened species and prohibit or regulate their collection for any purpose and take appropriate steps to rehabilitate and preserve such species.

22. Repositories For Different Categories Of Biological Resources.-

The Central Government, in consultation with the National Authority, may designate institutions and other bodies as repositories under the Act for different categories of biological resources. Repositories shall keep in safe custody the biological material in ex-situ conditions including voucher specimens deposited with them. Any new taxon discovered shall be notified to the repositories or any other institution designated for this purpose and its voucher specimen deposited with them.

CHAPTER VII
NATIONAL STATE AND LOCAL
BIODIVERSITY FUND

23. National Biodiversity Fund.

(1) There shall be established a National Biological Diversity Fund.

(2) The grants and loans from the Central Government, fees, royalties or monetary benefits received as a result of approvals granted by the National Authority and any donations/grants or loans received from other institutions, for the purpose of this Act, shall be paid into this Fund.

(3) The Fund shall be administered by the National Authority.

(4) The Fund shall be utilised for promoting the objectives of this Act including,-

- (a) channelling benefits to the conservers of biological resources, or creators and holders of knowledge;
- (b) Conservation of biological resources and in particular, conservation and development of biological resources in areas from where such resource, or knowledge has been accessed;
- (c) socio-economic development of such areas in consultation with the concerned Panchayat or Municipality;

(d) conservation of Heritage Sites notified under section 20.

(5) The Fund shall be subject to audit by the Comptroller and Auditor General of India.

(6) The Central Government shall frame rules for the management and administration of the National Biodiversity Fund.

24. State Biodiversity Fund.-

(1) There shall be established in each State and Union territory a Biodiversity Fund.

(2) The funds transferred from the National Biodiversity Fund and other grants made to the Fund by the State Government, Union territory Administration, Central Government, or any other institution shall be paid into the Fund.

(3) The management, administration and audit of the Fund shall be such as may be provided by the rules framed by the concerned State Government or Union territory Administrations in this behalf.

25. Local Biodiversity Fund.-

(1) The Local Biodiversity Fund shall be established in every Panchayat and Municipality and shall be administered and audited in accordance with the rules framed by the concerned State Government or as the case may be, Union territory Administration in this behalf.

(2) The funds transferred from the respective State or Union territory Biodiversity Funds, and other grants made to these funds by the State Government, Central Government, the Union territory Administration, or any other institution or organisation shall be paid into this Fund.

(3) The Biodiversity Management Committees may also generate resources for the Local Biodiversity Funds.

CHAPTER VIII
FINANCE, ACCOUNTS AND AUDIT

26. Grants by the Central Government.-

(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the National Authority by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The National Authority may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

27. Grants by the State Government.-

(1) The State Government or where applicable, Union territory Administration shall, after due appropriation made by Legislature by law in this behalf, pay to the State/Union territory Biodiversity Board and Biodiversity Management Committee by way of grants such sums of money as the State Governments may think fit for being utilised for the purposes of this Act. Where there is no Legislature in a Union territory, sums of money for this purpose shall be granted by the administrator.

(2) The State Union territory Biodiversity Board and Biodiversity Management Committee may spend such sums as they think fit for performing the functions assigned to them under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

28. Accounts and Audit.-

(1) The National Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the National Authority shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the National Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the National Authority under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and shall, in particular, have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the National Authority.

(4) The accounts of the National Authority, as certified by the Comptroller and Auditor-General or any other person appointed by him in his behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the National Authority and the Central Government shall cause the audit report to be laid, as soon

as may be after it is received, before each House of Parliament.

29. Accounts and Audit of Board and Management Committee.-

(1) State or Union Biodiversity Boards and Biodiversity Management Committees shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of a State or Union territory Biodiversity Board and Biodiversity Management Committee shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by a State or Union territory Biodiversity Board and Biodiversity Management Committee to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of a State or Union territory Biodiversity Board and Biodiversity Management Committee under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of a State or Union territory Biodiversity Board and Biodiversity Management Committee.

(4) The accounts of the State or Union territory Biodiversity Board and Biodiversity Management Committee, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government or Union territory Administration which shall cause the audit report to be laid, as soon as may be after it is received, before the concerned Legislature.

CHAPTER IX

SUPERSESSION OF DISSOLUTION OF AUTHORITY

30. Powers of Central Government to give Direction to Authority.-

The Central Government may give the National Authority such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act. It shall be the duty of the National Authority to comply with such directions.

31. Supersession of National Authority.-

(1) If the Central Government is of the opinion that the National Authority is unable to perform, or has persistently made default in the performance of its duties or has exceeded or abused its powers, it may, by notification in the Official Gazette, supersede the Authority for such period as may be specified in the notification;

Provided that, before issuing a notification under this sub-section, the Government shall by notice require the Authority to show cause within such period as may be specified in the notice as to why it should not be superseded and shall consider the explanation and objections if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding in the Authority -

- (a) the Chairperson and all the other members of the Authority shall as from the date of supersession, vacate their offices;
- (b) all the powers and duties which, by or under the provisions of this Act, may be exercised or performed by or on behalf of the Authority and the Chairperson, shall, during the period of supersession, be exercised and performed by such authority or person as the Government may direct;
- (c) all funds and other property vested in the Authority shall during the period of supersession, vest in the authority or person referred to in clause (b); and
- (d) all liabilities legally subsisting and enforceable against the Authority shall be enforceable against the authority or person referred to in clause (b) to the extent of the funds and properties vested in it or him.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may,-

- (a) extend the period of supersession for such further period as it may consider necessary; or
- (b) reconstitute the Authority in the manner provided in section 3:

Provided that the total period of supersession shall not exceed two years.

32. Dissolution of National Authority.-

(1) The Central Government may, by notification in the Official Gazette, declare that, with effect from such date as may be specified in the notification, the National Authority shall stand dissolved.

Provided that, no such declaration shall be made by the Central Government unless a resolution to that effect has been moved in, and passed by, each House of Parliament.

(2) With effect from the date specified in the notification under sub-section (1) -

- (a) all the members shall vacate their office;
- (b) all properties, funds and dues which are vested in or realisable by the Authority shall vest in, and be realisable, by the Central Government;
- (c) all liabilities enforceable against the Authority shall be enforceable against the Central Government to the extent of the properties, funds and dues vested in, or realised by the Central Government.

CHAPTER X
MISCELLANEOUS

33. Penalties and offences.-

Any person, corporate body, institution or organisation, knowingly committing or abetting the commission of any act, prejudicial to the biological diversity of this country shall be punishable with rigorous imprisonment which may extend upto five years and with fine.

34. Effect of other laws.-

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment or in any instrument having effect by virtue of any other enactment. In the case of any inconsistency between the provisions of this Act and the Patents Act, 1970, the provisions of this Act shall prevail and any such inconsistent provision in the Patents Act shall be void and of no effect. The provisions of the enactments relating to forests, environment and ecology, whether enacted by Parliament or any State Legislature shall be read harmoniously with, and construed as supportive of, and to promote, the objectives of this Act.

(2) The rules made, notifications issued, schemes prepared or orders made, whether by a State Government, Union territory Administration or the Central Government under any of the laws relating to forests, environment or

ecology concerning any matter provided for by this Act shall continue in operation, notwithstanding the fact that they are made, issued or prepared by an authority other than the authority prescribed under this Act provided they are not repugnant to the provisions of this Act.

35. Power of Central Government to give directions to the State Government.-

The Central Government will have the power to give directions to the State Governments for carrying into effect the provisions of this Act.

36. Power to Grant Exemptions.-

(1) The Central Government, in consultation with the National Authority, may by notification published in the Official Gazette, exempt any biological resources or areas from the purview of this Act.

(2) Every such notification shall be laid on the Table of each House of Parliament for a period of not less than four weeks.

37. Exemption from Income-tax.-

Notwithstanding anything contained in the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on income, profits or gains, the National Authority, the State/Union territory Biodiversity Boards and the Local Biodiversity Boards shall not be liable to pay income-tax or any other tax in respect of their profits, income or gains.

38. Protection of action taken in good faith.-

No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government, the State Government or Union territory Administration for anything done in good faith in pursuance of this Act or the Rules made thereunder.

39. Cognizance of offence.-

(1) No court shall take cognizance of any offence under this Act except on a complaint made by the Central Government or any authority or officer authorised in this behalf by that Government.

(2) No private complaint alleging an offence under the Act shall be instituted until the expiration of ten days next after a notice in writing has been delivered to or left at the residence or office of the alleged offender.

40. Members, officers and employees of the Authority to be public servants.-

All the members of the National Authority constituted under this Act and all officers and employees of that Authority, when acting or purporting to Act in pursuance of any provisions of this Act or the rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

41. Power to delegate.-

The Central Government may, by notification, in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act as it may deem necessary or expedient, to the National Authority, the State/Union territory Biodiversity Board, the Local Biodiversity Board or their officers and employees.

42. Vacancy or defect not to affect the validity of action taken.-

No act or proceeding of the National Authority, the State/Union territory Biodiversity Board, the Biodiversity Management Committee or the Local Biodiversity Board shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in its constitution or on the ground of absence or non-participation of any member or members, during the deliberations, decision-making or while taking any other action under this Act.

43. Power of Entry, Inspection and Seizure.-

(1) Any person authorised in that behalf by the National Authority, the State/Union territory Biodiversity Board or the Local Biodiversity Board, may enter and search any premises and any vehicle, vessel, aircraft or other conveyance for the purpose of securing compliance with the provisions of this Act or in case he has reason to suspect that any activity prejudicial to biodiversity or inconsistent with the provisions of this Act is being carried on, such authorised person shall be competent to seize any material, plant, animal or any other article including the receptacle, vessel or vehicle in which it is stored or being transported, if he suspects that possession or use of such material, plant, animal or other article is prejudicial to the biodiversity of India or is contrary to the provisions of this Act.

(2) The National Authority or any State/Union territory Biodiversity Board or Local Biodiversity Board shall be competent to call for any information, document or other material relevant to the purposes of this Act, from any person, authority or organisation if it considers such

information, document or other material relevant to the purposes of this Act. Any requisition for help or assistance made by such Authority or the Board shall be promptly provided by any public authority, officer or individual.

44. Power of Central Government to make rules.-

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

(2) Every rule 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, 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.

45. Power of State Government to make rules.-

(1) A State Government or a Union territory Administration may in respect of matters within its purview, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) 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, or as the case may be, before Legislative Assembly of the Union territory where applicable.

46. Power to exempt.-

If the Central Government is satisfied that it is necessary in the national interest, or to give effect to any reciprocal agreement entered into with another Government, to do so, it may, by notification published in the Official Gazette, exempt generally, or subject to such conditions as may be specified in the notification, any person or authority from the operation of any of the provisions of this Act.

47. Power to remove difficulties.-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such

provision not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.