

Biodiversity Protection, Farmers and Breeders Right

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Lecture 13: Regulatory Authorities in India – NBA & SBB

Welcome to the course on Biodiversity Protection, Farmers and Breeders Right. This lecture will be about regulatory authorities in India that is National Biodiversity Authority and the State Biodiversity Board. The concepts covered in this lecture are decentralized biodiversity governance, national biodiversity authority, establishment and constitution of NBA, powers and functions of NBA, the State Biodiversity Board, establishment of SBBs, the functions and powers of SBBs. The keywords of this lecture can be seen here. The Biological Diversity Act provides for a decentralized model of biodiversity governance. The Biological Diversity Act mandates implementation of the act through a decentralized structure with National Biodiversity Authority at the central level, the State Biodiversity Boards at the state level and the Biodiversity Management Committees at the local body level.

The powers with regard to Union Territories are given to National Biodiversity Authority which is delegated to Union Territory Biodiversity Council. So, instead of the State Biodiversity Board every Union Territory will have a Union Territory Biodiversity Council. The powers and functions of National Biodiversity Authority, the State Biodiversity Board and the Biodiversity Management Committee are clearly demarcated in the Biological Diversity Act. The local self-governments are required to set up biodiversity management committees in their respective areas for the conservation, sustainable use, documentation of biodiversity and chronicling of knowledge relating to biodiversity.

So, the National Biodiversity Authority is established at the central level by the Government of India while the State Biodiversity Boards are constituted by the state governments at the state level. The National Biodiversity Authority and the State Biodiversity Boards are required to consult with biodiversity management committees in decision making relating to biodiversity. So, every decision relating to the biological diversity taken from the jurisdiction of the Biodiversity Management Committee a consultation has to be made with the respective Biodiversity Management Committee. So, the three-tier structure envisaged under the Biological Diversity Act provides for this decentralized biodiversity governance. The National Biodiversity Authority acts at the central level and it is headquartered in Chennai and it delivers the mandate through the structure comprising of the authority, the secretariat and the different expert committees.

The State Biodiversity Boards and the Union Territory Biodiversity Councils are functioning in their respective states and union territories. The Biodiversity Management Committees function in their respective local bodies. The National Biodiversity Authority was established in 2003 for the implementation of India's Biological Diversity Act. The the NBA was established as a statutory body and it performs facilitative, regulatory and advisory functions on issues related to conservation, sustainable use of biological resource, fair and equitable sharing of benefits arising out of the use of biological resources. The establishment and constitution of National Biodiversity Authority is provided under section 8 of the Biological Diversity Act.

Under section 8 it is provided that NBA shall be a body corporate having perpetual succession, a common seal with power to acquire, hold, dispose of property both movable and immovable and to contract and shall by the set name sue and besue. So, this means that NBA is constituted as an autonomous body having a statutory form under the Biological Diversity Act. The head office of the NBA shall be at Chennai and it is provided in the Biological Diversity Act itself and with the previous approval of central government the NBA can establish offices at different parts of the country. The NBA shall consist of chairperson and members. So, all the decisions taken by the National Biodiversity Authority has to be approved by the authority.

So, the authority consists of the chairperson and the members. The chairperson of NBA shall be an eminent person having adequate knowledge and experience in conservation and sustainable use of biodiversity and in matters relating to equitable sharing of benefits and the chairman has to be appointed by the central government. The members of National Biodiversity Authority includes three ex officio members to be appointed by the central government. So, one of the members will be representing the Ministry of Tribal Affairs while the other two will be representing the Ministry of Environment and Forest. There will be seven ex officio members representing different ministries of central government which has relation with conservation of biodiversity.

So, this includes ministries handling agriculture research and education, biotechnology, ocean development, agriculture and cooperation, Indian systems of medicine and homeopathy, science and technology, scientific and industrial research. There will also be five non-official members who are appointed from among specialists and scientists. So, this five non-official members will be experts from different areas related to conservation of biodiversity and the five members will also be appointed by the central government. The chairperson of National Biodiversity Authority shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biodiversity and in matters relating to equitable sharing of benefits. The appointment of the chair, chairman of National Biodiversity Authority will be done by

the

central

government.

The chairperson shall be the chief executive of the National Biodiversity Authority and shall exercise such powers and perform such duties as prescribed in the Biological Diversity Act and the rules. The meetings of National Biodiversity Authority shall happen in accordance with the provisions of the Biological Diversity Act. The place and time of the meetings can be decided by the authority in accordance with the rules. The meetings of National Biodiversity Authority has to be presided over by the chairperson, but in the absence of chairperson any member of National Biodiversity Authority chosen by other members can preside the meeting. All questions which come before any meeting of the National Biodiversity Authority shall be decided on the basis of majority of votes.

And the chairperson and if there is equal votes on both sides the chairperson or in his absence any person who is presiding over the meeting can exercise a second or casting vote. Every member who is having a conflict of interest shall disclose that before the meeting and shall not attend the meeting. The NBA can take assistance of expert committees for performance of its functions. So, under section 13 the National Biodiversity Authority is empowered to constitute different expert committees. So, there will be one expert committee for agro biodiversity and in every area where the National Biodiversity Authority requires expertise.

So, there are different expert committees like expert committee on access and benefits sharing, expert committee on designation of repositories and for several others matters the National Biodiversity Authority is empowered to constitute an expert committee. The persons appointed as members of the expert committee are entitled to receive allowances or fees for attending the meeting as fixed by the central government. So, for discharging of its functions the National Biodiversity Authority relies on the expertise of members in the expert committees. The officers and staff of National Biodiversity Authority is appointed in accordance with the provisions of the Biological Diversity Act. The Act provides that the National Biodiversity Authority can appoint such officers and employees as it considers necessary for the efficient discharge of functions of the Act.

The terms and conditions of service of such officers or employees of National Biodiversity Authority is prescribed in the regulations issued under the Biological Diversity Act. The salaries and allowances payable to members and the administrative expenses of National Biodiversity Authority including the salaries, allowances and pension payable to the officers and employees of National Biodiversity Authority shall be defrayed out of the consolidated fund of India. So, the expenses of National Biodiversity Authority for performance of its functions and for paying salaries and other

allowances to its staff will be defrayed out of the consolidated fund of India. So, all the income derived under the Biological Diversity Act by the National Biodiversity Authority will be utilized for other purposes which is provided in the Act, but all other expenses including its administrative expenses will be met from the consolidated fund of India. The powers and functions of National Biodiversity Authority is provided under section 18.

So, one of the most important function of National Biodiversity Authority is to regulate activities mentioned under section 3, 4 and 6. The details of section 3, 4 and 6 will be dealt in another lecture. So, section 18 provides that one of the most important function of National Biodiversity Authority is to perform this regulatory function with regard to sections 3, 4 and 6. National Biodiversity Authority also has a function to issue guidelines for access to biological resources and for fair and equitable sharing of benefits. So, this means that the NBA has to issue a guideline for access to biological resource and fair and equitable sharing of benefits.

So, in accordance with this function National Biodiversity Authority has already issued a regulation. The National Biodiversity Authority has the power to grant approval for undertaking any activity referred to in section 3, 4 and 6. National Biodiversity Authority also has an advisory function which includes advising the central government on matters relating to conservation of biodiversity, sustainable use of its components, equitable sharing of benefits arising out of utilization of biological resources. Second advising the state government in the selection of areas of biodiversity importance which is to be notified as biodiversity heritage sites. The third advisory function is to perform such other function as may be necessary to carry out the provisions of the act.

So, the advisory function of National Biodiversity Authority is equivalently important as its regulatory function under the part 1. So, under the advisory function it has to advise central government on different matters relating to conservation of biodiversity and then it has to advise the state government for the selection of biodiversity heritage sites. And another important function of National Biodiversity Authority is to oppose or take measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource which is derived from India. So, under the Biological Diversity Act one of the important regulated activity is obtaining intellectual property rights for any research on biodiversity. So, one of the reasons for the enactment of Biological Diversity Act is the experiences in handling cases of biopiracy.

So, there has been lot of biopiracy happening at the global level and one of the key objectives of Biological Diversity Act is to prevent such biopiracy. So, for this purpose

one of the important function given to National Biodiversity Authority is to take measures which are necessary to prevent biopiracy. So, section 27 of the Biological Diversity Act provides for constitution of National Biodiversity Fund. So, this fund is constituted under the Act for a specific purpose. So, all the grants and loans made to the National Biodiversity Authority, all the charges and royalties received by the National Biodiversity Authority and all sums received from received by National Biodiversity Authority from such sources as decided by the central government will be credited to the National Biodiversity Fund.

So, this means that all the receipt of money received by the National Biodiversity Authority will be credited to the National Biodiversity Fund. So, for what purpose this fund could be used that is also provided in section 27. So, section 27 provides that the National Biodiversity Fund could be used for mainly three purposes. One is channeling benefits to the benefit claimers. So, here we have to understand that the main receipt of money by the National Biodiversity Authority will be in the form of benefit sharing.

So, that is why it is provided that the fund can be mainly used for channeling benefit to the benefit claimers. So, if the benefit claimers are identifiable then whatever income is received as a benefit sharing will be directly given to the benefit claimers. Second is conservation and promotion of biological resource and development of areas from where such biological resource has been taken or traditional knowledge has been accessed. So, this means that if the benefit claimers are not identifiable or if the benefit sharing amount received is in huge quantum then it can be used for conservation and promotion of biological resource or for development of area from where the biological resource or the traditional knowledge has been accessed. And thirdly it can be used for socio-economic development of the areas from where the biological resource has been taken or the knowledge has been accessed.

So, this means that the fund can be used only for these three purposes which is mentioned in section 27 of the Biological Diversity Act. So, the all the income received by National Biodiversity Authority whether it is in the form of a grant or loans or in the form of charges or royalties or in the form of benefit sharing all this will be credited to the National Biodiversity Fund and the fund can be utilized only for these three purposes. The section 29-28 provides for annual report and audit of National Biodiversity Authority. The accounts of National Biodiversity Authority shall be audited by the controller and auditor general of India or any person specified by him. So, the accounts of National Biodiversity Authority shall be made available to the Office of the Auditor General of India and the audit will be carried out by the Office of the Controller and Auditor General of India.

So, once this audit report is given the accounts to along with the audit report shall be forwarded to the central government. Section 28 provides for preparation of annual report. The National Biodiversity Authority every year shall prepare an Authority annual report which details the activities undertaken by the National Biodiversity Authority, the details of approvals granted by the authority and all the expenses and income of National Biodiversity will also be included in the annual reports. The accounts as well as audited copy of accounts the details of the audit all also will be provided in the annual reports. The National Biodiversity Authority shall forward the copy of the annual report along with the accounts and the audited report to the central government.

The central government shall cause the annual report and the auditor's report to be laid before the parliament. The state biodiversity boards are constituted under section 22 of the Biological Diversity Act. So, just like National Biodiversity Authority at the central level there will be a state biodiversity board in every state. So, in case of Union territories, Union territory biodiversity councils has been constituted which also performs functions which are similar to state biodiversity boards. The state biodiversity boards focuses on advising state governments on various matters relating to conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising from the utilization of biological resources.

The establishment of the state biodiversity board is provided under section 22 of the act. So, under section 22 the board will consist of a chairperson and members. The chairperson of the SBB shall be an eminent person who is having adequate knowledge and experience in conservation and sustainable use of biodiversity and in matters relating to equitable sharing of benefits. The chairperson of the state biodiversity board will be appointed by the state government. The members of the state biodiversity board include five ex officio members which are appointed by the state government to represent the different departments of state government.

There will be not more than five members appointed by the state government who are experts in various matters relating to conservation of biodiversity, sustainable use of biological resource and equitable sharing of benefits arising out of the use of biological resource. So, the state biodiversity board will consist of a chairperson and members which are appointed by the central by the state government. The head office of the state biodiversity board will be at a place decided by the state governments by notification in the official gazette. Usually the headquarters of state biodiversity board will be at the state headquarters and sometimes the state biodiversity board may also have offices in different parts of the state. The functions of the state biodiversity board is provided in section 23.

The functions of state biodiversity board is very similar to that of the national biodiversity authority. One of the important function of state biodiversity board is to advise the state government on various matters relating to conservation of biodiversity. The SBBs also has another important function to regulate by granting of approvals or otherwise, request for commercial utilization or bio survey and bio utilization of any biological resource by Indians. So, if the persons or entities who are intending to utilize biodiversity for commercial purpose are Indians or Indian companies, then they come under the regulatory jurisdiction of the state biodiversity board. So, regulating such activities is another important function of the state biodiversity board.

The SBBs shall also perform such other functions as may be necessary to carry out the provisions of the act or as may be prescribed by the state government. The state biodiversity fund is constituted under section 32 of the biological diversity act. So, any grants or loans made to the state biodiversity board, any grants or loans received made by the national biodiversity authority or all sums received by the state biodiversity board from such sources as decided by the state government will be credited to the state biodiversity fund. So, similar to the national biodiversity fund, the state government's will also have state biodiversity board's will have a state biodiversity fund. So, all the receives of the state biodiversity board will be credited to the state biodiversity fund.

The purposes for which the state biodiversity fund could be utilized is provided in section 32. So, the state biodiversity fund can be used for management and conservation of biodiversity heritage sites compensating and rehabilitating any section of people who are economically affected by the notification of a biodiversity heritage site. The conservation and promotion of biological resources, socioeconomic development of areas from where biological resource or knowledge associated the two has been accessed meeting the expenses incurred for the purposes authorized by the act. So, the state biodiversity fund which is constituted under section 32 of the act can be used only for these specific five purposes. The section 33, 34 and 35 provides for the annual report and audit of accounts of the state biodiversity board.

The accounts of the state biodiversity board shall be maintained and audited by the accountant general of the state. So, the accounts of the state biodiversity board shall be made available to the office of the accountant general of state and the audit will be carried out by this office. So, once this audit is over the account as well as the audit statement shall be forwarded to the state government. Section 33 provides that the state biodiversity board shall prepare an annual report. So, this has to be prepared in every financial year.

So, the annual report will consist of the different activities undertaken by the state

biodiversity board, the details of approvals granted and the accounts and the audit report. The accounts and the audit report shall also be forwarded to the state government along with the annual report. The state government shall cause that the annual report and the auditors report shall be laid before the house of state legislature. So, I am moving to conclusion now.

So, usually this slide will come. So, I am going to conclusion. To conclude the National Biodiversity Authority was established in 2003 to implement India's biological diversity act. The NBI is a statutory body and it performs facilitative regulatory and advisory function for the implementation of the biological diversity act. The state biodiversity boards are constituted at the state level and they function under the directions of the state government. The SBBs regulate by granting approvals the request for commercial utilization of bio survey and bio utilization of any biological resource by Indians and Indian entities.

The local level biodiversity management committees are responsible 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. Thank you very much for listening to the lecture. I hope you are enjoying the course.