

BIODIVERSITY ACT FALLS SHORT OF NATIONAL NEEDS

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Sometime in 1996, fed up with the refusal of the Ministry of Environment and Forests, to prepare biodiversity legislation for India, two NGOs, Gene Campaign and Forum for Biotechnology & Food Security, decided to do something about it. A process of consultations started with people interested in biodiversity and the environment and some grassroots level experts. Gene Campaign drew upon the experiences of its many Core Groups in several states, to get feedback from the ground. Finally came the consultations with legal experts with the help of who a draft Biodiversity Bill was prepared in 1997.

This draft Bill was intended to generate awareness about the urgent need for a law to affirm Indian ownership over the biodiversity in its territories and to sort of force the government's hand. Despite being a signatory to the Convention on Biological Diversity, the Indian government had taken no steps till then to act on its pro-community provisions, to protect biodiversity and the rights of *adivasi* and rural communities. It had no legal instruments to check biopiracy at its borders.

The draft Biodiversity legislation was sent in 1997 to the then President of India, Sri SD Sharma and to a number of Parliamentarians. Gene Campaign, a campaign and advocacy organisation and a major architect of the national campaign against seed patents began to use its advocacy experience to bring pressure on the government from several quarters, about the urgent need for a legislation to protect Indian interests in genetic resources.

These sustained efforts paid off and the Ministry of Environment & Forests constituted an expert committee to prepare a draft law on biodiversity. Dr. MS Swaminathan chaired the expert committee and the writer was a member. The deliberations of the committee produced a draft, which was released for public discussion and comments. This continued for a few years and gradually the draft Bill became more and more confused as suggestions were incorporated without examining their applicability or suitability.

The final Biodiversity Act , which has been passed by the Rajya Sabha on 11 December 2002 , despite all its good intentions, has ended up as a confused and weak document.

It is however the section on Intellectual Property Rights where the law is going to do its greatest damage. All that is stipulated is that IPR applications will have to go through the National Biodiversity Authority. There is no thought given to what kind of IPR will be permissible and what not. The Act in its confused way ends up running counter to the larger national and international campaign against patents on life forms. Since there is no stricture against patents, will the Authority give permission for a patent on a medicinal plant or a rare species of turtle or bee?

The Biodiversity Act having no clear position on IPRs is particularly unfortunate, especially when IPRs on biological materials are the single most vexed issue in the

overall IPR debate today. This area on which the Act lacks clarity is the very area, which is at the centre of a raging global controversy. Its ambiguity is alarming because it has the potential to lead to unending legal tangles on what could constitute a legitimate IPR under this law's jurisdiction.

The other Indian legislation dealing with bio resources have all taken clear positions on what IPR will be permissible. The Plant Variety Protection and Farmers Rights Act, 2001, do not allow patents, only a Breeders Right. The Patent Amendment Acts I and II specify that no patents will be allowed on plants and animals but will be allowed on micro organisms. The Biodiversity Act promises conflict even with respect to other Indian legislation.

The new Act is drafted as though it were a stand alone law, and there were no previous laws in the country with respect to biodiversity, like the Environment Protection Act, 1986, the Forest Conservation Act 1980, the Wildlife Act 1972, and the Indian Forest Act 1927. The Act does not take these existing laws into account and in many cases will duplicate their mandate or run counter to them, causing mayhem. What for example, should be the status of the Forest department and their conservation mandate if the structures of the new legislation are to oversee this job now?

The Act has also unthinkingly sets up parallel structures, which will be meaning less and create conflicts if implemented. Its proposed biodiversity heritage sites are a case in point. What are these meant to be? How will they be demarcated and how will they be financed? India already has set in place a comprehensive network of protected areas in the form of several national parks and sanctuaries in the biodiversity rich areas of the country. So what should be the locus standi of these new heritage sites? And what should be their status with respect to existing protected areas?

The current Act will hamper rather than encourage researchers. Instead of encouraging research in this important area of medicinal plants and their ecosystems, the provisions of this new law are so bureaucratic that they are likely to intimidate potential researchers with strong tangles of red tape. Not only will research proposals be vetted by the Authority (thereby causing infinite delays), even publications and dissemination of information will have to be in accordance with government guidelines.

Related to its confused position on IPRs, is the issue of benefit sharing accruing from commercialisation. There is no system for deciding the nature and extent of benefit sharing. The Authority and the Central and State governments will decide that arbitrarily. Local communities seem to have little say in the implementation of the Act. They cannot for example, oppose the grant of a patent or other IPR on biological material taken from them, nor do they have a say in what will be 'equitable' sharing of benefits. What started as an effort to have a participatory, enabling legislation, has ended up as the usual kind of law framed by bureaucrats where the local communities have been pretty much left out of the general scheme of things supposedly set in place for them.