

Biological Diversity Act, 2002

Chapter 12 - CHAPTER 12: MISCELLANEOUS

SECTION 48: NATIONAL BIODIVERSITY AUTHORITY TO BE BOUND BY THE DIRECTIONS GIVEN BY CENTRAL GOVERNMENT(1) Without prejudice to the foregoing provisions of this Act, the National Biodiversity Authority shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time: Provided that the National Biodiversity Authority shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.(2) The decision of the Central Government whether a question is one of policy or not shall be final.

SECTION 49: POWER OF STATE GOVERNMENT TO GIVE DIRECTIONS(1) Without prejudice to the foregoing provisions of this Act, the State Biodiversity Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the State Government may give in writing to it from time to time: Provided that the State Biodiversity Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.(2) The decision of the State Government whether a question is one of policy or not shall be final.

SECTION 50: SETTLEMENT OF DISPUTES BETWEEN STATE BIODIVERSITY BOARDS(1) If a dispute arises between the National Biodiversity Authority and a State Biodiversity Board, the said Authority or the Board, as the case may be, may prefer an appeal to the Central Government within such time as may be prescribed.(2) Every appeal made under sub-sec. (1) shall be in such form as may be prescribed by the Central Government.(3) The procedure for disposing of an appeal shall be such as may be prescribed by the Central Government: Provided that before disposing of an appeal, the parties shall be given a reasonable opportunity of being heard.(4) If a dispute arises between the State Biodiversity Boards, the Central Government shall refer the same to the National Biodiversity Authority.(5) While adjudicating any dispute under sub-sec. (4), the National Biodiversity Authority shall be guided by the principles of natural justice and shall follow such procedure as may be prescribed by the Central Government.(6) The National Biodiversity Authority shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely :-(a) summoning and enforcing the attendance of any person and examining him on oath;(b) requiring the discovery and production of documents;(c) receiving evidence on affidavits ;(d) issuing commissions for the examination of witnesses or documents;(e) reviewing its decisions;(f) dismissing an application for default or deciding it ex parte;(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;(h) any other matter which may be prescribed.(7) Every proceeding before the National Biodiversity Authority shall be deemed to be a judicial proceeding within the meaning of Sec. 193 and 228, and for the purpose of Sec. 196, of the Indian Penal Code (45 of 1860) and the National Biodiversity Authority shall be deemed to be a Civil Court for all the purposes of Sec. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

SECTION 52: APPEAL-Any person, aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, may file an appeal to the High Court within thirty days from the date of communication to him, of the determination or order of the National Biodiversity Authority or the State Biodiversity Board, as the case may be: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeals within the said period, allow it to be filed within a further period not exceeding sixty days.

SECTION 53: EXECUTION OF DETERMINATION OR ORDER-Every determination of benefit sharing or order made by the National Biodiversity Authority or a State Biodiversity Board under this Act or the order made by the High Court in any appeal against any determination or order of the National Biodiversity Authority or a State Biodiversity Board shall, on a certificate issued by any officer of the National Biodiversity Authority or a State Biodiversity Board or the Registrar of the High Court, as the case may be, be deemed to be decree of the civil Court and shall be executable in the same manner as a decree of that Court.

Explanation.-For the purposes of

this section and Sec. 52, the expression "State Biodiversity Board" includes the person or group of persons to whom the powers or functions under sub-sec.(2) of Sec. 22 have been delegated under the proviso to that sub-section and the certificate relating to such person or group of persons under this section shall be issued by such person or group of persons, as the case may be.

SECTION 54: PROTECTION OF ACTION TAKEN IN GOOD FAITH-No suit, prosecution or other legal proceedings shall lie against the Central Government or the State Government or any officer of the Central Government or the State Government or any member, officer or employee of the National Biodiversity Authority or the State Biodiversity Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made there under.

SECTION 55: PENALTIES(1) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of Sec. 3 or Sec. 4 or Sec. 6 shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten lakh rupees and where the damage caused exceeds ten lakh rupees such fine may commensurate with the damage caused, or with both.(2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of Sec. 7 or any order made under sub-sec. (2) of Sec. 24 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.

SECTION 56: PENALTY FOR CONTRAVENTION OF DIRECTIONS OR ORDERS OF CENTRAL GOVERNMENT, STATE GOVERNMENT, NATIONAL BIODIVERSITY AUTHORITY AND STATE BIODIVERSITY BOARDS-If any person contravenes any direction given or order made by the Central Government, the State Government, the National Biodiversity Authority or the State Biodiversity Board for which no punishment has been separately provided under this Act, he shall be punished with a fine which may extend to one lakh rupees and in case of a second or subsequent offence, with fine which may extend to two lakh rupees and in the case of continuous contravention with additional fine which may extend to two lakh rupees everyday during which the default continues.

SECTION 57: OFFENCES BY COMPANIES(1) Where an offence or contravention under this Act has been committed by a company, every person who at the time the offence or contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly :Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.(2) Notwithstanding anything contained in sub-sec. (1), where an offence or contravention under this Act has been committed by a company and it is proved that the offence or contravention has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-(a) "company" means any body corporate and includes a firm or other 'association of individuals; and (b) "director", in relation to a firm, means a partner in the firm.

SECTION 58: OFFENCES TO BE COGNIZABLE AND NON COGNIZABLE-The offences under this Act shall be cognizable and non-bailable.

SECTION 59: ACT TO HAVE EFFECT IN ADDITION TO OTHER ACTS-The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or wildlife.

SECTION 60: POWER OF CENTRAL GOVERNMENT TO GIVE DIRECTIONS TO STATE GOVERNMENT-The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule or regulation or order made there under.

SECTION 61: COGNIZANCE OF OFFENCES-No Court shall take cognizance of any offence under this Act except on a complaint made by-(a) the Central Government or any authority or officer authorised in this behalf by that Government; or (b) any benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

SECTION 62: POWER OF CENTRAL GOVERNMENT TO MAKE RULES(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-(a) terms and conditions of service of the Chairperson and members under Sec. 9;(b) powers and duties of the Chairperson under Sec. 10;(c) procedure under sub-sec.

(1) of Sec. 12 in regard to transaction of business at meetings;(d) form of application and payment of fees for undertaking or certain activities under sub-sec. (1) of Sec. 19;(e) the form and manner of making an application under sub-sec. (2) of Sec. 19;(f) form of application and the manner for transfer of biological resource or knowledge under sub-sec.(2) of Sec. 20;(g) form in which, and the time of each financial year at which, the annual report of the National Biodiversity Authority shall be prepared and the date before which its audited copy of accounts together with auditor's report thereon shall be furnished under Sec. 28;(h) form in which the annual statement of account shall be prepared under sub-sec. (1) of Sec. 29;(i) the time within which and the form in which, an appeal may be preferred, the procedure for disposing of an appeal and the procedure for adjudication, under Sec. 50;(j) the additional matter in which the National Biodiversity Authority may exercise powers of the civil Court under clause (h) of sub-sec. (6) of Sec. 50;(k) the manner of giving notice under clause (b) of Sec. 61;(l) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.(3) Every rule made under this section and every regulation 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 regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation 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 or regulation.

SECTION 63: POWER OF STATE GOVERNMENT TO MAKE RULES(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-(a) the other functions to be performed by the State Biodiversity Board under clause (c) of Sec. 23;(b) the form in which the prior intimation shall be given under sub-sec. (1) of Sec. 24;(c) the form in which, and the time of each financial year at which, the annual report shall be prepared under Sec. 33;(d) the manner of maintaining and auditing the accounts of the State Biodiversity Board and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under Sec. 34;(e) management and conservation of national heritage sites under Sec. 37;(f) the manner of management and custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied under sub-sec. (1) of Sec. 44;(g) the form of annual report and the time at which such report shall be prepared during each financial year under Section 45;(h) the manner of maintaining and auditing the accounts of the Local Biodiversity Fund and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under Sec. 46;(i) any other matter which is to be, or may be, specified.(3) 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.

SECTION 64: POWER TO MAKE REGULATIONS-The National Biodiversity Authority shall, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations for carrying out the purposes of this Act.

SECTION 65: POWER TO REMOVE DIFFICULTIES(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty :Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Central Bare Acts