

Biological diversity act: Balancing investments and sustainability

In December 2021, environment minister Bhupender Yadav tabled amendments to India's Biological Diversity (BD) Act, 2002. In part, the changes can be better explained as the Centre's efforts to promote Indian Systems of Medicine (ISM). The Centre intends to promote international collaborations and investments for the manufacturing and export of ayurveda, yoga, naturopathy, unani, siddha, sowa-rigpa and homoeopathy (Ayush), which are based on codified traditional knowledge.

The changes reflect the compromise between the ministries of Ayush and the environment that have been negotiating a long-standing dispute over the applicability of the BD Act. For several years, Ayush manufacturers have resisted the obligations of the BD Act, especially those requiring permissions for access and effecting benefit-sharing agreements. At present, access to biological material and related knowledge for commercial utilisation requires permissions either from the National Biodiversity Authority (NBA) or state biodiversity boards (SBBs).

In 2014, a National Ayush Mission was announced by the ministry of health and family welfare (MoH&FW). While the Centre was promoting Ayush, the environment ministry was aligning India's biodiversity regime with the Nagoya Protocol on Access and Benefit Sharing (ABS) under the Convention on Biological Diversity (CBD).

India's ratification of this protocol in 2014 meant aligning its domestic regime, especially requiring prior informed consent of indigenous peoples and local communities for access, stronger measures against illegal access and a clear institutional mechanism to effect fair and equitable benefit-sharing (FEBS). Soon after India ratified the Protocol, the Centre set up the ministry of Ayush, before which, the department of Ayush was under MoH&FW.

The global emphasis on ABS spurred SBBs to issue notices to several Ayush manufacturers to pay fees for access to the bio-resources they were utilising for commer-

cial products. This allowed SBBs to collect revenue. But this also led to pushback from ISM manufacturers. The environment ministry continued to hold the position that companies needed to pay up. In 2015, former environment minister Prakash Javadekar informed the Ayurvedic Drug Manufacturers Association (ADMA) that the industry has to pay "ABS tax". But ADMA circulated an advisory to its members suggesting that they defer ABS payment.

On December 14, 2015, the Central India Ayush Drug Manufacturers Association (CIDMA) filed a petition in the Nagpur bench of the Bombay high court (HC), seeking explanation on notices issued for the recovery of ABS. The petition challenged the validity of the legal provisions for FEBS on Indian entities. This issue also came to head in the 2018 Divya Pharmacy case, where the Uttarakhand HC upheld the SBBs authority to regulate access and enforce FEBS.

But the Ayush industry continued to seek exemptions. In 2019, a national policy research institute organised a roundtable discussion on the concerns of Ayush companies, many of which mirror the amendments proposed in the bill.

The most significant of these is exempting cultivated medicinal plants, their products and registered Ayush practitioners from regulation by the SBBs.

India as a mega diverse country has been leading in embracing CBD and its obligations for conservation and sustainable use. The BD Act, despite its shortcomings, sets up an institutional framework to curtail illegal access and effect benefit-sharing while ensuring conservation. India's push to attract investment and promote ISM should not be at the cost of diluting the BD regime.



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The views expressed are personal