

Upholding the Republic of Biodiversity

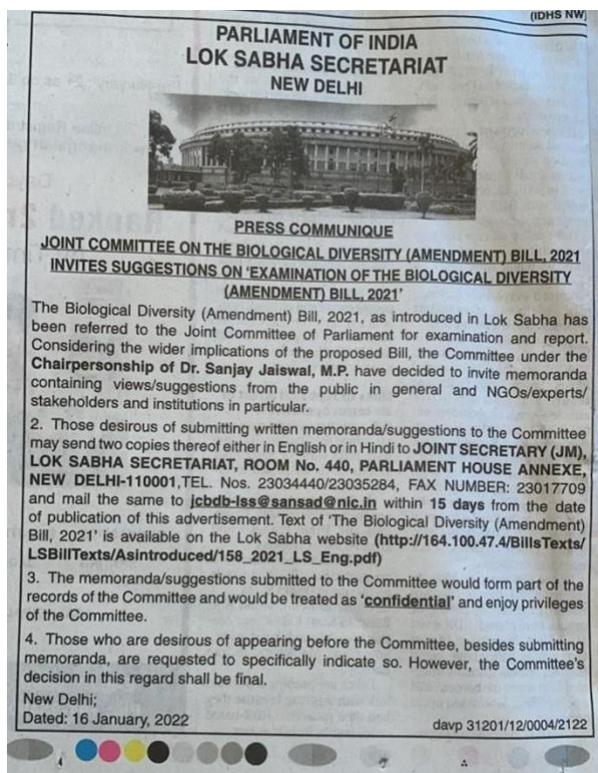
Demand immediate and complete withdrawal of proposed Biodiversity Act Amendment Bill 2021

A Statement issued by

Coalition for Environmental Justice in India

on the occasion of 73rd Republic Day of India, 26 January 2022

The Union Ministry of Environment, Forests and Climate Change (MoEF&CC)¹ has proposed comprehensive amendments to the Biological Diversity Act 2002 (BDA)² by way of the Biological Diversity Act Amendment Bill 2021³. Since the proposed amendments are far reaching in nature as well as deeply controversial, the Bill has been referred to a Joint Parliamentary Committee (JPC) for review. The JPC has invited comments/objections to the Bill by the end of the month.



Under the Doctrine of Public Trust enunciated as law of the land by the Supreme Court of India, natural resources of the country belong to the people, and are managed by the state as a trustee on behalf of the real owners. The unamended BDA recognizes the public trust doctrine as central to the successful implementation of the law.

In this sense, the proposed changes to the Act constitute a well calibrated and clear attempt to progressively undermine and destroy the sovereign rights and control that the people of India have over their biodiversity, bioresources and associated traditional knowledge, a right that is particularly crucial for adivasis, Dalits, farmers, fishers, vairs, hakims, nomadic and de-notified tribes, and such other natural resource dependent peoples whose lives, livelihoods and socio-economic wellbeing are intricately linked to nature.

¹ <https://moef.gov.in/en/>

² <http://nbaindia.org/content/25/19/1/act.html>

³ http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/158_2021_LS_Eng.pdf



Figure 1: The Doctrine of Public Trust protects rights of traditional fisher communities and their right to live in carbon neutral floating villages on Loktak Lake, south of Imphal, Manipur. The proposed Bill will destroy their livelihoods, commodifying habitats.

The Bill contains provisions which promote further centralisation of powers. This is in stark contrast with the law as it exists, which requires biodiversity conservation, protection and its sustainable use in collaboration with State and Local Governments. In this sense, the Bill is contrary to the Constitutional 73rd Amendment (Panchayat Raj) Act, 1992, the Constitutional 74th 74th Amendment (Nagarpalika) Act, 1992, the Panchayat (Extension to Scheduled Areas) Act, 1996 and the Forest Rights Act 2006. The provisions of the Bill also stand opposed to the Principle of Intergenerational Equity, Precautionary Principle, Polluter Pays Principle and a host of other such basic safeguards protecting people's and the country's interests now and into the future.

The Bill also seeks to comprehensively dilute sovereign governance mechanisms of the Biodiversity Management Committees subordinating them to centrally controlled parastatals, and thus compromise substantially their oversight to and access over their bioresources. The benefit of this dilution will accrue to private corporations, including MNCs, and especially those involved in AYUSH⁴ industries. This could result in irreversible extractive exploitation of India's bioresources and the country potentially faces loss of control over and extinction of several valuable plant species very rapidly as a result.

⁴ <https://www.ayush.gov.in>



Figure 2: Camel herders in Rajasthan are struggling to keep an extraordinary tradition alive, even as their rights to graze camels are being snatched due to reckless diversion and enclosure of commons to massive solar parks and other infrastructure projects.

The proposed changes in the BDA need to be viewed in conjunction with regulations⁵ proposed to be issued under the Food Safety Standards Act, 2006 (FSSA),⁶ which are also promoted without any respect for the country's federal governance system. The FSSAI⁷ proposals facilitate free passage of genetically modified foods into India even though there is a Ministerial moratorium in place since 2010 against GM food trials and cultivation. Here too the interests of Indian and international corporations are being leveraged over fundamental rights of farmers, food producers and local communities. Besides, the diversity of food cultures of India is sought to be homogenised by extending direct access to such imported foods across the country. In this context we record our gravest concerns that the changes proposed in regulations under FSSA are in concert with essential abrogation of the BDA and the GMO RULES of 1989⁸.

Biodiversity protection and its sustainable use extends centrally to India's biodiverse crop seeds for food & feed which have contributed to her rich cooking traditions - a culturally diverse art developed over thousands of years. Our reliance on traditionally safe and healthy food is now directly under attack and will be junked through these plans to open India's food and feed to GMOs in imported processed foods and feed, and the comprehensive dilution of BDA.

⁵ <https://www.fssai.gov.in/notifications.php?notification=draft-notification>

⁶ <https://www.fssai.gov.in/cms/act-2006.php>

⁷ <https://www.fssai.gov.in>

⁸ <https://geacindia.gov.in/acts-and-rules.aspx>



Figure 3: Decentralisation of administration and devolution of power to local communities is not limited to rural areas. Such powers that now exist in the Biological Diversity Act 2002 empowered local communities living around Turahalli Forest in South Bangalore to protect the scrub jungle from commercial development by the Karnataka Forest Department.

It is deeply worrying that the Government of India is attempting to destroy the very essence of the BDA, which was enacted following one of the most participatory efforts in law making in the history of India. The law, in fact, was enacted in response to India becoming a signatory to the United Nations Convention on Biological Diversity 1992⁹ (CBD) as it “reaffirms the sovereign rights of the States over their biological resources.”¹⁰ This needs to be seen in the context of Article 39(b), part of the Directive Principles of State Policy in the Constitution of India,¹¹ which clearly acknowledges that “ownership and control of the material resources” is “of the community” and that it must be “so distributed as to best subserve the common good.” On that premise the duty is cast on the Government in Article 48(A) to “endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”

⁹ <https://www.cbd.int>

¹⁰ The CBD is an international agreement signed by India recognising the need to protect human health and the environment from the possible adverse effects of the products of modern biotechnology (including Gene Edited Products) and it is rooted in the Precautionary Principle.

¹¹ <https://legislative.gov.in/constitution-of-india>



Figure 4: Food cultures are based on extraordinary understanding of biodiversity in local communities. Food is medicine to them, as is demonstrated here in a Biodiversity Festival held in Chizami, Nagaland on 6th March 2020. This biodiversity that is now in the sovereign control of indigenous people will in all likelihood pass into the hands of mega food and pharmaceutical corporations if the proposed changes actualise.

Significantly, the Government of India has proposed the Bill without consulting State Governments, Local Governments, or the wider public. The Bill has also not been translated into any of the Scheduled languages of India, as was done with the Draft Environment Impact Assessment Notification 2020 following nation-wide public outcry and the direction of the Delhi High Court¹². This may be because the Bill proposes significant and highly regressive changes to the Act which the Government may not want the people to know of.

There are provisions in the Bill which seek to extinguish or diminish the effective control people of India now have over their biodiversity, bioresources and associated traditional knowledge. Through it, foreign and Indian private corporations, research organisations and corporate data agencies from across the world will gain unfettered access to India's biodiversity and associated knowledge and information.

Such provisions of the Bill amount to advancing bio-looting of India's bioresources and the systematisation of biopiracy - which the country chose to actively resist by enacting the BDA and endorsing CBD. Alarming, certain provisions of the Bill extend legitimacy to several cases of biopiracy actively under consideration of the judiciary.¹³ Such dilutions would make it very difficult, if not

¹² <https://indiankanoon.org/doc/170177749/>

¹³ <https://esgindia.org/new/?s=biopiracy>

impossible, to hold any private individual or corporation accountable for biopiracy or biolooot in future. It is to be noted that prevailing safeguards helped India protect its bioresources internationally, especially through legal action in foreign courts, as evident from successes against biopiracy of Neem, Basmati rice, etc.¹⁴



Figure 5: Amongst the most critically endangered ecosystems, Sunderbans struggles to survive climate change impacts and official apathy.

Another worrying aspect in the Bill is that it aims to significantly erode the prevailing fragile autonomy of the National Biodiversity Authority.¹⁵ This is sought to be done by promoting the powers of the Member Secretary of the Authority, an appointee of MoEF&CC, to be equal to the autonomous Chairperson of the authority. In effect, this would turn the autonomous institution into an executive appendage of the Ministry.

In a most astonishing proposition, the Bill seeks to take the BDA out of the prevailing environmental jurisprudence governed under the umbrella legislation Environment Protection Act, 1986. Currently, all offences against the environment and associated rights are considered criminal offences. By way of the Bill, MoEF&CC now proposes to reduce such violations of BDA into mere civil offenses. It appears MoEF&CC has yielded to pressures from the United States Government which -- since the early 2000s -- has been pressuring India to whittle down its strong environmental jurisprudence.

¹⁴ <https://www.navdanya.org/site/living-seed/biopiracy-victories>

¹⁵ <http://nbaindia.org/>



Figure 6: Women and children are worst affected by secrecy and denial of their due right to know and participate in environmental decision making. In Mikir Bamuni Grant village in Assam, women lead protests against the diversion of their farm lands and forests to Azure Power Company, facing unimaginable police brutalities.

The Government of India has a duty cast upon it by the Constitution to propose reforms to strengthen the BDA in collaboration with State and Local Governments, so that India's biodiversity, peoples sovereign control over bioresources and associated traditional knowledge is protected, and their sustainable use will benefit present and future generations. MoEF&CC – in association with State Environment Departments – is mandated to ensure decentralised and effective implementation of the Act. Instead, the proposed Bill is a retrograde move, a brazen attempt to centralise control of India's biodiversity conservation system in the Central Ministry and will turn biodiversity and bioresources into a lucrative field for profit maximisation by corporate and financial interests. This we are neither able to tolerate nor accept.

On this 73rd Republic Day, We, the People of India, and environmental, social justice and democratic organizations fully reject the proposed BDA Amendment Bill, 2011 as it grossly militates against interests of the peoples of India and their futures. We make this demand in the interest of our living planet, and in resistance to the corporate loot of natural resources. We demand that the Bill be withdrawn forthwith by the Government of India.

We urge the Joint Parliamentary Committee to initiate nation-wide consultation processes to improve BDA and its implementation, enabling participation of primary stakeholders of biodiversity, bioresources and associated traditional knowledge in a manner accessible to them and in their language. In conducting such a deeply democratic consultation, JPC could call upon State Governments, Local Governments, NGOs and civil society to assist. This process will take time, but it is necessary that this time is invested now in order to safeguard India's biodiversity and thereby her ecological, economic and social securities.

Such rigorous assessment can weigh in support of the letter and spirit of the current Act and in securing India.



Figure 7: Retaining the autonomy of the National Biodiversity Authority is critical in securing support for protection of grassland ecosystems, for instance, which Ministry of Environment, Forests and Climate Change, along with Forest Departments. continues to term as ‘wastelands’.

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Figure 8: “The children of today will make the India of tomorrow. The way we bring them up will determine the future of the country.” – Jawaharlal Nehru, Prime Minister of India (1952-1946). It is to them we owe the promise of doing everything we must to protect our sovereign control over our biodiversity, bioresources and associated traditional knowledge.



Figure 9: Communities of Challakere taluk in Chitradurga, Karnataka hold on to an amazing tradition of protecting the purity of Amrit Mahal cattle by donating fodder, money and also offering their services. But the diversion of thousands of acres of Amrit Mahal Kaval grassland ecosystems to ‘science city’ has denied this millennia old cattle foraging grounds. For all that is said about protecting the cow, thousands of such cattle are without sufficient fodder.



{Photo credits: Leo F. Saldanha}