



सत्यमेव जयते



जहाँ है हरियाली ।
वहाँ है खुशहाली ॥



H.P. State Biodiversity Board
UNEP-GEF MoEFCC ABS Project

PROCEEDINGS ON:

**Interactive Dialogue on “Biological Diversity Act, 2002 and its Access and
Benefit Sharing (ABS) provisions for Bar Association and Senior Advocates of
Himachal Pradesh High Court**

New Regency Hall, Hotel Holiday Home (HHH), Shimla

4th of September, 2017.

Interactive Dialogue on “Biological Diversity Act, 2002 and its Access and Benefit Sharing (ABS) provisions for Bar Association and Senior Advocates of Himachal Pradesh High Court

Biological diversity is a national asset of a country; hence the conservation of biodiversity assumes greater significance. The first attempt to bring the biodiversity into the legal framework was made by way of the biodiversity bill 2000 which was passed by the Lok Sabha on 2nd December 2002 and by Rajya Sabha on December 2002. A national biodiversity authority has been established by the Biodiversity Act, 2002 to regulate act implementing rules 2004 has been operationalised since coming in to force. Regulating access as well as pushing the officially sponsored, documentation of biological resources and traditional practices through people’s diversity registers at the local and data bases at the national levels, respectively is the heart of the BD Act, 2002. It further probes the extent to which the principles of conservation have realized.

The Ministry of Environment & Forests is primarily concerned with planning, promotion, coordination and overseeing the implementation of the various environmental and forestry policies and programmes. The Ministry also serves as the nodal agency in the country for the United Nations Environment Programme (UNEP) and is also entrusted with the issues relating to multilateral bodies such as the Commission on Sustainable Development (CSD), Global Environment Facility (GEF) and of regional bodies like Economic and Social Council for Asia and Pacific (ESCAP) and South Asian Association for Regional Co-operation (SAARC) on matters pertaining to Environment. Out of the many mandates and objectives of the Ministry, Conservation and Protection of environment, assistance to organizations implementing environmental and forestry programmes, promotion of environmental and forestry research, extension, education and training and creation of environmental awareness among all sectors of the country’s population, are in relation with Biological Diversity Act 2002, implementation in various States of the Country.

The need to spread Biodiversity awareness is enormous in the context of successfully addressing Biodiversity Conservation problems, Biological diversity Act 2002 and rules 2004 address the same. On the one hand, awareness on Biological Diversity Act, 2002 creates greater awareness in individuals and communities with respect to putting environmental resources to use even while conserving them. On the other hand, greater the awareness increases especially within the line departments of the government, the scope of sustainable use and conservation practices for protecting our valuable biodiversity also increases.



In order to conserve and sustain biodiversity of the State and to implement programmes and strategies related with biodiversity conservation at the state and national level it is realized that the Law departments of the state should be made aware about the provisions, scopes and role of Biological Diversity Act, 2002, so it was decided by HP State Biodiversity Board to make Bar Association, Senior Advocates, Advocate General, Additional Advocate Generals and Deputy Advocate Generals of Hon'ble High Court of Himachal Pradesh aware about the role and scope of Biological Diversity Act, 2002. In this connection a one day training workshop was organized at Hotel Holiday Home (HHH), Shimla under supervision of Sh. Kunal Satyarthi, Joint Member Secretary, Himachal Pradesh State Biodiversity Board. Hon'ble Justice Sh. Sanjay Karol, Acting Chief Justice, Hon'ble High Court of Himachal Pradesh was the Chief Guest, Advocate B.P. Sharma, President Bar Association, Hon'ble High Court of Himachal Pradesh, Sh, Saurabh Sharma, Advocate, Hon'ble Supreme Court of India was the special guest, Smt. Archana Sharma, Director, Environment Science & Technology, Govt. of HP, Sh. Ishwar Poojar, Project Manager, UNEP/GEF MoEF&CC ABS Project, National Biodiversity Authority, Chennai were present during the workshop. Scientists and officials from HP State Biodiversity Board also attended the workshop.

Hon'ble Justice Sh. Sanjay Karol, Acting Chief Justice, Hon'ble High Court of Himachal Pradesh took



initiative and himself started the proceedings after the inaugural ceremony. Hon'ble Justice Sh. Sanjay Karol said that Conservation of biodiversity involves multiple stake holders and a multi-sectoral approach is necessary for its conservation in all spheres of ecosystem. The law requires each ministry to monitor biodiversity, be aware of environmental impact of activities within the

sphere of responsibility and work together cooperatively. He mentioned that the law includes the issue of biosafety in the objectives by specifying to ensure environmental safety to all citizens as a guarantee of social, economic and cultural sustainability. He also said that Article 46 of the law deals with the issue of

biosafety and that the precautionary principle, to avoid the defence of scientific uncertainty has been explicitly put in place in Article 11 of the Act. During his talk Earth summit and CBD were discussed and three tier system of Biological Diversity Act, 2002 i.e. Conserving Biodiversity, Sustainable use of its component and Fair and equitable Sharing of Benefits was also briefly discussed.

Hon'ble Justice Sh. Sanjay Karol told everyone about how the BD Act,2002 was formed and why there



was a need for formation of such Act. He said that BD Act, 2002 aims at promoting the conservation and sustainable use of biological resources and the equitable sharing of the benefits arising out of such resources. The Act provides for the establishment of the National Biodiversity Authority at the Central level, State Biodiversity Boards at the State level and Biodiversity Management Committees at the level of

the local self- government in India. He also told about Access Benefit Sharing which he said can be described as the process when bio-resources or people's knowledge are accessed, the user/ accessor must compensate the provider community either in financial terms or acknowledge the source. However once access is allowed, then the challenges for regulatory mechanisms are to identify and claim a share of benefits and to ensure just and equitable sharing. Article 16 of the Convention on Biological Diversity states the ways in which the Access and Transfer of Technology should take place. He told that the Act centralises all the property rights either in the hand of state through sovereign appropriation or in the hands of private inventors through monopoly of intellectual property rights. It does not however provide a framework for the rights of all other holders of biological resources and related information. The consequence is that resources and knowledge are not allocated through intellectual property rights, the rest is freely available. He also briefly touched the Nagoya Protocol on access benefit sharing in Tokyo in 2001 and told that it is an agreement which aims at sharing the benefits arising from utilisation in a fair and equitable way, thereby contributing in the conservation and sustainable use of biodiversity.

Sh. Kunal Satyarthi, Joint Member Secretary, HP State Biodiversity Board imparted knowledge related to Biological Diversity Act, 2002, and its Access and Benefit Sharing Provisions to all participants. Sh. Kunal Satyarthi interactively presented many cases related to BD Act by showing news clipping from Times of India newspaper in which it was mentioned that in August 2012, two Czech nationals were arrested "for stealing insects" near the Singalila National Park in Darjeeling. In September, the two Prague-based entomologist Petr Svacha and his colleague Emil Kucera were convicted by a local court under provisions of Biological Diversity Act, 2002. Next in his presentation he showed some pictures of

different varieties of brinjal, rajmah (pulse) and rice that was once found in the State and showed his concern that today out of many varieties found once now only very few are available, which shows the loss that biodiversity of the State has faced.

By giving these examples he explained that biodiversity is not just associated with medicinal plants and herbs found in wild but it covers everything except Normally Traded Commodities (NTC's) and other



agriculture produce till the time some value addition is done e.g. cultivation of apple is not applicable under BD Act, 2002 but if someone or some industry or firm is engaged in value addition by making some commercial product like jam or wine from apple then they do come under BD Act, 2002. By giving these examples Sh. Kunal Satyarthi showed the scope, provision and power of Biological

Diversity Act, 2002 and these examples also acted as the foundation of the whole presentation for better understanding of the topic for Bar Association and Senior Advocates of Himachal Pradesh High Court. Next he briefed about the status of global biodiversity and also told about the alarming rate (150 varieties of different species being lost every day) at which biodiversity is being wiped off from the face of earth. Next he brought everybody's focus on Biological Diversity Act, 2002 and its provision.

Next he briefed about the inception of the BD Act how it came into force he mentioned that in 1987, the World Commission on Environment and Development enunciated the principle of "sustainable development" in its landmark report titled "Our Common Future" in which it observed that "humanity has the ability to make development sustainable to ensure that it meets the needs of the present generation without compromising the ability of the future generations to meet their own needs". "Sustainable development" became the theme of the United Nations Conference on Environment and Development (UNCED), held at Rio de Janeiro in June 1992. In November 1990, the United Nations Environment Programme (UNEP) began the first of seven negotiating sessions whose objective was to produce an international treaty on the conservation of biological diversity. The CBD was presented at the Earth Summit in Rio de Janeiro in June 1992, where it was signed by 153 nations including India. The CBD came into force from the 29th of December 1993.

Explaining the three tier system Sh. Kunal Satyarthi mentioned that the Biological Diversity Act's aim is to provide for the "conservation of biological diversity, sustainable use of its components and for the

equitable sharing of the benefits arising out of the use of biological resources.”This has to be done through approval of Indian Government for transfer of Indian genetic material outside the country



,regulating all Indian nationals for collection and use of biodiversity except the local community , undertaking measures to conserve and sustainably use biological resources, local communities to have a say in the use of their resources and protection of indigenous or traditional knowledge. This act also envisages setting up of Biodiversity Management Committees (BMC) at local village level, State

Biodiversity Boards (SBB) at state level, and a National Biodiversity Authority (NBA) which is the three tier system. Next he described the functions of State Biodiversity Boards (SBB), Biodiversity Management Committees (BMC) and National Biodiversity Authority (NBA) which were:

- BMCs: Prepare, maintain and validate People’s Biodiversity Register (PBR) in consultation with the local people. Advice on any matter referred to it by the State Biodiversity Board or Authority for granting approval, to maintain data about the local vendors and practitioners using the biological resources
- SBBs: Advise the State Governments, subject to guidelines issued by the Central Government, on matters relating to conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of utilization of biological resources. Regulate by granting approvals or otherwise request for commercial utilization or bio-survey and bio utilization of any biological resource by Indians.
- NBA: The National Biodiversity Authority is mandated to regulate use of India’s biological resources; facilitates/ enable conservation action and provides advice to Central and State Governments on issues of conservation, sustainable use and access and benefit sharing.

The objectives of the Act were described next by Sh. Kunal Satyarthi which were:

1. Conservation of Biological diversity
2. Sustainable use of its components
3. Fair and equitable sharing of the benefits arising out of utilization of biological resources.

He told that the Biological Diversity Act of 2002, and the Biological Diversity Rules, 2004 are implemented by National Biodiversity Authority (NBA) at the national level, State Biological Board

(SBB) at state level and Biodiversity Management Committees (BMC's) at local levels. To assist NBA at centre and to advise them on matters exclusive and of particular interest to the biodiversity of the State, similar Boards have been established in States under Section 22 of the said Act. The powers and functions of the State Biodiversity Boards have been listed down in Section 24 and Section 23 of the Act. Some of the major functions of these authorities were discussed which are as follows:

- To regulate activities of, approve and advice the Government of India on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits.
- To grant approval under Sections 3,4 and 6 of Biodiversity Act,2002
- To notify areas of biodiversity importance as biodiversity heritage sites under this act and perform other functions as may be necessary to carry out the provisions of the Act.
- To take measures to protect biodiversity of the country as well as to oppose the grant of intellectual property rights to any country outside or any biological resources obtained from India.

It was told that the National Biodiversity authority (NBA) deals with the requests for access to the biological resources as well as transfer of information of traditional knowledge to foreign nationals, institutions and companies. Through this way piracy of Intellectual Property Rights in and around India is prevented and it also saves the indigenous people from exploitation. Next Sh. Kunal Satyarthi explained everyone about the role and functions of Himachal Pradesh State Biodiversity Board (HPSBB). He said that HPSBB was constituted in the year 2006 and its administrative body consists of a Chairman, 5 ex-officio members, 5 expert members and secretarial staff. Next role and functions of Biodiversity Management Committee (BMC) was discussed. He described the role of BMC's which is also to conserve Biological diversity, ensure sustainable use of its components and lastly there should be fair and equitable sharing of the benefits arising out of utilization of biological resources. In the following presentation he went on describing about need and importance of Peoples Biodiversity Register (PBR); which are legal documents and database on biodiversity of any given area and he also described about Local Biodiversity Funds (LBFs). He described how PBRs as a legal document could play an important role in maintaining records on biodiversity related to a specific area and he also mentioned how LBFs would help in motivating and channelizing the whole process of making of PBRs. Next Biodiversity Heritage Site provision under the Biological Diversity Act, 2002, was discussed and how this would be able to help locals conserve their heritage site which they already have been doing from generations (Sacred Grooves) or they were not able to because of lack of initiative or incentive. Certain exemptions

under Biological Diversity Act, 2002 and normally Traded Commodities (NTCs) were also discussed and explained.

Penalties related to breach to Biological Diversity Act, 2002, were discussed next and it was stated that: Firstly whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 3 or section 4 or section 6 shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten lakhs rupees and where the damage caused exceeds ten lakhs rupees such fine may commensurate with the damage caused, or with both. And secondly whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 7 or any order made under sub-section (2) of section 24 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakhs rupees, or with both. In addition it was told that the offences under this Act shall be cognizable and non-bailable. This clause stipulates that the Central Government may give directions to the State Governments for execution any of the provisions of this Act.

Next Sh. Ishwar Poojar, Project Manager (UNEP/GEF MoEF&CC ABS), NBA Chennai, presented his lecture on The Biological Diversity Act, 2002: The Access and Benefit Sharing Perspective. He started



his presentation by giving examples of Billion Dollar Pharma Industries using Bio-resources like: *Vespa mandarinia japonica* - Giant Japanese Hornet: The hornets feed on crop pests, besides the workers feed on the flight muscles of others insects, they produce a liquid called Vespa Amino Acid Mixture (VAAM), can increase athletic performance. Fried hornets are delicacy at country side of

Japan. *Illicium verum* – Chinese Star Anise: In 2009 Swine Flu outbreak lead to huge demand for anti influenza drug – tamiflu around the world. Which needed shikmic acid a primary precursor in pharma synthesis. Derived from Chinese Star Anise, extracted from its seed at tenth stage. By citing these examples he mentioned that how from these two bioresources only companies engaged in producing its formulations earns billions of dollars every year.

Next he told everyone about the enactment of Biological Diversity Act, 2002 and the Convention on Biological Diversity (CBD). He mentioned that in 1992- The CBD became an international legally-binding treaty and 196 Parties (countries) till date have signed the agreement. He briefly touched on 2003

Cartagena Protocol and 2010 Nagoya Protocol when ABS was first conceived and later came into force on 12.10.2014. He also mentioned that Nagoya - Kuala Lumpur and Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety. He stated that Biological Diversity Act was enacted in 2002 on the lines of CBD to implement the provisions of the BD Act, the National Biodiversity Authority was established in October 2003 at Chennai with following objectives:-

- Conservation of biodiversity,
- Sustainable use of its components,
- Fair and equitable sharing of benefits arising out of the use of bioresources

He said that the Act extends to the whole of India and that the Act covers foreign nationals and entities, Indian nationals and entities and NRIs. NBA, SBBs and BMCs together form the institutional framework for biodiversity legal regime in India vis-à-vis International compliance. Each of them work in co-ordination with the other under the Act to perform their roles and functions. Next Sh. Ishwar Poojar discussed Section 3 comprising Foreign Companies accession the bioresources of the country and what provisions BD Act, 2002 has for them, provision regarding transfers of results were discussed under Section 4 and Intellectual Property rights and issues related were discussed under Section 6. He mentioned that cases pertaining to Sections 3, 4, and 6 of the BD Act, 2002 are directly handled by National Biodiversity Authority (NBA) Chennai whereas Section 7 of the Act comprising of Access and Benefit Sharing Provisions is looked after by concerned State Biodiversity Boards and Section 21 again engages NBA regarding ABS issues. Section 53 gives power to SBBs to look after benefit sharing provisions.

Next exemptions from ABS under BD Act were discussed. It was told that under Section 5 exemptions are provided for collaborative projects for research purposes and where no commercialization is being done. He also added that Section 7 exempts local practitioners, Vaidas, Hakims, Amchis etc. for accessing the bioresources and using them in fact the Act encourages the Traditional Knowledge associated with bioresources found in a community from generations to be documented and conserved under Peoples Biodiversity Registers (PBRs).

Sh. Ishwar Poojar also discussed and explained about the Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT) procedures. Next he discussed offences and penalties under section 3, 4, 6, 7 and 24 (2) of the Act. Exemption of Certain Biological Resources under the BD Act were discussed and it was told that any items including Biological Resources which are being used as Normally Traded as Commodities are exempted from the Act. Act provides exemption of certain activities from its purview were to local people and community for free access to use bioresources within India, to growers and

cultivators, vaid and hakims (practitioners of traditional medicinal systems) to use bioresources, to biological resources, normally traded as commodities notified by the Central Government under section 40 of the Act, to collaborative research through government-sponsored institutes subject to conformity with guidelines and approval of the Central / State Governments and finally for research done by Indians within geographical boundaries of India are exempted. Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 were discussed next and it was said that . Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 have been notified on 21st November, 2014. The Regulation provides for legal certainty clarity and transparency simplified procedure to the Indian researchers / Govt. institutes to carry out basic research outside India, options of benefit sharing for different users, graded benefit sharing establishing supply chain from source to manufacturer upfront payment on high economic valued bioresources (Red sanders, Sandal etc.) and apportioning accrued benefits to the community/BMC. Benefit Sharing Component comprising commercial utilization, Transfers of results of research and Intellectual property rights were discussed next and it was told that entities commercially utilizing bioresources and earning gross ex-factory sale of upto rupees 1,00,00,000 are liable to share 0.1% of their benefit with the concerned BMC/BMCs, from rupees 1,00,00,000 to 3,00,00,000 the percentage share of benefit increases to 0.3% of their total earning gross ex-factory sale and if the benefit earned is more than 3,00,00,000 then the percentage share of benefit further increases to 0.5% of their total earning from gross ex-factory sale. In case of Transfer of results of research, the benefit sharing obligation is 3.0 to 5.0% of the monetary consideration. In the final section of presentation Benefit Sharing component with alternative option for commercial utilization was discussed and it was noted that Alternative option for commercial utilization where the trader sells the biological resource purchased by him to another trader or manufacturer, if he is a trader – the buyer to pay 1.0 to 3.0% of the purchase price and if he is a manufacturer – the buyer to pay 3.0 to 5.0% of the purchase price. If the buyer submits proof of benefit sharing by the immediate seller in the supply chain, the benefit sharing obligation on the buyer shall be applicable only on that portion of the purchase price for which the benefit has not been shared in the supply chain. It was further added that in cases of biological resources having high economic value such as sandalwood, red sanders, etc. - the benefit sharing may include an upfront payment of not less than 5.0%, on the proceeds of the auction or sale amount, as decided by the NBA or SBB, as the case may be. Finally if the sale is through auction, the successful bidder or the purchaser shall pay the amount to the designated fund, before accessing the biological resource.

Next Sh. Saurabh Sharma, Advocate Hon'ble Supreme Court of India and Legal Initiative for Forest and Environment (LIFE), New Delhi was requested to present his lecture. Sh. Saurabh Sharma started his talk

by showing a video clip from NDTV news channel showing the case where in August 2012, two Czech nationals were arrested “for stealing insects” near the Singalila National Park in Darjeeling. In September, the two Prague-based entomologist Petr Svacha and his colleague Emil Kucera were convicted by a local court under provisions of Biological Diversity Act, 2002. By showing this clip he mentioned how powerful the BD Act, 2002 is how varied the scopes of this particular Act are.

During his talk he mentioned that India promulgated the Biological Diversity Act, 2002 (BD Act, 2002) on 05th February 2003 to operationalize the CBD, 1992. The objectives of the statute are as follows:

- Conservation of Biological Diversity
- Sustainable Use of its components
- Fair and Equitable Sharing of Benefits arising out of the use of biological resources and knowledge associated
- Matters connected and incidental thereto



Sh. Saurabh Sharma next described some important definitions under various sections and provided legal prospective, he stated that in Section 2(b): Biological Resources Means plants, animals, and micro organisms or parts thereof, their genetic material by products (excluding value added products) with actual or potential use or value, but does not include human genetic material, under Section 2 (f):

Commercial Utilization means the end uses of a biological resource for commercial use such as Drugs; Industrial Enzymes; Food Flavours; Fragrance; Cosmetics; Emulsifiers; Oleoresins; Colours; Extracts; and Genes used for improving crops and livestock through genetic intervention. Conventional breeding and traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping are not commercial utilization as per Section 2(f) of the Act.

Another important definition he mentioned was Section 2(d): Bio-Survey & Bio-Utilisation which means that the survey or collection for any purpose of species, sub-species, genes, components and extracts of biological resources for any purpose is bio-survey and bio-utilization. This also includes characterisation, inventorization and bio-assay of biological resources and their components.

3-tier Institutional structure was described stating that at apex level is the National Biodiversity Authority (NBA) at State Level is the State Biodiversity Boards (SBB) and at local body level is the Biodiversity Management Committees (BMC). Functions of NBA under section 18 were described which were :

- ✓ Regulate grant of approval to foreign nationals and companies for access to bio-resources and associated knowledge
- ✓ Take measure to oppose the grant of IPR in any country outside India on any bio-resource obtained from India or knowledge associated with such bio-resource which is derived from India.
- ✓ Advise Cent Govt. on conservation, sustainable use and fair and equitable benefit sharing
- ✓ Advise State Govt. in selection of Biodiversity Heritage Sites
- ✓ Any activity necessary to carry out provisions of the Act

Functions of SBBs under Section 23 were described as under:

- ✓ Advise State Govt. on matters relating to conservation, sustainable use and fair and equitable sharing of benefits
- ✓ Regulate by granting approvals or requests for commercial utilization/bio-survey/bio-utilization for commercial utilization
- ✓ Any activity necessary to carry out provisions of the Act

Constitution of the BMC was described next and was said that BMC is to be constituted at the level of every local body within the area of its territorial jurisdiction Section 41 (1) of the BD Act, 2002 which is to be read with Rule 22 (1) of the BD Rules, 2004

Structure of the BMC was elaborated next mentioning that a BMC should comprise of Chairperson and not more than 6 persons nominated by the local body Chairperson to be elected by the BMC members in a meeting chaired by the Chairperson of the local body under Rule 22 (2) and Rule 22 (3) of the BD Rules, 2004

Main Responsibility of BMC was told next which was preparation of a People's Biodiversity Register (PBR) in consultation with local people which contains comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them under Rule 22 (6) of the BD Rules, 2004

It was also mentioned that Collection of fees from any person accessing/collecting any biological resources within their territorial jurisdiction of BMC can be done. Mandatory Consultation with the BMC

by NBA & SBB while any decision relating to the use of biological resource within their jurisdiction pertains to Section 41 (3) of the BD Rules, 2004 and Section 41 (2) of the BD Act, 2002

The PBR Process was described next mentioning NBA Guidelines on PBR Preparation 2013 which incorporates 7 steps as under:

1. Formation of Biodiversity Management Committee (BMC)
2. Sensitization of the public about the study, survey and possible management
3. Training of members in identification and collection of data on biological resources and traditional knowledge
4. Collection of data.
5. Analysis and validation of data in consultation with technical support group and BMC
6. Preparation of People's Biodiversity Register (PBR)
7. Computerization of information and resources

Next in his talk Sh. Saurabh Sharma mentioned Regulating Access to Biological Resources & Persons covered. It was stated that Indian citizens, body corporates, associations or organisations which are registered or incorporated in India and not covered under Section 3 obtaining any biological resource Commercial utilization, bio-survey and bio-utilization for commercial utilization are covered under the Act.

For procedural provisions it was mentioned that persons covered under Section 7 shall have to give prior intimation to the concerned SBB, the form for such prior intimation may be prescribed by the State Government to the SBB further this form for prior intimation will be found in the State Rules and finally the SBB has powers to prohibit or restrict any such activity if its is detrimental to the provisions of the Act.

Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations, 2014 were described next. Benefit Sharing between the Applicant and the SBB says that the share of benefit as paid by the Applicant depends on the level of Annual Gross ex-factory Sales:

- ❖ Up to Rs. 1,00,00,000: 0.1%
- ❖ Between Rs. 1,00,00,000 and Rs. 3,00,00,000: 0.2%
- ❖ Above Rs. 3,00,00,000: 0.5%

Benefit Sharing between the SBB and BMCs

Share of the SBB: Maximum 5% of the benefits accrued towards their administrative charges

Share of the BMCs or benefit claimer where identified: Minimum 95% of the accrued to benefits

In case BMC/benefit claimer not identified: Funds to be used to support conservation & sustainable use of biological resources & support local livelihoods of the local people where bio-resources are accessed.

Penalties pertaining to the violation of BD Act, 2002 were described next and was stated that: Provisions of Section 55 (1) states that: Whoever contravenes or attempts to contravene or abets contravention the provisions of Section 3 or Section 4 or Section 6 shall be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to 10 lakhs rupees such fine may commensurate with damage caused, or with both. In addition whoever contravenes or attempts to contravene or abets contravention of the provisions of Section 7 or any order made under sub Section (2) of Section 24 shall be punishable with imprisonment for a term which may extend to 3 years, or with fine which may extend to five lakh rupees, or with both.

Appeals under Section 52 A were explained mentioning that:

- ❖ Any person aggrieved by a determination of benefit sharing or an order of the National Biodiversity Authority or a State Biodiversity Board under the Biological Diversity Act, 2002 may appeal before the National Green Tribunal, established under the National green Tribunal, 2010.
- ❖ All appeals to NGT shall be made as per provisions of the National Green Tribunal Act, 2010.

It was also stated that the notifications can be carried out by NBA regarding officers authorized to file Complaints under Section 61 (a). it was also mentioned that no court shall take cognizance of any offense under this Act except on a complaint made by-The Central Government or any authority or officer authorized in this behalf by that Government; or any benefit claimer who has given notice of not less than 30 days in the prescribed manner, of such offense and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

Threaten Species (TS) Section 38 was also covered and it was said that Section 38: The Central Government in consultation with the State Government, may from time to time notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve these species

In the final part of his presentation Sh. Saurabh Sharma gave examples of cases and writ petitions files under BD Act, 2002. He started with the classic example of The Czech Nationals Case

Facts of the Case:

- ✓ In July 2008, two Czech nationals Petr Svacha and Emil Kucera arrested for collection of beetles and butterflies from the Singalila National Park, West Bengal
- ✓ In possession of more than 1500 specimens of butterflies and beetles, including the endangered *Delisa sanaca* at the time arrest.
- ✓ Violation of the Law:
- ✓ The Wildlife (Protection) Act, 1972: Sections 27, 28, & 29
- ✓ The Biological Diversity Act, 2002: Sections 3 read with Section 19
- ✓ Verdict in the Case:
- ✓ Petr Svacha was given a fine of Rs. 20,000
- ✓ Emil Kucera, was sentenced to 3 years imprisonment by the Chief Judicial Magistrate of Darjeeling & fine of Rs. 50, 000

Another case of BMC Keoti Matter O.A. No. 06/2014 (CZ) was discussed and the facts of the case are as under:

- ✓ The BMC of Keoti Gram Panchayat, Rewa district had filed a case in the NGT, Central Bench making the following prayers:
- ✓ Declaration of Keoti Gram as a Biodiversity Heritage Site (BHS) u/s 37 of the BD Act, 2002 due to
- ✓ Ecological Fragility of the area, presence of dense forest, water fall and diversity of medicinal plants.
- ✓ Ecological value at stake: Illegal mining & construction in the name of 'tourism' – Environmental damage to Keoti Village Forests due to construction of Biodiversity Parks by State Govt.
- ✓ Immediate Stoppage of Construction activity and demolish construction already carried out .
- ✓ Notification of Species of Samavalli/Somlata, Morshikha and Patthar Chattha as Threatened Species (TS) u/s 38 of the BD Act, 2002: Payment of fees from those accessing/collecting biological resources from the Keoti Gram Panchayat u/s 41 (3) of the BD Act, 2002

Tribunal's Observations in this particular case was that there are no guidelines framed by the State Govt. for identification and declaration of areas as Biodiversity Heritage Site (BHS) and the manner in which the BMC can levy the charges by way of collection fees and how the funds are to be utilized for benefit sharing. Hence Tribunal's Directions were that given the absence of Guidelines, the Tribunal had

reiterated its earlier directions that no mining of any sort, construction or alteration of habitat in any manner will be allowed in the area and the State to ensure the compliance of this direction strictly.

The State Government to devise comprehensive strategies to identify biodiversity rich sites and to protect and conserve such sites.

Next case discussed was of M/s Som Distilleries Pvt. Ltd. Vs. M.P. State Bio Diversity Board & Ors. (O.A. 62/2013, CZ). It was told that Madhya Pradesh State Biodiversity Board (MP SBB) in March-April 2013 had written to the NBA to issue uniform ABS guidelines to be used by the SBBs to regulate the collection of biological resources by Indian companies; thereby ensuring that companies pay benefit sharing to the SBB as well as BMC. However, with no clear response from the NBA, the Board issued notices to all companies using biological resource from their jurisdiction: Herbal Industries; Forest /Minor



Forest Produce based industries; Sugar Mills, Distilleries, All Food Processing Industries, Soya Industries, Spinning/Gining/Textile Mills, Other Agro and Bio based Industries, Coal Mining Industries (Government. Semi Government and Private) and Industries using Coal Bio-resource (e.g. Cement and Steel Industries). The MP SBB had also written to the Forest Development Corporation, Minor

Forest Produce Federation and Fisheries Department in the same regard. The notices highlighted that said company's extraction of raw material counts as "obtaining 'biological resources' for 'commercial utilization' as defined under the Act and thereby as per Section 7 read with Section 24 (1) requires the company to intimate the MP SBB through FORM 1 as prescribed in the MP Biological Diversity Rules, 2004 and pay Rs. 1000 as fees. Most importantly, in each of the notice it had asked to deposit 2% of their gross sales or gross revenue on financial year basis towards benefit-sharing in the Biodiversity Fund of the state. Given the absence of prescribed guidelines, the Board had used the similar formula as adopted by NBA in of the agreements signed by it in 2009.

Given the issuance of notices by the MP SBB, 13 companies filed a case challenging the said notices issued by MP SBB in the NGT, Central Zone. Given that the major ground of contention was that the SBB had issued the notices without the ABS Guidelines being issues by the Central Government/NBA, the Tribunal had thereby directed the MOEF&CC and NBA to lay down standardised guidelines for ABS. Given the order of the Tribunal, the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 came into force on 21.11.2014

The decision held was that given the Guidelines dated 21.11.2014 framed by the MOEF&CC and NBA, the Tribunal vide its final order dated 17.12.2014 had set aside the earlier notices issued by the MP SBB and gave them the liberty to determine the case of each individual Applicant/Appellant afresh after taking into account the scheme of the Act, Rules as well as Regulations issued by the National Bio Diversity Authority under Section 64 of the Act of 2002.

The most interesting of all cases was the case by Eklahara BMC mentioning that coal is a 'bio-resource. Details of the case were: - Case by Eklahara BMC (O.A. No. 28/2013 (CZ) & O.A. No. 17/2014 (CZ) Coal is governed by MMDR Act, 1957 (Is coal a Bioresource). Given the arguments made by the BMC, the coal companies submitted that coal is governed by the provisions of Mines and Mineral (Development & Regulation) Act 1957 (MMDR Act 1957), which gives the Central government the sole statutory power to make rules regarding coal and levy charges. Given the above, the state government and its authorities have no competence and jurisdiction to levy any charges; such that, the state government can only levy royalty on the grant of mining lease and not in any other form. Given the provisions of MMDR Act 1957, categorisation of coal as a biological resource, would lead to a contradiction between the two statutes.

Coal is not a biological resource:

Given the primary contention of BMC that coal contains plant genetic material; the coal companies submitted that given the meaning of genetic material under Convention of Biological Diversity. i.e. "material of plant, animal, microbial or other origin containing functional unity of heredity"; the half-life of DNA (functional unit of heredity) is 521 years under ideal conditions (dried state, vacuum packed and frozen at about -80 C) and that coal traces its origin to 63-300 million years and its formation under conditions of under high temperature and pressure led to its conversion into a fossil and thereby has no plant genetic material present in them.

Arguments made by MOEF and NBA:

MOEF further presented opinions from Secretariat of Convention on Biological Diversity, Geological Survey of India and Zoological Survey of India to highlight that coal is not a biological resource.

The CBD has stated that biological resources as defined in the CBD deals with living organisms and that coal by no means is one. GSI stated that given the process of formation of coal, it is a geological resource rather than a bio-resource. The ZSI has reiterated the statement made by the CBD that in context of coal being a bio-resource, though the definition of biological resources is not exhaustive, the CBD and BD Act define bio-resources in terms of living resources and not of biological materials of dead or fossilised in nature. Further, it is stated by the ZSI that though Nagoya Protocol emphasizes fair and equitable sharing of benefits arising out of utilisation of genetic resources and that coal has a biological origin, it is devoid

of any heritable genetic material, metabolic reactions and genetic expressions. Therefore, Coal doesn't fall under access and benefit sharing.

The contention made by the Applicant BMC and MP SBB that Coverage of coal under MMDR Act 1957 does not take away the right of the BMC to claim their right under BD Act 2002.

The Tribunal had concluded that:

Coal although indisputably of plant origin, does not in a fossilised form, after millions of years being buried under the earth, retain any genetic characteristics which can be linked to the plants, or to the vegetation from which the coal was originally formed. There is no scientific study to date which suggests that coal has a genetic structure and that it is similar to that of plants. It is a fossilized form though some of the chemicals like carbon are similar to those present in plants and that alone is not enough to suggest that coal by any stretch of imagination is biological in its character and configuration on the ground. That coal does not have any genetic structure and, therefore, is neither a genetic material nor a genetic resource and accordingly does not qualify to be called a biological resource, therefore, given that Coal is not a biological resources, the Coal companies are not liable to pay any fees for accessing or collecting coal from the area falling within the territorial jurisdiction of the BMC.



Dr. Murari Lal Thakur from State Biodiversity Board gave presentation on Access and Benefit Sharing (ABS) mechanism and its relevance in Himachal Pradesh. Conception and enactment of the Biological Diversity Act, 2002 was initially discussed. CBD its objective and objectives of the BD Act, 2002 were informed to the participants. Nagoya Protocol on ABS was discussed which is based on the fundamental

principles of prior informed consent (PIC), Mutually agreed terms (MAT), official checkpoint. Benefit-sharing obligations were discussed which were:

- Domestic-level benefit-sharing measures will provide for the fair and equitable sharing of benefits arising from the utilization of genetic resources, as well as subsequent applications and commercialization, with the contracting Party providing genetic resources.
- Utilization includes research and development on the genetic or biochemical composition of genetic resources.
- Sharing is subject to mutually agreed terms.
- Benefits may be monetary or non-monetary such as royalties and the sharing of research results

Traditional knowledge associated with genetic resources with provisions on access, benefit sharing and compliance were also discussed. Next in the presentation information on ABS provisions under BD Act, 2002 were discussed. Afterwards Benefit Sharing Options and Economic Importance of Bioresources present in the State of Himachal Pradesh were informed to the participants. A brief information regarding Bio-resource based industries and their global market share was discussed. Next determination of benefit sharing, PIC & MAT options, certain activities or persons exempted from approval of NBA or SBB, Fair and equitable benefit sharing options and non-monetary benefits of ABS provisions were discussed. in the final part of presentation some examples of ABS from India were discussed.

Glimpses of the Event







