

**THE MODEL BIODIVERSITY RELATED COMMUNITY  
INTELLECTUAL RIGHTS ACT BIODIVERSITY RELATED  
COMMUNITY INTELLECTUAL RIGHTS:  
TOWARDS A SUI GENERIS SYSTEM**

*The draft to be called the Biodiversity Related Community Intellectual Rights Act will apply to all collective innovation and its derived uses.*

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**SECTION I**

**Clause I - Short Title**

This Act shall be known as the *Biodiversity Related Community Intellectual Rights Act*.

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**Clause 2 - Extent**

It extends to the whole of India and covers the whole range of life forms including plants, animals and microorganisms. In cases of dispute with organisations/ individuals/ corporations/ other interests internationally, the disputes will be handled through the Convention on Biological Diversity.

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**Clause 3 - Commencement and Scope**

i) It shall come into force on such date as the Central Government may specify by notification in the Official Gazette.

ii) This Act shall apply to all varieties of life forms including plants, animals and microorganisms belonging to all genera/species, wild or cultivated, occurring naturally or modified in any manner whatsoever through any process, and to their cell lines, genetic material, characteristics, traits, products and the processes involved therein.

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**Clause 4 - Preamble**

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, educational, scientific, cultural and aesthetic values of biological diversity and its components,

Concerned that biological diversity is being reduced by many human activities,

Conscious of the close and traditional dependence of local communities on biological diversity and their important contribution to conservation and sustainable use of biological diversity,

Recognising the vital role that communities play in generating biological diversity, particularly agro-biodiversity and medicinal plants biodiversity,

Noting the sovereign rights of states over biological diversity,  
Noting that the state has a fundamental duty towards conserving biological diversity

Noting that the fundamental requirement for the conservation of biological diversity is strengthening the links between local communities and biological diversity,

Noting further that the Convention on Biological Diversity exhorts states to protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements,

Aware that there is a global tendency towards affirmation of intellectual property rights over biological diversity, its products and process related to it,

Noting that the Convention on Biological Diversity requires states to provide adequate and effective protection of intellectual property rights,

Noting that the Trade Related Aspects of Intellectual Property Rights Agreement of the World Trade Organisation counsels states to provide intellectual property rights protection through an effective sui generis system,

The Government of India enacts the Indian Biodiversity Related Community Intellectual Rights Act.

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### **Clause 5 - Objective**

The objective of this Act shall be to protect the rights of communities that have knowledge of biodiversity, have maintained the biodiversity through innovation and have utilised the biodiversity, with the ultimate aim of conservation of biodiversity while realising the full potential of its benefits.

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### **Clause 6 - Definitions and Interpretations**

For the purposes of this Act:

**i) Community:** This refers to a group of people - whether formal or informal, organised or disorganised, monolithic or reticulate - who share a knowledge tradition and have a common interest in the utilisation and conservation of biodiversity. Such communities include traditional communities such as farmers' communities, tribal communities, fisherfolk communities, healers including folk healers, practitioners of ayurveda, unani, Siddha, bonesetting, and other systems of medicine - indigenous people, women, and modern communities such as the scientific community. The Biodiversity Related Community Intellectual Rights Act recognises such communities as having legal persona and their intellectual rights as inalienable.

**ii) Biodiversity:** This refers to all life forms, including plants, animals and microorganisms found in all the ecozones within the boundaries of the nation - whether naturally occurring or modified in any manner including genetically modified, whether wild or cultivated or domesticated - its parts, products, cell lines, genetic material, properties, and

characteristics. Biodiversity, is further classified into agricultural biodiversity, medicinal plant biodiversity, and other biodiversity.

**iii) Biodiversity-Related Knowledge:** This refers to all knowledge related to biodiversity and derived through any system including indigenous non western knowledge systems and can be in any form - written, spoken, narrative, anecdotal. This knowledge of a biological resource is the result of collective innovation and all other knowledge of the resource is derived knowledge. This knowledge is collective in nature and is not exclusive to any one community

**iv) Innovation:** This refers to all collective innovation related to biodiversity, including agricultural innovation, pharmaceutical innovation, and other cultural or other innovation. This further includes processes involved in the innovation and products derived from it.

**v) Authority:** This refers to the National Biodiversity Authority as established under Clause 13 of the Act. This Authority is the apex body under which will be established the National Agricultural Biodiversity Authority, the National Medicinal Plants Biodiversity Authority, and other such bodies as may be deemed necessary. The term "Authority" as used in this Act refers to the National Biodiversity Authority and/or the sub-Authorities, as the case may be.

**vi) Board:** This refers to the Appellate Board as established in Clause 15 of the Act. The Appellate Board will be the apex body under which will be established the Agricultural Biodiversity Appellate Board, the Medicinal Plant Biodiversity Appellate Board, and other such boards as may be deemed necessary. The term "Board" refers to the Appellate Board and/or the sub-Boards as the case may be.

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## SECTION II

### *Technical*

#### **Clause 7 - Collective Ownership Rights of Communities**

i) The biological diversity of the country is the national wealth of its communities. Communities will have rights on germplasm covering the whole range of biological diversity of all genera and species. including microorganisms in the Indian territory under sovereign right.

ii) Recognising the knowledge and conscious and unconscious innovations of Indian communities and formal and informal contributions of Indian researchers in maintaining, conserving and broadening the base of genetic variability by way of creating, upgrading, collecting and evaluating and preserving, conserving and keeping biological diversity, the communities of India have unencumbered access to their biological wealth for their survival needs and traditional uses. This use will be governed by common property laws for collective use.

a) The local communities shall at all times and in perpetuity be the lawful and sole owners, custodians and stewards of biological resources, knowledge and innovation related to them.

- b) The state will not alienate biological resources from the rights holder/s.
- c) No biological resource or innovation shall be sold, assigned, transferred or dealt with in any way whereby the status of the local community as the owners, custodians and stewards of the resource or the innovation, or the integrity of the resource or the innovation is impaired.
- d) Any impairment of the right to ownership of the resource, knowledge or innovation shall be viewed as infringement of the right of the local communities.
- c) The local community, or any state or non-governmental organisation shall have the locus to enforce, monitor and further the local communities' innovation resource and/or innovation and any matters in relation to its utilisation, exchange or impairment, whether in Court or elsewhere provided always that the local community shall take precedence.

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### **Clause 8 - Co-ownership of Biological Resources, Knowledge and Innovation**

- i) Co-ownership with other communities:
  - a) Nothing in this Act shall prevent any other community/ies wherever situate from establishing their ownership-rights to the biological resource and/or innovation. In such event the community will be co-owners of the resource and/or innovation.
  - b) The co-ownership shall carry with it the same rights, duties and obligations as set out above, save that they shall be co-terminus and enjoyed together with the co-owners.
  - c) All benefits that accrue to one co-owner shall accrue to benefit all other co-owners.
  - d) Each co-owner shall hold in trust all rights, obligations, rewards, remuneration, etc. for the other co-owners.
- ii) Co-ownership with the State:
  - a) The state shall act as co-owner of the genetic resources of the entire territory of India for the explicit purpose of negotiating access to genetic resources by foreign/commercial interests and for ensuring payment of royalties where applicable. The state shall also ensure equitable disbursement of such payments.
  - b) Such action by the state shall be carried out jointly with the local communities.

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### **Clause 9 - Free Exchange Amongst Communities**

- i) Local communities shall at all times be entitled to grant free access to its resources and innovations and practices in relation thereof to other communities wherever situate without any payment or reward provided always that such resources and innovation is not acquired for commercial exploitation.
- ii) Such acquirer shall make the said resource and/or innovation available to any other community/ies on the same terms.

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### **Clause 10 - Commercial Utilisation of Biological Resources and Innovation**

- i) In cases where the community/ies wish(es) to make the biodiversity available to commercial enterprises, both national and international, involving the commercialisation of a traditional use or an Intellectual Property Rights claim on traditional knowledge of the biological resource, the community/ies in partnership with the state, represented by the

National Biodiversity Authority (hereinafter called the Authority), will determine access to the resource and terms of Intellectual Property Rights.

ii) The Community/ies and the Authority shall operate and manage these genetic resources as follows:

a) Making genetic resources available as and when appropriate to the person, body, organisation or corporation, who allow access to genetic resources, with a proviso that the genetic resources so supplied by India, shall not be transferred to any other country without the joint authorisation of the community/ies who own the resources and the Authority.

b) The rights holder/s jointly with the Authority shall negotiate and settle terms and conditions for exchange of genetic resources.

1) No person, body, organisation or corporation can use any resource or innovation or any part thereof for commercial utilisation without the express and written consent of the local community and the Authority.

2) The compensation/reward agreed upon shall be payable even if the person, body, organisation or corporation uses the said resource or innovation or any part thereof for commercial utilisation without the prior consent in writing of the community, PROVIDED always that this is without prejudice to the right of the community to enforce its right to the resource or innovation or any part thereof by injunctive or any other relief it may deem fit to pursue.

c) Resources generated, if any, from supply of germplasm shall be utilised only in trust of the rights holders for purposes including but not limited to the protection, development and maintenance of its genetic resources, as determined by the rights holders in partnership with the Authority

iii) Nothing in this section shall prevent more than one person, body, organisation or corporation from using any resource or innovation or any part thereof for commercial utilisation and at the same or any other time.

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### **Clause 11 - Community Biological Diversity Register**

i) All biological diversity and knowledge about it shall be registered in Community Biological Diversity Registers maintained at the Central level by the Authority and at the state, district and village levels by the relevant authorities.

ii) Knowledge of the name of the biological resource in international, local language, vernacular, dialect, or of its properties, or products, or use, or its mention in any folk tale, song, or any other medium of communication is enough to recognise the community/ies' ownership rights to the resource and/ or innovation.

iii) Nothing in the above clause shall prevent communities who have not registered their resources, knowledge, and innovations from establishing their ownership rights to their resources, knowledge and innovations.

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## **SECTION III**

### **Clause 12(a) - Scope of the Protection of Biological Resources, Knowledge and Innovation related to them**

i) The Act shall cover all biological resources, within the territory of India including microorganisms, whether naturally occurring or modified in any manner including genetic modification, and including their parts, characteristics and active principles.

ii) The Act will be divided into three sections to deal respectively with plants, animals and microorganisms.

iii) The following acts, for commercial purposes, with respect of biological resources, their knowledge and innovation related to them, will require the joint authorisation of the rights' holder and the state:

a) the production and/or duplication of the resource through any manner

b) the development of traditional products based on the resource,

c) the development of new products utilising local knowledge and based on local innovation

d) the offering for sale

e) the marketing

f) export, and

g) import.

iv) Nothing in the above clause shall prevent local communities from using biodiversity-related resource, knowledge and innovation for continuing their traditional practices including traditional commercial production as well as improving, innovating and inventing new products for exchange and use including commercial use.

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#### **Clause 12(b) - Researchers' Right**

i) Nothing in this Act shall be construed to abridge or restrict the rights of researchers to have free and complete access to protected materials for research use for increasing the knowledge and utility of biological resources provided that the researchers and/or their institutions and organisations shall not seek intellectual property rights or commercial utilisation on knowledge, products and processes developed by them.

ii) In the situation that the researcher/s and/or their institutions and organisations wish to commercially utilise the products of their research, they shall be governed by Clause 10 on Commercial Utilisation of Biological Resources and their Innovations.

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#### **Clause 12(c) - Acts Constituting Infringement of Biodiversity Related Community Intellectual Rights**

i) The following acts shall be considered as infringing the Biodiversity Related Community Intellectual Rights:

a) Sale, disposal, or export of biodiversity-related resources, knowledge, innovation for commercial utilisation by individuals, groups, organisations, government bodies, without the express written consent of the local community and the Authority

b) Use of biodiversity-related resources, knowledge, innovation for commercial utilisation by individuals, groups, organisations, national and international corporations, government bodies, without the express written consent of the local community and the Authority

c) Non-payment of adequate compensation as decided by the local community and the Authority for use of the biological resource, knowledge, innovation for commercial purposes.

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## **SECTION IV**

### **Clause 13 - National Biodiversity Authority**

i) The Central Government shall constitute a National Biodiversity Authority for the protection of biological resources, knowledge and innovation and for the protection of Biodiversity Related Community Intellectual Rights. The Authority will have balanced representation of the Ministry of Forests and Environment, Ministry of Agriculture, Ministry of Fisheries, Ministry of Health, Department of Biotechnology, Ministry of Science and Technology, Botanical Survey of India, persons of proven national and international eminence on issues of community rights from non-governmental organisations. In addition, depending on each case brought before it, the Authority shall induct temporary membership of representatives of local communities and the state government/s concerned as well as experts as needed.

ii) The National Biodiversity Authority shall constitute a National Agricultural Biodiversity Authority, National Medicinal Plants Biodiversity Authority and other such Authorities as may be deemed necessary to protect community rights. These Authorities will have as permanent members representatives of the related Ministries and departments, as well as two independent members who are eminent in their field.

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### **Clause 14 - Functions of the Authority**

i) The Authority will, in equal partnership with the local community, implement the various provisions of the Act as relate to the responsibilities and functions of the Authority in the most judicious and expeditious manner.

ii) The Authority will, in equal partnership with the affected local community, consider and decide upon all applications filed, whether complete or not, with the Authority

iii) The Authority will ensure that all applications will be screened against the Community Biological Diversity Register at the national, district and village levels to prevent infringement of Biodiversity Related Community Intellectual Rights. The Authority may inspect records of the applicant, and of any official register of biological diversity of any organisation, centre or body including laboratory in the country or outside the country as evidence for examination of the application.

iv) The Authority will publicise the applications in the gazette and the leading English and vernacular newspapers and radio of the states concerned well in advance of granting license for commercial utilisation so that communities that own the resource but have not registered can file their co-ownership to the resource, its knowledge and innovation, and can participate in the decision.

v)The Authority shall ensure proper maintenance and upgrading of the Community Biological Diversity Register at the national, district and village levels.

vi) The Authority will also perform the responsibility of advising the government on policy aspects as when called upon by the government to do so. Nothing, however, restricts the Authority from rendering advice to the government on its own.

vii) Any person/s or body/ies or community/ies aggrieved by the decision of the Authority may submit representation to the Authority for reconsideration of the decision along with such documents or other evidence as set out in Clause to support its/their counter claims within such time as may be prescribed by the Authority in its Rules. The Authority shall take a decision on the representation within the time prescribed in the Rules.

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### **Clause 15 - Appellate Board**

i) Any person aggrieved by the decision of the Authority can file an appeal to the Appellate Board constituted for this purpose by the Central Government.

ii) The Central Government shall appoint the Chairperson of the Appellate Board. The incumbent shall necessarily be an individual of national and international eminence in the field of community rights and customary rights, and of such outstanding calibre as renders him/her suitable for presiding over an Appellate Board of Biodiversity-Related Community Intellectual Rights.

iii) The Chairperson of the Board will be assisted in the discharge of his/her duties by a judge of the High Court and three suitably distinguished experts in community law.

iv)The Board may also induct on a temporary basis international experts as well as members of the community concerned in the case.

v) The Board shall decide the cases before it as expeditiously as possible.

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### **Clause 16 - Implementation of the Decision**

i) The decision of the Authority and/or of the Appellate Board in any matter related to the Act shall remain in force during the pendency of the legal proceedings unless specifically prohibited from being in operation or put under suspension by the Appellate Board.

ii) In so far as possible, and to meet the ends of justice and equity, the Appellate Authority shall hear both affected parties before issue of injunction or suspension or stay of proceedings.

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## **EXPLANATIONS TO THE BIODIVERSITY RELATED COMMUNITY INTELLECTUAL RIGHTS ACT**

### ***Definitions***

**Community:** The Community Rights regime is in relation to all communities - whether formal or informal, cohesive or not, traditional or modern. While it is acknowledged that some communities such as women, or indigenous people, or healers, have distinctive and unique characteristics, membership in communities cuts across borders. For example a tribal woman farmer belongs to the community of women, the community of tribals, and the farming community. Similarly a farmer who identifies plants with saline-resistance and breeds them belongs to both the farming community and to the scientific community.

**Knowledge:** Traditional indigenous communities gather knowledge over time. Such knowledge is not the prerogative of any one individual or group of individuals. Such knowledge belongs to the common pool of knowledge, and any further knowledge gained through innovation is added to this common pool. This knowledge has been freely shared with other communities.

Further, other communities having the same biological resources have also evolved knowledge about the resource. So this knowledge is not exclusive to any one community.

Recognising the utility and of a species is the first "non-obvious" leap of knowledge and is called meta-knowledge. All subsequent innovation to utilise this knowledge, including processes and products pertaining to the species, is derived or micro-knowledge, no matter how detailed it is. This micro-knowledge cannot be considered "novel" or "non-obvious"

**Biodiversity:** Biodiversity includes all biological resources that are normally classified as "wild" or "cultivated" (domesticated in terms of animals).

Species or varieties considered "wild" have been called "gifts of nature" and hence are supposed to be the "common heritage of mankind" to which communities cannot claim any form of rights. However, communities have used their knowledge and innovation and have developed cultures to sustainably maintain and protect the ecosystems in which these "wild" species exist. These species thus embody the cultural and intellectual contribution of communities.

Species which are categorised as "cultivated" or "domesticated" also embody the cultural and intellectual contributions of communities who have identified, screened, selected and bred these varieties, constantly maintaining them and improving them.

Micro organisms also embody the intellectual and cultural contributions of communities who have developed and innovated methods of maintaining and conserving soil, water, and the biosphere needed for the survival of these organisms.

For legal purposes, this biodiversity may be classified into agricultural biodiversity, medicinal plant biodiversity, and so on. However, a biological resource may have both agricultural and medicinal uses. For example, certain rice varieties (an agricultural biological resource) also have therapeutic value in diarrhoea and dysentery and thus also become a medicinal plant resource. Similarly, turmeric, ginger, onion, and garlic are both agricultural resources as well as medicinal plant resources. Such resources need to be registered in all their uses be included as part of both agricultural biodiversity as well as medicinal plant biodiversity.

**Authority:** The National Biodiversity Authority will have balanced representation of the Ministry of Forests and Environment, Ministry of Agriculture, Ministry of Fisheries, Department of Biotechnology, **Ministry of Health (Drugs Controller, or CSIR, or ICMR or any dept. that deals with medicinal plants)**, Ministry of Science and Technology, and Botanical Survey of India as its permanent members. In addition, the Authority will also have representation from the non-government sector by having as its permanent members persons of proven national and international eminence on issues of community rights, farmers' rights, rights of fisherfolk, rights of traditional scientific and folk healing communities, ecology and scientists.

The National Biodiversity Authority will have under it the Agricultural Biodiversity Authority, the Medicinal Plants Biodiversity Authority, and other such authorities as may be needed. These authorities will be represented by relevant members of the National Biodiversity Authority, the Ministries concerned, as well as two permanent members of international stature and eminence.

When deciding particular issues, the relevant Authority shall take in as temporary members the representatives of the governments of the states that are affected by the decision as well as the local communities. The representatives of the local communities should be recognised as such by the community concerned. Such representatives should be persons of respect and stature, enjoying the confidence of the community, irrespective of whether they represent the community formally in other structures such as the Panchayat. The Authority may also need to take in as temporary members, environmental experts and scientists depending on the nature of the case being decided.

**Board:** The Chairperson of the Appellate Board shall be of national and international eminence in the field of community rights to biological resources and of high calibre and proven integrity. The Chairperson need not personally be a legal expert, but will be assisted by experts in community law as well as a Judge of the High Court.

The Board may refer the issue for comments to other international experts in Community Law, Community Rights, Human Rights, Ecology, Agriculture, Fisheries, Medicine and Pharmacy, and other scientists, as well as experts in community knowledge, community lore in the related sphere, etc. in case of need.

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*Source: Shiva V. S., H. Afsar. G.B. Jafri, and R. Holla-Bhar. The Enclosure and Recovery of the Common: Biodiversity, Indigenous Knowledge and Intellectual Property Rights. Research Foundation for Science, Technology and Ecology. New Delhi. 1997. pp.163-174.*

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