



Unpacking the 2023 Amendment: Has India Weakened Community Rights under the Biological Diversity Act?

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Abstract

The Biological Diversity (Amendment) Act, 2023 represents the most significant statutory modification to India's biodiversity governance framework since the enactment of the original Biological Diversity Act in 2002. Ostensibly designed to decriminalize procedural lapses, streamline access procedures for domestic stakeholders, and facilitate the growth of the traditional medicine industry, the Amendment has attracted sharp criticism from civil society organizations, indigenous community representatives, and environmental legal scholars who argue that it fundamentally erodes the community rights architecture established by the parent statute. This article undertakes a doctrinal and critical analysis of the 2023 Amendment, examining each of its principal provisions—including the decriminalization of offences, the dilution of prior intimation requirements, the introduction of fast-track access for AYUSH practitioners, the reconfiguration of the National Biodiversity Authority, and the modification of benefit-sharing mechanisms—through the lens of community rights protection. Drawing on the legislative history of the Amendment, parliamentary committee reports, stakeholder submissions, and the framework of the Nagoya Protocol, this study evaluates whether the Amendment achieves an

appropriate balance between regulatory simplification and the protection of the rights of indigenous peoples, local communities, and traditional knowledge holders. The article concludes that while certain procedural reforms are defensible, several substantive changes—particularly the removal of mandatory prior intimation requirements, the weakened role of Biodiversity Management Committees, and the decriminalization of offences without commensurate strengthening of civil enforcement mechanisms—represent a measurable weakening of community rights that is inconsistent with India's international obligations and constitutional commitments.

Keywords: *Biological Diversity (Amendment) Act 2023, community rights, prior intimation, decriminalization, AYUSH practitioners, Biodiversity Management Committees, equitable benefit-sharing, traditional knowledge, Nagoya Protocol, indigenous rights.*



Introduction

India's Biological Diversity Act, 2002¹ was enacted as the domestic legislative instrument for implementing the country's obligations under the Convention on Biological Diversity², 1992, and later the Nagoya Protocol on Access and Benefit-Sharing, 2010. The statute established a three-tier institutional architecture—the National Biodiversity Authority³, State Biodiversity Boards, and Biodiversity Management Committees — designed to regulate access to biological resources, ensure equitable benefit-sharing with communities holding traditional knowledge, and conserve India's extraordinary biological heritage. Central to this framework was the recognition that communities—particularly indigenous peoples, forest-dwelling communities, pastoralists, and traditional healers—are not merely stakeholders but rights-holders whose knowledge, practices, and consent are indispensable to any legitimate engagement with biological resources.

On August 4, 2023, the Biological Diversity (Amendment) Act, 2023⁴ received presidential assent, introducing a series of modifications to the parent statute. The government characterized the Amendment as a long-overdue measure to decriminalize minor procedural lapses, reduce compliance burdens on domestic stakeholders—particularly practitioners of Indian systems of medicine (AYUSH)—and streamline access procedures to promote research, innovation, and the growth of the traditional knowledge-based economy. The Statement of Objects and Reasons appended to the Amendment Bill emphasized the need to “decriminalize certain provisions” and “bring more clarity” to the regulatory framework.⁵

However, the Amendment has been met with sustained opposition from a broad coalition of civil society organizations, tribal rights advocates, environmental lawyers, and academic commentators. The Centre for Policy Research, the Alliance for Sustainable and Holistic Agriculture⁶, the Coalition for Genetic Justice, and numerous grassroots organizations have argued that the Amendment represents a fundamental weakening of community rights, driven by commercial interests rather than conservation imperatives. The criticism focuses on several key changes: the removal of the mandatory prior intimation requirement under Section 7; the decriminalization of offences previously punishable with imprisonment; the introduction of a fast-track access mechanism for AYUSH practitioners that bypasses community-level consultation; the reconstitution of the NBA in ways that may reduce its independence; and the creation of a separate regulatory pathway for “registered Indian medicinal plants” that potentially excludes associated traditional knowledge from benefit-sharing obligations.⁷

This article examines the 2023 Amendment provision by provision, evaluating each modification against the standard of community rights protection. It asks the central question: has India weakened community rights under the Biological Diversity Act through the 2023 Amendment? The analysis proceeds in eight parts: Section II provides the legislative and political context of the Amendment; Section III examines the decriminalization provisions; Section IV analyzes the changes to prior intimation and access procedures; Section V evaluates the AYUSH fast-track mechanism; Section VI assesses the institutional changes to the NBA and BMCs; Section

¹ Biological Diversity Act, 2002, No. 18, Section 1-64, Acts of Parliament, 2003 (India).

² Convention on Biological Diversity, opened for signature June 5, 1992, 1760 U.N.T.S. 79 (entered into force Dec. 29, 1993).

³ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, opened for signature Oct. 29, 2010, NEP / CBD / COP / DEC / X / 1.

⁴ Biological Diversity (Amendment) Act, 2023, *supra* note 4, Section 7(1)(a) (exempting AYUSH practitioners practicing Indian systems of medicine).

⁵ Statement of Objects and Reasons, Biological Diversity (Amendment) Bill, 2021, No. 161 of 2021, Section 3 (India).

⁶ Alliance for Sustainable & Holistic Agric., Submission on the Biological Diversity (Amendment) Bill, 2021 (July 2022) (on file with author).

⁷ Centre for Policy Research, Analysis of the Biological Diversity (Amendment) Act, 2023: Implications for Community Rights and Biodiversity Governance, CPR Pol'y Brief (Aug. 2023).



VII examines the benefit-sharing modifications; Section VIII analyzes the registered Indian medicinal plants framework; and Section IX offers conclusions and recommendations.

2. Legislative and Political Context of the 2023 Amendment

2.1 The Journey from the 2002 Act to the 2023 Amendment

The BD Act, enacted in 2002 and notified in 2003, represented a pioneering legislative effort to balance biodiversity conservation with the imperatives of access and benefit-sharing. Over the two decades preceding the Amendment, the Act's implementation revealed several practical challenges: protracted approval processes, limited institutional capacity at the state and local levels, the uneven functioning of BMCs across states, and the difficulty of enforcing criminal penalties for procedural violations. Stakeholder consultations conducted by the Ministry of Environment, Forest and Climate Change ("MoEFCC") identified concerns from domestic industries—particularly the pharmaceutical, AYUSH, and seed sectors—that the existing regulatory framework imposed disproportionate compliance burdens without commensurate benefits for conservation or communities.

The Biological Diversity (Amendment) Bill, 2021⁸ was introduced in the Lok Sabha on December 16, 2021, and referred to the Joint Parliamentary Committee⁹ for examination. The JPC received extensive representations from stakeholders, including civil society organizations, indigenous community representatives, industry bodies, and state governments. The JPC's report, tabled in March 2023, recommended several modifications to the original Bill, including strengthening certain community rights protections and expanding the scope of consultation with local communities. The amended Bill was passed by both Houses of Parliament and received presidential assent on August 4, 2023.

2.2 Constitutional and International Law Dimensions

The constitutional dimensions of community rights in biodiversity governance are significant. Article 21¹⁰, interpreted to include the right to a healthy environment and the right to livelihood, has been read by the Supreme Court to protect the rights of forest-dwelling communities over natural resources. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 establishes the legal framework for community forest rights, including the right to own, access, and dispose of minor forest produce, the right of use and access to forest areas for grazing and traditional seasonal resource access, and the right to protect and conserve community forest resources. The 2023 Amendment must be read in the context of these overlapping constitutional and statutory commitments to community rights.¹¹

At the international level, the Nagoya Protocol, to which India is a Party, imposes binding obligations to ensure that access to genetic resources and associated traditional knowledge is subject to prior informed consent and mutually agreed terms. Article 6¹² of the Protocol requires each Party to take legislative, administrative, or policy measures to ensure that access to traditional knowledge held by indigenous and local communities requires the prior informed consent or approval and involvement of those communities. Any domestic legislative change that reduces the procedural safeguards for obtaining community consent raises questions of consistency with these international obligations.

⁸ Biological Diversity (Amendment) Bill, 2021, No. 161 of 2021, Lok Sabha (Dec. 16, 2021).

⁹ Joint Parliamentary Committee, Report on the Biological Diversity (Amendment) Bill, 2021, Rajya Sabha (Mar. 2023).

¹⁰ India Const. art. 21.

¹¹ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2, Section 2-14, Acts of Parliament, 2007 (India).

¹² Nagoya Protocol, *supra* note 3, art. 6.



2.3 The Stated Objectives of the Amendment

The government's stated objectives for the Amendment, as reflected in the Statement of Objects and Reasons and the parliamentary debates, can be summarized as follows:

- (a) decriminalization of procedural offences to reduce the compliance burden on domestic stakeholders and encourage good-faith participation in the regulatory framework;
- (b) streamlining of access procedures to reduce delays in the approval process for research and commercial utilization of biological resources;
- (c) facilitation of the AYUSH and traditional medicine industry by creating expedited access pathways;
- (d) clarification of the regulatory scope, particularly regarding the categories of biological resources and activities subject to regulation;
- (e) encouragement of research and innovation in the biodiversity sector. Each of these objectives is examined in the following sections in relation to their impact on community rights.

3. Decriminalization of Offences: Deregulation or Depletion of Deterrence?

3.1 The Original Penal Framework

Under the unamended BD Act, Section 55 prescribed criminal penalties for contraventions of the Act's provisions, including imprisonment for terms extending up to five years and fines of up to ₹10 lakh for first offences, with enhanced penalties for continuing violations. The criminal character of these provisions was intended to serve as a strong deterrent against unauthorized access to biological resources, misappropriation of traditional knowledge, and failure to comply with access and benefit-sharing obligations. For communities whose traditional knowledge and biological resources were at risk of exploitation, the threat of criminal prosecution represented an important, if imperfectly enforced, safeguard.¹³

3.2 The 2023 Amendment: From Criminal to Civil Penalties

The 2023 Amendment replaces imprisonment with civil penalties for contraventions of Sections 3, 4, 6, and 7¹⁴. Under the amended Section 55¹⁵, contraventions are now punishable by the imposition of penalties determined by the NBA or the concerned SBB, with the penalty amount to be based on the gravity of the offence, the damage caused to the environment, and the quantum of benefit derived by the offender. While the Amendment retains imprisonment for violations of Sections 5¹⁶ states "*restriction on obtaining intellectual property rights without NBA approval*") and Section 57¹⁷ states "*failure to furnish information*", the removal of criminal sanctions for the core ABS offences is the most consequential penal change.

¹³ Biological Diversity Act, 2002, supra note 1, Section 55.

¹⁴ Biological Diversity Act, 2002, supra note 1, Section 3-4, 6-7.

¹⁵ Biological Diversity (Amendment) Act, 2023, supra note 4, Section 55.

¹⁶ Biological Diversity Act, 2002, supra note 1, Section 5.

¹⁷ Biological Diversity Act, 2002, supra note 1, Section 57.



3.3 Impact on Community Rights

The decriminalization of offences under the BD Act has significant implications for community rights. First, the deterrent effect of criminal penalties, while imperfectly enforced, served as an important normative signal that unauthorized access to biological resources and traditional knowledge is a serious legal wrong, not merely a regulatory infraction. The shift to civil penalties recharacterizes these violations as administrative non-compliance, potentially reducing the social and legal stigma attached to biopiracy and unauthorized knowledge appropriation.

Second, the capacity of communities to initiate criminal proceedings for violations of their knowledge rights is significantly curtailed. Under the criminal framework, community representatives could file First Information Reports¹⁸ with local police stations, initiating criminal investigations independent of the regulatory apparatus. Under the civil penalty framework, communities are dependent on the willingness and capacity of the NBA or SBB to initiate penalty proceedings, placing the enforcement initiative in the hands of institutions that may be subject to political and economic pressures.

Third, the standard of proof and procedural safeguards differ substantially between criminal and civil proceedings. Criminal prosecutions require proof beyond reasonable doubt, but they also trigger the investigative powers of the police, the protection of witness rights, and the possibility of judicial oversight at multiple stages. Civil penalty proceedings, conducted by the regulatory authority itself, may lack the procedural rigor and transparency of criminal trials, potentially undermining the ability of affected communities to challenge weak or compromised enforcement decisions.

3.4 Assessing the Deterrence Deficit

The government's contention that the removal of criminal penalties will encourage good-faith compliance rather than deterring it is open to serious question. The empirical evidence on regulatory compliance suggests that the removal of criminal sanctions for environmental offences in India has generally not been accompanied by improvements in enforcement. The experience with the Environment (Protection) Act, 1986, where criminal penalties have been rarely enforced but have nonetheless retained symbolic significance, suggests that the normative function of criminal provisions should not be underestimated. For communities whose knowledge and resources are vulnerable to commercial exploitation, the decriminalization of ABS offences removes an important—if imperfect—layer of protection.

4. The Dilution of Prior Intimation and Access Procedures

4.1 The Original Section 7 Framework

Under the unamended BD Act, Section 7¹⁹ required that no citizen of India or body of persons—whether incorporated or not—shall obtain any biological resource occurring in India or knowledge associated thereto for commercial utilization or bio-survey and bio-utilization for commercial utilization without giving prior intimation to the State Biodiversity Board before such occurrence. This prior intimation requirement was a critical procedural safeguard: it ensured that the SBB was informed of any proposed commercial utilization of biological resources or associated knowledge, enabling the Board to assess the implications for local communities, impose conditions, and, where necessary, require benefit-sharing. The prior intimation

¹⁸ Code of Criminal Procedure, 1973, No. 2, Section 154, Acts of Parliament, 1974 (India) (requiring registration of First Information Report for cognizable offences).

¹⁹ Biological Diversity Act, 2002, *supra* note 1, Section 7.



requirement also served as an early warning mechanism, allowing BMCs and affected communities to raise objections or seek clarification regarding proposed activities.

4.2 The Amended Framework

The 2023 Amendment modifies Section 7²⁰ in ways that substantially reduce the scope of the prior intimation requirement. The amended provision introduces categories of persons and activities that are exempt from the prior intimation requirement, including:

- (a) practitioners of Indian systems of medicine practicing locally;
- (b) local people, including growers and cultivators of indigenous varieties of plants and breeds of animals;
- (c) persons obtaining biological resources for personal use or consumption;
- (d) persons obtaining biological resources for purposes such as collaborative research under certain conditions.

While some of these exemptions—particularly those for personal use and local cultivation—are defensible on policy grounds, the breadth and vagueness of certain exemptions raise significant concerns.

4.3 Community Rights Implications

The narrowing of the prior intimation requirement has three principal implications for community rights. First, the reduction in the scope of activities subject to regulatory oversight decreases the opportunities for communities to participate in decision-making regarding the utilization of biological resources occurring in their territories or associated with their knowledge. Community awareness of proposed commercial activities is a necessary precondition for meaningful participation, and the weakening of prior intimation reduces the flow of information to affected communities.

Second, the exemptions introduced by the Amendment create potential loopholes through which commercial actors may evade regulatory scrutiny. The definition of “local people” and the scope of “local practice” of AYUSH are potentially broad enough to encompass activities that are, in substance, commercial but structured to fall within the exemption. The absence of clear thresholds—such as quantitative limits on the volume of resources accessed or the revenue generated from their utilization—creates interpretive ambiguity that may be exploited to circumvent the regulatory framework.

Third, the Amendment’s shift away from prior intimation and towards a system of retrospective disclosure or ex post facto approval reduces the procedural space for community consultation. Where an entity can access biological resources and begin commercial utilization before notifying the SBB, the community’s ability to influence the terms of access, negotiate benefit-sharing, or object to the activity is significantly diminished. This ex post approach is fundamentally inconsistent with the principle of prior informed consent, which requires that communities be informed and give consent before access occurs, not merely after the fact.

5. The AYUSH Fast-Track Mechanism: Facilitation at Whose Expense?

5.1 The Rationale for AYUSH Exemption

The creation of a fast-track or exempted pathway for AYUSH practitioners represents one of the most politically salient dimensions of the 2023 Amendment. The Indian systems of medicine—Ayurveda, Yoga and Naturopathy, Unani, Siddha, and Homeopathy—rely extensively on biological resources, particularly medicinal

²⁰ Biological Diversity (Amendment) Act, 2023, *supra* note 4, Section 7.



plants, and the traditional knowledge associated with their preparation and administration²¹. AYUSH practitioners have long argued that the requirement to obtain prior approval or give prior intimation for accessing biological resources imposes a disproportionate burden on a sector that is deeply rooted in traditional knowledge systems and predominantly composed of small-scale practitioners. The government's decision to create a facilitated pathway for this sector thus responds to a genuine regulatory concern.²²

5.2 The Community Rights Critique

However, the design of the AYUSH fast-track mechanism raises significant community rights concerns. The exemption of locally practicing AYUSH practitioners from the prior intimation requirement means that the use of biological resources and associated traditional knowledge by this category of users proceeds without the knowledge or consent of the communities that developed and maintain that knowledge. Where AYUSH practitioners utilize traditional knowledge regarding the medicinal properties of plants—knowledge that may have been developed and transmitted by specific tribal or local communities over generations—the absence of a community consultation requirement effectively disassociates the knowledge from its sources.

The ethical and legal dimensions of this disassociation are significant. Under the framework of the Nagoya Protocol²³, access to traditional knowledge held by indigenous and local communities requires the prior informed consent of those communities. The Amendment's exemption of AYUSH practitioners from community consultation potentially places India in non-compliance with its international obligations²⁴. Moreover, the exemption creates a precedent that could be extended to other categories of users in future amendments, progressively eroding the community rights architecture of the BD Act.²⁵

5.3 Distinguishing Legitimate Facilitation from Rights Erosion

It is important to distinguish between the legitimate facilitation of small-scale, locally practicing AYUSH practitioners and the potential exploitation of the exemption by commercial entities operating under the guise of traditional medicine practice. The Amendment's failure to establish clear boundaries—in terms of the scale of operations, the nature of the biological resources accessed, the commercial value of the end products, and the mechanisms for ensuring benefit-sharing with source communities—creates a framework in which commercial actors may structure their operations to qualify for the exemption while engaging in activities that are, in substance, industrial-scale commercial utilization. The absence of a robust monitoring and verification mechanism to distinguish genuine local practice from commercial exploitation represents a significant gap in the community rights protection framework.

²¹ N. Singh, The AYUSH Exemption under the Biological Diversity (Amendment) Act, 2023: Policy Rationale and Community Rights Concerns, 16 Indian J. Health L. & Policy 78, 78-102 (2023).

²² Ministry of Ayush, Government of India, About AYUSH.

²³ Nagoya Protocol, *supra* note 3, art. 6 (requiring prior informed consent for access to traditional knowledge held by indigenous and local communities).

²⁴ Biological Diversity (Amendment) Act, 2023, *supra* note 4, Section 7 (creating exemption for locally practicing AYUSH practitioners from prior intimation requirement).

²⁵ Nagoya Protocol, *supra* note 3, art. 6(1).



6. Institutional Reconfiguration: The NBA, SBBs, and BMCs

6.1 Changes to the National Biodiversity Authority

The 2023²⁶ Amendment modifies the composition and functioning of the National Biodiversity Authority in ways that may affect its independence and its orientation towards community rights protection. Under the unamended Act, the NBA was required to include among its members representatives of communities with traditional knowledge, tribal representatives, and persons with expertise in the conservation of biological resources. The Amendment's modifications to the composition and appointment process raise questions about the continued representation of community interests at the highest level of biodiversity governance. If the restructured NBA has reduced community representation, its capacity to serve as an advocate for community rights within the regulatory framework is correspondingly diminished.

6.2 The Marginalization of Biodiversity Management Committees

Perhaps the most consequential institutional change wrought by the 2023 Amendment is the marginalization of Biodiversity Management Committees. Under the original BD Act, BMCs were established at the level of local bodies—municipalities and panchayats—and were tasked with preparing People's Biodiversity Registers, promoting the conservation and sustainable use of biological resources, and advising on matters relating to the access and utilization of biological resources within their jurisdictions²⁷. The BMC was the institutional node at which community participation in biodiversity governance was concretized.²⁸

The 2023 Amendment dilutes the role of BMCs in several ways. First, the narrowed scope of the prior intimation requirement reduces the matters on which BMCs must be consulted, effectively shrinking their decision-making domain. Second, the fast-track mechanism for AYUSH practitioners bypasses the BMC consultation process, removing community-level governance from a significant category of access. Third, the Amendment's provisions regarding the preparation and updating of PBRs do not strengthen the institutional capacity of BMCs to carry out this task, despite the well-documented challenges of PBR preparation in many states. The cumulative effect of these changes is to reduce the BMC's role from a substantive governance body to a largely ceremonial institution, weakening the primary mechanism through which communities participate in decisions affecting their biological resources and traditional knowledge.

6.3 The Governance Deficit

The institutional reconfiguration effected by the Amendment reflects a broader trend in environmental governance towards centralized decision-making and reduced community participation. The shift of regulatory authority from local bodies (BMCs) and state-level institutions (SBBs) towards the central government and the NBA represents a centralization of power that is inherently in tension with the principle of subsidiarity and the community-based governance model envisaged by the original BD Act. For communities whose relationship with biological resources is place-based and localized, the centralization of decision-making creates additional barriers to meaningful participation and increases the distance between knowledge holders and the institutions that regulate the use of their knowledge.

²⁶ Biological Diversity (Amendment) Act, 2023, *supra* note 4, Section 5 (amending composition and appointment of NBA members).

²⁷ Biological Diversity Act, 2002, *supra* note 1, Section 41 (requiring constitution of Biodiversity Management Committees at local body level).

²⁸ Biological Diversity Act, 2002, *supra* note 1, Section 41(2) (mandating preparation of People's Biodiversity Registers).



7. Modifications to the Benefit-Sharing Framework

7.1 The Original Benefit-Sharing Architecture

Equitable benefit-sharing is the normative core of the BD Act, reflecting the principle—enshrined in Article 15²⁹—that the benefits arising from the utilization of biological resources and associated traditional knowledge must be shared fairly and equitably with the communities that have developed and maintained that knowledge. Under the original framework, Sections 19–22³⁰ established the mechanism for determining and enforcing benefit-sharing obligations, with the NBA empowered to determine the quantum and modalities of benefit-sharing while approving access applications. Benefit-sharing could take monetary forms example royalties, licence fees, equity stakes or non-monetary forms example technology transfer, joint research, capacity building, and the NBA was required to consider the interests of affected communities in making benefit-sharing determinations.

7.2 The 2023 Modifications

The 2023 Amendment modifies the benefit-sharing framework in several significant ways. The Amendment revises the criteria for determining the quantum of benefit-sharing, introduces provisions for the manner in which benefit-sharing payments are to be calculated and deposited, and modifies the process for the disbursement of benefits to affected communities. The specific modifications, read in conjunction with the narrowed scope of the prior intimation requirement and the AYUSH exemptions, effectively reduce the universe of activities subject to benefit-sharing obligations. Where activities are exempted from prior intimation, they are correspondingly exempt from benefit-sharing requirements, reducing the total quantum of benefits available to communities.

7.3 Community Impact Assessment

The practical impact of the benefit-sharing modifications on communities is likely to be significant. Communities that had previously received—or reasonably expected to receive—benefit-sharing payments from entities utilizing biological resources or traditional knowledge within their territories may find that certain categories of utilization no longer trigger benefit-sharing obligations. The narrowing of the benefit-sharing base is particularly concerning given the already documented challenges in ensuring that benefits reach the intended communities. The combination of a reduced benefit-sharing base and the persistent institutional challenges of benefit distribution compounds the risk that communities will receive fewer benefits under the amended framework than under the original Act.

Moreover, the Amendment's provisions regarding the calculation of benefit-sharing payments raise questions about the adequacy of the valuation methodology. Where benefit-sharing is calculated on a fixed or simplified basis, without adequate consideration of the commercial value of the end products or the contribution of traditional knowledge to that value, communities may receive benefits that bear no reasonable relationship to the value derived from their knowledge and resources. The principle of equitable benefit-sharing, as articulated in the CBD and the Nagoya Protocol, demands that benefits be commensurate with the value generated, not merely symbolic.

²⁹ Convention on Biological Diversity, *supra* note 2, art. 15.

³⁰ Biological Diversity Act, 2002, *supra* note 1, Section 19-22.



8. Registered Indian Medicinal Plants: A Parallel Regulatory Track

8.1 The New Category

One of the novel features of the 2023 Amendment is the creation of a category of “*registered Indian medicinal plants*.” Under the amended framework, the Central Government is empowered to notify certain species of plants used in Indian systems of medicine as registered Indian medicinal plants, and to establish a separate regulatory pathway for access to and utilization of these species. This separate pathway is designed to reduce the regulatory burden on the AYUSH and pharmaceutical sectors by simplifying the approval process for accessing these specific biological resources.³¹

8.2 Implications for Traditional Knowledge Protection

The creation of a separate regulatory track for registered Indian medicinal plants has significant implications for the protection of associated traditional knowledge. Where a plant species is designated as a registered Indian medicinal plant, the regulatory requirements for accessing that species and the knowledge associated with its medicinal properties may be different from—and potentially less stringent than—those applicable to other biological resources. This creates the risk that the traditional knowledge associated with registered Indian medicinal plants will receive weaker protection than the knowledge associated with other biological resources, contradicting the principle of equal treatment of traditional knowledge irrespective of the category of biological resource with which it is associated.

Furthermore, the process of designating registered Indian medicinal plants raises questions about community participation. If the notification of registered species is determined by the Central Government without mandatory consultation with the communities that have developed and maintained the knowledge associated with those species, the designation process itself may be inconsistent with the principle of prior informed consent. Communities whose medicinal plant knowledge forms the basis for the registration of specific species should have a meaningful role in the designation process and in the determination of the regulatory terms applicable to those species.

8.3 The Erosion of the Benefit-Sharing Base

The practical effect of the registered Indian medicinal plants framework is to create a dual regulatory system in which a significant category of biological resources—medicinal plants used in Indian systems of medicine—is subject to a separate, potentially less rigorous, set of access and benefit-sharing requirements. This bifurcation of the regulatory framework reduces the coherence of the biodiversity governance system and creates opportunities for regulatory arbitrage, where entities may structure their activities to fall within the less stringent pathway. For communities whose traditional knowledge relates predominantly to medicinal plants—which includes many tribal and indigenous communities in India—the creation of a parallel track that offers weaker protections represents a targeted erosion of their knowledge rights.

³¹ Biological Diversity (Amendment) Act, 2023, *supra* note 4, Section 7A (creating framework for registered Indian medicinal plants).



9. Conclusions and Recommendations

9.1 Summary of Findings

This article's analysis of the Biological Diversity (Amendment) Act, 2023 leads to a clear conclusion: the Amendment has weakened community rights under the Biological Diversity Act. While certain procedural reforms—including the decriminalization of minor procedural lapses and the reduction of compliance burdens for genuinely small-scale, local practitioners—are defensible as matters of regulatory policy, the Amendment's substantive modifications represent a net reduction in the legal protections available to communities whose biological resources and traditional knowledge are the subject of the Act's governance framework.

The weakening of community rights occurs across multiple dimensions:

- (a) the removal of mandatory prior intimation reduces community awareness of and participation in decisions regarding the utilization of biological resources in their territories;
- (b) the AYUSH fast-track mechanism bypasses community consultation for a significant category of users;
- (c) the decriminalization of offences reduces the deterrent effect and the community's ability to initiate enforcement proceedings;
- (d) the marginalization of BMCs reduces the institutional space for community-level governance;
- (e) the narrowing of the benefit-sharing base reduces the quantum of benefits available to communities;
- (f) the creation of a parallel regulatory track for registered Indian medicinal plants targets the specific knowledge systems of communities whose expertise lies in medicinal plant knowledge.

9.2 Consistency with International Obligations

Several provisions of the 2023 Amendment raise questions of consistency with India's obligations under the Nagoya Protocol. The Protocol's requirement that access to traditional knowledge held by indigenous and local communities be subject to their prior informed consent is potentially compromised by the narrowing of the prior intimation requirement and the AYUSH exemption. The Protocol's obligation to establish compliance mechanisms, including checkpoints for monitoring the utilization of genetic resources and traditional knowledge, may be undermined by the decriminalization of offences and the weakening of enforcement mechanisms. India's international reputation as a champion of community rights in biodiversity governance—built through its advocacy for the inclusion of ABS provisions in the CBD and its leadership in the Nagoya Protocol negotiations—is potentially damaged by these domestic legislative changes.³²³

9.3 Recommendations

In light of the foregoing analysis, this article proposes the following recommendations for restoring and strengthening community rights under the amended BD Act:

First, the rules to be framed under the amended Act should establish clear, quantitative thresholds for the AYUSH exemption, distinguishing genuine small-scale local practice from commercial operations that should remain subject to the full regulatory framework.

³² Convention on Biological Diversity, *supra* note 2, arts. 8(j), 15(7) (recognizing rights of indigenous and local communities and requiring benefit-sharing).

³³ See generally Shiva V., *The Biodiversity Amendment: A Threat to India's Traditional Knowledge and Communities*, Navdanya Res. Found. Policy Paper (Aug. 2023).



Second, the role of BMCs should be strengthened through dedicated funding, capacity building, and a mandatory consultation requirement for all access applications—including those from AYUSH practitioners—that involve biological resources or knowledge originating within the BMC's jurisdiction.

Third, the civil penalty framework should be designed to ensure that penalties are sufficient to deter violations, with a significant proportion of penalty revenues directed to affected communities. An independent monitoring mechanism should be established to oversee penalty proceedings and ensure their fairness and transparency.

Fourth, the registered Indian medicinal plants framework should include mandatory community consultation in the designation process and should ensure that benefit-sharing obligations for these species are commensurate with those applicable to other biological resources.

Fifth, the NBA should develop and publish community rights guidelines, articulating the standards for prior informed consent, benefit-sharing, and community participation that will govern the implementation of the amended Act. These guidelines should be developed through a participatory process involving community representatives, civil society organizations, and academic experts.

Sixth, Parliament should consider enacting a standalone Traditional Knowledge Protection Act, addressing the gaps in the existing patchwork of legislation and establishing a comprehensive, rights-based framework for the protection of traditional knowledge, including WATK, that is consistent with India's constitutional commitments and international obligations.³⁴

9.4 Final Observations

The Biological Diversity Act, 2002, was enacted at a moment of global recognition that the conservation of biodiversity and the protection of community rights are inextricably linked. The 2023 Amendment, driven by the legitimate concerns of regulatory efficiency and industrial facilitation, has shifted the balance of the Act away from community rights and towards commercial interests. Whether this shift can be reversed or mitigated through rule-making, institutional practice, and judicial interpretation will determine whether India's biodiversity governance framework continues to serve as a model for the Global South or becomes a cautionary tale of the costs of weakening community rights in pursuit of economic growth.

The stakes are high. India's biological resources and the traditional knowledge associated with them are not merely economic assets; they are the cultural heritage of communities that have served as stewards of biodiversity for millennia. The weakening of their rights is not merely a legal question; it is a question of justice, recognition, and the moral obligations that a democratic state owes to the communities that have preserved the nation's extraordinary biological wealth.

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