

# Ecological Impact And Sustainable Development Implications Of Ayush Industry Exemption On Biodiversity Act And Benefit Sharing: A Theoretical Analysis.

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## ABSTRACT

Changes to India's biodiversity management framework brought about by the Biological Diversity (Amendment) Act (BDAA), 2023 will influence the AYUSH sector. In this study, we look at what happens if the Biological Diversity Act (BDA) of 2002 doesn't apply to AYUSH practitioners and people who employ codified conventional wisdom. The modifications aim to promote growth and innovation in conventional medicine by simplifying rules, encouraging the cultivation of medicinal plants, and streamlining methods for obtaining biological resources. One fundamental premise of the Act is fair along with equitable benefit-sharing, however the act has been the subject of controversy due to its exemptions. Some people are worried that the changes could damage local and indigenous communities' rights and lead to the exploitation of their ecological resources. The study delves into the delicate balancing act of safeguarding conventional understanding and community rights while simultaneously fostering economic development in the AYUSH sector. To advance the conventional medicine industry while protecting biodiversity, the results stress the need of better definitions and procedures.

**Keywords:** Ayush Industry exemption; Biodiversity Act; Sustainable resource use, Benefit sharing.

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## INTRODUCTION

Twenty years ago, lawmakers passed the Bio-Diversity Act<sup>1</sup> with the intention of protecting and responsibly using the nation's rich biodiversity. To put it simply, biodiversity is the vast array of life forms found on Earth. The Cartagena Protocol (2003)<sup>2</sup> along with the Nagoya Protocol (2014)<sup>3</sup> were both requested by the Convention on BD (CBD). The former dealt with biosafety and the latter with access along with benefit sharing. Both the BDA of 2002 and the Cartagena Protocol were ratified by India in 2003. The Act limits who can get their hands on conventional understanding and biological resources. Ecological stability, ecosystem preservation, and sustainable development in India depend on efforts to protect biodiversity. Many different ecosystems and species depend on India's varied flora and wildlife for subsistence, food production, and cultural preservation. By preserving species diversity, we can lessen the severity of climate change, make communities more resistant to environmental dangers, and ensure that generations to come will live in prosperity.

By updating the current BDA of 2002, the BDAA, 2023 hopes to solve modern problems and guarantee the sustainable use of biological resources. Simplifying legal procedures for accessing biodiversity resources, encouraging medicinal plant cultivation, and streamlining processes are the goals of the modifications. The goal of these changes is to make conservation efforts more equitable while still allowing for biodiversity-related economic activity. India has shown its dedication to biodiversity protection and acunderstandingment of the changing demands in this area by the introduction of this Act. This study examines how legal exemptions for AYUSH practitioners intersect with three pressing environmental challenges: (1) unsustainable harvesting of wild medicinal plants, (2) erosion of traditional ecological knowledge, and (3) inequitable resource governance under climate change pressures. In India, over 90% of medicinal plant species are collected from the wild, with 65% of them facing various degrees of threat (NMPB, 2022), highlighting the urgent need for policies grounded in ecological realities. This paper looks to draw attention to the potential consequences of the biodiversity (Amendment) Act 2023 and benefit sharing excluding AYUSH Practitioners. (Sharma, 2024)

**Biological Diversity Act (BDA), 2002 – A Background**

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<sup>1</sup> Act No. 18 of 2003

<sup>2</sup> Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 11 September 2003, No. 30619.

<sup>3</sup> The Nagoya Protocol on Access and Benefit-sharing, 12 October 2014.

India enacted the BDA, 2002, to fulfil its obligations under the CBD. The major goals of this initiative are to preserve biological variety, sustainably use its components, along with guarantee fair and also equitable benefit distribution resulting from utilising biological resources and related conventional understanding.

The NBA<sup>4</sup> and SBBs<sup>5</sup> have crucial responsibilities in executing the regulations of the BDA. In the realm of BD protection and fair benefit-sharing, the NBA serves as the highest governing body tasked with developing rules, standards, and procedures. SBBs enable biodiversity management at the state level by developing strategies, awarding permits, and raising awareness among stakeholders. A fundamental principle of the BDA is to provide fair along with equitable benefit-sharing, which guarantees that local communities, indigenous peoples, and conventional understanding holders are compensated fairly for their efforts in conserving biodiversity and using biological resources sustainably. This concept promotes inclusiveness, social fairness, and environmental justice, therefore encouraging cooperative endeavors towards biodiversity preservation and the achievement of sustainable development. (Chakraborty, 2024). A foundational BDA principle is equitable benefit-sharing, ensuring fair compensation for local communities, indigenous peoples, and holders of traditional knowledge. This fosters social equity, inclusiveness, and environmental justice—critical to cooperative biodiversity conservation. This has been vital in safeguarding species like the *Santalum album* (sandalwood), threatened due to commercial exploitation, and in preserving the biodiversity-rich ecosystems like the Western Ghats, home to endangered species such as the Lion-tailed macaque (*Macaca silenus*). Indigenous communities like the Irulars in Tamil Nadu have long contributed to conserving snake populations and medicinal plant resources. Incorporating such traditional ecological knowledge into governance frameworks enhances both conservation along with sustainable utilisation.

#### **Key Amendments in The Biological Diversity (Amendment) Act<sup>6</sup>, 2023**

To promote the growth of medicinal plants, the BDAA, 2023, seeks to alleviate the regulatory constraints on practitioners and companies engaged in the Indian medicinal systems, counting Ayurveda, and Yoga, and Naturopathy, and Unani, and Siddha, and Homeopathy (AYUSH). The objective of this amendment is to encourage the sustainable use of medicinal plants along with conventional understanding linked to Indian healthcare systems. Its objective is to streamline the patent application procedure for biological resources along with related conventional understanding. The revisions seek to simplify administrative processes and lessen compliance risks to promote cooperative research and encourage investments in biodiversity-related endeavors. The purpose of this provision is to encourage creativity and facilitate the commercialization of biotechnological devices, while also guaranteeing adherence to legal and regulatory obligations.

An important modification suggested in the Act is the exclusion of specific users, like Indian medicine practitioners, from the obligation to distribute benefits to local populations. Although the purpose of this exemption is to encourage research and development in the area of conventional medicine, it has generated criticisms regarding fair benefit distribution and the safeguarding of the rights of indigenous understanding holders. Detractors contend that this clause has the potential to weaken the fundamental values of equity and inclusiveness within the Biological Diversity Act. The changes conform the definition of foreign-controlled enterprises to current legislation, such as the enterprises Act, 2013, to govern their utilisation of biological resources. The modifications seek to confirm adherence to international accords, such as the Nagoya Protocol on Access and Benefit-Sharing, by providing a clearer regulatory framework for foreign-controlled enterprises. The objective of this alignment is to enhance the supervision capabilities and deter the exploitation of biological resources by foreign entities, while yet safeguarding national interests and sovereignty.

The government's important reforms demonstrate its commitment to achieving a harmonious equilibrium between fostering economic growth, stimulating innovation, and protecting biodiversity protection and conventional understanding. Nevertheless, the consequences of these changes on the preservation of biodiversity and fair distribution of beneficial outcomes are still being examined and discussed by legal and environmental experts. (Radhika, 2024)

#### **Benefit Sharing and Exemptions**

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<sup>4</sup> National Biodiversity Association

<sup>5</sup> State Benefit Boards

<sup>6</sup> Biological Diversity (Amendment) Act, 2023

Indeed, benefit sharing was a significant component of the 2002 Act<sup>7</sup> as well. The revised Section 21<sup>8</sup> now requires the NBA to guarantee that approvals issued result in fair along with equitable distribution of benefits. Furthermore, the clause grants the Authority the power to allocate payments to benefit claimers or organisations in cases when resources or information are obtained from individuals or groups. The modification entails their existing requirement to engage in a benefits sharing understanding with the NBA upon the commercialization of the patented product or process. This guarantees equitable distribution of gains resulting from commercialization among relevant parties. Pursuant to the 2002 Act, any financial gain obtained from the investigation, bio-survey, and bio-utilisation of obtained biological resources were to be distributed among the local populace. In this regard, the Act introduces substantial modifications.

An essential modification is the removal of the requirement to transfer benefits to the local community for bio-survey or even bio-utilisation. This decision is perceived as an effort to promote investment in research along with commercialization, while guaranteeing that companies are not encumbered with overly onerous responsibilities to share advantages. (Khurana & Khurana, 2023)

### **Ayush Practitioners**

India is a culturally affluent nation rich in ancient medical systems such as Ayurveda. Engaging in the conservation and commercial utilisation of India's biological resources serves to enhance the attraction of additional foreign investment. AYUSH, short for Ayurveda, and Yoga along with Naturopathy, and Unani, and Siddha, along with Homeopathy, refers to the six distinct Indian medical systems that are widely practiced in India and several surrounding Asian countries, with only a few exceptions in some affluent nations. Established in March 1995, the department known as the Indian System of Medicine was renamed AYUSH in November 2003. Its primary objective is to provide greater emphasis to the advancement of these systems. This decision was made to prioritize these systems considering the dominant allopathic medicine system, which resulted in a "architectural correction" in the health service system envisioned by the National Rural Health Mission (NRHM). (Samal, 2015)

### **Exemption of AYUSH Practitioners and Its Implications**

A recent revision to the BDA is expected to facilitate the conventional sector in increasing its presence in the field of health and wellness. However, environmentalists express concerns that excluding Ayush practitioners from paying Access and Benefit Sharing (ABS) fees may negatively impact the tribal community.

The BDAA, 2023, officially announced by the Centre, seeks to streamline the process of accessing the abundant biodiversity of the country for research and development purposes, while simultaneously safeguarding the environment and providing equitable advantages to local populations. The Amended Edition of Section 7<sup>9</sup> of the Act, like the original legislation, consists of two components. According to Section 7(1)<sup>10</sup>, entry to Biological Resources is prohibited unless the relevant State Biodiversity Board is notified beforehand. The second component, Section 7(2)<sup>11</sup>, includes conditions that exempt individuals from the requirement of informing the SBB in advance before accessing a biological resource. As per the first legislation, only locally residing individuals and communities, such as biodiversity farmers and cultivators, Vaidas, along with Hakims, who are engaged in indigenous medicine, were granted exemption. However, as per the revised legislation, registered AYUSH practitioners who have been engaged in indigenous medicines, counting Indian systems of medicine, for the sake of subsistence and livelihood are also not required to notify the SBB.

An Ayurvedic Doctor, who practices Ayurveda for livelihood and sustenance, is not required to notify the SBB in advance if she wishes to access a biological resource. The significance lies in the fact that the statute does not specify which activities constitute sustenance and livelihood. This implies that enterprises in the AYUSH sector could circumvent the obligation to notify the SBB by hiring AYUSH practitioners to access biological resources. However, although Vaidas or Hakims may have served the same function, Indian firms have consistently argued that they are not required to get prior SBB consent as per the original legislation. (Kumar et al., 2022)

The amendment lacks a requirement for obtaining prior approval from local and indigenous populations, as well as a consultative process, when governing access to genetic resources and understanding. Introduced in the Lok Sabha, the measure aims to expedite research, streamline the patent application procedure, and attract foreign

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<sup>7</sup> *ibid*

<sup>8</sup> Section 21, Biological Diversity (Amendment) Act, 2023

<sup>9</sup> Section 7, Biological Diversity (Amendment) Act, 2023

<sup>10</sup> Section 7(1), Biological Diversity (Amendment) Act, 2023

<sup>11</sup> Section 7(2), Biological Diversity (Amendment) Act, 2023

investments in the biological resources chain, counting research, while safeguarding national interest. Nevertheless, the modification introduces further uncertainty regarding one of the three fundamental principles of the primary legislation - the Principle of Fair Access and Benefit Sharing. (Sabrang, 2024)

The Ayush Compensation Scheme (ACS) is a monetary compensation usually provided to tribal and other communities that have a longstanding practice of collecting, protecting, and using essential herbs and therapeutic plants for the Ayush sector. Ayush encompasses the therapeutic systems of ayurveda, and yoga, and naturopathy, and unani, and siddha, and sowa rigpa, along with homoeopathy. Pharmaceutical companies that market such medications or therapies are grouped together within the Ayush sector.

During an interview with Business Standard, a representative from the Ayurvedic Medicine producers Organisation of India stated that the amendment would enable Ayush pharmaceutical producers to increase their market share in the wider health and wellness sector. However, Debadyo Sinha, the head of climate and ecosystems at the Vidhi Centre for Legal Policy, argued that the government has reduced the possible income of indigenous people, whose way of life relies on herbs, by granting exemptions to Ayush practitioners. According to Ayush industry estimates, the required proportion of earnings that is allocated as Accounting Profit and Sales varies from 0.1 to 0.5 percent of sales, depending on the revenues of the organization. Sinha voiced reservations over the clarity lack within the concept of Ayush practitioners. When an individual engages in herb cultivation without creating a company and thereafter sells their products to corporations, there is no means of regulating such activities. To avoid exploitation, it is necessary to establish a precise definition of the phrase 'Ayush practitioner'. Furthermore, apart from the ABS exemption, the decriminalisation of biodiversity violations is a subject of disagreement. (Business Standard, 2024)

#### **Divya Pharmacy v. Union of India Case Law<sup>12</sup>**

The central question in the Divya Pharmacy v. Union of India case was whether an Indian company, which lacks any foreign involvement in terms of ownership and management, is required to adhere to the ABS or fair and equitable benefit sharing (FEBS) guidelines outlined in the 2002 Act. The verdict of the Uttarakhand High Court unambiguously stated that all Indian firms involved in the extraction of biological resources must obtain prior authorization and allocate a portion of their income to indigenous and local populations who possess conventional understanding. In accordance with the revisions, if the case were to be tried today, it would no longer be necessary to acquire prior authorization from the NBA before submitting a patent application. This has the potential to impact the legal responsibility of these corporations pursuant to ABS or FEBS regulations. Furthermore, the revisions provide it with an exemption from the requirement of sharing benefits with the local citizens.

#### **CONCLUSION**

The BDAA, 2023 signifies a notable change in India's strategy towards biodiversity management and the equitable distribution of benefits, notably with regards to the AYUSH sector. The amending measures seek to promote development and innovation in the conventional medicine sector by granting AYUSH practitioners and users of codified conventional understanding an exemption from the obligation to share benefits with local populations. The purpose of this exemption is to simplify procedures for cultivating and researching medicinal plants, therefore fostering the growth of India's abundant medicinal legacy and enticing investments in the AYUSH industrial sector.

Nevertheless, this new policy has generated significant controversy over its consequences for the preservation of biodiversity and fairness. On the one hand, the changes are expected to stimulate the growth of the AYUSH sector, possibly resulting in improved market presence and economic advantages. However, opponents contend that these modifications may weaken the goals of just and equal distribution of benefits established in the BDA of 2002. This exception gives rise to apprehensions over the possible biological resource exploitation and the marginalization of indigenous and local populations that have conventionally protected these resources. Insufficient clarity on the definition of AYUSH practitioners and the absence of prior consent procedures for accessing genetic resources exacerbate these problems. Lacking explicit direction, there is a potential for the anticipated advantages

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<sup>12</sup> Divya Pharmacy v. Union of India, 2018 SCC Online Utt. 1035

for local communities to not be realized, resulting in an imbalance between the progress of conventional medicine along with the safeguarding of the rights of conventional understanding holders.

Ultimately, the revisions, although intended to update and revitalise the AYUSH sector, must be carefully evaluated to guarantee that these modifications do not undermine the core values of biodiversity preservation and equitable distribution of benefits. Additional modifications or supplementary actions may be required to rectify the deficiencies and uncertainties resulting from the present amendments, so assuring a proper equilibrium between the objectives of economic progress and environmental justice. A stronger emphasis on sustainable development solutions—integrating environmental protection with socio-economic growth—will be essential to achieving long-term resilience and inclusivity.

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## REFERENCES

1. Chakraborty, D. (2024, May 24). Biological Diversity (Amendment) Bill, 2023: Insights & Impacts. Retrieved from: [https://depenning.com/blog/biological-diversity-amendment-bill2023/?utm\\_source=mondaq&utm\\_medium=syndication&utm\\_content=articleoriginal&utm\\_campaign=article](https://depenning.com/blog/biological-diversity-amendment-bill2023/?utm_source=mondaq&utm_medium=syndication&utm_content=articleoriginal&utm_campaign=article)
2. Samal, J. (2015). Role of AYUSH workforce, therapeutics, and principles in health care delivery with special reference to National Rural Health Mission. *AYU (an International Quarterly Journal of Research in Ayurveda)*, 36(1), 5. <https://doi.org/10.4103/0974-8520.169010>
3. Sabrang. (2024, June 26). Navigating the grey: The Biodiversity Amendment Act, 2023, and the Water Conservation Act, 2024, steps towards leniency or leap into laxity? Retrieved from <https://sabrangindia.in/navigating-the-grey-the-biodiversity-amendment-act-2023-and-the-water-conservation-act-2024-steps-towards-leniency-or-leap-into-laxity/>
4. Business Standard. (2024, January 22). Amended biological diversity law raises fear of loss for tribals. Retrieved from [https://www.business-standard.com/economy/news/centre-notifies-biological-diversity-amendment-act-2023-check-details-124012200728\\_1.html](https://www.business-standard.com/economy/news/centre-notifies-biological-diversity-amendment-act-2023-check-details-124012200728_1.html)
5. Khurana, T., & Khurana, T. (2023, September 8). Analysis of Biological Diversity (Amendment) Bill, 2023. Retrieved from <https://www.khuranaandkhurana.com/2023/09/08/understanding-the-biological-diversity-amendment-bill-2023/>
6. Radhika, P. V. (2024). Biodiversity Amendment Act, 2023: A Catalyst to Safeguard India's Indigenous Resources - International Journal of Law Management & Humanities. *International Journal of Law Management & Humanities*, 7(1), 2380–2386. Retrieved from <https://ijlmh.com/paper/biodiversity-amendment-act-2023-a-catalyst-to-safeguard-indias-indigenous-resources/#>
7. Sharma, S. (2024, April 22). Navigating Change: Unravelling the Biological Diversity (Amendment) Act, 2023 | India Corporate Law. Retrieved from <https://corporate.cyrilamarchandblogs.com/2024/04/navigating-change-unravelling-the-biological-diversity-amendment-act-2023/>
8. Kumar, P. N. R., Pathak, S., Singh, R., Ghate, U., Wele, A., James, T. C., & Srinivas, K. R. (2022). Traditional Medicine Review. *Traditional Medicine Review*, 1(2). Retrieved from <https://fitm.ris.org.in/sites/fitm.ris.org.in/files/2022-05/TMR%20Journal%20April%202022-final.pdf>