



REGULATING RESEARCH BY BIODIVERSITY LEGISLATION

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ABSTRACT

Man has a natural instinct to develop, grow or progress. 'Development', a term belonging to the realm of economics, has nowadays acquired a central and irreplaceable category, Development, as it is understood today, is a relatively new idea which belongs to the twentieth century and more specifically to its second half. 'Development' is a complex phenomenon and is used as a synonym of modernization, urbanization and industrialization, reaching a high standard of living and adoption of contemporary consumption levels.

KEYWORDS- natural instinct ,realm of economics ,synonym of modernization.

INTRODUCTION

It reflects the values of evaluation of the so called developed nations as evolution pattern of the developed nations is now considered as universal and obligatory development goals which must be implemented by the rest of the world. In twenty first century expressions like "development", "growth",

"modernization" and progress have become magical concepts whose utility is beyond challenge and , therefore, any issue or question that attacks these magical concepts is not allowed to be raised, rather it is shunned.

India is rich in resources which consist of renewable and non renewable resources. Man in his greed for acquiring more and more has directly affected the resources in a very effective way in the name of development and several developmental policies including the thirst for development in technology and life science. Man has over exploited the resources for purpose of his attainment including exploitation of biological diversities and as such the biological diversity are diminishing which is otherwise very necessary for the natural cycles. But during the last two decades there is a great over exploitation of biodiversity. As per the principles of natural justice, it is necessary to preserve the natural resources for the coming generation and therefore the present generation should make a justifiable use of the natural resources including the biological diversity in a sustainable way.

ROLE OF THE GOVERNMENT:

Government has shown a serious concern in this regard and has given support for conservation of biological diversity sustainable use of its component and fair equitable sharing of the benefits arising out of the use of biological resources more particularly where India is very rich in biological diversity. India is party to the United Nations Convention on biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992. The Government Of India passed the Bio Diversity act 2002 for the purpose of achieving the main purpose of maintaining and preserving the biological diversity and balance use of the same and thus promoting a balance use of all the resources that if used in long run shall give favorable results so as to serve the needs of the present and future generation and thus achieving the object of sustainable development.

REGULATION OF ACCESS TO BIOLOGICAL DIVERSITY

Research and Commercial Utilization :

Section 3 and 4 of the Biological Diversity Act provides for obtaining of previous approval of the National Biodiversity Authority in case of any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for Bio-survey and Bio-utilization. The Biological Diversity Act provides for obtaining approval in case of transfer of the results of any research relating to biological resources occurring in or obtained from India. However one can seek exemption from this if the project involves the transfer exchange of the biological resources which is connected institution as well as the government of India if it confirms with policy guideline of Central Government.

Intellectual Property Rights:

Science and Technology has given a wide scope to the learners and a policy of the Government to secure the intellectual property rights such as copyright, trademark, design, Geographical indication have provided and opportunity for the researcher as he can gain the royalty of his work. Such inventions in scientific field involves utilization of biodiversity by reason of which a person can undertake research and can obtain any intellectual property right including the research which is based on research or related with biological resource and hence and rights such as patents, have been regulated in by this Biodiversity Act .Sec 6 of the biological diversity act lays down the condition of obtaining the approval of National Biodiversity Authority where an applicant/s applies for Intellectual Property Rights by any name from India or from outside the country for any invention related with biodiversity. However when a person applies for patent he can apply for such after he obtains patent but before such patent is sealed .

The National Biodiversity Authority under this provisions can provide for sharing of benefit or royalty or both which shall also contain sharing of commercial utilization of such rights.

Punishment for Contravention of the Provisions of Biological Diversity Act :

Whoever contravenes or attempts to contravene or abets the contravention of the provisions of Section 3 or Section 4 or Section 6 shall be punishable with imprisonment for a term which may extend to five year, or with fine which may extend to ten lac rupees, such fine may commensurate with the damage caused, or with both.

Companies also comes within the purview of the above punishment as every concerned who at the time of the commission of such act involving punishment was done were in control of the company and also the affairs of the company shall be guilty of such act.

Offences to be cognizable and non-bailable :

Any of the above Act if is done then in such circumstances the police officers shall be under authority to proceed with such Act in cognizable way i.e. cognizable offences are those offences which do not require any warrant for purpose of arrested and as such the person can be arrested without warrant from the concerned authority. Moreover offences are bailable as well as non-bailable. Bailable offences are those offences in which a person can obtain a bail after applying before the Court and the Court may grant bail. Whereas non-bailable offences are those offences in which a person can be arrested and shall not be able to be granted bail as he has committed non- bailable offences. Therefore from the above it becomes clear that the Govt. of India have taken the issue of biological diversity, several types of diversity which exist in India very seriously and have provided stringent provisions to check the happenings of exploitation of biological diversities.

Recognizing Rights of Biological Diversity as well future Generation:

The Biological Diversity Act 2002 considered human societies need of minimizing new risk and pressure over exploitation of the natural resources can cause irreversible damage to the society resulting in the loss of natural resources. And therefore it is the need of the day to develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity. Regulate or manage biological resources important

for the conservation of biological diversity where this or outside protected areas, with a view to ensuring their conservation and sustainable use.

CONCLUSION :

It is a well known Newtonian concept that every action has opposite reaction. Actions undertaken towards development growth, modernization and progress also have opposite reactions and their impact is felt primarily on environment which is why issues relating to environment, or ecology are assigned subservient role to economic-technical development. Ignorance of Law is of no excuse though any research activity involves motive of human benefit but it is necessary for all concerned to make aware himself about the consequences of not knowing the legislation and proceeding further for research.

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