

Q. India needs a more comprehensive guidelines for the implementation of Biodiversity Act, 2002. Discuss in the light of recently revised guidelines.

Ans: The Biodiversity Act was enacted to meet the obligations under Convention on Biological Diversity (CBD) to which India is a party in 2002.

In 17 years of implementation, it has resulted a large number of litigations before Court and NAT. To tackle these issues, MoEFCC issued a revised set of guidelines.

Shortfalls of these revised guidelines:

- The term 'guidelines' instead of 'regulation' reduces its potential and provides a confusing mandate.
- The guidelines focused only on 'securing of benefits' and completely silent on 'sharing'.
- It ignored the negotiation between parties about benefit sharing and the pre-determination of percentage of profits to be shared is also against the Nagoya Protocol of CBD.
- There is no rationale provided to how the percentage of annual ex-gross factory sale to be allocated for benefit sharing has been reached.

→ The provision of power to determine benefits is vested under National Biodiversity Authority (NBA), which pose a legal challenge and undermine the role of State Biodiversity Boards (SBBs).

→ The role of Biodiversity Management Committee (BMCs) has also completely ignored.

→ Exempted activities: The exemption provided to traders of bioresources, small-scale industries with low turnover and start ups from paying any kind of benefits.

↳ From legal perspectives, it makes no distinction between different types of commercial activities for exemption.

→ A period of 45 days accorded to NBA to provide approval for emergency purposes, but such a limit doesn't make any sense in case of an emergency.

From the above arguments, it is clear that the guidelines need to be more comprehensive and detailed to resolve future legal challenges. It is important now that lawmakers and experts recognised the situation and strive for better application of mind while implementing the act.