
ENVIRONMENTAL AND BIOLOGICAL PERSPECTIVES ON CONTRACTUAL VALIDITY: A STUDY OF SECTION 23 OF THE INDIAN CONTRACT ACT AND THE BIOLOGICAL DIVERSITY ACT, 2002

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ABSTRACT

The important concerns regarding the legality and enforceability of contracts involving the use and exploitation of biological resources when contract law and environmental legislation come into conflict. This research analyses the relationship between the Biological Diversity Act of 2002, and Section 23 of the Indian Contract Act of 1872, in order to investigate the biological aspects of contractual validity. If an agreement's purpose or consideration is illegal, immoral, or against public policy, it is null and invalid, according to Section 23. This notion becomes more important when discussing biological variety since contracts pertaining to genetic resources, bioprospecting, and traditional knowledge must adhere to legal protections intended to guarantee conservation and fair benefit – sharing. According to the report, agreements that go against the goals of the Biological Diversity Act, for example, by granting unlawful access to biological materials or by distributing benefits in an unfair manner may be declared null and invalid under Section 23 because they are against public policy. It emphasises that sustainable legal practices must strike a balance between business goals and ecological responsibility by further examining the ethical and jurisprudential aspects of environmental morality within contractual relationships. The study comes to the conclusion that the legitimacy of contracts, especially when it comes to biological resources, must go beyond simple consideration and consent to include adherence to environmental laws and social and ecological justice principles.

Keywords: Section 23, Indian Contract Act, Biological Diversity Act 2002, biodiversity contracts, bio-prospecting, environmental morality, benefit-sharing, public policy, ecological justice, contractual validity.

1. INTRODUCTION

Contracts serve as the foundation for all legal, social, and business dealings, enabling the efficient and legally binding exchange of resources, products, and services. In India, contracts are based on the Indian Contract Act, 1872, which guarantees that agreements are made with free consent, legal consideration, and a valid purpose. Section 23, which establishes the line separating legal and illegal agreements, is of particular significance among its components. If the consideration or goal of an agreement is prohibited by law, violates any legal laws, is fraudulent, entails harm to persons or property, is immoral, or goes against public policy, it is declared unlawful¹. The term “opposed to public policy” changes in response to legislative revisions and societal norms.

Contracts have historically used Section 23 to declare contracts that violate legislative restrictions, morals or justice to be void. Public Policy has however, gradually broadened to include ecological and environmental issues, reflecting the evolving legal awareness in response to global environmental crises. The interpretation of Section 23 can no longer be limited to purely moral or economic factors, since environmental sustainability is becoming a mandate of the Indian Constitution, particularly under Article 21², 48A³, and 51A(g)⁴. It is reasonable to say that contracts that disrespect ecological balance, exploit natural resources in an unsustainable manner, or violate laws preserving biodiversity are against public policy.

The Biological Diversity Act of 2002⁵ has considerable significance. In order to satisfy the 1992 Convention on Biological Diversity⁶, the Act was passing upon the request of the convention. It enables the establishment of the legal architecture for the “Conservation on Biological Diversity”, “Sustainable Use of Biological Diversity”, and “Equitable Share of the Benefits” that bioresources and associated traditional knowledge are benefits and are being used. It also restricts the unpermitted access of biological material, especially for foreign entities and stipulates that all bioprospecting activities, research and commercial exploitations obtains permission from the National Biodiversity Authority (NBA). The Act also addresses local and indigenous peoples whose traditional knowledge contributes to the protection of

¹ Id. § 23.

² INDIA CONST. arts. 21.

³ INDIA CONST. arts. 48A.

⁴ INDIA CONST. arts. 51(A)g).

⁵ The Biological Diversity Act, No. 18 of 2002, INDIA CODE (2002).

⁶ Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79.

biodiversity. It provides for their protection by ensuring that they receive appropriate compensation for the commercial exploitation of their traditional knowledge.⁷

Assessing the legality of contracts involving biological resources requires careful consideration of the relationship between Section 23 of the Indian Contract Act and the Biological Diversity Act. A contract may be void ab initio under Section 23 for being “forbidden by law” or “opposed to public policy”⁸, if it allows access to biological material or traditional knowledge without the National Biodiversity Authority’s required permissions or does not include benefit-sharing with local communities. Statutory compliance and environmental morality must thus be acknowledged by the courts as essential components of a contract’s legitimate purpose.

Additionally, as a component of contemporary jurisprudence, the idea of environmental morality has developed, reflecting the notion that ecological integrity must be respected in all human endeavours, including commercial agreements⁹. Environmental morality is a continuation of the public policy that aims to protect environment and life. It is consistent with the idea of sustainable development, which aims to strike a balance between technological advancement and environmental preservation. Therefore, the legality of a biological resource contract must be evaluated in light of its ecological and ethical implications in addition to its financial benefit and mutual consent.

This legal junction is even more crucial in light of the increasing cases of biopiracy, in which multinational firms use genetic resources or indigenous knowledge without permission or just recompense. Even if legally signed, these arguments defeat the public interest and run counter to the Biological Diversity Act’s statutory aim. According to Section 23, judicial action is necessary to protect environmental justice and stop the exploitation of India’s abundant biological resources.

In order to investigate the biological aspects of contractual validity, we will look at how environmental legislation affect how legality is interpreted under Section 23. It makes the case that ecological legality, accordance with biodiversity laws, defence of indigenous rights, and environmental ethics must now be included in the legal purpose of a contract. The paper promotes a jurisprudential framework that balances ecological responsibility with contractual

⁷ National Biodiversity Authority, Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations, Gazette of India, Notification No. G.S.R. 827(E) (Nov. 21, 2014).

⁸ Indian Council for Enviro-Legal Action v. Union of India, (1996), 3 S.C.C. 212 (India).

⁹ Centre for Environmental Law, WWF-India v. Union of India, (2013), 8 S.C.C. 234 (India).

freedom to guarantee that private agreements support the more general objectives of social justice, sustainability, and conservation.

1.1 STATEMENT OF THE PROBLEM

The intersection of contract law and environmental regulations especially concerning the legitimacy of contracts that involve biological resources and traditional knowledge poses great challenges. Although contracts are null and void under Section 23 of the Indian Contract Act of 1872, if they are illegal or against public policy, the environment has rarely used this provision. Unlike the Indian public law Biological Diversity Act 2002, that provides for fair benefit-sharing, controlled access, and protection of biodiversity, legal conflicts arise when contracts regarding genetic resources or bioprospecting disregard these stipulations. There is a need to reconsider the sustainability and environmental ethics that need to be integrated for the environmental obligations to Section 23 of the Indian Contract Act. There is a conflict with the environmental obligations and the 'legality' constraints in Section 23 of the Act, thus the need for a new perspective on the Act.

1.2 RESEARCH OBJECTIVES

- To investigate the effects of Section 23 of the Indian Contract At, 1872 on the enforceability and legitimacy of agreements pertaining to biological resources and traditional knowledge.
- To determine whether contracts that violate the Biological Diversity Act of 2002 can be deemed null and invalid and against public policy under section 23 of the Contract Act.
- To assess how well ecological sustainability and environmental ethics may be incorporated into Indian legal interpretations of contractual validity as essentials elements of public policy.

1.3 RESEARCH QUESTIONS

1. Whether the legality and enforceability of contracts pertaining to biological resources and related traditional knowledge influenced by section 23 of the Indian Contract Act, 1872?
2. Whether context of Section 23, which that contracts do not comply the provisions of Biological Diversity Act, 2002 to be considered void and adverse to public policy?

3. Whether the interpretation of contractual validity under Indian law successfully combine the concepts of environmental ethics and ecological sustainability?

1.4 RESEARCH METHODOLOGY

This study follows a doctrinal and analytical research methodologies in examining Section 23 of the Indian Contract Act, 1872 and the Biological Diversity Act, 2002 for the purposes of determining the validity of contracts relating to biological resources and traditional knowledge. Using qualitative methods, this study interprets statutes and also case laws along with the works various scholars, with a view of determining whether ethics in the environment and sustainability affect the enforceability of a contract. The study relies on primary research sources such as statutes and case law and the constitution, and the secondary research sources such as legal textbooks, scholarly papers, and policy documents on laws relating to biodiversity and the environment. The study takes a comparative and interdisciplinary approach in the study of the incorporation of ecology into contracts in various countries. Therefore, the study aims to find a logical linkage within the concept of lawful object in Section 23 of the Act and the mandate of environment in the Biodiversity Act, to advocate for a contract law principle to be the harmonization of business contracts and preservation of contracts approve to offer positive sustainability ethics in the enforcement of contracts in India.

2. LITERATURE REVIEW

1. Comparative Study of India's Biological Diversity Act, 2002 and the Convention on Biological Diversity (CBD): Convergences and Divergences

Arun, **De Facto L.J.**, Volume 1, Issue 1, (2025).

In this research paper the author studied that, although biological variety is the foundation of life on Earth, the prospect of its disintegration has prompted extensive legal across the world. India passed the Biological Diversity Act (BDA) 2002, as a signatory to the Convention on Biological Diversity 1992 after its pledges. The two frameworks are compared in this research report, with an analysis of their similarities and differences. It talks about how India's Act adapts its provisions to meet national demands while yet capturing the essence of the CBD. The report goes on to list obstacles, assess implementation gaps, and offer solutions for enhancing biodiversity governance in India. Through this paper the author lacks that Few

studies have looked at how the Biological Diversity Act, 2002 and Section 23 of the Indian Contract Act, 1872 connect to determine the validity of contracts involving biological resources. Furthermore, Indian legal study has yet to fully examine how the integration of sustainability and environmental ethical principles into the theory of contractual validity is incorporated.

2. Biodiversity Prospecting: Lessons and Prospects

Katy Moran, Steven R. King, and Thomas J. Carlson, **Annu. Rev. Anthropol.**, (2001). 30:505– 26.

In this research paper the author analysed that recent developments in biotechnology and the adoption of the U.N. Convention on Biological Diversity have drawn anthropologists into the rapidly evolving, morally and philosophically complex field of bioprospecting, or the search for genetic and biochemical resources that have commercial value. Is bioprospecting a novel approach that will support the development of novel treatments and the maintenance of conventional medical systems, and to conserve biological and cultural diversity by showcasing their medical, economic, and social values, and to enable biodiversity rich but technologically underdeveloped nations to benefit from biotechnology and other advantages. Alternatively, is bioprospecting just another kind of colonialism, or bio imperialism, in which the North appropriates the resources and intellectual property rights of the South. Through this research paper author lacks limited understanding of the legal and ethical aspects of bioprospecting under Indian contract and biodiversity laws is currently available. Additionally, the conflict between promoting biotechnological innovation and avoiding bio-imperialism has not been fully explored in the literature to yet.

3. Biological diversity act, 2002 – An analysis

Dr. Purnima Duarah Saikia, **Int. J. Multidiscip. Res. Dev.**, (July 2016), Volume 3, Issue 7, 44-46.

In this research paper the author defined that, the variety among living things, and the ecological complexity of which they are a part, including diversity within and across species, and ecosystems, is referred to as “biodiversity”. “Biodiversity refers to the study of all living things and their ecological impacts in the context of the environment. Biodiversity conservation

is currently gaining momentum globally. The preservation of biodiversity stands out among the environmental concerns that require immediate attention. One of the most significant laws approved by the Indian parliament is the Biological Diversity Act of 2002, which, if properly implemented, would effectively contribute to the preservation of the nation's biodiversity. Here, an analysis of the Act's key provisions has been attempted. Through this research paper author lacks, inadequate evaluation of the Biological Diversity Act of 2002's actual use, and efficacy in accomplishing biodiversity protection objectives is currently available. Furthermore, little is known about how it interacts with other relevant legal frameworks specifically, contract law to support environmentally sound governance.

3. SCOPE AND LIMITATIONS

This paper examines the relationship between Indian environmental rules and contract law, with a focus on agreements pertaining to the use and commercialization of biological resources. In addition to requirements of the Biological Diversity Act, 2002 concerning access and equitable benefit – sharing, it looks at Section 23 of the Indian Contract Act, 1872 to decide when a contract becomes illegal or against public policy. In addition to emphasizing the regulatory roles of the National Biodiversity Authority and State Biodiversity Boards, the research concentrates, on contracts related to bioprospecting, genetic materials, and traditional knowledge. It employs a doctrinal research approach, focusing on ecological ethics and sustainability while relying on legal requirements, scholarly commentary, and policy frameworks.

4. LEGAL AND REGULATORY FRAMEWORK

SECTION 23 OF THE INDIAN CONTRACT ACT, 1872

Section 23 of the Indian Contract Act of 1872 is a pivotal provision for identifying lawful contracts. The Act grants the principle of freedom of contract, but this freedom was circumscribed by requirement that the object and consideration of an agreement must be lawful. Section 23 enumerates the instances when a thing or consideration becomes unlawful and the contracts do not violate the law, morals, or public interests generally with respect to issues related to biological resources and the environment.¹⁰

¹⁰ The Indian Contract Act, 1872, § 23.

Essentials Of a Valid Contract

The contract to be legally enforceable, it must fulfil certain essential elements as provided under the Indian Contract Act, 1872 it includes:

1. **Offer and Acceptance:** There must be a lawful offer by one party and an acceptance of that offer by the other.
2. **Lawful Consideration:** The act or promise exchanged must be legally permissible.
3. **Free Consent:** Parties must enter into the agreement voluntarily, without coercion, fraud, misrepresentation, undue influence or mistake.
4. **Competency of Parties:** The contracting parties must be of sound mind, of legal age, and not disqualified by law.
5. **Lawful Object:** The purpose of contract must not be illegal or opposed to the public policy.
6. **Intention to Create Legal Relations:** The agreement should be intended to have legal consequences.

Unlawful Consideration and Object

Section 23 declares that consideration or object is unlawful:

- It should be forbidden by law
- It defeats the purpose of any law
- Should be fraudulent in nature
- Causes harm to person or property
- It is considered immoral
- It is opposed to the public policy

The agreement was said to be void if any of these conditions are satisfied and it can't be enforced in court of law. For instance, agreements for smuggling protected wildlife species, unauthorized collection of genetic resources, or extraction of the biological materials without proper approval would be considered unlawful because they contravene statutory environmental protections.

Public Policy and Morals

The concept of the public policy serves to ensure that, contracts do not violate moral standards or the interest of society. Although the term is rather vague and open-ended, the courts have utilized it as a justification for holding contracts void when they are considered harmful to the general good or contrary to prevailing legal principles. Analogously, an act which is contrary to societal and ethical standards is considered immoral.

The law therefore recognizes that freedom of contract must consider wider ethical and environmental considerations in the case of contracts concerning biological diversity, for instance, which lead to unethical bioprospecting, unfair exploitation of indigenous knowledge, or are ecologically harmful. They may be held null and invalid as being offensive to public policy.

BIOLOGICAL DIVERSITY ACT, 2002

In order to carry out India's obligations under the Convention on Biological Diversity (CBD), the Biological Diversity Act, 2002 was established. The Act recognizes the rich and diverse biodiversity of the nation and aims to control its use implementing policies that promote conservation, sustainable use, and equitable distribution of the advantages derived from biological resources and associated traditional knowledge. In addition to guaranteeing that any commercial or scientific access to biological materials is conducted in a controlled and responsible way, it seeks to defend the interests of local and indigenous populations who have traditionally protected these resources.¹¹

The three main concerns of the Biological Diversity Act, 2002, are: Biodiversity conservation for sustainable use of biological resources, fair and equitable sharing of benefits arising from the use of biological resources and their associated traditional knowledge, restricts access by

¹¹ Biological Diversity Act, No. 18 of 2002, INDIA CODE (2002).

foreign and certain Indian parties to biological material, and requires benefit sharing agreements, and prior informed consent before access for commercial or research use of biological resources. It also provides for national, states, and municipal administrative mechanisms properly to oversee and manage these processes.¹²

The Biological Diversity Act establishes an Access and Benefit Sharing (ABS) mechanism to ensure that communities and regions providing, biological resources or related traditional knowledge are equitably benefited when such resources are used for commercial, industrial, or research purposes. Benefits may be monetary- like royalties, licensing fees, or joint venture opportunities or non-monetary like technology transfer, skill development, capacity- building initiatives, and community welfare programs.¹³ Users are required to mutually agree on terms and benefit sharing agreements in accordance with regulatory guidelines that foster transparency and ecological protection before accessing such resources, and in the case of foreign or multinational entities, it should obtain prior approval from the National Biodiversity Authority.

Role Of the National Biodiversity Authority (NBA) And State Biodiversity Boards (SBBs)

The National Biodiversity Authority (NBA), at Chennai is a central regulatory authority grants approval for the use of biological resources by the foreign persons, organizations, and companies. It deals with benefit – sharing agreements, formulates conservation plans, advises Central Government on biodiversity matter, and works to safeguard indigenous and traditional knowledge systems¹⁴. At the state level, SBBs¹⁵ are responsible for access, to biological resources for both commercial and domestic research purposes. They promote proper management of resources for sustainable use, scrutinize applications regarding utilization of such resources, and provide advice to the state governments on conservation measures. The BMCs are grassroots level organizations that use, people's biodiversity registers to document the local biological resources, and ensure community participation in conservation and benefit-sharing programs.

¹² Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79.

¹³ The Environment (Protection) Act, 1986, No. 29 of 1986, INDIA CODE (1986).

¹⁴ National Biodiversity Authority, Government of India, Functions of the NBA.

¹⁵ State Biodiversity Boards, Biological Diversity Act, 2002, §§ 22–24.

5. RELATIONSHIP BETWEEN CONTRACT LAW AND PRESERVATION OF BIODIVERSITY

Environmental Public Policy

Environmental public policy is the compilation of laws, rules, and governmental policies directed towards protecting natural ecosystems, and resources not only for present but also future generations. It was based upon themes of the resource's conservation, sustainability, and ecological preservation. Its aim is that economic and developmental activities should not affect the environment adversely. This idea finds application in Indian laws like, the Environmental Protection Act of 1986¹⁶, and Biological Diversity Act of 2002 and legal theories such as the principle of polluter pays, and the doctrine of public trust. The general thinking behind environmental public policy is that natural resources are not merely a commodity for commercial exploitation.

The Impact of Commercial Agreements on Biological Resources

Commercial agreements related to biological resources are commonly encountered in the industries of food production, biotechnology, medicines, agriculture, and cosmetics. Gathering, utilization, or selling of plants and seed s, microbes, or associated traditional knowledge may be the subject of such contracts. However, these contracts often lead to ecological damages, depletion of natural resources, and inequitable treatment for the indigenous and local communities, possessing this knowledge if they are entered into without any legal sanction or regulatory compliance. Section 23 of the Indian Contract Act, 1872, renders any contract void if it is violations of laws related to environmental protection or causes unlawful exploitation.

Bioprospecting, Genetic resources, and Traditional Knowledge

Bioprospecting is defined as the identification, and analysis of biological resources, such as plants, animals, and microbes, to identify chemicals or genetic properties useful for industry, commerce, or medicine. These materials almost always have a direct link to the traditional knowledge retained by local, and indigenous groups. These groups are recognized under the Biological Diversity Act, as the rightful owners such knowledge, and their permission must be sought with fair distribution of benefits before any commercial use is made. Because of this,

¹⁶ The Environment (Protection) Act, 1986, No. 29 of 1986, INDIA CODE (1986).

strict control is necessary to prevent what is called biopiracy, or the exploitation of biological resources or traditional knowledge by organizations or researchers without proper consent or payment to the communities that have protected them for centuries.

Conflict Between Contractual Freedom and Ecological Responsibility

While contract law allows parties autonomy of negotiation and making contracts, ethical and legal restraints put a limit on such autonomy. Section 23 of the Indian Contract Act, has therefore rendered any contract, which contains any illegal, immoral, or socially deleterious item or consideration, void and unenforceable. These are contracts that utilize biological resources in a manner injurious to the environment, or which disregard conservation principles, or make use of community knowledge without permission. Ecological responsibility means that environmental law regulates the equitable use of natural resources. Thus, contractual flexibility cannot be stretched to the detriment of community rights or environmental damage. This was situation where, a balance needs to be struck among financial gain, social justice, and environmental preservation.

6. CONTRACTUAL INVALIDITY UNDER SECTION 23 IN CONTEXT OF BIODIVERSITY

Contracts Allowing Unlawful Access to Biological Materials

Illegal contracts refer to those that are made for, access to biological resources with no permission. Under the Biological Diversity Act of 2002, prior approval by NBA or respective SBBs is required before people, businesses, and research institutions, particularly foreigners, use or collect biological resources. It is thus illegal for anyone to enter into an agreement that allows the extraction, use, or export of plants, seeds, microbes, or genetic resources without such approval. Such contracts can lead to exploitation of rights of the local, and indigenous groups, loss of biodiversity, and ecological damages. Because of this, a contract for providing unapproved access to any biological resource is void ab initio and unenforceable.

Contracts with Unfair or Non-compliant Benefit-Sharing

The Biological Diversity Act lays great emphasis on fair and equitable benefit sharing. If any business or researcher gains monetarily by utilizing biological resources or traditional knowledge, they have an obligation to share the benefits, be they financial or in the form of

technology transfer, training or development support, with the indigenous or local communities who have conserved and passed on this information. Agreements that deny these advantages, impose unfair conditions, or ignore their contribution are considered exploitative. Such agreements facilitate biopiracy and violate the legal framework of the Act. For this reason, contracts which violate ABS clauses can be rendered null and invalid due to their lack of ethical and legal validity.

CASE LAWS AND JUDICIAL INTERPRETATIONS

Kani Tribe/ Arogya Pacha – Jeevani Drug Benefit Sharing Model

In India, the Kani Tribe/ Arogya Pacha case is a seminal illustration of fair benefit – sharing. Researchers from the, Tropical Botanical Garden and Research Institute (TBGRI) noticed that Kani tribe of Kerala had long used the forest plant Arogya Pacha to increase stamina and lessen fatigue. They later scientifically verified the plant's medicinal qualities and created the herbal medication “Jeevani”. TBGRI engaged into a benefit sharing agreement, giving tribe 50% of licensing fees, and creating the Kani Welfare Fund Trust to oversee the benefits for the community after realizing that this information came from the Kani community.

This approach played a part in the framing of, the Biological Diversity Act of 2002, India's first officially recognized access and benefit sharing framework. It also shows respect for traditional knowledge and recompense in a just manner for the commercial utilization of biological resources. This case provides that any agreement related to the biological resources must not violate public policy, environmental protection principles, or community rights vis-a-vis Section 23 of, the Indian Contract Act. Contracts may thus become void which fail to provide due benefit - sharing or have involved unauthorized access to resources.¹⁷

Turmeric Patent Case (USPTO, 1997 Revocation)

One important example of preventing commercial exploitation of traditional knowledge is the Turmeric Patent Case (USPTO, 1997 Revocation). In this instance, the use of turmeric for wound healing a therapeutic method that has been practiced for generations in India was given a US patent. In order to show that the information was not new, the Indian Council of Scientific

¹⁷ K. Pushpangadan & P. K. Rajasekharan, *Arogyapacha (Trichopus zeylanicus): The Kani Tribe, TBGRI and the First Benefit-Sharing Model Under Biodiversity Legislation in India*, 7 J. ETHNOPHARMACOLOGY 135 (1999).

and Industrial Research (CSIR) contested, the patent by presenting written proof from antiquated literature and conventional medical procedures. Consequently, patent was cancelled by the US patent and Trademark Office. This case demonstrates that long – stranding traditional knowledge and communal rights cannot be superseded by economic interests.

According to Sec 23 of the Indian Contract Act, any contract that seeks advantage of such traditional knowledge without acknowledgement or fairness would be deemed immoral, against public policy, and therefore null and void, reiterating the moral and legal requirement of openness and fair- benefit sharing.¹⁸

Divya Pharmacy vs. Union of India (2018)

In this case, the Uttarakhand High Court judgement made the, application of the Biological Diversity Act of 2002, to commercial utilization of biological resources clear. This case, the Appellant, Divya Pharmacy, pleaded that it should not be obligated to pay ABS fees, as such obligations fall solely upon foreign organizations.

The Court had rejected this argument, and held that the ABS laws equally apply to the Indian businesses utilizing biological resources for commercial gain. The Court emphasized that biological resources are a part of shared heritage in this country, and the local and indigenous populations who contribute to conservation and protection of those resources must be sufficiently compensated for the benefits those populations confer.

This would mean that any kind of arrangement aimed at bypassing obligations to share benefits under Section 23 of the Indian Contract Act is undeniably void for being against public policy. This also reinforces the notion that commercial use of biodiversity has to be reconciled with moral and legal imperatives of equity and sustainability.¹⁹

Coca- Cola & Pepsi Biodiversity Access Investigations (NBA Orders, 2021)

The legal actions mounted by the National Biodiversity Authority against Coca- Cola and Pepsi Co in 2021 brought into focus the requirement for prior permission on the part of the businesses in utilizing plant- based substances derived from Indian biodiversity. The NBA insisted that the

¹⁸ Turmeric Patent Case, Re-examination of U.S. Patent No. 5,401,504 (U.S. Patent & Trademark Office Apr. 21, 1997).

¹⁹ Divya Pharmacy v. Union of India, W.P. No. 343/2016 (Uttarakhand High Court, Dec. 21, 2018).

companies follow the permission processes under the Biological Diversity Act, 2002, reiterating that it is illegal to utilize biological resources for commercial purposes in the absence of such permission.

Any contract, therefore, which allows access to these resources without regulatory permission has for its object an unlawful purpose. These contracts are void and unenforceable under Section 23 of the Indian Contract Act, 1872, since they run counter to public policy and the requirements of the law. This case illustrates that fair benefit – sharing and adherence to the law are essential components that must be satisfied if a biodiversity contract is to be enforceable.²⁰

Biocon Ltd & Others. v. Karnataka Biodiversity Board, (2015)

A number of pharmaceutical and biotechnology businesses were found to have exploited biological resources from Karnataka in their research and commercial goods without notifying the authorities in the Biocon Ltd. & others v. Karnataka Biodiversity Board (2015) proceedings. According to the Biological Diversity Act of 2002, these enterprises must negotiate access and benefit – sharing (ABS) agreements and seek prior clearance, the Karnataka Biodiversity Board explained. This ruling clarified that Indian businesses, not simply foreign ones, are subject to the same ABS responsibilities.²¹

7. FINDINGS OF THE STUDY

According to the research, contracts involving biological resources must be assessed in line with environmental laws and more general public policy goals in addition to free consent and consideration. According to Section 23 of the Indian Contract Act, 1872, any agreement that has an illegal aim or goes against the public interest is null and invalid. It is evident that agreements allowing uncontrolled exploitation of biological resources or avoiding equitable benefit sharing responsibilities are incompatible with India's commitments to conservation and fairness when this concept is read in combination with the Biological Diversity Act, 2002. Biodiversity is seen as a national and community- owned resource, and its commercial use must adhere to sustainability standards, as demonstrated by the instances and regulatory rulings

²⁰ National Biodiversity Authority, Order Against Coca-Cola and PepsiCo for Access Without Approval (2021).

²¹ Biocon Ltd. v. Karnataka Biodiversity Board, Proceedings No. KBB/ADM/CR-06/2013-14 (2015).

highlighted. In order to ensure compliance and stop biopiracy, organizations like the National Biodiversity Authority and State Biodiversity Boards are crucial.

According to the report, modern contract law is beginning to take collective environmental responsibilities into account rather than just a commercial perspective. The concept of environmental ethics calls for protecting natural ecosystems, respecting indigenous knowledge systems, and making sure that resources are managed in a way that respects the rights of future generations. Additionally, ecological justice demands that the communities that have historically safeguarded biodiversity get an equitable portion of its benefits. Consequently, agreements pertaining to biological resources cannot put financial gain ahead of environmental principles. The sustainability idea is acknowledged in environmental rules on a national and worldwide level requires that biological resources be used and extracted in a way that protects ecological stability and promotes the welfare of nearby populations.

8. SUGGESTIONS

There are a few changes that are required to bring the preservation of biodiversity and contract law in better alignment. For instance, strict laws should be enacted to prevent commercial utilization of biological resources without necessary permission and fair and equitable benefit-sharing. Awareness generation and capacity- building programs should be designed to help local communities, firms, and researchers understand their rights and responsibilities under the Biological Diversity Act. Agreements relating to biological resources must contain express provisions relating to benefit- sharing, community involvement, and explicit prior approvals. Strengthening documentation of traditional knowledge through the mechanism of People's Biodiversity Registers will go a long way in the future in combating biopiracy and recognizing community stewardship.

9. CONCLUSION

This study thus concludes that apart from private consent and consideration, the enforceability of contracts needs to be judged in the perspective of environmental laws and more general ethical considerations. In the instant case, Section 23 of, the Indian Contract Act, 1872 applies, as it render an agreement void, and unenforceable if its consideration, or object was unlawful, or opposed to public policy. The basic elements of public policy in India are conservation, equality, and sustainable use, which are directly opposed to the contracts on biological resources whenever these violate the environmental laws, circumvent the procedures for

obtaining legislative approval, or fail to include equitable benefit-sharing.²²

These are further enhanced by the Biological Diversity Act, 2002, where, the regulatory framework through National Biodiversity Authority and State Biodiversity Boards has been established, to ensure responsible access to bio-resources and to prevent marginalization or exploitation of traditional knowledge holders. Yet, with more and more cases of biopiracy, traditional knowledge theft, as well as the commercial utilization of biological resources, the need for ecological morality in the decisions of judges concerning business matters has also come to light. Courts and tribunals are increasingly recognizing biodiversity as part of the common heritage that needs protection for present, and future generations based, on the principle of intergenerational equity.

In other words, alignment of contract law and biodiversity protection is not only a procedural but also a substantive matter, implying recognition of the environment as a stakeholder in legal and economic systems. Ensuring that contractual arrangements respect ecological limits and community interests is crucial to arrive at a balanced model of development that will support both economic progress and environmental justice.

²² The Indian Contract Act, 1872, § 23.