

Intellectual Property advocacy in the fields of:

- IP Infrastructure
- IP Valuation
- M & A
- IP Policy
- Technology Transfer
- Innovation Research
- Patent Law
- Licensing
- Data Management
- Copyright
- Collaborations
- Balance for Rights & Obligations

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## EDITORIAL

### Memorize all the images and their positions:

Welcome news indeed! The (Natural) Biodiversity Amendment Bill, 2023 has been amended at last. Justice delayed from 2002 and denied till now has been set right.

The Convention on Biodiversity (CBD) which was under negotiation from 1988 by United Nations Environment Programme (UNEP) got enforced on May 2002. This led to the commencement of ad hoc group working on Nagoya Protocol which got concluded post 2010 and entered into force on 12th October, 2014. The Biodiversity set at each of the member's National level were to be enacted and implemented after the Nagoya Protocol was finalized. Except India, all other countries waited for Nagoya Protocol to be entered into force and got ratified.

India, in the meantime, in a tearing hurry to grab the headlines and be the frontrunner of sustainable development enacted the Biodiversity Act, 2002 hastily and haphazardly. It was indeed a badly drafted and badly enforced Act followed by equally ill-drafted Rules (Biodiversity Rules 2004), followed by implementing an agreement draft to be signed by Patent Applicants and a periodic announcements of procedures randomly and unilaterally. These actions have been followed with concerted efforts at forceful enforcement and policing against Patent Applicants.

There have been innumerable examples of mis-enforcement by the NBA authorities. There have been many examples of ordinary citizens who out of passion or creativity filed patent applicants and applied for NBA permission. They signed the agreement made available by NBA. After getting the Patent granted, they were happy and did not pursue commercialization. But NBA officers have been pursuing them for payments of royalty even though may not have been commercialized. All these harassments and overzealous enforcement pursuits have now been put to rest by the enactment of the Amendment Bill, 2023.

India's innovation entrepreneurship and opportunities had been adversely impacted by the Biodiversity Act, 2002, the Biodiversity Rules, 2004 and the procedural processes thereof enforced by the Natural Biodiversity Authority till now. Use of waste materials otherwise unusable parts of fossils and plants and self-cultivated plants were created as endangered material and demands were made for sharing contributions on them even if not commercialized. All this has changed now after the Amendment, 2023. Prior to tabling the bill in the parliament, the Draft Bill of 2021, was subjected to the Parliament's selected expert committee and then it was tabled in Lok Sabha and later in Rajya Sabha after approval by the Parliamentary Committee. The Amended Act (2023) has set right many wrongs and has made the Biodiversity Act, compliant with the Nagoya Protocol.

The Salient Features of the Biodiversity (Amendment) Act, 2023 one as follows:

- Offences under the Act have been decriminalized – This makes provision for effective compliance with making monetary contributions for benefit sharing as the solution and final objective. Offences Were Cognizable and Non-Bailable under the 2002 Act, imprisonment upto five years were provided for in his old act. De-criminalization of offences and provides for penalty in range of Rs. 1 lakh to Rs. 500 lakhs.

- ii. As enforced to earlier provision of having to obtain permission from NBA, prior to grant of patents, the amended provisions provide for Indian Researchers, Investors, Patentees and applicants only to intimate and register the NBA for permission only at the time of commercialization.
- iii. As enforced to earlier provision of having to obtain permission from NBA, prior to grant of patents, the amended provisions provide for Indian Researchers, Investors, Patentees and applicants only to intimate and register the NBA for permission only at the time of commercialization.
- iv. The definition of foreign entities have been synergized with the Companies Act 2013, and only the foreign entities need to get permission prior to patenting in India on Indian bio-resources.
- v. State Governments are required to set up BMC (Biodiversity Management Committees) to motivate and encourage habitat protection and keeping track of protection initiatives for endangered species.
- vi. The self-cultivators of herbs and natural products for Ayurveda and other forms of traditional medicines and traditional knowledge based activities have been exempted under the amended Act.

Consequent to the new Amended Act 2023, the Biodiversity Rules, 2004 will also need to undergo amendments. The Amended Act, 2023 will come into force only after the Rules are notified and such date is announced by the government.

## **DECODING THE DATA PROTECTION BILL OF 2023**

The Lok Sabha on Monday passed the Digital Personal Data Protection (DPDP) Bill with a voice vote, bringing India a step closer to its first law that enshrines how private or government entities can use or process citizen's data. The opposition has expressed several concerns over the legislation and has been demanding that the bill be sent to a parliamentary panel for further deliberations. They alleged that the bill violated citizens' right to privacy.

### **Main provisions of the Bill:**

Companies and businesses (data fiduciaries) cannot process the personal data of any user without his or her explicit consent. Companies which process such personal data must give exact details of the purpose for which the data is collected and delete it as and when this consent is withdrawn. The consent architecture provided in the Bill is similar to other digital privacy provisions across the world. The bill has also moved to a 'blacklisting' approach for cross-border transfer and processing of personal data, meaning that the government would specify certain geographies where data cannot be processed. This approach is in contrast with the approach taken by other major data jurisdictions such as the European Union, where the approach is to identify and whitelist jurisdictions which follow and implement adequate legal standards for processing of data within their geographies. The Bill suggests a penalty of upto Rs. 250 crore per instance of data breach and a maximum penalty of Rs. 500 crore for all such breaches. However, it does away with criminal penalties, including all jail terms, envisioned under the older versions.

### **Impact on businesses and individuals:**

The most immediate concerns are around the increased cost of compliance that many say is likely to hurt Indian startups. The absence of the provision deemed consent has taken policy experts and organizations by surprise. Deemed consent is a legal concept that allows for the processing of personal data without explicit consent when certain conditions are met. The Bill also allows transfer and processing of personal data transfer to any country or geography outside India but companies have called for more clarity on various aspects around it. It also excludes processing of personal data put out in public domain which will impact the operation of search engines and AI chatbots in the country. The bill has stringent conditions for processing data of children and parental consent is a must for processing data of minors with certain exemptions. It also states that undertaking tracking and behavioral monitoring of children is prohibited with certain exemptions.

*Source: [https://www.google.com/search?q=Decoding+the+Data+Protection+Bill+of+2023&dq=Decoding+the+Data+Protection+Bill+of+2023&gs\\_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQIRigATIHCAIQIRigAdIBCDEyOTVqMGo5qAIAAsAI&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Decoding+the+Data+Protection+Bill+of+2023&dq=Decoding+the+Data+Protection+Bill+of+2023&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQIRigATIHCAIQIRigAdIBCDEyOTVqMGo5qAIAAsAI&sourceid=chrome&ie=UTF-8)*

## **EPIC SAGA OF CIPLA: HOW A SWADESHI ROBIN HOOD TOOK ON BIG PHARMA OF THE WEST**

In 1972, then Prime Minister Indira Gandhi got a message from Yusuf Khwaja Hamied, the owner of Cipla: “Madam, here is the drug. Should millions of Indians be denied the use of a life-saving drug just because the inventor doesn’t like the color of our skin?” She was taken aback.

Hamied, who had been fighting to have the patent laws changed, had marketed a product called Propranolol, which was a drug against heart disease, the first beta blocker in India. Propranolol was invented by ICI (Imperial Chemical Industries) in England, in 1963, and marketed worldwide in 1965. In 1972, Cipla had introduced the generic version of Propranolol in India, and ICI filed a case against Cipla for patent infringement.

Hamied’s message resonated with Gandhi and overnight India changed its patent law. The new law said a company could not patent any end product or compound, but only the process to make that product and that too for a period of seven years. Now, Hamied could make his copycat versions, called generics, by slightly changing the manufacturing process and he would be breaking no law

*Source: <https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/epic-saga-of-cipla-how-a-swadeshi-robin-hood-took-on-big-pharma-of-the-west/articleshow/102440967.cms?from=mdr>*

## **THE ANUSANDHAN NATIONAL RESEARCH FOUNDATION BILL- 2023**

A significant step for research and innovation in India! Science & Technology Minister Dr. Jitendra Singh introduced The Anusandhan National Research Foundation Bill-2023 in Lok Sabha, aiming to set up a Rs 50,000 Cr fund to “seed, grow, and promote” research and development in India. The Bill aims to tap into CSR funds, with a goal of securing at least 10% contribution for R&D. It also addresses R&D funding disparities among IIT’s and other premier institutes and, state universities, with the latter receiving barely 11% of allocated funds.

The proposed foundation will serve as an apex body for high-level strategic direction of scientific research in the country according to the recommendations of the National Education policy (NEP), with an executive council under the Principal Scientific Advisor, Government of India. The key objectives of the Bill includes Preparing R&D roadmaps, nurturing research at academic and research institutions, establishment of conducive research infrastructure focused on National priorities, emerging frontiers and strategic research etc.

*Source: <https://www.thehindubusinessline.com/news/anusandhan-national-research-foundation-bill-2023-tabled-in-lok-sabha/article67158624.ece>*

## **INDIAN PATENT OFFICE LAUNCHES THE IP WAVE WEBSITE**

The IP Wave Website was launched at the valedictory ceremony of the Rashtriya Bouddhik Sampada Mahotsav 2023.

The IP Wave platform equipped with AI chatbot provides a concise overview of the progress and recent developments in Indian Intellectual Property, innovation, and startup ecosystem. Additionally, it highlights the impact of Intellectual Property & innovation on the economic value creation for business and society as well.

The website provides research-based insights on topics related to intellectual property like designs, trademarks and copyright in conjunction with areas like trade, technology, emerging markets, sustainability, startups, creative economy etc.

The newsletter was started in September 2021 with an intention to provide comprehensive insights and resources to navigate the complex world of intellectual property. The newsletter has a reach to over thousands of across the countries and beyond. It is a free to read publication with constant research efforts of Sanrachna Foundation and Shree Guru Gobind Singh Tricentenary University, Gurugram.

The link to the IP Wave website is [www.readipwave.com](http://www.readipwave.com). The user interface of the website is as follows:





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WED, 11:19 AM



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