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# 'Bugging' questions of biopiracy

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The debate over scientists caught collecting insects from a protected area raises larger issues of facilitating research while safeguarding natural resources.

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A debate is raging in conservation circles regarding two Czech scientists caught collecting insects from the Singalila National Park in West Bengal. Petr Svacha and Emil Kuchera were arrested by Forest Department officials for taking out beetles, butterflies and other insects without permission. They have been charged with offences under Sections 27 and 29 of the Wild Life Protection Act, 1972, relating to illegal entry and removal of wildlife from a protected area.

The controversy relates to the credentials of the scientists, the legality of their arrest, the rigidity of the law, and the conditions in which they are imprisoned. Many scientists from within and outside the country have petitioned for their release while others are questioning why they should be treated any differently from others who break the law. But there is another aspect of this debate worth talking about.

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The action of the scientists attracts not just the provisions of the Wild Life Protection Act but also those of the Biological Diversity Act (BDA), 2002, which was brought into place as part of India’s commitment to the Convention on Biological Diversity. The BDA was envisaged to be a response to cases of bio-piracy (improper collection and/or commercialisation of biological resources or related knowledge, as in this case), apart from ensuring conservation, sustainable use and equitable sharing of benefits.

As per the BDA, no foreign entity can access biological resources in the country for research or commercial purpose without the permission of the National Biodiversity Authority (NBA), based in Chennai. Neither can any transfer of research results or Intellectual Property Rights (IPRs) be obtained without such explicit approval. In order to do so, the individual, institution or corporate would need to fill a form highlighting the purpose of the access and if there are any commercial gains to be arrived from it. If yes, then there would be a mechanism to determine equitable sharing of benefits arrived from such commercial use. The Czech scientists are said to have been collecting insects for publishing a book; others say that it may have been for trade by at least one of them (who is reported to have advertised this on his Web site).

### Question of ‘benefit-sharing’

Both these actions would mean deriving some individual benefit, apart from the first one being a service to entomology. With these clear benefits, this access would have been liable to sharing of the same through the mechanisms determined at the time of grant of approval. What is important is that the term ‘benefit’ does not mean only monetary gain.

Indeed, increasingly, researchers themselves are questioning whether there should be ethical codes of conduct that require sharing of information, credits, methodologies, technologies, and/or money, so that the site and/or community from whom resources and knowledge are obtained, also gain.

It would be important to say, however, that in the 261 approvals granted under the Biological Diversity Act, 2002, there has been no reported instance of benefit sharing being determined. The NBA is in the process of forming guidelines for this, five-and-a-half years after



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the legislation came into being! In the case of the Czech scientists, the NBA has the powers to take action based on the knowledge about this illegality. Citizens too can bring this to the notice of the authority and seek action or take the matter to court after giving a notice to the NBA.

But there are also some larger questions. If permission had been sought by the Czechs under the Biological Diversity Act, other requirements would have kicked in. An "expert" committee of the NBA would have looked at the potential impact of such access and allowed or rejected it. This would be in addition to the permissions to be procured under the Wild Life Act, since the collection was from a national park.

In an earlier instance, the NBA disallowed the Bangalore-based Ashoka Trust for Research on Ecology and Environment (ATREE), to transfer 2,00,000 specimens of insects from the Western Ghats to the US. It questioned why such a large sample had to be exported out.

Taxonomists were livid as this would have meant the end of their project as facilities to test the samples were not available in India. Especially controversial was the fact that in other cases handled by the NBA, germplasm of several species, including Himalayan Lily, anaerobic fungi from animal faeces, jatropha, jute, Bacillus (bacteria) from forests and brinjal, have been allowed to be accessed and sent out of India.

Scientists have a valid grouse against overbearing and unnecessary regulations that impede independent research. But it is also important to view this in the light of the commodified world we all live in today. Biological resources are an important component of several industries such as seeds, pharmaceuticals, biodiesel, nutraceuticals and so on. Research has been often a conduit by which commercial entities gain access to bioresources.

The transfer of germplasm from a local site to entities within or outside the country, even with permission, cannot, by itself, check biopiracy. The BDA mechanism is simply not adequate for this. For instance, there is little involvement of local communities in consenting to such access, not much consultation with the scientific community, and inadequate capacity to track transfers. But for now the law exists and it is mandatory for any scientist Indian or foreign to follow it, even

while lobbying for its improvement to facilitate genuine research as also stop biopiracy.

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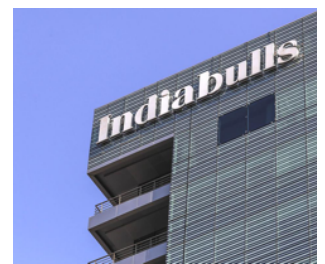
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