

421 Plants EXEMPTED from Biodiversity Act protection!

Biological Diversity Act, 2002 was enacted in compliance with the UN Convention on Biological Diversity, 1992. The law reinforces that bio resources are the sovereign property of the people.

The State, as a custodian, is required to promote preservation of biodiversity, sustainable use of its components, guarantee fair and equitable sharing of the benefits arising out of the use of the bioresources and associated tradition knowledge and proactively tackle bioloot and biopiracy.

National Biodiversity Authority and State Biodiversity Boards are required to work with Biodiversity Management Committees of Local Governments in implementing the law.

Hidden in this law, however, is a provision (Sec 40) that exempts Normally Traded Commodities from the protection guaranteed by the law.

On 26th October, 2009, Indian Environment and Forest Ministry (MoEF) notified 190 plant species as 'Normally Traded Commodities' (NTCs), 2002. Which meant these plants could be exploited for revenue, and without oversight from the regulatory agencies.

ESG's research revealed that several species notified were critically endangered and most valuable medicinal plants. Thus, they would now be overexploited and possibly go extinct.

As per IUCN Red List, 15 species in the notified list were in danger: 6 are vulnerable, 5 near threatened, 1 endangered and 3 critically endangered with the possibility of extinction.



A tabulation of these species based on the threats perceived is enclosed.

Vulnerable	Near Threatened	Endangered	Critically Endangered
Acorus calamus (Kan: Baje)	Gloriosa superba (Kan: Aginsikhe, Balipaapu, Chowthi hoo)	Rauvolfia serpentina (Kan: Patalagarudi)	Inula racemosa (Kan: Rasnabheda)
Curcuma angustifolia (Kan: Koovehittu)	Piper longum (Kan: Hipli)		Kaempferia galangal (Kan: Kachchura)
Garcinia indica (Kan: Dhupadamara)	Dendrobium sp.		Valeriana jatamansi (Kan: Tagara)
Piper nigrum (Kan: Menasu)	Cymbidium sp.		
Aegle marmelos (Kan: Belapatre)	Cholorophytum borivillianum (Kan: Musli)		



ESG'S RESPONSE

In response to ESG raising alarm over this Notification, MoEF issued a clarification on 16th February 2010. Which further confirmed that - the 190 species will be exempt from protection accorded by Biological Diversity Act when they are traded as commodities the 2009 notification applies only for export of these 190 species, meaning prior permission of NBA for exporting them is not required. (The protection is guaranteed only if any of these species are being used for research.)

ESG challenged this Notification in a PIL (WP 41532/2012) before the High Court of Karnataka, which apart from highlighting the acts of biopiracy by Mahyco/Monsanto in the development of B.t. Brinjal, questions the Constitutional validity of Section 40 of the Biodiversity Act, 2002 relating to NTC.

In the decade that has passed since the case was filed, a lot of damage has been done to India's biodiversity. More species were added to the NTC list on 7th April, 2016 and then again on 7th November, 2017, thereby increasing the number of NTCs from 190 to 421!

A survey by ESG confirms the 15 endangered species notified in the first list continue to remain in subsequent notifications. Indicative of the threat to India's bioresources is in how status of two species has deteriorated substantially - Garcini imberti Bourd (commonly referred to as Kokkum) and Chlorophytum borivillianum Santapau & R.R.Fern (commonly known as Safed Musli) have become locally extinct in several parts of India.

See: <https://tinyurl.com/ESGProtectsBioresources>



BIOPIRACY by Monsanto promoting

THE DISCOVERY

What began as an effort to collaborate with progressive farmers, civil society organisations, farmers movements, etc in ensuring India would reject B.t. Brinjal (India's first food GMO) given its irreversible consequences to environment, public health and also socio economic implications, turned out to be the first ever case globally where American multinational company Monsanto and its subsidiary Mahyco (both owned by Bayer now), along with various public agri unviersities of India, would be charged with criminal violation of Biological Diversity Act on grounds of biopiracy. Responding to an important question from farmers who asked "Who owns the cotton and brinjal that Monsanto has accessed to turn them into proprietary GM products", ESG dug deep and exposed how local farmer bred varieties had been access by Monsanto/Mahyco criminally and illegally.

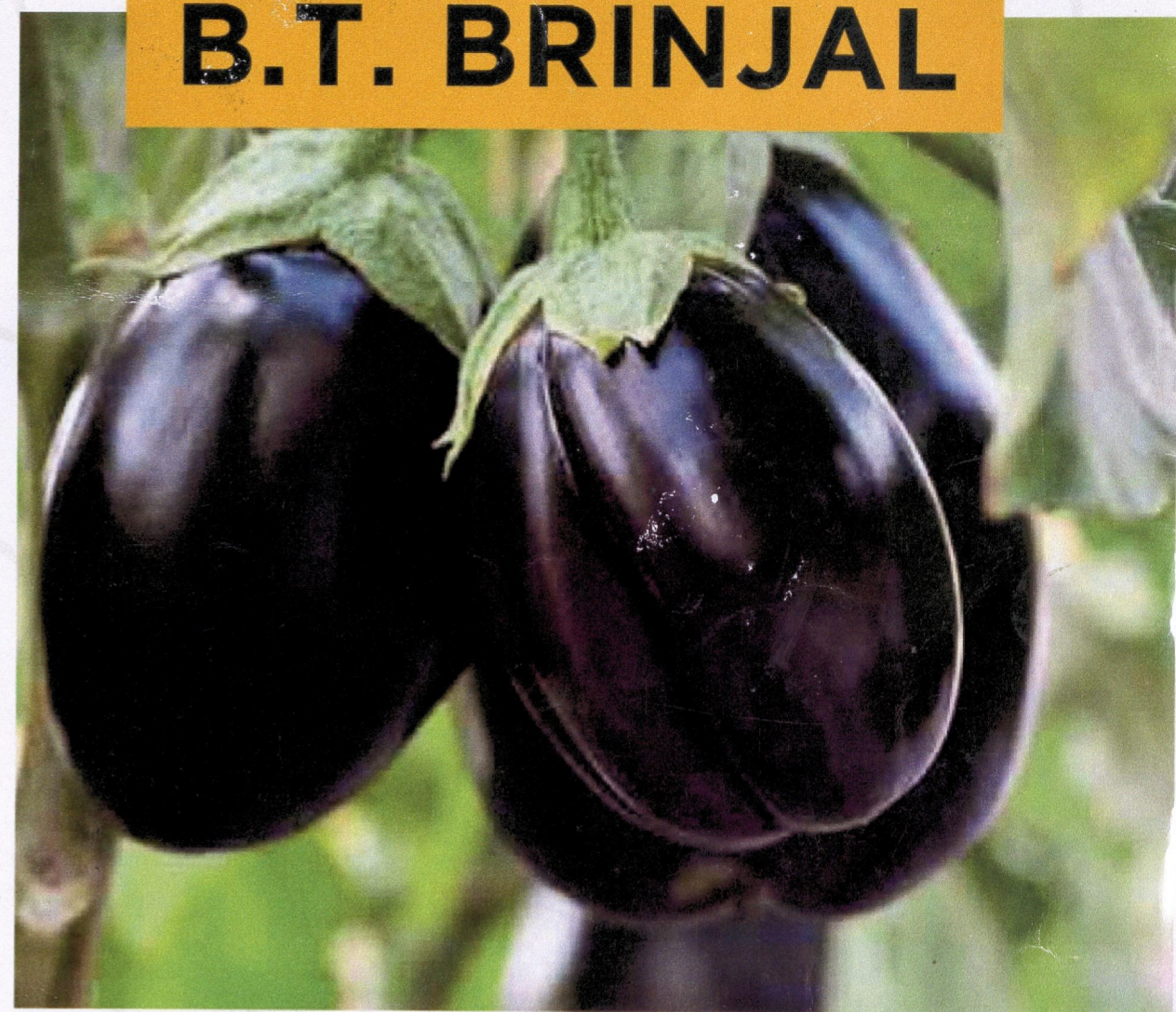
ESG research exposed Mahyco, Indian subsidiary of Monsanto (now owned by Bayer) took the proprietary Cry I AC gene and inserted into 16 local farmer varieties of Brinjal without seeking consent of Biodiversity Management Committees, State Biodiversity Boards, and National Biodiversity Authority, thus committing biopiracy. M/s Sathguru Management Consultants Pvt. Ltd. which represented Cornell University (Cry I AC gene patent holder) and USAID led Agricultural Biotechnology Support Programme, along with University of Agricultural Sciences, Dharwar, Tamil Nadu Agricultural University and Indian Vegetable Research Institute, Varanasi participated in this programme, well aware this constituted a brazen act of biopiracy.

GLOBAL CONSEQUENCES

In 2011, criminal proceedings were initiated against Mahyco/Monsanto and the agricultural universities by regulatory authorities, even as ESG raised concerns about resistance to act against the violators in a PIL before the Karnataka High Court (WP 41532/2012). An appeal against the criminal proceedings failed before the High Court, but was subsequently stayed by the Supreme Court, and remains so since 2013.

ESG's PIL was also transferred to National Green Tribunal, a decision ESG challenged in the Supreme Court as bad in law. Following persistent efforts over a decade, in November 2022 the Supreme Court returned the PIL to the High Court of Karnataka. The outcome of this PIL will shape the ctively implement BDA. The implications of such biopiracy are grave. Corporate biopiracy exploits traditional knowledge, violates farmers' rights, and is a gateway for over-

B.T. BRINJAL



ESG raised complaints with National Biodiversity Authority (NBA), MoEF and Karnataka Biodiversity Board. Initially reluctant to act on the complaints, the regulatory agencies were forced to responde when in 2011 India's then Environment Minister Ms. Jayanti Natarajan stated in Parliament that the access was illegal, constituted biopiracy and would be legally pursued.

See: <https://tinyurl.com/ESGTacklesBiopiracy>



SEED ACTIVISM

Patent Politics
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-exploitation of bioresources. It has potential to wipe out critically important local varieties of food and commercial crops, besides destroying biodiversity and local ecology.

ESG's initiative is now the subject of major global scholars enquiry, and is propelling efforts to tackle corporate biopiracy.



See: <https://tinyurl.com/ESGSeedActivism>

