



Biological Diversity Conservation In India: A Policy And Practice Perspective

Vishwapriya C.¹ Yogendra S²

¹Assistant Professor, Visveswarapura College of Law, V. V. Puram, Bengaluru-560004.

¹ Assistant Professor, Visveswarapura College of Law, V. V. Puram, Bengaluru-560004

ABSTRACT

India is one of the top twelve most biodiverse nations in the world. India is home to some of the most ecologically varied ecosystems on Earth. The term "biodiversity" is used to describe a large range of organisms. The term "biodiversity" refers to the wide range of living forms found on Earth, including both land and sea creatures. For the purpose of conservation of biodiversity, we mean the management of human influence on the biosphere in a manner that maximises benefits to present generations while conserving its ability to meet the needs and aspirations of future generations. The Convention on Biological Diversity, which all signatory nations are bound to by law, is briefly summarised in this article. On top of that, India is one of the signatories to this agreement. The objectives of this conference are the preservation of biological variety, the responsible use of its parts, and the equal sharing of the advantages that result from the use of genetic resources. This biodiversity pact is like the holy book for the Indian government when it comes to implementing rules and regulations.

This page provides a thorough analysis of the biodiversity conservation laws in India. Also discussed in this research is the role of the courts in upholding the Biological Diversity Act of 2002's mandate to safeguard biodiversity.

Keyword: Biodiversity, Conservation, Convention, Implementation

¹Assistant Professor, Visveswarapura College of Law, V. V. Puram, Bengaluru-560004.

² Assistant Professor, Visveswarapura College of Law, V. V. Puram, Bengaluru-560004

Introduction

The rich variety of life on Earth is a priceless gift from Mother Nature to humanity. Nature has provided us with all of its components, living and nonliving alike, for our use. Due to the fast rise of the population, industrialization, and globalization, biodiversity is under threat and is rapidly dwindling. Biodiversity provides all of humanity's essential requirements, including oxygen, food, shelter, clothes, medicines, raw materials for industry, and more. A number of plant and animal species are now extinct, while others are in grave danger of extinction.

People should take precautions to preserve biodiversity, using both in-situ and ex-situ approaches, because they are reaping all the benefits of biodiversity. The establishment of laws, rules, and regulations allows for the preservation and conservation of these things.

Objective of the Study

The objective of this study is

- To understand the biodiversity laws in India,
- To study the historical background of biodiversity in India,
- To analyses conservation of biodiversity in India,
- Implementation biodiversity Act in India.

Methodology

These studies use the doctrinal approach as its research methodology. The resources can be sourced from existing documents, as suggested by the subject of this study. Articles, books, magazines, journals, and e-journals serve as the secondary sources for this research.

Meaning and Definition of Biological diversity

In a 1986 study for the first American Forum on biological diversity, which was hosted by the National Research Council, entomologist E.O. Wilson used the term "biodiversity" for the first time. The term "biological diversity" was coined by Thomas Lovejoy in 1980; the latter is a truncation of the former. Instead of biological diversity, which the National Research Council staff thought was less effective in terms of communication, they suggested the term biodiversity to him.³ India has some of the highest biodiversity in the world. In terms of biodiversity, India is among the top twelve countries in the world. Biodiversity, in its simplest definition, refers to the wide range of organisms that inhabit our planet. This includes every living

³Yeshwanth Shenoy Biodiversity Law & Practice Em Tee En Publication Kochi, 2005 Edition

thing on Earth, from the biggest mammals to the tiniest insects, amphibians, birds, plants, fungus, bacteria, and every other type of plant and animal.

Definition of Biological diversity

Biological diversity is defined by Perlman and Adelson as the rich variety of life and the complexity in which it exists. The amount of distinct elements and how often they occur together make up diversity. From whole ecosystems down to the molecular basis of heredity's chemical structures, there are various degrees of organization for these elements in terms of biological diversity. Ecosystems, species, genes, and abundance levels are all encompassed under the phrase.⁴

The term "biodiversity" was coined at the 1992 Rio de Janeiro Earth Summit and refers to the variety of life on Earth. This diversity encompasses not only differences within and between species, but also between ecosystems and all types of habitats, whether terrestrial, marine, or aquatic.⁵

All forms of life, including those on land, in water, and in any combination thereof, as well as the ecological complexes to which they belong, are considered to be part of what is known as "biodiversity," as stated in Article 2 of the 1992 Convention on Biological Diversity.⁶

The variation among all forms of life and the ecological systems to which they belong is what is meant by "Biological Diversity," which encompasses diversity within and between species as well as within ecosystems, as stated in the Biological Diversity Act of 2002⁷.

Meaning of Conservation Biodiversity

Although both the CBD-1992 and the Biological Diversity Act, 2002 use the Latin words "conservation" and "biodiversity" to describe what we mean when we talk about "conservation," no one has ever defined it. Meaning "to keep" or "guard," the verb "servare" is used, and the word "con" indicates "together." That being said, the verb's meaning is possessive. According to the dictionary, "conservation" means "an act of preserving."⁸ The goal of biodiversity conservation should be to ensure that future generations can fulfill their requirements and fulfill their dreams without compromising the ability of the biosphere to support the current generation. Research into the effects of human actions on biological diversity and the creation of strategies to preserve that diversity constitute biodiversity conservation. Preserving entire ecosystems is one extreme of

⁴<http://shodhganga.inflibnet.ac.in/bitstream/10603/21884/1/sukdeb%20das,ph.d.%20thesis.pdf> (Accessed 6th January 2017)

⁵*Ibid* page 6

⁶Article 2 of Convention on Biological Diversity 1992

⁷Section 2 (b) of the Indian Biodiversity Act 2002

⁸ Dr SR Myneni Environmental law Asia Law house Hyderabad

conservation, while safeguarding populations of individual species is another. Stopping humans from destroying or degrading habitats any more is the most efficient and effective way to preserve biodiversity.⁹

Historical Background of Biological Diversity

Existing environmental legislation such as the Indian Forest Act, 1927, Wildlife Protection Act, 1972, Environment Protection Act, 1986, etc., were enacted before the Biodiversity Act, 2002. Despite the fact that each of these laws emphasized environmental protection, not a single one of them adequately dealt with every facet of ecological and biodiversity preservation.

In addition, India has signed up to a number of additional environmental legislation, including those of the

- Ramsar Conservation on Wetlands, 1971
- Convention for the Protection of World Cultural and Natural Heritage, 1972
- Convention on International Trade of Endangered Species of Wildlife Fauna and Flora, 1973
- Convention on the Conservation of European Wildlife and Natural Habitat, 1979
- World Conservation Strategy, 1980
- The United Nations Convention on Biological Diversity, 1992¹⁰

The Biodiversity Convention, or Convention on Biological Diversity (CBD), was came into force on December 29, 1993, after being opened for signature at the Earth Summit in Rio de Janeiro on June 5, 1992.

The Convention has three main goals:

1. Conservation of Biological diversity
2. Sustainable use of Its Components and
3. Fair and equitable sharing of benefits arising from genetic resources, and by appropriate transfer of relevant technologies, taking into account all the rights over those resources and technologies, and by appropriate funding .¹¹

Protecting biodiversity is now recognized in the treaty as "a common concern of humankind" and as an integral part of progress, which is a first. All ecosystems, species, and genetic material are safeguarded under the agreement. To ensure that the benefits of genetic resources are distributed fairly, it lays down standards. At the

⁹ *Ibid* page 77

¹⁰ https://www.lawctopus.com/academike/biodiversity-act-2002-analysis/#_ednref13 (accessed as on 28 February 2018)

¹¹ Article 1 of The Convention on Biological Diversity 1992

cutting edge of biotechnology is its bio-safety protocol, the Cartagena Protocol. All signatory nations are legally obligated to follow the rules laid down in the Convention.¹²

The Convention on Biological Diversity was signed by India on June 5, 1992. The pact was ratified by India on February 18, 1994, and it came into effect on May 19, 1994. Using this pattern, we may plan for the long-term use and protection of India's natural resources. On May 15, 2000, the Ministry of Environment and Forests presented the Biodiversity Bill to the Lok Sabha. The Lok Sabha approved the bill on December 2, 2002, and the Rajya Sabha did the same on December 11, 2002.¹³

Implementation of Biological Diversity Act in India

It is imperative to acknowledge that the preservation of ecosystem services—including but not limited to precipitation regulation, soil fertility restoration and management, crop pollination and cross-pollination, soil erosion prevention, and food chain stability—is contingent upon biodiversity. In order to maintain the stability of food webs, it is imperative to safeguard both ecological and biological diversity.¹⁴

The term "conservation" is not defined in the CBD, however it usually refers to protecting species from extinction, degradation, or alteration. In order to preserve biodiversity, it is essential to stop the degradation or destruction of their habitats.¹⁵

Maintaining human demand for natural resources into the future while simultaneously protecting and enhancing biological diversity is a problem for governments, organizations, and individuals worldwide. To ensure the long-term viability of biological diversity, including its related knowledge and resources, and to ensure that people in India have access to these things, the government passed a law in 2002 known as the Biological Diversity Act. They are two types of Conservation. Ex-situ conservation,¹⁶ and In-situ conservation¹⁷. Efforts have been initiated to save biodiversity both by ex-situ and in-situ conservation.

Under the biological diversity Act in India a established three tier system they are At national Level: National Biodiversity Authority (NBA),¹⁸

- The national government is authorized by Section 8 of the CBD Act to establish the National Biodiversity Authority, which is tasked with implementing the stipulations of this legislation. It started

¹² Supra 2 page 191

¹³Supra 1 page 8-9

¹⁴http://www.vigyanprasar.gov.in/Radiosericals/Conserving_Biodiversity2.pdf (Accessed 6th January 2017)

¹⁵Abdul Haseeb Ansari International law in globized world voice from Asia 'Future direction in conservation of biological diversity: An interdisciplinary approach'. Serials Publications New Delhi 2008

¹⁶Means the conservation of components of biological diversity outside their natural habitats. Article 2 of Convention on Biological Diversity 1992

¹⁷Means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties. Article 2 of convention on biological diversity 1992

¹⁸The Biological Diversity Act 2002,section 2 (j) means the National Biodiversity Authority established under section 8

live on October 1, 2003. One organization that functions autonomously is the National Basketball Association (NBA). The Ministry of the Environment and Forests delineates the principal functions that the Authority shall perform.

- The regulations governing the allocation of benefits in a fair and equitable manner and the provision of access to biological resources shall be promulgated by the National Biodiversity Authority. The regulatory responsibility for the activities specified in sections 3, 4, and 6 falls upon the authority.¹⁹
- It is possible to get permission to do anything listed in sections 3, 4, or 6 from the National Biodiversity Authority²⁰.
- The Central Government may seek advice from the National Biodiversity Authority on matters pertaining to the conservation of biodiversity, the sustainable utilization of its components, and the fair distribution of benefits resulting from the use of biological resources²¹;
- As specified in subsection (1) of section 37, the National Biodiversity Authority is authorized to advise State Governments on the selection of areas with exceptional biodiversity for designation as heritage sites and the implementation of management strategies for these sites.²²
- To ensure compliance with the provisions of this legislation, the National Biodiversity Authority may assume any further obligations considered suitable.²³
- Intellectual property rights of any foreign nation obtaining biological resources or information pertaining to those resources from India are subject to revocation by the National Biodiversity Authority, an entity operating on behalf of the Central Government²⁴.

At State Level: State Biodiversity Boards (SBB's)²⁵ – Give recommendations to the state governments on biodiversity protection, sustainable use of its components, and fair distribution of gains from biological resource exploitation, within the bounds of rules set by the federal government.²⁶ regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians;²⁷ Comply with any and all additional duties imposed by the State Government or required by this Act in order to carry it out.²⁸

¹⁹*Ibid* section 18 (1)

²⁰*Ibid* section 18 (2)

²¹ *Supra* 13 section 18 (3) (a)

²²*Ibid* section 18(3) (b)

²³*Ibid* section 18 (3) (c)

²⁴*Ibid* section 18 (4)

²⁵*Ibid* section 2(n) means the State Biodiversity Board established under section 22;

²⁶*Ibid* section 23 (a)

²⁷*Ibid* section 23 (b)

²⁸*Ibid* section 23 (c)

On local Level: Biodiversity Management Committees (BMC's)²⁹ There needs to be an effort to preserve and enhance native avian and flora species. Join the online database known as the People's Biodiversity Register (PBR) by collecting data from locals. Keep track of the medicinal herbs and other items used by indigenous peoples for healing purposes. Bring biodiversity boards at the state and federal levels up to speed on problems affecting local ecosystems. The Biodiversity register is accessible to researchers and businesses for a fee, in accordance with the Nagoya Protocol of the Convention on Biodiversity (CBD).

Approximately 37,769 BMCs and 29 states are currently home to SBBs. Although BMCs could play a crucial role in implementing this system, they have not been successful thus far. These days, keeping records is just a formality, and not all regions of the nation have the appropriate BMCs on staff.³⁰ There are needless lawsuits because nobody can say for sure what the PBR register's legal and IP status is. One such location in Madhya Pradesh is Chindwara. In their lawsuit against Coal India, BMC sought a share of the revenues based on the premise that coal is a biological resource. In several states, the Panchayati Raj Institutions (PRI) are wary of establishing BMCs because they fear losing control of their small-scale forest products. The mining lobby, forest traders, and state forest authorities all have their reasons for not cooperating with BMC, and the reasoning is the same. BMCs have not benefited from the funding allocated to them by UNDP and UNEP because of the red tape that prevents them from being implemented in India.³¹

CBD requires all signatory nations to develop biodiversity conservation and sustainable use policies and plans at the national level and to incorporate these goals into existing sectoral and cross-sectoral initiatives³². In order to incorporate biodiversity concerns into relevant sectors and to produce national policies, plans, or programmes for conservation and sustainable use of biodiversity, the Central Government is empowered to do so by the Act.³³ As part of their larger environmental and development agendas, they must formulate national strategies and action plans to protect biodiversity. In the fields of forestry, farming, fishing, energy, transportation, and city planning, this is of paramount importance. Additionally, treaty obligations encompass.

- Watching out for the most important aspects of biological diversity that need to be protected and used sustainably
- In addition to promoting sustainable development in the surrounding region, protected area designations work to maintain biodiversity.
- Repairing and restoring damaged ecosystems in collaboration with local residents to aid endangered animals in their comeback.

²⁹ *Ibid* section 41

³⁰ <http://www.simplydecoded.com/2013/01/14/national-biodiversity-authority-introduction/> (Accessed 24 January 2017)

³¹ <http://mrunal.org/2014/05/biodiversity-management-committees-functions-features-limitations.html> (Accessed 28 January 2017)

³² Article 6 of Convention of biological diversity 1992

³³ Section 36 of the biological diversity Act 2002

- Local communities and indigenous peoples can be involved in a way that honours and maintains their traditional understanding of using biological variety sustainably.
- Defending ecosystems, habitats, and species against the invasion, control, or eradication of non-native ones.
- Efficiently handling the risks posed by genetically modified organisms.
- Environmental impact evaluations, particularly those concerning development projects that could threaten biodiversity, should solicit public feedback.
- Spreading awareness regarding the importance of preserving biological variety and its significance.
- Details on how each nation is doing in terms of achieving its biodiversity target.³⁴

The decentralized system for implementing the Act will be overseen by the NBA, which will advise the Central Government on matters pertaining to the conservation of biodiversity, the sustainable use of its components, and the fair distribution of benefits from the exploitation of biological resources. The NBA will also provide guidance to state governments on issues like heritage site designation and management plans, as well as the selection of places with significant biodiversity³⁵

In all, 18 different regions of India have been designated as Biosphere Reserves by the government. Larger areas of natural habitat are protected by these reserves, which often include buffer zones that permit certain economic activity and national parks and reserves. The law ensures the safety of every local resident, every cultural practice, and every plant and animal species that calls the protected region home. Here, animals can find safety.³⁶

In India, the FREEP (Forestry Research, Education, and Extension Project) is working to protect biodiversity by including local communities through eco development. For the thousands of low-income individuals whose livelihoods are dependent on the preserved natural ecosystems, the plan is to create new resources and revenue streams". Consequently, a pilot scheme has been a smashing success, with local villages banding together to protect the forest's precious resources.³⁷

The Government of India has been taken various steps to protection of biodiversity in India some of the important steps they are

³⁴ Supra 1 page 7

³⁵ <http://nbaindia.org/content/22/2/1/aboutnba.html> (Accessed 29th January 2017)

³⁶ <http://employmentnews.gov.in/Conservation-of-Biodiversity.pdf> (Accessed 11th February 2017)

³⁷ M P Dahiya Biodiversity Conservation Pragn Publication 2006 New Delhi

- Act No. 72, Wild Life (Protection), was passed by the Central Government in 1972. Among other things, the Act makes it illegal to hunt certain creatures listed in schedules I through IV and establishes Protected Areas to safeguard birds and other wild animals.
- Wetlands in the US were protected by the 2010 Wetland (Conservation and Management) Rules.
- Through the Centrally Sponsored Scheme of the National Plan for Conservation of Aquatic Eco-System, state governments get financing to assist with the maintenance of the nation's wetlands, including Ramsar sites.
- The Wildlife Crime Control Bureau was established to prevent the illegal trade of animals, especially those that were in risk of extinction.
- The Wild Life (Protection) Act, 1972 states that the Central Bureau of Investigation (CBI) is responsible for identifying, apprehending, and prosecuting offenders against wildlife.
- The main objective of the Centrally Sponsored Scheme 'Integrated Development of Wildlife Habitats' is to bring endangered species, specifically the Hangul, back to Jammu and Kashmir. Indian national parks have invested millions of rupees to safeguard a diverse array of wildlife, such as snow leopards in Jammu and Kashmir, vultures in Gujarat, swiftlets in Tamil Nadu, nilgiri tahr in Tamil Nadu, and sanghai deer in Manipur, among many more.³⁸

Judiciary and Conservation of Biodiversity.

The preservation of India's rich biodiversity is highly valued by the country's courts. In 1976, after the 1972 United Nations Conference on Human Environment in Stockholm, environmental articles were introduced to the Indian Constitution as a consequence of the 42nd amendment. This provision states that the government must make every effort to protect and improve the country's natural resources, especially its forests and animals. The preservation and improvement of India's natural resources is a "fundamental duty" of every Indian state and citizen. Citizens of India have been filing more and more environmental protection petitions in recent years, prompting the judicial system to intervene on many occasions in an effort to save the earth. Humans and the environment have both profited from some historic court decisions in India. In Subhash Kumar V. State of

³⁸<http://www.clearias.com/biodiversity-protection-steps-taken-by-indian-government/> (Accessed 2nd February 2017)

Bihar³⁹ the right to survive, according to the Supreme Court's ruling in this case, encompasses the freedom from contamination in the air and water that we breathe.

In Ivory Traders and Manufacturers Association V Union of India⁴⁰ a detrimental trade can be outright banned, according to the Delhi high court. The practice of killing elephants for their ivory is evil. This cannot be construed as a commercial enterprise within the meaning of Article 19(1)(g) of the constitution. As a result, the sale of any kind of ivory, whether native or imported, is a fundamentally unjustified activity⁴¹.

Following the lead of M. Viswanathan, V/s The State of Andhra Pradesh and others, the court determined in that it would certainly disturb public order to try to illegally cut down red sander trees or smuggle their timber. In light of the detent's criminal behavior and his repeated and irregular involvement in the aforementioned activities, the detaining authority issued the detention order against him in compliance with the Act. In order to stop him from being involved in more of these things, which are bad for public order and forest wealth?⁴²

Conclusion

It is our moral obligation to ensure that biodiversity is safeguarded for the benefit of all living things, both now and in the future. When it comes to enforcing regulations and policies in India, the convention on biodiversity is the gold standard. The Indian federal government has delegated increased authority to state and regional governments to fine violators of biodiversity regulations. The more we investigate, the more apparent the links are between biodiversity and a sustainable future for humanity. Our very survival depends on our ability to protect biodiversity. People are becoming more conscious of the necessity of preventing biodiversity loss and the government is taking action by enacting laws and regulations. If biodiversity continues to decline at its current rate, human existence may be in jeopardy in the not-too-distant future. Therefore, protecting biodiversity is not just the right thing to do, but also a basic human obligation. Protect ecosystems and save lives.

³⁹ AIR 1991 SC 420

⁴⁰ AIR 1997 Del 267

⁴¹ P Leelakrishnan Environmental law in India Lexis Nexis Nagpur 3rd Edition 2008

⁴²<https://indiankanoon.org/dcfragment/18417651/?forminput=biological%20diversty%20act%20%20doctypes%3A%20judgments> (Accessed as on 1 march 2018)