

An Analysis of Conservation of Biodiversity Under Indian Constitution and Judicial Response

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Abstract

Biodiversity is part of our daily lives and livelihood and constitutes the resources upon which families, communities, nations and future generations depend. Biodiversity can be set in a time frame so that species extinctions, the disappearance of ecological associations, or the loss of genetic variants in an extant species can be classed as loss of biodiversity. Similarly, additions to biodiversity include addition of new elements of life by mutation, by artificial breeding, by biotechnology or by ecological manipulation. A large number of factors and forces are responsible for the steep decline in the earth's biodiversity during the last century. Most of these are caused due to tremendous increase in human population and this in turn resulted in the overexploitation of certain plant and animal resources for food, medicine, skin, fur, tusks, musk, etc., habitat loss and fragmentation, land use change and pollution. Concerns have been raised about the loss of biodiversity especially after the United Nations Conference on Environment and Development (UNCED) held at Rio de Janeiro in 1992, where loss of biodiversity was recognized as one of the most important problem of this century. This article focuses on provisions of Indian constitution for conservation of biodiversity and also judicial response for the conservation of biodiversity.

Keywords: Conservation, Sustainable use, Constitution, Biodiversity, Judiciary, Livelihood, Species.

Introduction

The earth holds a vast diversity of living organisms, which includes different kinds of plants, animals, insects, and micro-organisms. The earth also holds an immense variety of habitats and ecosystems. The total diversity and variability of living things and of the system of which they are a part is generally defined as biological diversity, i.e. the total variability of life on earth. In other words it also refers to the totality of genes, species and ecosystems in a region. Biodiversity includes diversity within species, between species and of ecosystems. Biodiversity represents the very foundation of human existence. Besides, the profound ethical and aesthetic implications, it is clear that the loss of biodiversity has serious economic and social costs. The genes, species, ecosystems and human knowledge which are being lost represent a living library of options available for adapting to local and global change. Maintaining and restoring healthy ecosystems plays a key role in adapting to and mitigating climate change through biodiversity conservation, sustainable use and sustainable land management and yields multiple environmental, economic and social benefits. Ecosystem-based approaches provide an important route to sustainable action and represent a vital insurance policy against irreversible damage

from climate change, whereas failure to acknowledge the relationship between climate change and biodiversity and failure to act swiftly and in an integrated manner could undermine efforts for improvements in both areas. Biodiversity was being exploited at the international level without the consent of the respective country. Concern had been expressed for the conservation of biodiversity at national and international level. Hence, various laws and conventions, at international level, have been enacted for the conservation of biodiversity. Apart from that some provisions of the constitution reveals the intention of the conservation of biodiversity under the umbrella environment and ecology.

Conceptualization of Biodiversity

Biodiversity is contraction of biological diversity.¹ It is the foundation of life on earth and one of the pillars of sustainable development.² It also maintains the ecological balance³. The very survival of humankind depends on these core ecological functions.⁴ Biodiversity provides a variety of environmental services from its species and ecosystem that are essential at the global, regional and local levels. Production of oxygen, reduction of carbon dioxide, maintaining the water cycle, protecting soil,⁵ photosynthesis⁶, pollination, chemical cycling, and pest control⁷ are some important services. Food, clothing, housing, energy, medicines are all resources that are directly or indirectly linked to the biological variety present in the biosphere. Currently known and described species range between 1.7-1.8 million. However, scientists have estimated that the number of species of plant and animals on earth could vary from 5 to 30 Million. India is one of the megadiverse countries in the world with 45,000 species of plants and twice as many of the animals have been recorded in India. India has only 2.4% of the world's land area but the species diversity in India is 8.1 percent which makes India one of twelve megadiversity countries of the world.⁸ In flora, the country can boast of 45,000 species which accounts for 15 percent of the known world plants, wherein 35 percent are endemic and located in 26 endemic centres. Among the monocotyledons out of 588 genera occurring in the country, 22 are strictly endemic.⁹ The diverse physical features and climatic situations have formed ecological habitats like forests, grasslands, wetlands, coastal and marine ecosystems and desert ecosystems, which harbours and sustain

¹Purohith, Shammi, Agarwal, Environmental Science, Student Edition Publishing Ltd, Jodhpur, 2007, p. 177.

²<http://www.un.org/news/Press/docs/2007/system10994.doclast>.

³Ecological effects of biodiversity in turn affect both climate change through enhanced greenhouse gases, aerosols and loss of land cover, and biological diversity, causing a rapid loss of ecosystems and extinctions of species and local populations. The current rate of extinction is sometimes considered a mass extinction, with current species extinction rates on the order of 100 to 1000 times as high as in the past.

⁴<http://www.indiascrin/article-1294-html>.

⁵ Erach Bharucha, Environmental Studies, Universities Press Pvt Ltd, Hyderabad, 2006, p. 82.

⁶Photosynthesis is the process of converting light energy to chemical energy and storing it in the bonds of sugar. This process occurs in plants and some algae (Kingdom Protista). Plants need only light energy, CO₂, and H₂O to make sugar. The process of photosynthesis takes place in the chloroplasts, specifically using chlorophyll, the green pigment involved in photosynthesis. Photosynthesis takes place primarily in plant leaves, and little to none occurs in stems, etc. The parts of a typical leaf include the upper and lower epidermis, the mesophyll, the vascular bundle(s) (veins), and the stomates. The upper and lower epidermal cells do not have chloroplasts, thus photosynthesis does not occur there. They serve primarily as protection for the rest of the leaf. The stomates are holes which occur primarily in the lower epidermis and are for air exchange: they let CO₂ in and O₂ out. The vascular bundles or veins in a leaf are part of the plant's transportation system, moving water and nutrients around the plant as needed. The mesophyll cells have chloroplasts and this is where photosynthesis occurs.

⁷Supra Note 5

⁸<https://www.vedantu.com/question-answer/india-is-one-of-the-twelve-megadiversity-class-12-biology-cbse-5f6a975059186c0d8d2d31dd>

⁹Purohit, Shammi, Agarwal, Environmental Science, Student Edition, Jodhpur, 2007, p. 195.

immense biodiversity.¹⁰ The country is also one of the 12 primary centres of origin of cultivated plants and domesticated animals. It is considered to be the homeland of 167 important plant species of cereals, millets, fruits, condiments, vegetables fibre crops and oilseeds, and 114 breeds of domesticated animals.¹¹ Biodiversity manifests itself at three levels: species diversity which refers to diversity between the species, genetic diversity which refers to the genetic variations within a population of species. Ecosystem diversity, which refers to the variety of habitats, biological communities and ecological process, occurs in the biosphere.¹²

- India is home to 33% of the life forms found in the world and is one among the 12 mega diverse countries of the world.
- India comprises 2% of the world's land mass but is home to 8% of the biodiversity of the world.
- India can be divided into 10 bio geographic zones and 25 biotic provinces, which represent all the major ecosystems of the world.
- There are 122 botanical gardens, 106 National parks, 347 zoos, 567 sanctuaries and 18 biosphere reserves in India.
- There are 47,000 species of plants and 89,000 species of animals identified in the country.
- 60% of this wealth can be found in the Western Ghats which is one of the hotspots of diversity in India.
- India is home to 40 world heritage sites and 6 Ramsar Wetland, amongst protected areas.
- India has two major realms called the Palaearctic and Indo-malayan, and three biomass, namely the tropical humid forests, the tropical dry/ deciduous forests and warm desert/ semi-deserts.¹³

Conservation of Biodiversity under Indian Constitution

The Constitution of India came into force on 26th January 1950. It is one of the very few constitutions in the world, which provides for specific provision for the protection and improvement of the biodiversity. Part III of the constitution guarantees fundamental rights to all the citizens of India¹⁴ and protection of right life and personal liberty is considered as the most important among them.¹⁵ The scope of these rights has been extended by the interpretation of judiciary where it included right to livelihood as a fundamental right. Supreme Court interpreted right to life to include healthy environment. This as a fundamental right and this interpretation can be tool for sustainable development.¹⁶

Under Article 19 of the Indian constitution all citizens are given the right to freedom of speech and expression. Accordingly any citizen of India has the right to inform others the situation or condition of the environment and the cause of pollution.

The Supreme Court of India interpreted Article 21 which guarantees the fundamental right to life and personal liberty, to include the right to a wholesome environment and held that a litigant may assert his or her right to a healthy environment against the State by a writ petition to the Supreme Court or a

¹⁰<http://Mod.nic.in/samachar/imay/html/para.htm>

¹¹Ibid.

¹²<http://www.indiascrin/article-1294.html>

¹³Beny Joseph, Environmental Studies, Tata Gastrotricha Mc Graw Hill, 2006, New Delhi, p 103.

¹⁴Article 14- 35 of the Indian Constitution of India speaks about the fundamental rights guaranteed to the citizens of India.

¹⁵For more details about the right to life and personal liberty see Article 21 of the Indian Constitution.

¹⁶Madhab Chandra Dash, Satya Prakash Dash, Fundamental of Ecology, The Mc Graw Hill Companies, New Delhi, 3rd edition, 2009, p 439.

High Court.¹⁷ Recently to mitigate the needs of environment related litigation Green benches had been constituted in many High Court in the country.

Article 47 of the Constitution of India deals with duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. In tasking the state to raise the standard of living of the people and improve the public health the constitution views that it is the duty of the state to create a good environment for the living condition of its citizens. In addition, the prohibition of the consumption of intoxicating drinks implies the forbiddance of polluting of the consumption of intoxicating drinks implies the forbiddance of polluting the waters, especially, those important sources of drinking water.¹⁸

Article 48 directs the state to take steps to organize agriculture and animal husbandry on modern and scientific lines. In particular, it should take steps for preserving and improving the breeds and prohibiting without which public health cannot be assured. Article 48 A of the constitution reads the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife and improve the natural environment.

Further under Article 51(a) (g) the citizens are required to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living.¹⁹ By imposing duty upon all the citizen of India to protect forests, rivers and wildlife it has shown its intention to conserve the biodiversity. If any person act against to this provision of the constitution that amounts to violation of the Indian constitution.

The interaction between rights of indigenous or tribal people and right to environment has some lessons and implications relevant for the estimation of interrelationship doctrine. In fact, indigenous people have been, and continue to be, extremely vulnerable to the consequences of environmental degradation.²⁰ As reflected in the Fifth and Sixth Schedules to the Constitution, the constitutional policies intend to protect the landed rights of the tribal's, to insulate them from exploitation and to confer autonomy to tribal administration on management of forest and water. Justice RAMASWAMY, J. viewed that as the large section of scheduled tribes depended on agriculture and minor forest produce, protection of their land, culture and ecology provided sustenance and social security for them. According to him, hygiene and environment are integral facets of rights to healthy life, and it would be impossible to live with human dignity without a humane and healthy environment, and it is the duty of State and every person to maintain the eco-friendly atmosphere. The Court invalidated the mining leases in scheduled area granted to non-tribal persons as violated of the Fifth Schedule and Regulations framed

¹⁷Rural Litigation and Entitle Kendra v/s State of UP, AIR 1988 SC 2187(Popularly Known as Dehradun Quaring case).

¹⁸www.unescap.org/drapad/vc last visited on 27/04/2014.

¹⁹For details see Article 51 (a) (g) of the Indian Constitution

²⁰The Intergovernmental Panel on Climate Change (IPCC) estimates that the global average sea level will rise by 7.2 to 23.6 inches (18-59 cm or 0.18- 0.59m) during this century. Much of the Pacific region is comprised of small island states, the traditional lands of many indigenous peoples. However, the very existence of many of these territories is under threat due to rising sea levels caused by climate change. Soil erosion from destructive wave activity, frequent storm surges and landslides is resulting in land loss to many indigenous communities. As such, an integral part of the culture, heritage and traditions of Pacific indigenous peoples is in jeopardy. http://www.un.org/en/events/indigenousday/pdf/factsheet_Pacific_FINAL.pdf

there under, and ordered for immediate stoppage of mining activity. About stoppage of mining activity in government land in scheduled area, the Court directed the Government to constitute a committee to decide the issue. Concerning future grant of mining license, the Court required the Government to strictly conform to mines and Mineral (Regulation Development) Act and Forest Conservation Act in coordination with the Central Government. Thus a synchronization between right to environment and right of indigenous people to have means of living and ecological balance, effectuated right to environment.

On the other hand, the collision between the claims of tribal's to means of livelihood by fishing and right to conserve forest, ecology and wildlife calls for a fair resolution through mutual balancing. In Animal and Environment Legal Defence Fund case, the Supreme Court accommodated both the claims by subjecting the licensed fishing activity in Pench National Park to extensive monitoring and regulation in order to ensure that fishing, did not disturb the wildlife situation. Issuing of photo identity card to tribal fishermen, limits on seasons and timings for fishing, restraints on entry and exit points and prevention of use of fire, are some of the measures directed by the Court.

Further, constitutionality of Madhya Pradesh Governments' order permitting collection of tendu leaves from sanctuaries and national parks by villagers was in issue, the Supreme Court tried to balance between right to livelihood and right to wholesome environment by directing the State Government to complete the procedure for final declaration on sanctuaries and national park within 6 months. The process of mutual balancing has vindicated the role of interrelationship doctrine.

Judicial Response to Conservation of Biodiversity

Apart from Indian Constitution the Indian judiciary in various cases tried to conserve the biodiversity. In its efforts to protect the environment, the Supreme Court and the Indian Judiciary in general have relied on the public trust doctrine, precautionary principle, - it means environmental measures by the state Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation. The onus of proof is on the actor or the developer/industries to show that this action is environmentally benign. This principle has been accepted as a part of the law of the land and Article 21, 47, 48-A and 51-A (g) of the constitution of India give clear mandate to the state to protect and improve the environment and to safeguard the forest and wildlife.

In the famous Kamal Nath case,²¹ the Supreme Court held that notion that the public had right to expect certain land and natural resources to retain their natural characteristics was finding its way into the law of the land. In the present case the court upheld polluter pays principle. This principle is a sound principle and interpreted by the Supreme Court that liability to harm to the environment extends not only to compensate the victims but also cost of restoring the environmental degradation. As such the polluter is liable to pay the cost to the individual suffers as well as the cost of reversing the damaged ecology.²² In its efforts to protect the environment from solid and hazardous waste, the Supreme Court and the Indian Judiciary in general have relied on the public trust doctrine, precautionary principle; polluter pays principle, the doctrine of strict and absolute liability, the exemplary damages principle, the pollution fine principle and inter-generational equity principle apart from the existing law of the land.²³

²¹ M.C. Mehta v Kamal Nath, 197 (1) SCC 388.

²² <http://www.legalserviceindia.com/article/1159-Environmental-Degradation-and-its-Protection.html>

²³ Varinder Singh, Research Article Role Of Indian Judiciary In Solid Waste Management, International Journal of Recent Scientific Research Research Vol. 7, Issue, 1, pp. 8317-8323, January, 2016.

Another guiding principle has been that of adopting a model of sustainable development. The consistent position adopted by the courts as enunciated in one of its judgments has been that there can neither be development at the cost of the environment or environment at the cost of development. Thus, the Supreme Court recognizes the need for development and proper utilization of our natural resources for the betterment of our society. However, this cannot be done at the expense of the environment itself. The courts in India have, thus, played a dynamic role in preserving the environment and eco-system. In a series of cases, the superior courts of India issued various directions and orders to prevent the environmental degradation.²⁴

Further, the Indian Judiciary has articulated that the contradiction between the development and environmental pollution in India can be resolved through the sustainable development. The doctrine of sustainable development was for the first time applied by the apex court in a famous case *Vellore Citizen Welfare Forum v/s Union of India*.²⁵ In this case Justice Kuldip Singh observed that the traditional concept that the development and ecology are opposed to each other is no longer acceptable. He further observed that sustainable development as a balancing concept between ecology and development which has been accepted as a part of the Customary International Law. Even the Public Interest Litigation, which is unique feature of environmental jurisprudence, has also lost its momentum after the retirement of Justice Kuldip Singh, who is known as the green judge of India. The Supreme Court itself became less enthusiastic in entertaining the PIL especially related to environment, a cursory glance at the reported cases will show that only a few landmark judgments have come in the past decade. It appears that the judiciary is also avoiding from the role which it had already played in the arena of environmental jurisprudence.

The Supreme Court even reversed some of its earlier orders in which it took stringent action against the violators and the High Court's followed the suit. The case of *T. N. Godavarman v/s Union of India*²⁶ is an example of it. The Supreme Court through its interim order imposed a blanket ban on the cutting of forest in the State of Arunachal Pradesh and movement of cut tress and timber from any of the Seven North-Eastern States to any other State. The court also banned the felling of trees in state of Jammu and Kashmir, Himachal Pradesh and Tamil Nadu. It also prohibited running of timber industry within the forest with a view to protect the forest. But in the name of sustainable development the Supreme Court in its subsequent directions relaxed its earlier directions.²⁷

In *M.C Mehta v/s Union of India*²⁸ The Supreme court ordered the shifting of 168 hazardous industries operating in Delhi as they were causing danger to the ecology. Likewise, in *Council for Enviro-Legal Action v Union of India*²⁹ the court issued appropriate orders and directions for implementing and enforcing the laws to protect ecology. In this case the petition was filed by a registered voluntary organisation working for the cause of environmental protection in India as a public interest litigation complaining ecological degradation in coastal areas.

In *S. Jagannath v Union of India*³⁰ The petitioner filed public interest litigation seeking the enforcement of Costal Zone Regulation Notification of the government of India stopping of intensive

²⁴<http://indialawyers.wordpress.com/2009/05/24/judicial-activism-and-the-role-of-green-benches-in-india/>

²⁵A. I.R 1996 S.C. 2715.

²⁶T. N. Godavarman v/s Union of India (1997) 2 SCC 267.

²⁷<http://www.airwebworld.com/articles/index.php?article=1421>

²⁸(1996) 4 SCC 750.

²⁹(1996) 5 SCC 650.

³⁰AIR 1997 SC 811.

and semi intensive type of prawn (small fish) farming in the ecological fragile and the constitution of a National Coastal Management Authority to safe guard the marine life and coastal areas. It was contended that a large number of private and multinational companies have started setting up Shrimfarm in the coastal areas of the country causing serious threat to the environment and ecology of the areas. The court held that setting up of Shirm(small Fish culture farms within the prohibited areas and in ecology fragile coastal areas have adverse effect on environment and costal ecology therefore it cannot be permitted to operate. Justice Kuldip Sing observed that “the sea coast and beaches are gifts of the nature to the mankind. The aesthetic qualities and recreational utility of the said area has to be maintained. Any activity which has the effect of degrading the environment cannot be permitted.”³¹

Conclusion

Since life originated on earth nearly 3.8 billion years ago, there had been enormous diversification of life forms on earth. Biodiversity refers to the sum total of diversity that exists at all levels of biological organization. Of particular importance is the diversity at genetic, species and ecosystem levels and conservation efforts are aimed at protecting diversity at all these levels. Earth’s rich biodiversity is vital for the very survival of mankind. The reasons for conserving biodiversity are narrowly utilitarian, broadly utilitarian and ethical. Besides the direct benefits (food, fiber, firewood, pharmaceuticals, etc.), there are many indirect benefits we receive through ecosystem services such as pollination, pest control, climate moderation and flood control. We also have a moral responsibility to take good care of earth’s biodiversity and pass it on in good order to our next generation

³¹J.N Panday, Constitutional Law of India, Central Law Agency, 42nd Edition 2005, p 239.