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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **EFFECTIVENESS OF CONSTITUTIONAL PROVISIONS SAFEGUARDING BIODIVERSITY**

AUTHORED BY - DINESHKUMAR.T<sup>1</sup> & RANJITHA.B<sup>2</sup>

## **Introduction**

In India, Judiciary plays an important role in interpreting and enforcing environmental laws, adjudicating and protection and improvement of environment by interpreting various constitutional provisions, prior to 42<sup>nd</sup> Amendment Act, 1976, there was no explicit provision relating to environmental protection in the constitution though it was implicit in the preamble and directive principles of state policy Art 48A and Art 51A(g) introduced by the 42<sup>nd</sup> Act of 1976 provides the duty of state and citizens to protect and improve the natural resources and environment. The judiciary has interpreted Articles 14,19,21 to include right to a healthy and pollution free environment as the basic fundamental rights of every citizen.

The Indian court has been instrumental in interpreting the laws in a way that has aided in both promoting and safeguarding the environment and sustainable development. In actuality, India's judiciary has developed new environmental jurisprudence. The Indian courts also played a significant part in defending tribal rights at the same time. When environmental preservation and tribal rights protection are at odds, our judiciary steps in.<sup>3</sup>

Indigenous peoples assert that intellectual property systems not only fail to provide adequate protection for their cultural forms, products and expressions; they serve the interests of the dominant, non-Indigenous cultures as against the distinct rights and interests of Indigenous systems of creativity and cultural products and expressions.

Therefore, it has stepped in to defend democracy and the legal foundation upon which the constitution is based. In order to create a civil society where respect for human dignity is the cornerstone of its functioning, the Supreme Court has zealously protected individual rights.

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<sup>3</sup>ParamiitS.Jaswal, "Developments in Environmental Laws; The Case of India" in Proceedings of the work shop on development planning, university of London, U.K(1992).



The court has always been guided by the Latin maxim *Boni Judicis est ampliare juris actionem*, which states that law must keep pace with society in order to remain relevant. In every aspect of national life, the Supreme Court's accomplishments have had a profound impact. It has rendered decisions on matters involving every aspect of human existence. The judiciary, which defends the constitution and protects human rights, has played a crucial role in creating a balanced society and maintaining equality within its politics in particular.

The Court has long been mindful of its specific obligation to the less fortunate members of society, who find it difficult to reach the Court for justice owing to poverty, ignorance, and illiteracy. Therefore, it developed the public interest litigation technique to make justice accessible to the impoverished classes. PIL is a tool that has assisted the court in playing the role of the social engineer and has resulted in several historic rulings.<sup>4</sup>

This paper outlines on Environmental Protection and cultural protection, and discusses some of the ways in which their cultures are appropriated or exploited. The paper then explores where existing intellectual property laws fail to meet Indigenous peoples' expectations and aspirations regarding protection of their cultures.<sup>5</sup>

### **ROLE OF judiciary in environmental protection:**

Following the Stockholm conference on human environment in 1974, environmental concerns were given importance and various measures to protect the environment were taken by the government of India. As a result, the Water Act, 1974, Air Act, 1981, Environmental protection Act, 1986, Biological diversity Act, 2002, etc. were enacted. However, enforcement and implementation of these laws was a major concern. Following the Bhopal gas tragedy in 1986 and subsequent oleum gas leak case in 1987 raised the importance of environmental protection in which judiciary played a significant role.

The judiciary in addition to interpreting the provisions of the constitution, has evolved and applied various doctrines such as public trust doctrine, intergenerational equity, absolute liability, Doctrine of sustainable development, precautionary principle, polluter pay principle, etc in adjudicating various disputes related to environment.

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<sup>4</sup>M.P.Jain ,Indian Constitution Law ,P.No.1524, Published by Lexis NexisButterworthsWadhwa ,Nagpur,Sixth Edition ,2008.

<sup>5</sup>[https://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library](https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library)



### **Interpretation of constitution:**

The judiciary being the custodian of fundamental rights and guardian of the constitution has interpreted its provisions in different ways to ensure environmental justice.

Article 21 of the constitution provides that no person shall be deprived of his life and personal liberty except according to the procedure established by law. The judiciary has interpreted this article liberally to include right to clean environment as a fundamental right under Article 21 post *Menaka Gandhi v. Union of India* case. In *Rural Litigation Entitlement Kendra v. State of U.P.* the supreme court held that right to a healthy environment is a fundamental right and ordered for the closure of limestone quarries and prohibition of illegal mining which causes great damage to the health of the people and environment of such as soil erosion land degradation, groundwater contamination, spread of diseases etc. the court held that it is the right of a person to live in an environment free of threats of danger and diseases.

The judiciary has also stated that right to life and personal liberty is very important for the development of an individual and for realisation of his /her full potential which is not possible without a clean environment.

In *Ratlam Municipality v. Vardhichand*, the court recognised the right of pollution free environment as a fundamental right required for decent living of a human being.

In *Subash Kumar v. State of Bihar*, the court held that right to clean and quality water and air is an inherent fundamental right of every citizen and the state should ensure to provide quality water to its citizens.

The judiciary in *P.A. Jacob v. Superintendent of Police, Kottayam* held that Art. 19(1)(a) read with Art. 21 provides of freedom from noise pollution thus stating that freedom to speech and expression does not involve the right to use loudspeakers and sound amplifiers which results in excess noise thus causing health hazards to the people.

In *Coverjee v. Excise Commissioner*, the supreme court held that when there is a clash between the environment protection and fundamental rights and carrying of trade or business, the court should strive to bring a balance in environmental interest and business matters.

The judiciary in Janaradham case held that the phrase to protect and improve in Art 48A and Art 51A(g), includes the affirmation to be taken by the government from its degraded from but also to improve the quality of environment.

In taj trapezium case, the supreme court ordered the closure of 168 industries surrounding the taj trapezium zone that were polluting the environment and the national monument of taj mahal. Similarly in ganga pollution case, the court ordered the closure of industries polluting the river ganga.

In Bhopal gas tragedy and oleum gas leak case, the supreme court taking into account the complexity of the problem involving technical matters which requires the expert knowledge, the court directed the central government to make provisions for a tribunal specifically dealing with environment related matters. As a result, the national environmental tribunal Act, 1995 was passed with an aim of establishing National Environmental tribunal But it was never implemented.

In 2010, a national green tribunal which a specialized fast track court which deals with environmental cases was established by the National green tribunal act to provide for speedy and expeditious disposal of cases relating to environment which has contributed significantly towards environmental protection and management.

### **Constitutional provisions relating to protection of environment:**

Prior to 42<sup>nd</sup> Amendment Act, 1976 there was no explicit provisions relating to the protection of environment though it was implicit in the preamble and directive principles of state policy Article 48A and 51A(g) were introduced by the 42<sup>nd</sup> constitutional amendment Act, 1976 for protection and improvement of environment.

#### **(1) Fundamental rights ;**

Part III of the constitution provides for fundamental rights which are very important for the development and full realisation of an individual's potential. Right to environment is regarded as a fundamental right under articles 14, 19 and 21.

Article 14 provides for equal protection of law and equality before law. The state should ensure fairness in protection of environment and ensure that one class of people does not exploit the

environmental resources of others Art 19 (1)(a) provides for freedom of speech and expression which also includes freedom from noise pollution. In P.A. Jacob v. Superintendent of Police, Kottayam, the Supreme Court held that freedom of speech and expression under Art. 19(1)(a) does not include the freedom to use loudspeakers or sound amplifiers.

Article (19)(1)(g) provides that any person can practice any profession, carry out any trade or business within the territory of India subject to reasonable restrictions. No person has carried out any trade or business that is hazardous to the safety of the general public and environment.

Article 21 provides for the right to life and personal liberty which has been liberally interpreted to include the right to a healthy environment free from threats and dangers of diseases and infections.

Article 32 provides for constitutional remedies where any affected party can file a writ petition or public interest litigation on matters relating to environmental pollution. A similar remedy is also available under Art. 226 to approach high courts.

## **(2) Fundamental duties;**

Article 51A(g) places a responsibility on the citizens to protect and improve the natural environment, lakes, rivers, forests and to show compassion to living creatures.

## **(3) Directive principle of state policy;**

Article 39 provides that the material resources of the community should be distributed to serve the public good and it includes resources in the hands of private persons and not only state-owned resources.

Article 42 provides that the state should ensure just and humane conditions of work and maternity relief.

Article 47 the state should raise the level of nutrition, increase the standard of living and maintain public health.

Article 48 provides for the state to organise agricultural and animal husbandry on scientific modern lines.

Article 48A the state shall endeavour to protect and improve natural resources and safeguard forests and wildlife.

Article 49 to protect the monuments of national and historical importance from destruction.

Article 51 to conform with international treaty, obligations.



Article 253 power of parliament to pass laws relating to conservation and protection of improvement.

### **Convention on biological diversity (1992)**

Article 8(j) of the convention respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles that are relevant for biodiversity conservation and sustainable use, promote their wider application with the approval and involvement of the holders of such knowledge, and encourage the equitable sharing of benefits from the use of such knowledge.<sup>6</sup>

The convention calls upon its signatories to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices, (Article 8(j))

### **Indian And International Perspective of Biodiversity**

Biological diversity is fundamental to agriculture and food production. From the millions of genes that serve as building blocks to the thousands of plants and animals that inhabit the earth, almost limitless combinations of organisms that make up natural ecosystems. Under the contextual reference of modern intensive agriculture demanding many farmers to adopt high yielding varieties of plants and animals, Biodiversity makes an essential contribution for feeding the millions of population of the world. When farming communities abandon diversity, varieties and breeds of animals extinct and the specialized useful traits may be lost. Agricultural diversity forms an important component for tackling unforeseen effects of climate change and is one of the essential key component for developing varieties and animal species with standing temperature extreme floods, droughts, outbreak of diseases reducing the crop productivity and directly causing untold hardship to farming community.

Biodiversity is a multi-disciplinary subject involving diverse activities and actions. The stakeholders in biological diversity include the Central Government, State Governments,

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<sup>6</sup>Article 8(j)Convention on biological diversity (1992).

institutions of local self-governmental organizations, industry, etc. One of the major challenges before India lies in adopting an instrument, which helps to realise the objectives of equitable sharing of benefits enshrined in the Convention on Biological Diversity.

The Convention on Biological Diversity's Article 8(j) recognises the contributions of local and indigenous communities to the conservation and sustainable use of biological resources through traditional knowledge, practises, and innovations, and provides for an equitable sharing of benefits arising from the use of their knowledge, practises, and innovations.<sup>7</sup>

### **The Biodiversity Act's Most Important Features:**

The Government of India has introduced the Biological Diversity Act, 2002, following a lengthy and rigorous consultation process including all stakeholders.<sup>8</sup> To manage access to the country's biological resources and to provide an equal share of the benefits derived from their utilisation. To conserve and sustainable use of biological diversity. The National Biodiversity Authority (NBA), State Biodiversity Boards (SBB), and Biodiversity Management Committees (BMCs) are all being established. When making decisions about bio resources and related knowledge under their jurisdiction, NBA and SBB must consult BMCs.<sup>9</sup> Respect for and protection of traditional biodiversity knowledge held by local populations. To ensure that the advantages of biological resources are shared with local people as biological resource conservers and keepers of knowledge and information about their usage. For the purpose of obtaining biological resources and/or associated knowledge for use, all foreign nationals organisations must first receive NBA consent. For transferring research results to foreign nationals or organisations, Indian scientists and individuals must obtain NBA authorisation. Declaring areas of importance from the perspective of biological diversity as biological diversity heritage sites helps to conserve and develop them. Protection and rehabilitation of threatened species. Involvement of state government institutions in the broad plan of the Biological Diversity Act's implementation through the formation of committees. Protect India's rich biodiversity and associated knowledge from foreign persons and organisations who do not share the benefits that arise from such use, and combat Bio piracy. To get bio resources, Indian industry must notify SBB in advance. SBB has the authority to impose restrictions if they are determined to be in violation of conservation, sustainable usage, or benefit sharing. Provisions

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<sup>7</sup>The Convention on Biological Diversity, 1992 art 8(j).

<sup>8</sup>The Biological Diversity Act, 2002.

<sup>9</sup>The Biological Diversity Rules, 2004.

for notifying heritage sites by State Government in consultation with local body. The establishment of a National, State, and Local Biodiversity Fund, as well as its usage for biodiversity protection. Prior approval is needed from NBA for IPRs in any invention in India or outside India on Bio resource.<sup>10</sup>

### **The Biodiversity Act's management structure**

At the national, state, and local levels, a three-tiered structure is planned.

#### **National Biodiversity Authority (NBA)**

The National Biodiversity Authority shall handle any requests for access from foreign people, institutions, or organisations, as well as all demands for the transmission of research results to any foreigner. The head office of the NBA is established at Chennai. NBA consists of the following members.

#### **Members of NBA**

A Chairperson who shall be an eminent person having adequate knowledge on conservation and sustainable use of biological diversity. Three ex-officio members appointed by the Central Government. One representing the Ministry dealing with Tribal affairs. Two representing the Ministry dealing with Environment and Forests of whom one shall be the Additional Director General of Forests. Seven ex-officio members appointed by the Central Government to represent respectively the Ministries of the Central Government dealing with Agricultural Research and Education, Biotechnology, Ocean Development, Agriculture and Cooperation, Indian Systems of Medicine and Homeopathy, Science and Technology Scientific and Industrial Research

Five non-official members appointed amongst specialists and scientists, representatives of industry, conservers, creators and knowledge holders of biological resources.<sup>11</sup>

#### **Powers and Functions of NBA**

Regulate, approve, and advise the Indian government on research, commercialization, bio-survey, and bio-utilization. Grant approval to Section 3, 4 and 6.<sup>12</sup> Certain individuals are prohibited from engaging in biodiversity-related activities without the prior authorisation of

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<sup>10</sup> The National Biodiversity Authority, 2004.

<sup>11</sup> The Biological Diversity Act, 2002.

<sup>12</sup> The Biological Diversity Act, 2002 ss.3, 4 & 6.



the National Biodiversity Authority (Section 3). The National Biodiversity Authority must approve the transfer of research results to specific individuals (Section 4).<sup>13</sup> The National Biodiversity Authority must approve any application for IPR rights (Section 6).<sup>14</sup> Perform such other functions as may be necessary to carry out the provisions of this act.

### **Approvals by NBA**

Any person who wishes to obtain or apply for a patent or other form of IPR protection, whether in India or abroad, as described in sub-section (1) of Section 6, may do so by submitting an application to NBA.<sup>15</sup> Any person who wishes to transfer any biological resource or information linked with it as defined in sub-section (1) of Section 3 must submit an application to the National Biodiversity Authority in the form and manner prescribed.<sup>16</sup> Determination of equitable benefit sharing by National Biodiversity Authority.

### **Functions of State Biodiversity Board**

Advise the State Government on topics relating to biodiversity conservation, sustainable use of its components, and equitable distribution of the benefits emerging from the utilisation of biological resources, subject to any recommendations issued by the Central Government. Control commercial exploitation, bio-survey, and bio-utilisation of any biological resource by Indians by providing approvals or otherwise. Conduct any other functions that the State Government deems required to carry out the provisions of this Act or that the State Government deems appropriate.<sup>17</sup>

### **Power of State Biodiversity Board**

Any citizen of India, or a body corporate, organisation, or association registered in India, planning to engage in any of the activities listed in section 7 must notify the State Biodiversity Board in advance in the manner required by the State Government. If the State Biodiversity Board receives an intimation under sub-section (1), it may, in consultation with the local bodies concerned and after making such inquiries as it deems necessary, prohibit or restrict any such activity by order, if it believes that such activity is detrimental or contrary to the objectives of biodiversity conservation and sustainable use, or equitable sharing of benefits arising from such

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<sup>13</sup>The Biological Diversity Act, 2002 s. 4.

<sup>14</sup>The Biological Diversity Act, 2002 s. 6.

<sup>15</sup>The Biological Diversity Act, 2002 Ss.1 of s.6.

<sup>16</sup>The Biological Diversity Act, 2002 Ss.1 of s.3.

<sup>17</sup>The Biological Diversity Act, 2002 s. 23.2

activity. Provided, however, that no such order must be imposed without first giving the person affected an opportunity to be heard. Any information supplied in the form referred to in sub-section (1) for prior intimation will be kept secret and shall not be revealed to any person not involved, either deliberately or inadvertently.<sup>18</sup>

Section 7 deals with commercial utilisation of biological resources, bio survey and bio utilisation for commercial purposes, with prior intimation to the State Biodiversity Board. The functions of the Biodiversity Board, at the National and State level, as delineated in Sections 18 and 23 are advisory, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilisation of biological reserves. The National Board also advises the State Governments in selecting areas of biodiversity as Heritage sites and implementation of measures for management of such sites. The State Board is also conferred with the power to regulate the granting of approvals or otherwise request; for commercial utilisation or bio survey and bio utilisation of bio reserves.<sup>19</sup>

### **Biodiversity Management Committees (BMCs)**

Institutions of local state government will be required to set up biodiversity management Committees in their respective areas for conservation, sustainable use, documentation of biodiversity and chronicling of knowledge relating to biodiversity.

NBA and SBBs are required to consult the concerned BMCs on matters related to use of biological resources and associated knowledge within their jurisdiction.<sup>20</sup>

### **Exemptions provided in the Act**

The Biological Act, 2002 provides for the following exemptions: Exemption to local people and community of the area for free access to use biological resources within India. Exemption to growers and cultivators of biodiversity and to Vaidas and Hakims to use biological resources. Exemption through notification of normally traded commodities from the purview of the Act. Exemption for collaborative research through government sponsored or government approved institutions subject to overall policy guidelines and approval of the Central Government.

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<sup>18</sup>The Biological Diversity Act, 2002 s. 24.

<sup>19</sup>K.G.Gangadharan vs State Of Kerala.

<sup>20</sup>The Biological Diversity Act, 2002 s. 41.

### **Forest conservation Act, 1980**

The forest trees not only give us with oxygen for breathing, but they also do a lot more. They also give us with useful items such as food and wood. Forests are an important aspect of our environment because they help to maintain the earth's ecosystem and water cycle.

The Act's goal is to protect our country's forest and sustain its ecology. This Act also aims to rejuvenate the woods in our country by planting trees and increasing forest growth. To protect the forest, its flora, fauna and other diverse ecological components. To protect the integrity, territory and individuality of the forests. To protect the forests and prevent deforestation that will lead to land erosion and subsequent degradation of the land. To prevent the loss of forest biodiversity. To prevent the conversion of forests into agricultural lands, or grazing lands, or building of business or residential units.<sup>21</sup>

In this instance, a 20-year mining lease for limestone in the forest region was awarded to the respondents in the year 1966. Following its expiration in 1986, the respondents requested a renewal from the State government. The state legislature approved the decision to extend the lease by another 20 years. This order was cancelled by the Forest Department. The Supreme Court of India heard a case challenging this cancellation. The Court determined that the state cannot issue or renew the licence in accordance with Section 2 of the Forest (Conservation) Act without the Central government's prior permission. As a result, the order cancellation was done correctly.<sup>22</sup>

In this case The District Collector submitted a motion to start the contempt proceedings against the appellants for disobeying the court's directives. The recently built bund had to be removed in accordance with court orders so that seawater could enter and save the mangrove forests. The injunction made an effort to stop the appellants from engaging in any behaviour that may endanger the mangrove forests. The appellants are authorised to produce salt at the location. The mangrove woods in the region prevent the sun evaporation of saltwater for the purpose of producing salt, according to the Supreme Court. Mangrove forests are of considerable ecological importance and are also environmentally sensitive, which is why they are classified as CRZ-I. (Coastal Regulatory Zone-I). The Coastal Area Classification and Development

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<sup>21</sup> <https://blog.iplayers.in/need-know-forest-conservation-act-1980/>

<sup>22</sup>State of MP v. KrishnadasTikaram.



Regulations, 1991 classifies the Coastal Regulatory Zone, and salt manufacture is prohibited under the regulations.<sup>23</sup>

### **International perspective of Biological diversity:**

The world's biological, cultural and linguistic diversity are imperilled. While the nature and extent of the threat to the Earth's biological richness is much debated, there is no doubt about what is happening to humanity's cultural and linguistic diversity.

### **Convention on Biological Diversity (CBD)**

In 1992, the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro enacted the Convention on Biological Diversity (Biodiversity Convention, CBD). There are presently 196 Parties to the Convention. Switzerland approved it on November 21, 1994.<sup>24</sup>

The CBD's signature nations agree to protect biodiversity in their own territories, promote suitable measures for biodiversity conservation and sustainable use in developing countries, and control equally access to genetic resources and their use.

The CBD Parties agreed in April 2002 to considerably limit the rate of biodiversity loss by 2010. Unfortunately, the agreed-upon 2010 aim was not met. At the Nagoya Conference of the Parties in October 2010, the worldwide Strategic Plan for Biodiversity 2011–2020 and new biodiversity targets for the decade to 2020, known as the Aichi Biodiversity Targets, were set. The removal of counterproductive incentives, increased connectivity of protected areas, and sustainable use of places with an economic role were among the measures to be achieved under the strategic plan and goals.<sup>25</sup>

The Department of Environment, Transport, Energy, and Communications (DETEC) produced a national biodiversity plan, which was adopted by the Federal Council on April 25, 2012, to ensure long-term biodiversity protection. On the same day, the related action plan was agreed, which lays out concrete steps to achieve the 10 strategic goals for long-term biodiversity conservation in Switzerland.

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<sup>23</sup>KrishnadeviMalchandKamathia v. Bombay Environmental Action (2011).

<sup>24</sup> The convention on Biological Diversity, 1992.

<sup>25</sup><https://www.un.org/en/observances/biological-diversity-day/convention>

A new global framework for biodiversity is to be adopted at the next Conference of the Parties (COP) for the period after 2020. This will replace the expired Strategic Plan for Biodiversity 2011–2020, setting new targets for 2030 and 2050. Some of the elements Switzerland is pushing for are: a clear and concise framework with measurable targets and indicators that address the most important global causes of biodiversity loss; a framework that applies to the entire international biodiversity regime and strengthens and leverages synergies between different conventions and processes; and finally, an effective implementation mechanism that allows the success of measures to be assessed and lessons to be learned.<sup>26</sup>

### **Decision-making and implementation: the Conference of the Parties**

The Convention's supreme decision-making body is the Conference of the Parties (COP) the governments of the countries that have ratified the Convention. The COP is composed of nearly 180 Contracting Parties, making it one of the world's most popular conventions. The COP meets every two years. The COP's functions include adopting amendments and protocols to the Convention (such as the recently adopted Cartagena Protocol on Biosafety), establishing programmes, and creating various subsidiary bodies to assist the COP in its tasks. One such body of particular relevance to indigenous peoples is the Ad Hoc Open-ended Inter-sessional Working Group on the Implementation of Article 8(j) and Related Provisions, known as "the Ad Hoc Working Group on Article 8(j)."<sup>27</sup>

### **Cartagena Protocol on Biosafety**

In the year 2000, the same states adopted the Cartagena Protocol on Biodiversity under the cover of the Biodiversity Convention. Switzerland ratified the agreement in 2002. The Cartagena Protocol is an international treaty that addresses environmental and health concerns associated with the use of genetically modified living organisms. Its purpose is to assure the safe transit and use of live species that have been genetically modified using biotechnology, which may represent a threat to biodiversity conservation and sustainable usage.<sup>28</sup>

As a complement to the Cartagena Protocol on Biosafety, the Nagoya-Kuala Lumpur Supplementary Protocol was passed in Nagoya in 2010. The additional protocol establishes international laws and procedures for culpability and remedy in the event that genetically

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<sup>26</sup><https://www.bafu.admin.ch/bafu/en/home/topics/biodiversity>

<sup>27</sup><https://www.cbd.int/convention/articles/?a=cbd-23>

<sup>28</sup><https://bch.cbd.int/protocol/>

modified organisms cause biodiversity loss (GMOs). Switzerland ratified it on October 27, 2014, and it went into effect on March 5, 2018. Its requirements are in line with the Swiss Gene Technology Act.<sup>29</sup>

### **Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Access and Benefit-Sharing, ABS)**

The Nagoya Protocol, which was negotiated as part of the Convention on Biological Diversity (CBD), governs access to genetic resources as well as the fair and equitable distribution of benefits resulting from their use (Access and Benefit-Sharing, ABS). It is a tool for achieving the Convention on Biological Diversity's third goal, which is to conserve biodiversity and ensure the long-term use of its components. The traditional knowledge of indigenous and local groups, as well as genetic resources, are frequently intertwined. As a result, the Nagoya Protocol includes provisions for access and benefit-sharing when such information is utilised.

On July 11, 2014, Switzerland approved the Nagoya Protocol. It went into effect on October 12, 2014. In order to implement the convention in Switzerland, new provisions (NCHA Art. 23)<sup>30</sup> were added to the Federal Act on the Protection of Nature and Cultural Heritage. On February 1, 2016, the Nagoya Ordinance went into effect. Its goal is to apply the laws of the Nature and Cultural Heritage Act concerning genetic resources and to implement the Nagoya Protocol in Switzerland.<sup>31</sup>

### **The Convention for the Protection of the World Cultural and Natural Heritage, 1972**

The World Heritage Convention was adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) General Conference at its 17th session in Paris on 16 November 1972. The Convention came into force in 1975. In August 1974, Australia became one of the first countries to ratify the Convention.

The World Heritage Convention aims to promote cooperation among nations to protect heritage around the world that is of such outstanding universal value that its conservation is important for current and future generations.

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<sup>29</sup><http://biosafety.org.za/information/know-the-basics/regulation-of-gmos/the-cpb>

<sup>30</sup>The Natural and Cultural Heritage Protection Act 2014 art 23.

<sup>31</sup><https://www.bafu.admin.ch/bafu/en/home/topics/biotechnology/info-specialists/nagoya-protocol.html>



It is intended that, unlike the seven wonders of the ancient world, properties on the World Heritage List will be conserved for all time.

### **The role and responsibility of participating nations**

States that are parties to the Convention agree to identify, protect, conserve, and present World Heritage properties. States recognise that the identification and safeguarding of heritage located in their territory is primarily their responsibility. They agree to do all they can with their own resources to protect their World Heritage properties.

They agree, amongst other things, as far as possible to: 'Adopt a general policy that aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programs' Undertake 'appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage'

Refrain from 'any deliberate measures which might damage, directly or indirectly, the cultural and natural heritage' of other Parties to the Convention, and to help other Parties in the identification and protection of their properties.<sup>32</sup>

In Nyam Jang chhu River case report held that Buddhist monks in the Tawang area of Arunachal Pradesh have cause for celebration as it appears that their campaign to preserve the black-necked crane's winter home has been successful. The recent report from the Wildlife Institute of India (WII), based in Dehradun, recommending against the 780 MW Nyamjang Chhu hydropower project is seen as a moral victory by the monks because it will help protect the habitat of the revered bird, also known as the "bird of fortune" by the locals, in the Zemithang valley of the district. According to the WII assessment, the construction of the dam (NyamjangChhu project) would eventually drown the whole habitat of the threatened blacknecked crane in Zemithang.<sup>33</sup>

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<sup>32</sup><https://www.awe.gov.au/parks-heritage/heritage/about/world/world-heritage-convention>

<sup>33</sup> <http://www.indiaenvironmentportal.org.in/content/464180/assessment-of-habitat-use-by-black-necked-crane-grus-nigricollis-and-eflows-of-nyamjang-chu-hydroelectric-project-in-tawang-district-arunachal-pradesh/>

### **Ramsar Convention on Wetlands**

The Convention on Wetlands of International Importance especially Waterfowl Habitat was concluded in Ramsar, Iran, in 1971. This makes it one of the oldest international agreements on the protection of nature. The Ramsar Convention came into force in Switzerland in 1976. The secretariat for the Ramsar Convention is located in Gland (canton of Vaud).

The Convention on Wetlands is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources.<sup>34</sup>

### **Bern Convention**

The Convention on the Conservation of European Wildlife and Natural Habitats was signed by the Council of Europe in Bern in 1979. It is the first agreement to regulate the protection of biodiversity at European level.

The aim of the Bern Convention is to conserve wild flora and fauna and their habitats, and to promote cooperation between European countries in the conservation of biodiversity. Particular attention is paid to threatened and particularly sensitive species. The Bern Convention implements many of the global goals defined in the Convention on Biological Diversity (1992) at regional level.<sup>35</sup>

### **The Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973**

The Convention on International Commerce in Endangered Species of Wild Fauna and Flora (CITES) is a global agreement among nations to regulate or prohibit international trade in endangered species of wild fauna and flora.

Governments began to notice in the mid-twentieth century that trading in some wild animals and flora had a disastrous effect on those species. Unsustainable usage for food, fuel, medicine, and other uses was driving many animals to extinction.

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<sup>34</sup><https://www.ramsar.org/>

<sup>35</sup><https://www.coe.int/en/web/bern-convention>

Individual countries could control what happened within their borders, but they had no method of dealing with the consequences of international commerce in these animals. The CITES agreement, signed in 1973 by 21 countries, addressed this issue.

### **Conservation impacts**

CITES is still one of the bedrock of international conservation after four decades. There are 183 member Parties, and trade in over 35,000 species is restricted. Every two to three years, representatives from CITES countries gather at a Conference of the Parties to assess progress and make changes to the protected species listings, which are divided into three categories with varying levels of protection

Appendix I: Includes the world's most endangered plants and animals, such as tigers and gorillas. International commercial trade in these species, or even parts of them, is completely banned, except in rare cases such as scientific research.

Appendix II: Contains species like hippopotamus and many corals that are not yet threatened with extinction, but which could become threatened if unlimited trade were allowed. Also included are "look-alike" species that closely resemble those already on the list for conservation reasons. Plants and animals in this category can be traded internationally, but there are strict rules.

Appendix III: Species whose trade is only regulated within a specific country can be placed on Appendix III if that country requires cooperation from other nations to help prevent exploitation.

CITES also brings together law enforcement officers from wildlife authorities, national parks, customs, and police agencies to collaborate on efforts to combat wildlife crime targeted at animals such as elephants and rhinos.<sup>36</sup>

### **4.6.9 World Conservation Strategy**

After recognizing that the world's biodiversity is under threat, the countries of the world under the banner of United Nations came together in 1992 to formulate the first worldwide protocol on biodiversity conservation. This was the United Nations Convention on Biological Diversity. Subsequently, many national and international protocols were laid down, and they were implemented.

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<sup>36</sup><https://www.worldwildlife.org/pages/cites>

All of these were based on a document called World Conservation Strategy that was jointly developed by UNEP, IUCN and WWF in 1980. It's been the go-to document for implementation of conservation measures all over the world. It highlights the "intellectual framework and practical guidelines" for conservation measures. It also delineates the priority activities in our conservation efforts. It is specific, focused on efficiency and calls for global action.

It is intended not just for conservationists but also for the government and development proponents. It provides guidelines on policy framework and aids commercial units to take decisions in the best interests of ecosystems.

### **Objectives of the World Conservation Strategy**

There are three main objectives of the World Conservation Strategy-*To maintain ecological processes and ecosystems* that are of importance to human activities, like soil regeneration, nutrient cycling, water cleansing, etc. *To preserve genetic diversity* of species on Earth. *To ensure sustainable use of species and ecosystems* which support communities and industries.<sup>37</sup>

Priority efforts done under the conservation umbrella are linked to these goals. It's critical that we don't let crucial ecosystem processes deteriorate to the point where the land can no longer be used for any economic activity. Ecosystems such as forests, rivers, and coastal ecosystems also contribute directly to our economies. Objects that are directly or indirectly related to these ecosystems can be found in our houses. These ecosystems must be preserved if we are to sustain our existing standard of living.

Habitat fragmentation, invasive species, pollution, and over-exploitation of resources all contribute to species extinction. However, if a species is genetically capable of adapting to these environmental pressures, it can do so. Darwin postulated the "survival of the fittest," which states that certain people would, by chance, have a genetic set-up capable of withstanding environmental changes such as those caused by humans. They can then pass on these qualities to future generations, ensuring the species' survival. Greater genetic variety in a population of a species means the species has a better chance of surviving.

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<sup>37</sup><https://eco-intelligent.com/2016/12/06/world-conservation-strategy-what-is-it-and-why-is-it-important/>



Finally, those species and habitats that contribute to our economic stability must be exploited in a sustainable manner, guaranteeing that WCS's first goal is met. Controlling the discharge of contaminants, proper waste management, and resource optimization are all part of this. Understanding the capabilities of the animal/ecosystem can help with this.<sup>38</sup>

There is urgent need to achieve this because-The planet cannot continue to support our numbers sustainably. Many people around the world are compelled to destroy the natural resources to escape starvation and poverty. A case in point is the poaching situation in Africa. People are forced to take up arms and kill the animals, even though they know better. They are simply hungry. The resource base of major industries like fisheries, meat, and forestry is shrinking. The energy needs to meet our standard of living is increasing.

The appellants, who were aggrieved by the said notices, challenged the vires of the Act. According to them, Sections 4 & 5<sup>39</sup> of the Act violated the provisions of Articles 14, 19(1)(f), 31 and 31A of the Constitution.

The High Court for reasons recorded in the Judgment upheld the validity of the Act and dismissed the petitions. However, the High Court granted certificates under Articles 132 & 133 of the Constitution and hence the appeals.

Nullifying the purchase, the Court held that “Any person who acquires such granted land by transfer from the original grantee in breach of the condition relating to prohibition on such transfer must necessarily be presumed to be aware of the prohibition imposed on the transfer of such granted land, and they cannot be considered to be a bona fide purchaser for value; and every such transferee acquires to his knowledge only avoidable title to the granted land”.

The title acquired by such transfer is defeasible and is liable to be defeated by an appropriate action taken in this regard. If the Legislature under such circumstances seek to intervene in the interests of these weaker sections of the community and choose to substitute a speedier and cheaper method or recovery of these granted lands which were otherwise liable to be resumed

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<sup>38</sup><https://www.environmentandsociety.org/mml/iucn-ed-world-conservation-strategy-living-resource-conservation-sustainable-development>

<sup>39</sup> The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands Act), 1978, S.4&5

through legal process, it cannot be said that any vested rights of the transferees are affected. Transferees of granted lands with full knowledge of the legal position that the transfers made in their favour in contravention of the terms of grant or any law, rule or regulation governing such grant are liable to be defeated in law, cannot and do not have in law or equity, a genuine or real grievance that their defeasible title in such granted lands so transferred is, in fact, being defeated and they are being dispossessed of such lands from which they were in law liable to be dispossessed by process of law.

The argument that the expression 'land' has been used in its restricted sense in paragraph 5(2)(a) of Schedule V to the Constitution of India<sup>40</sup> and therefore the impugned provisions prohibiting the transfer of lands along with structures thereon by employing the expression 'immovable property' is not in accordance with law is devoid of merit for two reasons: i. Firstly, there is no reason to believe that 'land' has not been employed in its legal sense. The expression 'land' in its legal sense is a comprehensive expression which is wide enough to include structures, if any, raised thereon and ii. Secondly to interpret the expression 'land' in its narrow sense is to render the benevolent provisions impotent and ineffective. In that event the prohibition can be easily circumvented by just raising a farm house or a structure on the land. The impugned provisions were inserted by the Amending Regulation precisely to plug such loopholes and make the law really effective.

**4.7.5. In “J.V.Sharma&Ors. Vs. Government of India<sup>41</sup>”,**– AP High Court, the petitioners had challenged the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights Act), 2006 and sought to declare the Act as illegal and unconstitutional. The Court has held that the denial of laudable objective of the above Act would prejudice the forest dwellers sought to be protected, and if there are defects in implementation, there are sufficient safeguards in the process for correcting the same.

**4.7.6. In “Minor Forest Produce Gatherers Committee, PullangiPanchayat&Anr. Vs. State of A.P<sup>42</sup>”,** the Andhra Pradesh High Court held that the petitioners being the gatherers of minor forest produce such as hill brooms, they should not be prevented from collecting the minor forest produce.

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<sup>40</sup> The Constitution of India

<sup>41</sup> W.P.(C).No.21479 of 2007.

<sup>42</sup>W.P.No.12493 of 2012.

**4.7.7.** In “**JanjathiBaribidhasta&Ors. Vs. UOI**<sup>43</sup>”, W.P.(C).No.1973 of 2008, the Gauhati High Court held that the petitioner forest dweller shall not be evicted without the following the due procedure of law even though the argument of the Government is that the petitioner is not a forest dweller.

**Biodiversity and access benefit sharing:**

The Indian biodiversity Act aims to protect the FEBS of the indigenous community. However, it has been breached in many instants. For example Divya pharmacy case and KANI mode. The CBD recognise the contributions of Local, indigenous community to the Conservation & Sustainable use of biological resources through traditional knowledge, practices, innovations, and provides for an equitable sharing of benefits arising from the use of their knowledge, practice & innovations.

The following Act (The forest Act,1927, The forest (conservation) Act 1980, and Wild life Protection,1972) is meant for conserving the environment, but these acts restrict the rights of Tribal to use forest for their living and they displace from the their own habitant. On the other hand, Forest dwellers Act, 2006, Biological diversity Act 2002, the panchayat (Extension to Scheduled Areas) Act, 1996 and constitution provision services for providing privilege for the tribals to use the forest. So some provision of the act should be repeal from the Act for purpose to protection of environment .Because the natural resource not only need for present but also future generation. The judicial attitude in India has been for protecting the traditional rights of the tribes but not at the cost of environment and development. It is based on the principles of "sustainable development"

**CONCLUSION**

In the paper, I have made an attempt to examine and analyse laws pertaining to the protection of biodiversity. The protection of environment is needed but it is leads to be a greater loss and destruction of biodiversity. Wildlife conservation is the need of the time and it should the responsibility of all peoples of the world to cooperate and contribute for its achievements. The IUCN (international union for conservation of nature) has positive efforts in advancing the recognition of the biodiversity.\

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<sup>43</sup> W.P.(C).No.1973 of 2008.

In India, a major policy shift took place in 1998 when the government recognized the need to involve villages in forest protection. Accordingly, the Ministry of Environment and Forests, the Government of India, issued instructions to the states in 1990 that the rights of biodiversity and other villages living around forests will have first charge on forests. Thereafter, the government initiated the cooperation of local people through the system of joint forest management. The system of forest management has not been able to produce a desired result.

The Indian Biodiversity Act aims to protect forest resources. However, it has been breached in many instances. For example, in the Kani model case and Divya Pharmacy case, the CBD recognizes the contributions of local, indigenous communities to the conservation and sustainable use of biological resources through traditional knowledge, practice, innovations, and provides for an equitable sharing of benefits arising from the use of their knowledge, practice, and innovations.

The following acts (the Forest Act, 1927, the Forest (Conservation) Act, 1980, and Wildlife Protection, 1972) are meant for conserving the environment, but these acts restrict the rights of Tribals to use forests for their living and they are displaced from their own habitats.

On the other hand, the Biological Diversity Act, 2002, and constitutional provisions serve for providing privileges for forests.

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