



CLIMATE CHANGE & BIO-DIVERSITY: A LEGAL STUDY

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Abstract

Bio-Diversity is a significant aspect of maintaining ecosystem and climate change in society. It is not national issues as well international because biodiversity is a more affected part of the environment. After Earth Conference on the world level is started movement to promote biodiversity and climate change. Indian Constitution has committed to the protection of the natural resource & life below water. It is a very nice aspect and appreciated by the Sustainable Development Goal 2015 which is enumerated the protection and preservation of biodiversity & is the savior of life on the earth. The Indian legal system has concerned international law and members of the Earth Conference focused on the preservation of climate change and biodiversity through the enactment and government policy. The chapter is evaluated all enactment efforts and the impact of the policy on the protection of climate change & biodiversity. The object of the study is to find out the present status of climate change and biodiversity in a legal way. The methods used in the study are

analytical and descriptive on the basis of legal document, commission report, Ministry actions, and judgment of the Apex Court.

Key Words: Ecosystem, Bio-Diversity, Judiciary, Enactment, International Conference

INTRODUCTION

An ecosystem denotes a family of living organisms on the Earth and along with forest, hills, mountains, land, water, rivers, and sea¹. Biodiversity Convention is a landmark, for several reasons. Above all, it embraces biological diversity as such as a common concern of humankind, while at the same time recognizing the responsibility of each State to conserve it². Law mechanisms are enumerated standards and attracted other attention³ to preserved climate change and the environment. The international obligations play a crucial role to promote common commitments and measures to preserve them and also National Schemes provides a framework to regulate certain behaviour, to affect the area of biodiversity. Ministry of Environment, Forest, and Climate Change has also declared many policies concerning biodiversity and climate change as well⁴. In 2000 the Law Commission of India has recommended formulating legal policy for the protection of biodiversity⁵. Global Biodiversity outlook has also collected data periodically on

¹ Ecosystems, available at: <https://www.ugc.ac.in/oldpdf/modelcurriculum/Chapter3.pdf> (last visited on 06/05/2021).

² Cyrille de Klemm & Clare Shine, Biological Diversity Conservation and the Law Legal Mechanisms for Conserving Species and Ecosystems, XV IUCN – The World Conservation Union (1993).

³ Non- governmental organization, International organization in the context mentioned United Nations Environment Program.

⁴ Annual Report 2020-2021, Ministry of Environment, Forest & Climate Change, available at: <http://moef.gov.in/wp-content/uploads/2017/06/Environment-AR-English-2020-21.pdf> (last visited on 06/04/2021)

⁵ Report No. 171 of the Law Commission of India, (2000).



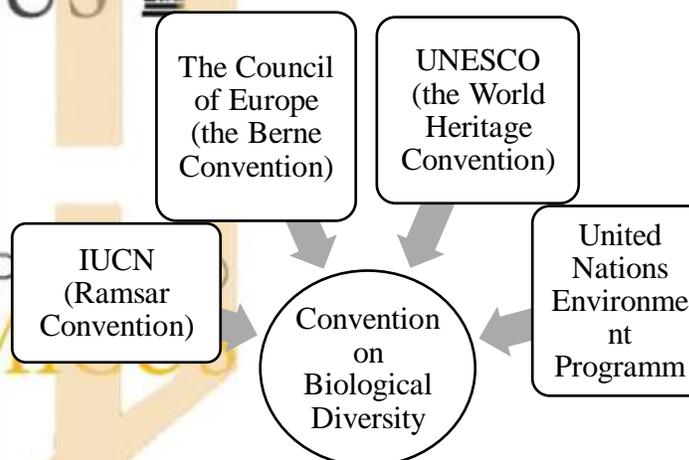
biodiversity and focus on the implementation of the biodiversity convention. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Service has played a greater role to provide information, data, and status on Biodiversity around the globe⁶. Biodiversity is more affected by livelihood, poverty, and climate change itself⁷. Another side the climate change is also affected by biodiversity in the manner of flooding, pollution at sea level, and Global warming⁸. So we can say that climate change is directly affected to biodiversity and it is also affected by climate change and a very debating question arises that what did legal efforts about the biodiversity and climate change. What the government policies are more effective to preserved of biodiversity. The study depends to find out answers to the above query below.

INTERNATIONAL CONVENTIONS ON BIODIVERSITY AND CLIMATE CHANGE

The Convention on Biodiversity and climate change is started on 5th June, 1992 and provides comprehensive provisions, standards, and protection about biological diversity. It is given a very vast significance status of climate change and biodiversity. The convention has scientifically defined Biological Diversity and includes the variability among living organisms from all sources for example terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part; this

includes diversity within species, between species, and of ecosystems⁹. The convention has defined other words biological resource including the value of humanity and biotechnology etc. The main objects of the Convention have utilized genetic resources and making legal frameworks on the national level also. Article 7 of the Convention has provided the responsibility of the member states to identify the components of biodiversity and conservation¹⁰.

In 2020 Global Biodiversity Framework was also enumerated few ideal new goals proposed¹¹ the convention has also concerned with



The impact of the convention on biological diversity in the Indian system has passed legislation Biological Diversity Act

⁶Intergovernmental Science- Policy Platform on Biodiversity and Ecosystem Service(IPBES) available at: <https://ipbes.net/about>(last visited on 06/05/2021).

⁷ Hannah Reid and Saleemul Huq, Climate Change – Biodiversity and livelihood impacts, 57Center for International Forestry Research (2005).

⁸ Ibid.

⁹ Article 2 of the Convention on Biological Diversity, 3 United Nations (1992)

¹⁰ Article 7 of the Convention on Biological Diversity, 5 United Nations (1992).

¹¹ Report of the Open- ended working Group on the Post-2020 Global Biodiversity Framework, United Nations Environment Program, Second Meeting, Rome, (2020).



2002. The United Nations Convention on Climate Change has also organized conferences concerning climate change on a global level. The Ministry of Environment, Forest & Climate Change has started SDG Co-ordination Unit for the implementation of Goal 13 of the Sustainable Development initiated by UNFCCC¹². May 2021, United Nations Climate Change press has released for the preservation of climate change all country has updated their climate change action plan and demanded national contribution for the protection on climate change¹³.

INDIAN LEGAL FRAMEWORK ON THE CLIMATE CHANGE & BIODIVERSITY

The Indian constitution has declared protection of the environment is a prominent task of the government under Article 48A. The problems set with Climate Change & Biodiversity are very critical and need to protect it. For this reason, the Indian parliament has passed separated legislation on biodiversity, that known as Biological Diversity Act, 2002. No doubt much other legislation¹⁴ is applied on the protection of climate change and biodiversity but exactly it's not covered all aspect of the biological and biodiversity. The main objectives of the enactment are-

- ❖ To provide measurements for conservation of biological diversity,

- ❖ To sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources,
- ❖ To provides knowledge concerning biodiversity and its incidental impact¹⁵.
- ❖ To utilization of genetic resources in the protection of climate change and
- ❖ To give effect to the principles of the Convention on Biological Diversity.

The Act has defined biological diversity¹⁶ and commercial utilization¹⁷ National Biodiversity Authority¹⁸etc.

Section 3 of the Biological Diversity Act, 2002 provides rules and regulation to certain persons not to undertake Biodiversity related activities without approval of the National Biodiversity Authority. Under clause (1) of section 3 confers without previous approval of Authority, obtain any biological resource occurring in India or knowledge associated thereto for research or commercial utilization or bio-survey and bio-utilization¹⁹. In-State of Jharkhand and another v. Govind Singh²⁰ the Apex Court has observed that the language of the Act is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been saying. A construction that requires, for its support, the addition or substitution of words or which results in rejection of words has to be avoided unless it is covered by the rule of

¹² United Nations Climate Change, available at: <https://unfccc.int/> (last visited on 10/05/2021).

¹³ COP25 and COP26 Presidents Urge Governments to Strengthen the Climate Ambition Alliance, available at: <https://unfccc.int/> (last visited on 10/05/2021).

¹⁴ Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981, Environment Protection Act, 1986, Ozone

Depleting Substances (Regulation and Control) Rules, 2000 , Wild protection Act, 1972 etc.

¹⁵ Preamble, Biological Diversity Act, 2002.

¹⁶ Section 2(b) Biological Diversity Act, 2002.

¹⁷ Section 2(f) Biological Diversity Act, 2002.

¹⁸ Section 2(j) Biological Diversity Act, 2002.

¹⁹ Biological Diversity Act, 2002.

²⁰ (2005) 10 SCC 437.



exception, including that of necessity, which is not the case here. In the case, Supreme Court has explained words of enactment as indicating the will of the legislature and the court has the responsibility to interpret any legislation in favour of social and natural justice.

In **Kavalappara Kottarathil Kochuni v. State of Madras and Kerala**,²¹ the Higher Judiciary has explained Fair and Equitable Benefit Sharing is one of the three important posts of the entire movement of conservation of biodiversity, and one of the basic principles of the enactment. It is emphasizing the value of the preamble of the Act of 2002. So that fair and Equitable Benefit Sharing is imposing responsibility on the Indian company and organization.

In **Divya Pharmacy v. Union of India**²² Justice, Sudhanshu Dhulia has described the significance of the international convention concerning biodiversity and the protection of the Environment. The effort of the world community for a sustainable biodiversity system goes back to the United Nations conference on the human environment, which is better known as the Stockholm conference of 1972. It was the first United Nations conference, which focused on international environmental issues. The Stockholm manifesto authorized that earth's resources are finite and there is an urgent need to safeguard these resources²³.

Section 7 of the Biological Diversity Act of 2002 is incorporated who is used biological recourse. According to the section no person, who is a citizen of India or a body

corporate, association, or organization which is registered in India, can obtain any biological resources for commercial utilization, etc. without giving a prior intimation to the State Biodiversity Board concerned. Only local communities, vairs and hakims are exempted from this provision²⁴. The legislation has given a very strong point for the safety to use the biological recourse by any company, organization, and association, etc. only one ground to the use the biological recourse on prior permission State Biodiversity Board. Section 23 has provides the power and functions of the State Biodiversity Board.

State Biodiversity Board has functioned to advise the Government of the State on matters relating to the conservation of biodiversity, sustainable use of its components, and equitable sharing of the benefits arising out of the utilization of biological resources. These types of functions are dealt with by the National Biodiversity Authority²⁵.

Section 8 of the Act has provided the establishment of the body of National Biodiversity Authority and having corporation status it has used power and function under section 18 of the Act. The main function of the authority is to advise the central government and state government in areas of biodiversity. It's also having the power to refuse the grant of intellectual property rights in any country outside India in the context of any biological resource obtained from India. The Act is provided Constitution of the National Biodiversity

²¹ AIR 1960 SC 1080.

²² Writ Petition (M/S) No. 3437 of 2016.

²³ Ibid.

²⁴ Section 7, Biological Diversity Act, 2002.

²⁵ Biological Diversity Act, 2002



Fund under section 27 that means it can provide grants and loan and received it.

The fund is used in the conservation of biodiversity and research resource-related biodiversity. It is a very significant aspect of the legislation deals with by the National Biodiversity Authority. Section 27(2) (b) confers conservation and promotion of biological resources with the development of areas from where such biological resources or knowledge associated thereto has been accessed. The Authority has also prepared an annual report on biodiversity, concern problem, funding body, and other measurements related to the conservation of biodiversity.

The Biological Diversity Act ensures and promotes the preservation of biological things and issues which are directly connected with the protection of the environment. The main purpose of the funds is to provide assistance in the financial matter and concern with the State Biodiversity Board for protection and regeneration of biological diversity so that long-term sustainability is ensured and the indigenous and local communities get incentives for benefit of conservation and use of biological resources²⁶. Section 52A of the Biological Diversity Act of 2002 has enumerated an appeal provision against the order of the National Biodiversity Authority and State Biodiversity Board before the National Green Tribunal, the matter regarding the determination of benefit sharing²⁷.

²⁶ Ibid.

²⁷ Section 52A, Biological Diversity Act, 2002

²⁸ Development of Legal Institutional and Financial Framework of National Program, available at: <http://moef.gov.in/wp-content/uploads/2017/06/Development-of-legal->

GOVERNMENT POLICIES: CLIMATE CHANGE & BIODIVERSITY

National Environment policy 2006 has enumerated the problems concerning environmental components like land, water, soil, noise, natural heritage, biodiversity, forests, wildlife, etc and their impact on climate change²⁸. In 2008 the Indian government has launched National Action Plan on Climate Change, which is work on the domestic level, and in 2015 the Indian government has submitted Intended Nationally Determined Commitments to UNFCCC in the context of the Paris Climate Change Summit²⁹. Many climate change programs has started by the Indian Government in 2008 under NAPCC.

National Solar Mission

National Mission for Enhanced Energy Efficiency

National Mission on Sustainable Habitat

Ministry of Science & Technology

National Mission on Strategic Knowledge of Climate Change

National Mission for Sustaining the Himalayan Eco-system

National Water Mission

National Mission for a Green India

National Mission for Sustainable Agriculture

The Ministry of Environment & Forest and Climate Change have played a vast role in the conservation of biodiversity and climate change in India. The ministry is promoted Collaborative research programs on

Institutional-and-Financial-Framework-of-National-Program.pdf(last visited on 10/05/2021).

²⁹ Shyam Sara, India's Climate Change Policy: Towards a Better Future, Government of India, (2019).

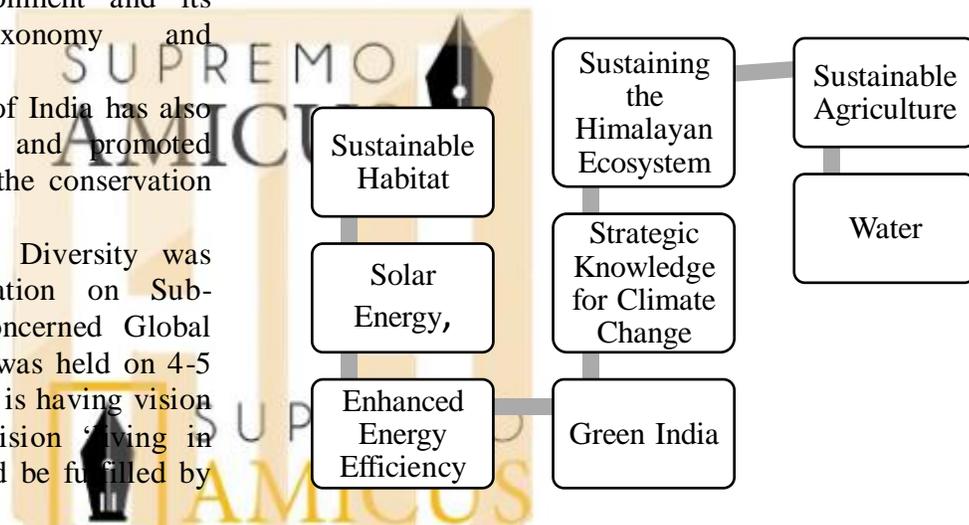


Biodiversity with other Organizations vi. including non-governmental organizations³⁰. The Ministry of Environment achievement has mentioned below about the Biodiversity vii. & Climate Change during Covid pandemic. viii.

To enhance better adapt to climate change by enhancing investments in development programs in sectors vulnerable Adaptation of fund with developed countries To framed domestic framework and international construction

1. Monitoring of Biodiversity Plots
2. Organized many workshops, training, and webinar on climate change & biodiversity studies for example Impact of Climate Change on Pollinators of High Altitudes of North-West Himalaya, Island Biodiversity, Conservation and Management, COVID-19 and its link with Environment and its Biodiversity and Taxonomy and Biodiversity³¹, etc.
3. Digital Zoological Survey of India has also helped library assistance and promoted research reports regarding the conservation of biodiversity³².
4. Convention on Biological Diversity was adopted Virtual Consultation on Sub-regional to framework concerned Global Biodiversity Post 2020; it was held on 4-5 August 2020³³. The agenda is having vision 2050 and the name of vision living in harmony with nature would be fulfilled by India till 2050³⁴.
5. Post-2020 climate goals in India are climate actions are intended to be taken under the Paris Agreement and adopted eight goals concerning climate change.
 - i. To propagate a healthy and sustainable way of living.
 - ii. Economic development and friendly climate
 - iii. To reduce the emissions intensity till 2030³⁵.
 - iv. Green Climate Fund
 - v. additional forest and tree cover

6. Climate Change Action Programme has estimated scientific and technological development with protection of the environment. The National Action Plan on Climate Change has encompassed eight core missions in the specific areas mentioned below



7. National Adaptation Fund on Climate Change is known as NAFCC. It is a Central Sector Scheme that agenda to support concrete adaptation activities to deal with the adverse effects of climate change.

8. Climate Ambition Summit dealt by the United Nation, UK and France and The focus of the Summit was to bring world leaders together to make new commitments to tackle climate change and deliver on the Paris Agreement.

³⁰ Annual Report 2020-2021, Ministry of Environment, Forest & Climate Change.

³¹ Id. at 6.

³² Id. at 8.

³³ Id. at 29.

³⁴ Annual Report 2020-2021, Ministry of Environment, Forest & Climate Change.

³⁵ Id. at 254



9. In November 2020, India has to Launch the Climate Change Knowledge Portal³⁶ for more information concerning in conservation of climate change.

10. CEO Forum on Climate Change is a private sector that plays a pivotal role in creating low carbon sustainable economies. The Indian government has started a new virtual CEO Forum on Climate Change on 5th November 2020.

11. G20 Environment Ministers' meeting is also played a greater role to promote the solar system in India. The Clean Development Mechanism is concerned with a flagship programme addressing climate change mitigation and simultaneously allowing developing countries in meeting their sustainable development objectives.

12. The India Cooling Action Plan has been appreciated internationally as an important policy initiative, a very potential to provide socio-economic and environmental benefits related to reduced refrigerant use, climate change mitigation, and Sustainable Development Goals.

13. The Ministry of Environment, Forest and Climate Change has collaborated with International Corporation means international friend for the protection of climate change & biodiversity.

- i. The United Nations Environment Programme
- ii. Global Environment Facility & GEF Agencies,
- iii. International Resource Panel
- iv. The World Bank and regional bodies like the Economic & Social Commission for Asia & Pacific (ESCAP),
- v. Brazil-Russia-India-China-South Africa

- vi. South Asian Association for Regional Cooperation (SAARC),
- vii. South Asia Cooperative Environment Programme (SACEP),
- viii. Association of South-East Asian Nations (ASEAN),
- ix. Asian Development Bank (ADB),
- x. European Union (EU),
- xi. India-Brazil-South Africa (IBSA)
- xii. Summit on Environment amongst others.

The body organizations or institutions are supported by annual contributions working on environmental matters, climate change, and biodiversity. The all of above point has indicated the ministry of environment, forest and climate change has played a crucial role to maintain the ecosystem and climate change. The ministry has funded the promotion of the project for the assistance of conservation of biodiversity and climate change. On the other side, we can see not more effective improvement shown about the preservation of climate change and biodiversity. During the pandemic, more improvement can be seen in the field of the environment but post-Covid pandemic what will be facing about the biodiversity and climate change. So we all have no free from difficulties regarding climate change and biodiversity.

CHALLENGES BEFORE BIODIVERSITY & CLIMATE CHANGE

Covid 19 has given a lot of pain but given lessons to everyone who preserved our earth and nature. Many challenges are facing the Indian legal system in the protection & conservation of biological diversity and climate change.

³⁶ Climate Change Knowledge Portal, available at: <https://www.cckpindia/> (last visited on 10/05/2021)



- ❖ Lack of Public Participation- it is rooted in challenges before the preservation of the ecosystem when former prime minister Indira Gandhi has to attend to Stockholm Conference said Poverty, Population and Protection of the environment (3PPP) is the main problem of India. So that less public participation is an obstacle in the conservation of climate change and biodiversity.
- ❖ Lack of effective Environmental Impact Assessments- Indian system has faced a lot of difficulties concerning effective environmental impact assessment, by the reason ends of promotion, protection, and preservation of the environment is defeated.
- ❖ Lack of Environmental Education- it is a very basic part to not understand the significance of the environment, biodiversity, sea protection, conservation of the forest, and wildlife. Environmental education is played a pivotal role in awareness of the protection of the environment. It was the basic agenda of the Stockholm Conference in 1972.
- ❖ The not good impact of Biodiversity Plans and Surveys³⁷- the biodiversity survey may be considered to Habitats and campus features of biodiversity, Species surveys regarding organism, and Monitoring and repeat surveys. But in India has not more effective in this field so that it is a major challenge to reduce the destruction of climate change and biodiversity.
- ❖ Lack of Institutional Arrangements- environmental protection and maintained ecosystem not only government responsibility it is also the duty of all organizations as well as individuals to understand and helped in the conservation of the biodiversity. If institutional arrangements

are working in the favour of the promotion of the ecosystem so that makes it very easy to conserve biodiversity. Social corporate responsibility has also incorporated these types of principles.

CONCLUSION

The concluding remarks about the research study on biodiversity & climate change is a crucial part to understand changing environment, newly diseased, changing climate, and prevailing serious pandemic. The Convention on biological diversity and its Protocols provide a mandate for countries to develop laws and policies on the preservation and viable use of biodiversity, and benefit-sharing relating to genetic resources, to access the traditional knowledge concerning genetic resources, and biosafety. Many Countries have formulated legislation and schemes towards the protection and conservation of climate change and biodiversity. India has also framed and proposed policies related preservation of the environment, forest, wildlife, and climate change with biodiversity. The main difficulties are arising impartial implementation of all measurements provides by the Indian government for the protection of biodiversity. Same similar problems are concerning the implementation of the Convention's regarding climate change, global warming, and biodiversity. The existing laws and policies are also necessary to reviewing time to time. The Strategic Plan on Biodiversity 2011-2020 provides guidance and sets a target for effective national implementation. Awareness, webinars and conference are the very best

³⁷ Jorge Cabrera Medaglia, Freedom-Kai Phillips and Frederic Perron-Welch, Biodiversity Legislation Study A Review of Biodiversity Legislation in 8

countries, GLOBE International aisbl, 35- 36, the World Future Council and the Centre for International Sustainable Development Law (2014).



tool for the implementation of the
Conventions, legislations and policy.

