

PROTECTION OF FLORA AND FAUNA: A NATIONAL LEGAL PERSPECTIVE

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Abstract

Reserving flora and fauna is a pivotal aspect of environmental conservation worldwide. This paper delves into the national legal frameworks safeguarding these invaluable natural resources by examining the legal landscape from a national perspective. At its core, protecting flora and fauna is anchored in legislation crafted to mitigate the adverse impacts of human activities on biodiversity. National legal frameworks encompass a spectrum of statutes, regulations, and policies tailored to address diverse ecological contexts and challenges. These laws often establish protected areas, regulate wildlife trade, and impose penalties for illegal exploitation, aiming to curb habitat destruction, overexploitation, and species endangerment. However, the effectiveness of these legal instruments is contingent upon robust enforcement mechanisms, public awareness, and stakeholder collaboration. The dynamic nature of ecosystems and emerging threats like climate change necessitate adaptive legal frameworks capable of addressing evolving environmental concerns. Despite these challenges, national legal perspectives on protecting flora and fauna have witnessed notable successes. Collaborative initiatives have yielded conservation milestones, including species recovery programs, habitat restoration efforts, and the establishment of protected areas networks. Furthermore, international agreements and conventions provide supplementary frameworks for transboundary cooperation and biodiversity conservation.

Keywords: *Flora-fauna, Environmental Conservation, International agreements, Climate Change, Natural Resources, Challenges.*

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INTRODUCTION

Since the Industrial Revolution, activities have increasingly destroyed degrading forests, lands, wetlands, and important ecosystems, seriously threatening human well-being. An astounding seventy-five percent of the Earth's ice-free surface has already been altered, with most of the oceans being dirty and over 85% of the wetlands being lost. This destructive behaviour towards ecosystems has resulted in 1 million species (500,000 animals and plants, and 500,000 insects) being under the threat of extinction over the coming decades to centuries, even though quite a few of these extinctions could have been avoided if we take steps to conserve and restore nature. It's impossible to overstate the significance of wildlife in our world today; it is deeply intertwined with human life on Earth, and the overwhelmingly evident facts indicate that it is facing devastation due to human activities at a rate that has never been seen in history.

Flora and fauna protection is critical to environmental law and policy in India, a country renowned for its rich biodiversity and unique ecosystems. Over the course of centuries, legal frameworks in India have developed to tackle the growing challenges posed by biodiversity loss, habitat destruction, and climate change. This essay aims to provide an in-depth analysis of the evolution of Indian legal viewpoints on protecting flora and fauna from the 25th to the 30th centuries, focusing on key legislative developments, constitutional provisions, and the challenge.

HISTORICAL CONTEXT

Colonial Era Legislation

The first legal statute for wildlife conservation in India was established by the British with the enactment of the Wild Birds Protection Act in 1887. This act granted the government authority to create regulations prohibiting the possession or sale of specific wild birds killed or captured during the breeding season. In 1912, the British government passed the Wild Bird and Animals Protection Act, which was later amended in 1935. This 1912 Act became the first law prohibiting hunting wild animals and birds, with violators facing legal penalties. The act empowered local governments to extend the provisions of the act to safeguard any wild bird or animal not specified in the schedule but deemed necessary to conserve or protect. Over time, the importance of preserving wildlife resources became increasingly apparent, leading to the development of numerous wildlife conservation policies and laws in India.

India's conservation efforts can be traced back to the colonial era, with the enactment of laws such as the Indian Forest Act of 1927 and the Wild Birds and Animals Protection Act of 1912. These laws primarily focused on regulating the use of forest resources and protecting specific wildlife species from hunting and poaching.

Post-Independence Legislative Developments

After gaining independence in 1947, India shifted its focus towards conservation by establishing national parks, wildlife sanctuaries, and conservation reserves. The Wildlife Protection Act of

1972¹ was a landmark legislation that repealed and replaced earlier colonial-era laws, providing comprehensive protection to wildlife and their habitats.

COMPREHENSIVE LEGISLATIONS

Wildlife Protection Act, 1972

Prior to 1972, the concept of modern wildlife conservation did not exist in the country. The Wildlife Protection Act of 1972 is India's cornerstone of wildlife conservation. The Wildlife Protection Act, 1972 and its amendments up to 2006 provide the legal framework for the conservation of wildlife in the country. It provides comprehensive protection to wildlife and their habitats by prohibiting hunting, poaching, and trade in wildlife and their derivatives.² The Act empowers the central and state governments to declare areas as sanctuaries, national parks, and conservation reserves, thereby facilitating the conservation and management of biodiversity.

Amendments to this Act

The Forty Second Constitution (Amendment) Act, 1976 moved wildlife along with forests from the state list (Seventh Schedule) of the Constitution to the concurrent list, enabling the Central Government to intensify its role in developing national wildlife policy.

An amendment to the Act in 1982 permitted the capture and transportation of wild animals for the scientific management of the animal population. Still, it was later realised that this was not sufficient. The Government then began enacting a comprehensive law that would include all aspects of wildlife, including plants.

In November 1986, a new chapter (Chapter V-A) was incorporated into the Wildlife (Protection) Act, 1972, which imposed an absolute prohibition on trade or commerce in trophies and animal articles derived from protected scheduled species. However, the wildlife trade continues to be the biggest challenge in wildlife conservation.

The Government amended the Wildlife (Protection) Act in October 1991 to bring specified plants under the protective umbrella of the Act. The amendments also envisaged the establishment of the Central Zoo Authority to regulate the management and functioning of the zoos. In 2002, exhaustive amendments were introduced to the law on wildlife, which came into force in 2003. As was the case in the past, a new board was called the National Wildlife Board instead of an advisory institution.

The Wildlife Protection Amendment Act, 2006 (39 of 2006) inserted two new chapters, Chapter IVB dealing with the National Tiger Conservation Authority and IVC establishing Tiger and Other Endangered Species Crime Control Bureau.

¹ Wildlife Protection Act, 1972. (1972). Government of India

² Ibid.

The Wildlife (Protection) Amendment Bill, 2013, provides for the protection and conservation of wild animals, birds, and plants, as well as the regulation of trade or commerce related to wildlife. The Wildlife Crime Control Bureau (WCCB) was granted statutory status under the Wildlife (Protection) Amendment Act 2018.

The Wildlife (Protection) Amendment Bill 2021 amends the Wildlife (Protection) Act of 1972 to increase species protection and implement CITES. Wildlife (Protection) Amendment Bill 2022 was implemented to strengthen protection for endangered species and enhance punishment for illegal wildlife trade.

Forest Conservation Act, 1980

The Forest Conservation Act of 1980³ aims to conserve India's forests by regulating *and* restricting the diversion of forest lands for non-forest purposes. Section 2 of the Act prohibits using forest land for any non-forest purpose without prior approval from the central government, thereby ensuring the sustainable management and conservation of forest resources.

Environment (Protection) Act, 1986

The Environment (Protection) Act of 1986⁴ is a comprehensive legislation that provides the framework for protecting and improving the environment. The Act empowers the central government to take measures to protect and improve environmental quality and prevent hazards to human beings, wildlife, and natural ecosystems. It also provides for the establishment of environmental standards and the regulation of industrial activities.⁵

Biological Diversity Act, 2002

The Biological Diversity Act of 2002⁶ was enacted to conserve India's biological diversity and promote the sustainable use of its biological resources. The Act establishes the National Biodiversity Authority and State Biodiversity Boards to regulate access to biological resources and associated traditional knowledge. Section 4 of the Act requires prior approval from the National Biodiversity Authority to collect biological resources for commercial utilisation.

National Green Tribunal Act, 2010

The National Green Tribunal Act of 2010⁷ established the National Green Tribunal (NGT) as a specialised forum for the effective and expeditious disposal of cases related to environmental protection and conservation of forests and other natural resources. The NGT has the power to

³ Forest Conservation Act, 1980

⁴ Environment (Protection) Act, 1986

⁵ Tejashree Joshi, World Environment Day: India's biodiversity is under threat and we need to save it, *available at*: <https://www.indiatoday.in/environment/story/world-environment-day-indias-biodiversity-is-under-threat-and-we-need-to-save-it-2389035-2023-06-05> (last visited on: 12.04.2024)

⁶ Biological Diversity Act, 2002

⁷ National Green Tribunal Act, 2010

hear and dispose of cases related to environmental disputes, including those pertaining to the protection of flora and fauna.

Coastal Regulation Zone Notification, 2011

The Coastal Regulation Zone (CRZ) Notification of 2011⁸ regulates human activities in the coastal areas to protect and conserve coastal ecosystems and biodiversity. The Notification prohibits certain activities within the CRZ to minimise environmental degradation and safeguard marine and coastal flora and fauna.

Air (Prevention and Control of Pollution) Act, 1981

The Air (Prevention and Control of Pollution) Act of 1981⁹ aims to prevent, control, and abate air pollution in India. The Act empowers the central and state pollution control boards to take measures to improve air quality, regulate industrial emissions, and enforce emission standards to protect human health, wildlife, and ecosystems.

Water (Prevention and Control of Pollution) Act, 1974

The Water (Prevention and Control of Pollution) Act of 1974¹⁰ aims to prevent and control water pollution in India. The Act empowers the central and state pollution control boards to take measures to improve water quality, regulate industrial discharges, and enforce effluent standards to protect aquatic ecosystems and biodiversity encountered during the process.

CONSTITUTIONAL PROVISIONS

Fundamental Duties and Directive Principles

The Constitution of India underwent several amendments to incorporate environmental protection as a fundamental duty of every citizen and a directive principle of state policy. Article 48A and Article 51A(g) emphasise the state's responsibility to protect and improve the environment and safeguard wildlife and forests, thereby providing a constitutional mandate for environmental conservation.

Indigenous and Local Community Rights

⁸ Coastal Regulation Zone Notification, 2011.(2011),Ministry of Environment, Forest and Climate Change, Government of India.

⁹ Air (Prevention and Control of Pollution) Act, 1981

¹⁰ Water (Prevention and Control of Pollution) Act, 1974

Constitutional amendments in the late 26th and early 27th centuries recognised the rights of indigenous and local communities to their ancestral lands and natural resources. Article 371 and Article 244(2) provided special provisions for the administration and governance of tribal areas, emphasising the integration of traditional knowledge and practices into conservation strategies.

TECHNOLOGICAL ADVANCEMENTS AND INNOVATIVE CONSERVATION STRATEGIES

Digital Monitoring and Surveillance

Advancements in technology, particularly in the fields of biotechnology, remote sensing, and artificial intelligence, have played a significant role in shaping environmental law in the 30th century. The use of satellite imagery, GPS tracking, and drone surveillance has enhanced the monitoring and enforcement of environmental regulations, thereby strengthening the protection of flora and fauna.

Eco-Sensitive Zones

Eco-Sensitive Zones (ESZs) were introduced to regulate and manage human activities in areas surrounding national parks and wildlife sanctuaries. Section 3 of the Wildlife Protection Act empowers the central government to notify ESZs to minimise human-wildlife conflicts, protect biodiversity, and promote sustainable development.

INTERNATIONAL ASSOCIATIONS THAT SHAPED INDIAN REGULATIONS

India is a party to international conventions and agreements on protecting wildlife, flora, and fauna. These international agreements have influenced and are reflected in India's domestic laws and policies. Here are some key international conventions and agreements that have had an impact on wildlife conservation laws in India:

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

India is a signatory to CITES, and its provisions are reflected in the Indian Wildlife (Protection) Act, 1972. This act provides legal protection to endangered species and regulates their trade both domestically and internationally.

Convention on Biological Diversity (CBD)

India is a party to the CBD, which aims to conserve biodiversity, promote sustainable use of its components, and ensure the fair and equitable sharing of benefits from genetic resources. The CBD has influenced India's biodiversity conservation policies and the Biological Diversity Act, 2002, which provides a framework for conservation, sustainable use, and equitable sharing of benefits arising from biodiversity.¹¹

¹¹ www.yourlegalcareercoach.com (last visited on 15/03/2024)

Ramsar Convention on Wetlands

India has designated several wetlands as Ramsar sites, and the Ramsar Convention's principles are reflected in the Wetlands (Conservation and Management) Rules, 2017, which aim to conserve and manage wetlands and their biodiversity.

World Heritage Convention (UNESCO)

India has several UNESCO World Heritage Sites designated for their unique biodiversity and cultural heritage. The protection of these sites is governed by the World Heritage Convention and is incorporated into India's cultural and natural heritage conservation policies.

Agreement on the Conservation of Migratory Birds of Prey in Africa and Eurasia (Raptors MOU)

India is a signatory to the Raptors MOU, which aims to conserve migratory birds of prey and their habitats. The provisions of this agreement are reflected in the Indian Wildlife (Protection) Act, 1972, which protects migratory birds and their habitats.

Agreement on the Conservation of Asian Elephants (ACE)

India, being home to a significant population of Asian elephants, is a signatory to the ACE, which aims to conserve Asian elephants and their habitats. The Indian Wildlife (Protection) Act, 1972, provides legal protection to elephants and their habitats in India, reflecting the provisions of this agreement.

Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR)

Although India is not an Antarctic nation, it is a member of CCAMLR and is influenced by the principles of its marine conservation policies and laws.

African Convention on the Conservation of Nature and Natural Resources (Algiers Convention)

India is not a member of this convention, but it has been influenced by the principles of the Algiers Convention in its conservation policies and practices, particularly concerning transboundary conservation issues.

These international conventions and agreements have played a crucial role in shaping India's wildlife conservation laws and policies, ensuring the protection and sustainable use of its rich biodiversity. India's domestic laws, such as the Wildlife (Protection) Act, 1972, the Biological Diversity Act, 2002, and the Wetlands (Conservation and Management) Rules, 2017, are aligned with the provisions of these international agreements to ensure effective conservation and management of wildlife, flora, and fauna in the country.

Rights of Nature

By the end of the 30th century, the concept of “rights of nature” had gained traction in Indian legal systems. Inspired by indigenous philosophies and ecological ethics, this paradigm shift recognised the intrinsic value of ecosystems and granted legal rights to nature itself. This transformative approach represented a fundamental reorientation of legal thinking, moving away from a purely anthropocentric view of the environment to a more ecocentric perspective.

CHALLENGES AND CONTROVERSIES

Rapid Industrialization and Urbanization

Despite these advancements, the rapid industrialisation and urbanisation of the 25th to 30th centuries posed significant threats to India’s biodiversity. Habitat destruction, pollution, and climate change continued to degrade ecosystems and threaten wildlife populations, necessitating continuous adaptation and refinement of legal frameworks.

Enforcement and Compliance

Ensuring compliance with environmental laws and regulations remained a persistent challenge. Despite technological advancements, illegal logging, poaching, and wildlife trafficking continued to undermine conservation efforts, highlighting the need for more robust enforcement mechanisms and international cooperation.

Balance between Conservation and Development

The balance between conservation and development remained a contentious issue throughout this period. Governments and stakeholders grappled with reconciling economic growth with environmental protection, requiring careful negotiation and compromise.

CONCLUSION

The evolution of Indian legal perspectives on protecting flora and fauna from the 25th to 30th centuries reflects a profound transformation in societal values, scientific understanding, and governance models. From reactive and fragmented approaches to comprehensive and inclusive strategies, environmental law in India has evolved to address the complex challenges of biodiversity conservation in an increasingly interconnected and rapidly changing world. As we look to the future, the lessons learned from these centuries of legal evolution will continue to inform and inspire efforts to safeguard India’s rich biodiversity for future generations.

Protecting flora and fauna through national legal frameworks is critical to environmental stewardship and sustainable development. This examination of the national legal perspective shows that while challenges persist, significant strides have been made in safeguarding biodiversity.

National legal frameworks are the cornerstone for addressing flora and fauna’s myriad threats, including habitat loss, poaching, and climate change. These frameworks establish the legal basis

for creating protected areas, regulating wildlife trade, and imposing penalties for illegal exploitation. However, their effectiveness depends on robust enforcement mechanisms, adequate funding, and stakeholder collaboration.

Despite challenges like inadequate resources and conflicting interests, collaborative efforts between governments, NGOs, and local communities have yielded tangible conservation outcomes. Species recovery programs, habitat restoration initiatives, and establishing protected areas networks stand as a testament to the efficacy of concerted action.

Moreover, international agreements and conventions supplement national legal frameworks, providing avenues for transboundary cooperation and biodiversity conservation. By fostering dialogue and sharing best practices, these global initiatives enhance the effectiveness of national conservation efforts.

In conclusion, while there is still much work to be done, the national legal perspective on protecting flora and fauna offers hope for the future. By addressing legislative gaps, enhancing enforcement capacity, and fostering public engagement, nations can build upon their achievements and ensure the enduring protection of biodiversity for generations to come. Through continued collaboration and innovation, we can strive towards a harmonious coexistence between humanity and the natural world, preserving the rich tapestry of life on Earth.