

Judicial Trends And International Making Authorities In Preserving Environment

Author – Dr. Parul Sharma¹

DOI: <https://doi.org/10.5281/zenodo.19486931>

Abstract

Securing Environment is a legal and international instruments provide a foundation for coordinated action. They set standards, facilitate cooperation, and offer mechanisms for enforcement. As the world suffering enhancing biodiversity loss, the synergy between legal frameworks and international cooperation remains pivotal in preserving the Earth resources for future generations. The perception of the judiciary and international decision-making authorities play complementary roles in preserving biodiversity. While national courts enforce environmental laws and protect local ecosystems, international organizations provide a global framework for cooperation, and facilitate the exchange of resources to address biodiversity conservation on a broader scale. Biodiversity which refers to the total amount and variety of life on this planet is facing unprecedented threats due to human actions such as habitat destruction, overexploitation, Pollution. In order to meet these challenges and save the planet's rich diversity of life, national and international agreements has been identified as a key strategy.

“Billions of dollars have been spent on the exploration of the moon. We know far more about the moon than we know about the biodiversity degradation. The moon will be there for longer than these natural environment and perhaps longer than the human race. In the environment, are found most complex interacting system on earth, systems which might even hold the key to our survival and about which we know practically nothing”

¹ I Dr. Parul Sharma with a Ph.D. from the University of Technology, Jaipur and extensive teaching and research experience in the field of law. I am currently serving as Assistant Professor at Gitarattan International Business School, affiliated with Guru Gobind Singh Indraprastha University. Previously, I taught at the Delhi Institute of Rural Development, contributing significantly to academic and institutional growth. My areas of specialization include Constitutional Law and Civil Laws (Contract). Dr. Sharma has published research papers in reputed journals, including SCOPUS-indexed publications, and has presented papers at national and international conferences. I have also contributed a book chapter on criminal justice reform.

Email ID: paruls1892@gmail.com

Keywords:

Environment, Biodiversity, Climate, Conservation, Judiciary, International treaties

International Strategies and National Legal Instrument

Biodiversity conservation is a major global concern owing to the immense loss of biodiversity being witnessed across the globe. In this regard, several strategies and legal aspects have been put forward to address the problem of biodiversity conservation. In this essay, I will highlight the global strategies and legal aspects associated with biodiversity conservation.

²Conservation of Environment in the Post-Independence Era

Indian Constitution and Environment Protection It was assumed that while drafting the Indian Constitution, the framers did not foresee the cancerous characters of the environmental degradation. Hence the word environment not only remained unspoken in the Indian constitution, but also no specific provision was legislated to make a direct impact upon the environment. From its very inception, however, the Indian Constitution with its certain Articles and Entries in the Schedule made indirect arrangement for the improvement and safeguard of the environment. The preservation and improvement of the environment need some type of a viable plan of action, which was facilitated by the decisions taken in the Stockholm Conference, 1972 as it also provided the necessary impetus to all the nation states including India. However, in the subsequent years, by adding two specific Articles 48A & 51A (g) in the Indian Constitution on environment, India demonstrated its national commitment towards the improvement and conservation of environment by aligning their policy with the “Magna Carta of our environment” 10. By the 42nd Amendment Act of the Indian Constitution, the country had become first sovereign in the world to confer the constitutional status for its environmental protection policy.¹¹ And the environmental jurisprudence largely revolves around these two newly introduced Articles of the Indian Constitution.

The Forty Second Constitutional Amendment Act, 1976

² Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment) [2010] ICJ Rep 14.

By explicitly incorporating this amendment the movement for environmental protection and improvement has been gaining momentum since then. While including Art. 48A to the DPSP, Art. 51A (g), on the other hand, emphasized on a newer perspective of fundamental responsibility.

Article 48A declares: “The state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country”.

Article 51A (g) – According to this article “every Indian citizen is responsible to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures”.

Besides the difference in the language, the two articles majorly differ due to their form over their matters. The nation has accumulated a consensus in the environmental awareness movement which ultimately strengthens its legislations to support this cause.¹² Moreover, underlining the responsibilities of the state and the citizen related to ecological protection, the S.C. again emphasized in Art. 48A & Art. 51A (g) of the Indian Constitution in “**Hinch Lal Tiwari v. Kamala Devi**” . Apart from these, the amendments in the Seventh Schedule of the Indian Constitution also made certain changes: “Schedule Seventh: List III, Concurrent List Item No. 17A: Forest, 17B: Protection of wild animals and birds and 20A: Population Control and Family Planning”.

By transferring various entries from State List II to List III “Concurrent List” the Parliament is empowered to make legislation on the protection of flora and fauna, population control, family planning, and others. As such, it would facilitate necessary and relevant changes by developing a uniform law throughout the country.

Legislative Powers under Constitution

Due to the significance of allocation of legislative authority, a threefold power distribution among the Union and the States was adopted by the Constitution from the Government of India Act, 1935, to regulate the various human activities with enactment of necessary provisions. In accordance with the laws, Part XI of the Indian Constitution facilitates not only the legislative governance, but also the administrative bond among the Union and the States. The distribution of the legislative areas between the Union and the States was sanctioned by the Art. 246 of the Constitution with note to the III Lists in the Seventh Schedule of the Constitution. On the basis of the themes itemized in List I “Union List”, the

Article has described that Parliament can use their exclusive legislative power, on the inclusive 97 subjects for the entire country. On the other hand, the State Legislatures exclusively³ capacitated for the enactment of laws on List II (State List) matters, comprising the 66 subjects. Both parliament and the State Legislature, under List III “Concurrent List”, have been overlapping to share jurisdiction over 52 subject matters. However, all of the above mentioned three Lists also make the environmental legislative powers available in the relevant fields.

Legal Scenarios :

- I. National Legislation: Most countries have laws and regulations aimed at conserving biodiversity. These laws can cover a wide range of issues, including the protection of endangered species, the management of national parks and reserves, and the regulation of activities such as logging.
- II. CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora): CITES is an international treaty that regulates the international trade in endangered species. It aims to ensure that the trade in wild animals and plants does not threaten their survival. CITES lists species in three appendices, each with different levels of protection. The CITES Convention is worried about the protection of species instead of environment. Refers to attached informative supplements of the jeopardized creatures might be secured in this convention, and applies to both the creatures and plants.
- III. Bilateral and Regional Agreements: Some regions and countries have entered into bilateral or regional agreements to promote biodiversity conservation. For example, the European Union has the Birds and Habitats Directives to protect wildlife and habitats within its member states.

³ Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 art 1.

- IV. Indigenous and Local Community Rights: Recognizing the rights of indigenous peoples and local communities to their traditional knowledge and resources is a critical legal aspect of biodiversity conservation. Many countries are enacting laws and policies to support these rights.

It's important to note that the effectiveness of these legal scenarios and global strategies depends on their implementation and enforcement. Environment Protection requires not only international cooperation but also local and national commitment to protecting ecosystems and species.

Delhi Sustainable Development Summit

The Delhi declaration was held in the year 2002. This convention was perceived as a land mark convention in the area of biodiversity conservation and another method for dealing with the issue of environmental degradation. More than 170 nations went to the convention. The convention was additionally significant for the accentuation that it offered to Russia, U.S.A. and other nations which affirm the strategies prescribed to diminish Green House Gases (GHG) discharge in the Kyoto Protocol. One of the most critical proposals of the convention was to think about cautiously with respect to what extent the strategies, targets as well as strategies settled in the Convention held in Johannesburg in the year 2002 was being the essential factor for Co-activity. The Delhi Declaration additionally expressed that the signs of environmental changes, for example, worldwide temperature change, precipitation change are some of the couple of examples are a clear indication of the impending environmental change, which could be perpetual in nature. At the convention, the created nations requested that the developing nations need to make efforts on their own to diminish the GHG (Green House Gas) Emissions by the year 2025.

⁴ROLE OF JUDICIARY AND INTERNATIONAL MAKING AUTHORITIES IN PRESERVING BIO-DIVERSITY: -

⁴ Centre for Environmental Law, WWF-India v Union of India (2013) 8 SCC 234.

The judiciary and international governing bodies play crucial roles in preserving biodiversity by interpreting and enforcing environmental laws, regulations, and international agreements. Here's an overview of the roles these entities play:

I. Judiciary:

a. Interpretation and Enforcement of Environmental Laws: Judges have the authority to hold individuals, corporations, and governments accountable for actions that harm biodiversity or violate conservation laws. The Forty-Second Amendment to the Indian Constitution in 1976 introduced principles of environmental protection in an explicit manner into the Constitution through Articles 48A and 51A(g). Article 48A laid down in the Chapter of the Directive Principles of State Policy of Constitution of India, obligates the State to protect and improve the environment. On the other hand, Article 51A (g) obligates citizens to undertake the same responsibilities. As far as legislative power is concerned, the said Amendment has also moved the subjects of “forests” and Pressures Response Driving force States Impacts Chapter-I 15 “protection of wild animals and birds” from the State List to the Concurrent List. The Stockholm conference is honoured by references in the Air Act and the Environment Act – a result of effective applications of Article 253 of the Constitution, which gives the Parliament the power to make laws implementing India’s International obligations, as well as any decision made at an International Conference, association or other body.

b. Adjudicating Environmental Disputes: When there are disputes over biodiversity conservation, the judiciary offers a platform for the resolution of the dispute. This is with regard to habitat destruction, pollution, land use change, and the conservation of endangered species.

c. Judicial Review: The courts can carry out judicial reviews to determine the legality and constitutionality of government policies and projects regarding biodiversity conservation. This will ensure that governments are within the law of environmental protection.

d. Compensation and Remedies: In cases of environmental harm, the judiciary can order compensation to affected parties and require the responsible parties to take corrective actions or implement remediation measures.

e. Setting Legal Precedents: Court decisions can establish legal precedents that guide future actions and policies related to biodiversity conservation. Landmark cases can significantly influence the direction of conservation efforts.

The National Green Tribunal ACT, 2010

The National Green Tribunal (NGT) is an important institution for environment protection, as it provides a specialized forum for dealing with issues related to environment laws and regulations. The NGT is charged with the expeditious and effective disposal of cases related to environmental violations, conservation of natural resources, and prevention of environmental damage. The NGT is an important institution for the protection of the environment, operating within the provisions of the Constitution of India. The mission of the NGT, as a specialized judicial institution, is to deal with environment concerns and violations, in line with the provisions of the Constitution of India, which provides for the right to a clean and healthy environment. Through the provision of speedy justice, specialized knowledge, and a public interest litigation platform, the NGT is a guardian of environmental rights, with a focus on intergenerational equity and sustainable development. As a constitutional safeguard against environmental damage, the NGT is a model of the complementarity between legal instruments and constitutional relief, promoting a better and more balanced coexistence between human activities.

⁵II. International Governing Bodies:

a. Development of International Agreements: International bodies, such as the United Nations and its specialized agencies (e.g., the Convention on Biological Diversity, CITES, and the Ramsar Convention), develop and negotiate international agreements and treaties to address global biodiversity issues. These agreements set standards and guidelines for biodiversity conservation.

⁵ Tennessee Valley Authority v Hill 437 US 153 (1978).

6. Vellore Citizens Welfare Forum v Union of India AIR 1996 SC 2715.

7. Lafarge Umiam Mining (P) Ltd v Union of India (2011) 7 SCC 338.

b. **Monitoring and Reporting:** International authorities oversee the implementation of international agreements by member countries. They collect data, monitor progress, and report on the status of biodiversity conservation efforts worldwide.

c. **Enforcement and Compliance Mechanisms:** International agreements often include mechanisms for enforcing compliance with conservation obligations. These mechanisms may involve dispute resolution, penalties for non-compliance, and measures to address illegal wildlife trade.

d. **Capacity Building:** International organizations often provide technical assistance, capacity-building programs, and funding to help member countries enhance their biodiversity conservation efforts.

e. **Knowledge Sharing:** These bodies facilitate the sharing of scientific knowledge, best practices, and conservation strategies among nations. They encourage cooperation and collaboration to tackle global biodiversity challenges.

f. **Policy Advocacy:** International governing bodies often advocate for biodiversity conservation at the global level, influencing policies and actions taken by member states and the international community.

Resultant, the judiciary and international governing bodies play critical roles in preserving biodiversity by upholding and enforcing laws, treaties, and agreements related to environmental conservation. Their actions contribute to the protection of ecosystems, species, and genetic diversity on a global scale. These entities serve as essential safeguards against biodiversity loss and environmental degradation for example

Supreme Court of India on Biodiversity:

The Supreme Court of India has played a significant role in addressing issues related to biodiversity and environmental conservation as follows:

6. *Vellore Citizens Welfare Forum v. Union of India (1996)*: In this case, the Supreme Court issued a landmark judgment that laid down important principles for environmental protection. It emphasized the "polluter pays" principle and held that industries that cause environmental pollution should bear the cost of remediation and restoration. This judgment had implications for biodiversity conservation by discouraging activities that harm the environment.

7. *T.N. Godavarman Thirumulpad v. Union of India &Ors. (1997)*: Often referred to as the Godavarman case, this case involved the protection of forests and biodiversity in India. The Supreme Court issued various orders to regulate forest activities and protect forests and wildlife. It also appointed various committees to oversee compliance with its orders, including measures to protect biodiversity.

8. *Centre for Environmental Law WWF-I v. Union of India (2013)*: In this case, the Supreme Court addressed the issue of sand mining in various states, which had a significant impact on river ecosystems and biodiversity. The court imposed restrictions on sand mining activities and directed state governments to formulate comprehensive guidelines to protect riverbeds and ecosystems.

9. *In Re: T.N. GodavarmanThirumulpad (2018)*: In this ongoing case, the Supreme Court continues to address various issues related to forest conservation and biodiversity protection. The court has issued orders related to forest diversion for non-forest purposes, conservation of wildlife corridors, and the rehabilitation of forest-dwelling communities.

10. *CITIZEN FOR GREEN DOON & ORS. v. UNION OF INDIA & ORS. (2019)*: This case involved the Char Dham highway project in Uttarakhand, which raised concerns about its potential impact on biodiversity and the fragile Himalayan ecosystem. The Supreme Court directed the government to follow strict environmental guidelines and consider the concerns of environmental conservation in the project's implementation.

Conclusion

Some developed and developing nations have divergent approaches to the preservation of their environmental resources, in terms of emphasis and financial resources allocated. Many legal frameworks, Governmental institutions, Semi-Governmental institutions have made efforts to preserve the Biodiversity. Sustainable Development has always been the aim of every Organisation. All the administrative functioning bodies while preparing their Plan and Policies, always take into consideration the National and International aspect of their laws. In view of the above, there is no single system that works anywhere to maintain the balance of nature. The environmental imbalances on earth can be likened to those that are of a monetary nature, and these are major barriers to the realization of the basic needs of the growing population, especially in the developing countries, and