

Judicial Response on Biodiversity Laws and Endangered Species

Dr. Sona Kumar

Assistant Professor

Coordinator (P.G. Department)

G. H. Raisoni University, Saikheda (M.P.)

India our country is blessed with the natural wealth and ranks amongst the top countries of the world in biodiversity. It has evergreen forest, grasslands, deserts, mountains, mangroves, seas, wetlands and marshlands, with diverse ecosystems that harbour a rich variety of wildlife¹.

I. An Overview: The Relationship of the Biological Diversity Act 2002 with Endangered Species

Conservation of biological diversity is an integral aspect of the Indian Ethos. The Biological Diversity Act, 2002 aims at conservation of biological resources and associated traditional knowledge through people's participation at all levels of local bodies. In consonance with the convention on biological Diversity 1992 effective documentation of biological heritage, sustainable utilization and benefit sharing for access to the biological resources including genetic resources are key components of the biological Diversity act, 2002. The Act of 2002 provides necessary legal frame work for meeting to the national obligations in harmony with glorious ancient traditions and cultures of the country. The Biological Diversity Act, is fully pregnant with the conservation of the biodiversity. The purpose of the Biodiversity, Act, itself ultimately leads to the conservation of the biodiversity and preservation :1) Human beings and (2) The Natural process.

Endangered species are the result of the operation of the natural process and the human actions. Biodiversity is directly related to endangered species because endangered species is the component of the biodiversity. This component cannot be separated or segregated from biodiversity and hence a systematic approach needs to be channelized for dealing with endangered species, so that we can prevent the process of endangered species.

A) The following are the provisions of the Biodiversity Act which have the direct and indirect bearing on the endangered species. Under the Biodiversity Act there is a provision for research. This research has been defined under section 2 sub clause m [2(m)], "Which means study or systematic investigation of any biological resource or technological application that uses biological systems, living organisms or derivatives thereof, to make or modify products or processes for any use.

This definition of the research clearly states that the biodiversity deals with living organisms and as a result it has become a natural corollary to study the existence and extinction of the living organisms. Endangered species is the off shout of this particular process of research.

B) The second definition which has a direct bearing on the endangered species is section (2(o)), sub clause (o) is sustainable use, which means, "the use of components of biological diversity in such manner and at such rate that does not lead to the long term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations.

This definition speaks of the fact that endangered species need to be protected preserved and prevented from being their extinction. How this can be channelizes is a matter of research and study. This aspect is taken care of in this work of sustainable use.

¹ The Vanishing Indias Wildlife Crisis, Bindra Singh Prerna, Penguin Random House India, Haryana, India, 2017 Pg.13.

C) Section -3 of the Biodiversity Act, specifically provides that for the purpose of study, research, analyses, applications and channelization of the contents of the Biodiversity Act, the permission of the National Biodiversity Authority is must, without that authority nobody is permitted to do the study or research pertaining to Biodiversity Act.

D) Under Section 4 a specific restriction has been provided pertaining to results of research, the results of the research are not to be transferred to certain persons without the permission of the National Biodiversity Authority.

E) Under Section – 18 of the Biodiversity Act, the function and powers of National Biodiversity Authority are provided. As per this section the National Biodiversity Authority has been given full powers for regulating the activities including issuing the guidelines for access to biological resources and for fair and equitable benefit sharing, it needs to mention that National Biodiversity Authority exercises the full control for, access to biological resources and for fair and equitable, benefit sharing. This section has been provided by way of abundant caution, so that there should not be otherwise use of the biodiversity in the country.

F) Under Section -19 the procedure for getting approval from the National Biodiversity Authority had been laid down for obtaining any biological resources or knowledge associated there to for research, or for commercial utilization or for bio survey and bio-utilisation or transfer, the results of any research relating to biological resources. This exercise of control by the National Biodiversity Authority, certainly provides a way were by the abuse of the biodiversity can be arrested. The biodiversity authority has been given the power to extend the permission for those who seek for it with respect to the study analysis, research and transfer of resources sharing. All this has a direct bearing with the study of endangered species

G) Under Section-23, the functions of the State Biodiversity board have been elaborated which also speaks of the fact, pertaining to control, channelization and regularisation of the act at the level of the state biodiversity board.

H) Under Section 38, the Central Government has been given the power that, after consultation with the State Government, may notify any species which is on the verge of extinction or likely to become extinct in a near future as threatened. Species and prohibit or regulate those species from being extinct and also to take appropriate steps to rehabilitate and preserve those species. This section has a direct bearing on the endangered species. Under this section the power has been vested in the Central Government to notify and to declare the endangered species so that the authorities and the public shall be aware of this fact.

I) Under Section 63, of the Biodiversity Act, the State Government has been empowered to make the rules and regulation for the implementation of some of the provisions of the Act. The rules and regulation can be provided for conservation, preservation, regulation of biodiversity in the State, at the same time the rules and regulation can be provided for the prevention of the extinction of the species whatever the rules and regulations shall be prepared under section 63 can be placed before the Legislative Assembly, of the State and can be passed by the State legislature so that those rules and regulations shall be the laws which shall be binding on the authorities of the Government, people and the societies.

In the aforesaid paras certain provisions of the Biodiversity Act, of 2002 have been analysed and discussed with the view that how far these provisions have the direct and indirect bearing on the endangered species. After going through this provisions the inference which can be drawn is that the Biodiversity Act, 2002, has direct or indirect bearing on endangered species and under the conservation of the biodiversity the endangered species are included which becomes the part of this act and as such it is the need of time that the Union Government at its own level and the state Government at its own level must provide the rules and regulations in the form of the law for arresting the extinction of endangered species. That has to be taken on the priority basis otherwise their shall be a catastrophic Erosion of

endangered species and then it shall be beyond the control of the Union and State Government to channelize the prevention of extinction of endangered species.

II. THE RELATION OF BIODIVERSITY WITH ENDANGERED SPECIES

Biodiversity is such that it's very dynamic. The construction and the destruction of the biodiversity is dependent mainly on two factors firstly it depends on the human beings and the other is the natural process which is laid down by the nature itself.

The basic trend of the biodiversity is its growth and destruction, for which there is all the unanimity in the globe. Conservation of the biodiversity is the need of the hour and the human factor is also prominently responsible for its conservation. Similarly destruction of the biodiversity is the natural process and prevention of this destruction, if can be possible by human efforts then that is also the requirement of the time.

Biodiversity and endangered species are exclusively related with each other because existence and the growth of biodiversity has its culmination into its destruction this relationship of reformation, existence and destruction is the natural process supported by the human efforts on both the sides that is with the human efforts we can conserve the biodiversity likewise with the human efforts destruction is caused. Human beings are the link for construction or destruction of biodiversity.

Endangered species plainly means that, "a species of wild animals or plant that is in danger of extinction throughout all or a significant portion of its range. A species is considered threatened if it is likely to become endangered within the foreseeable future.

Extinction of the species indicates that the very existence of the species shall come to an end or over that is the disappearance of the species. The process of nature is such that, when the species disappear then there place is taken by other species. The extinction of the species can be there by the following there ways.

2.1 Natural Extinction

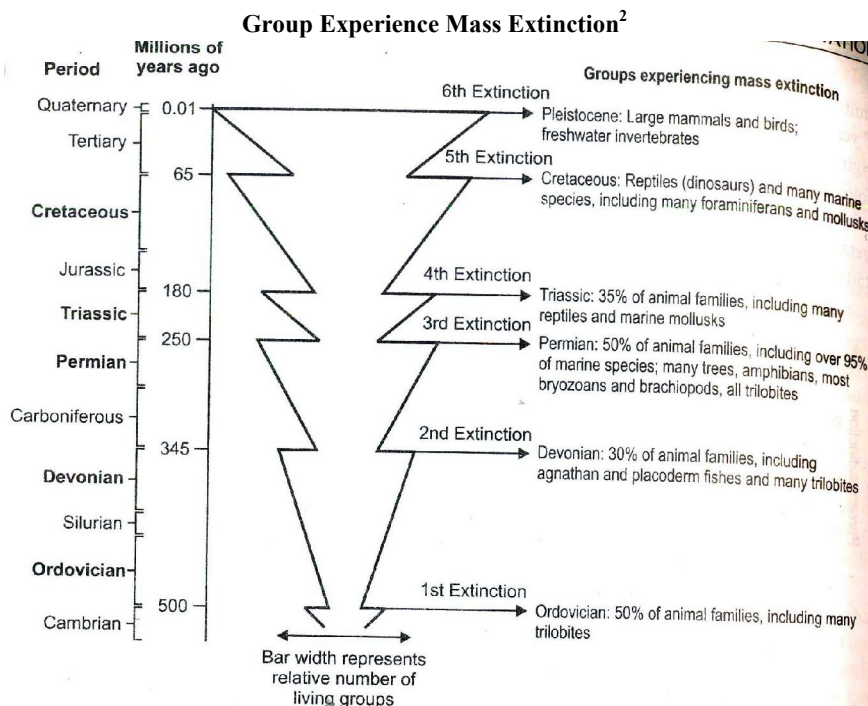
Plainly means that species disappear in the natural course, one of the reasons for the disappearance of species in the natural course is change in the environmental conditions. The process of the loss of species is very slow and it takes lot of time, it is also said that when the specie disappear because of change conditions some other species take their place. These some other species can adopt change conditions and as a result continue to survive.

2.2 Mass Extinction

In the earth geological history, we get certain period wherein large number of species became extinct because of catastrophic. It has been said that mass extinction occurs over a millions of years. It is also observed that, large scale species extinction in geological times, was almost as common as species origination. The duration of species was generally less than ten million years. The biological composition earth at species level change drastically several times. The dazzling example of the mass extinction occurred near the end of the peramian period (2050 million years ago) removing almost 60.9% of all life.

2.3 Anthropogenic Extinction

The human activities are principally responsible for anthropogenic extinction. The most of the species are disappearing from the face of the earth due to human activities. Each of the past, mass extinction was spread over millions years or less, compare to only two hundred years for the anticipated extinction due to human interference. Thus if we make a comparison to mass extinctions of geological extinction and the men made mass extinction, represents a very severe depletion of biodiversity.



Generally major group of plants and animals are under the threat of mass extinction. The extinction vary from ten to twenty percent of global species. The IUCN red list 2004 has recorded that 733 animals and 110 plants species and one red alga have become extinct or extinct in the world since 1500 A.D. It also observed that more species have been extinct from the Islands then from that mainland or the oceans³.

The extinction of the wild species is found in captivity, cultivation or naturalised population. The current rate of extinction is one thousand to ten thousand times higher then the natural rate of extinction, and is in the order of one thousand species per decayed, per million species⁴.

There are certain species who are on the verge of extinction, they are large body size (Bengal tiger, lion, and elephant) small population size and low reproductive rate (blue whale and giant panda) then feeding at high tropical levels in the food chain (Bengal tiger and bald eagle), fired migratory routes and habitants (blue whale and whooping crane) and localised and narrow range of distribution (wood land caribou), (many Island species) also make the species susceptible to extinction.

2.4 The causes of Extinction of Species

Species extinction that take place due to natural factors generally includes small population size, deleterious environmental variations, periodic catastrophes, migrations, overcrowding and inherent nonlinear population dynamics the species also extinct if the organisms fails to survive because of natural disasters, such as floods, droughts, ice age, and impact of asteroids of the growth of species is also affected if organisms fails to co-exist with one another, as a

²J.S.Singh, S.P.Singh, S.R. Gupta, Ecology Environmental science and conservation, S. Chand Publication, New Delhi, 1st Edition 2014, p.g.686.

³An excerpt, from the International union for conservation of Nature (IUCN) also known as the IUCN Red list or Red Data List founded in 1964, is the "world's most comprehensive inventory of the global conservation status of biological species". The International union for conservation of Nature is the worlds' main authority on the conservation of nature and is the world's main authority.

⁴An excerpt, from the pimm and RAVN, 2000 P.535

result of competition, predation etc. and the biggest hurdles occurs when the organisms fails to live up with man's activities, such as habitat fragmentation⁵ over exploitation destruction or direct competition leading to extinctions⁶ presently in the recent sinario the third factors as become far more important than other factors as discussed above.

The world conservation union (formerly known as IUCN) has recognised nine red list categories of species, which is divided into:- extinct, extinct in the wild, critically endangered, endangered, vulnerable, near threatened, least concern, data deficient and not evaluated.

The species which are threatened with extinction are included in vulnerable, endangered or critically endangered category. Critically endangered refers to a 50% probability of extinction in five years, endangered a 20% probability in 20 year and vulnerable. 10% probability in 100 years species with small world populations that are not at present endangered or vulnerable but are at risk are called rare. These species are usually localized within restricted geographical areas or habitats or are thinly scattered over a more extensive range.

To protect this Biodiversity from being erosion and to stop and to prevent detrimental situation those who are affected by this have taken the recourse of the judiciary to protect this Biodiversity and in its right earnest manner has tried to justify every encroachment or violation of the Biodiversity by way of giving a judgment which shall protect it and that is how the judiciary has come into pictures for the propose of protection of the Biodiversity, environment and ecology. Judiciary has taken into consideration the laws, the statues, the notifications and the bye laws for interpretation and through the interpretation protected the biodiversity the glimpses of it we get in following cases which have been discussed as under:-

IV. IVORY TRADERS AND AMP. MANUFACTURES ASSOCIATION V. UNION OF INDIA, 1997⁷

In this case there are two writ petitions which are club together for deciding the issues. The Parliament of India had made certain amendments in the Wild life Protection Act, 1972 by the Amendment Act No. 44 of 1991. By this amendment a ban was imposed on the trade in Ivory derived from the African Elephant. The amendment also dealt with the trade and business of ivory, including persons manufacturing articles there from.

The writ petitioners in this writ petition are mainly aggrieved by the ban imposed by the Wild Life (Protection) Amendment Act, 1991, on the trade in ivory derived from the African elephant. It is asserted by them that they only deal with ivory imported before the coming into operation of Amendment Act No. 44 of 1991. It is claimed that the first petitioner is a Society registered under the Societies Registration Act, 1860 and is an Association of persons connected with the trade and business of Ivory, including persons manufacturing articles there from.

The second Petitioner to the fourteenth petitioner are dealers in ivory. They assert that they are carrying on business and trade in ivory including the manufacture of articles derived from ivory lawfully imported into India prior to the ban and are members of the first petitioner. The fourteenth petitioner also claims to be an artisan engaged in the business of carving raw ivory. The fifteenth petitioner too claims to be an artisan. Therefore, they plead that they are persons affected by the Amendment Act.

As per the prayer clause of the writ petition, the petitioners challenge Sections 5(i), 27(b), 30(i),(iii), 33(b)(ii), 34, 35 and 37 of the Wild Life (Protection) Amendment Act, 1991 (Act No. 44 of 1991) (for short 'the Amendment Act') and the corresponding amendments/changes carried out in the Principal Act known as Wildlife (Protection) Act, 1972. According to the petitioners such a ban is violation of Articles 19(1)(g), 14 and 300A of the Constitution of India.

⁵Singh J.S., Singh S.P. Gupta S. R., Ecology environment and resource conservation, Anamaya Publishers, New Delhi 2006, P. g 537.

⁶Belovsky et.al 1999, P Huston 1994. The (conservation status of species).

⁷Delhi 267, b, ILR, 1997 Delhi 22./(1997)ILR 2Delhi22.

After hearing the arguments of both the sides the Court has drawn the conclusion that the Parliament of India has the power and competence to make the laws and also to make amendment in the Wild Life protection Act with the purpose to protect Indian elephant. If Indian elephant are preserved and protected then this amendment is a need of hour and accordingly both the writ petitions were disposed of without any relief. It needs to state here that the Court has acted as a Saviour of the wild life in the country. The High Court has given the weightage for the protection of the elephant as against the violation of fundamental rights of a citizen in doing the profession of their choice.

V. VISAKHA SPCA V. UNION OF INDIA AND OTHERS, 2000⁸

In this case a writ petition was filed for the Public Cause against the respondent who wanted to decommissioned install submarine and a naval ship in an area of 30x200 meters in the sea coast of Ramakrishna Puram Beach opposite Madhuvan Restaurant, Vishakhapatnam as illegal and violate of the Notification issued by the Central Government on 19/02/1991 under the provisions of Environment (Protection) Act, 1986 and the rules made there under. It was the contention of the petitioner that the Animal Welfare Board of India, specifically observed that there is no protection of animal life and endangered species from being killed and subjected to cruelty by unscrupulous human beings and it was also further stated by the petitioner that Olive Ridley Sea Turtles swim to the shores of Visakhapatnam from thousands of miles away and lay eggs in the nest put up by them. The said species and the eggs laid down by them are destroyed and used by the people in the vicinity in spite of various representations and complaints made regarding it to the authorities.

The petitioner has sort permission to protect turtle nests at Visakhapatnam Gannavaram and Pudimadaka Beaches along the coast of Andhra Pradesh. As a result of this permission the petitioners could challenge this petition in the court against the respondent. The respondents had decided to install a decommissioned submarine and ship on the coast which is detrimental to sea turtle and is also in violation of notification issued under the provision of Environmental Protection Act 1986, where in all such activities are prohibited.

The wild life protection Act 1972 under Item No. 13 of Schedule I Para 2 provides the protection for the Olive Loggerhead Turtles. The said project which was to be installed would definitely violate this provision of Wild life Protection Act, hence the petitioner wanted that this project should not be allowed at all.

The court while deciding the petition specifically observed that the respondent must obtain the approval and clearance from the Andhra Pradesh Coastal Management Authority constituted under Section 3(3) (i) of the Environment Protection Act 1986 by the Central Government.

The court further directed the petitioner to submit his representation or objections along with the material within 15 days to the Andhra Pradesh Coastal Zone Management Authority. This authority shall decide whether the project is viable or not by taking into consideration the damage to the turtles.

In this case the Supreme Court has definitely done the justice to the petitioner by directing the respondents to approach the Andhra Pradesh Coastal Zone Management Authority to decide whether permission be given or not as a result of it the project could not be started.

VI. M/S MARINE PRODUCTS EXPORTERS ASSOCIATION V. THE UNION OF INDIA AND OTHERS, 2015⁹.

In this case the petitioner has challenged Notification dated 06/02/2015 issued by the Director General of Foreign Trade prohibiting the export of shark fins of all species of Shark. The petitioner as an association of Exporter of dried marine products it is a registered society under Tamil Nadu Society Act, 1978.

The Notification which has been issued by the central Government has banned the export of shark fins of all species of shark.

⁸2000 (6) ALD 539, 2000 (6) ALT 666

⁹ See for details :<https://indiankanoon.org/doc/108756556/>

According to the petitioner in India we have a long coastal line of about 7500 Kilometres where in thousands of fishing villages are there along the coast line. The meat of shark is consumed by only a very small percentage of Indian Population but the export of shark fins to china and to other countries is a flourishing trade. On this background the export of shark is very much essential for the economic development of the country.

It is also important that the Government has to formulate the foreign trade policy under the Foreign Trade Act, 1972. It was their another contention that there are nine species of shark to segregate them with respect to prohibited sharks and non- prohibited sharks was very difficult hence the Notification needs to be quashed. From the Government perspective it was put forth that for safeguarding the environment, export of shark and shark fins could be banned. Export of shark is also to be banned because we have to preserve the marine ecosystem in the Indian Waters. According to the Ministry of Agriculture the export of shark need to be banned because it is resulting into degradation of marine ecosystem.

The Supreme Court dismiss the petition on the ground that there was no substance in the petition the ban of export of shark is justified on the ground of preserving environment, ecology and the marine ecosystem. In this topic of Judicial Response to Biodiversity Laws and Endangered Species it has been observed that there are some very important decisions decided by the Kerala, Karnataka and Uttarakhand High Court which have been covered under nith in an analytical and detailed manner

VII. CONCLUSION

Biodiversity is the gift of the nature to the human society. This gift needs to be protected and preserved by the human beings. Each and every species of animal, plant and micro organisms has been born on this earth with some purpose and has its defined place in the Earth's ecosystem. Indian rich biodiversity is under severe threat owing to several factors such as habitat destruction, degradation, fragmentation, over exploitation of resources, global warming, introduction of harmful species, agricultural activities, extraction including mining, fishing, logging, harvesting, human settlement, industry, changes in forest composition and hunting, poaching, alien invasive species are major proximate factors of species extinction.

It has been realised that the protection of the endangered species is extremely essential, if these species are destroyed then the richness of the biodiversity will be reduced to a larger extent and it will be very difficult to restore those species again. The analysis suggests that the quantum of extinction of endangered species from the biodiversity is very large.

In fact it is a theme of this work to study, how the preservation and protection of endangered species which are the components of biodiversity is to be taken into consideration. The various available laws, enactment, preventive measure and conservative policies are the matter of great concern towards the protection and preservation of biodiversity and endangered species.

Further, it has been observed that the force of any Act largely depends on its enforcement and real world practice that is how different authorities, lawyers and the Courts perceive and observe its provisions. Policy goals of maintaining ecosystems to sustain life and diverse life forms with emphasis on inter and intra generational equity contained in the Biological Diversity Act, 2002 could be achieved by its effective implementation, in the Courts and by those entrusted with its enforcement as well as compliance by concerned persons.

Healthy ecosystem along with its biodiversity and forests including endangered species are the elements of the fundamental right to life. Yet provisions of fair and equitable sharing of benefits arising from access to biological and genetic resources for commercial utilization may need better understanding of conditions affecting right to property in order to integrate the precautionary principle in various economic activities.

Rape is the most horrifying & brutish act of violating bodily honor of a female. It devastates the whole physical and mental poise and drives the victim into deep emotional trauma and decreases her to a living carcass. It is a crime against the basic human right of every individual irrespective of their gender and a clear violation of Article 21 of our constitution that is Right to Life. Rape victim may go to take the legal, clinical, and emotional wellness frameworks for help, yet there are many writing give insight to the fact that numerous survivors are denied help by these offices. The

help that they get at times leaves them feeling re-victimized. Secondary victimization is the victimization that happens not as an immediate after effect of the criminal act however through the reaction of organizations and people to the victim. Secondary victimization is most apparent in criminal justice system. There are times when it amounts to complete denial of the victim from the society and cultural groups. It may result to intruding and inappropriate conduct by police. In a way it can be said that the whole process of criminal investigation in certain ways cause secondary victimization.

Secondary victimization in the process of criminal justice may happen due no proper balancing in the right of victim and rights of the accused or offender. All the more ordinarily, notwithstanding, it happens on the grounds that those answerable for ordering criminal justice and procedures do as such without considering the perspective of the victim. Rape has been seen as the most fierce crime against a female that influences the physical being as well as the mental being of the victim. "As stated in an intervention to the European Court of Human Rights in the case of *M.C. v Bulgaria*¹⁰", "The equality approach starts by examining not whether the woman said 'no', but whether she said 'yes'." It wrecks lives, as its damaging impacts continue long after the immediate suffering. It is a type of "gender -inequality", a physical issue to wellbeing, a wrongdoing, an infringement of women's basic liberties and is exorbitant to economy and society. Rape is perhaps the most vicious type of crime against woman.

¹⁰(39272/98) [2003] ECHR 646 (4 December 2003)