

**Constitution of India and Environmental Governance: Administrative and Adjudicatory  
Process**

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**Lecture No. 28**

**Development of the International Framework on Biodiversity: Convention on Biodiversity  
1992**

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**II. INTERNATIONAL FRAMEWORK LAW: CBD**



- EFFORTS BEFORE CBD :
- WORLD CONSERVATION STRATEGY, 1980 :- 3 MAJOR CONSERVATION GOALS : MAINTENANCE OF ESSENTIAL ECOLOGICAL PROCESSES PRESERVATION OF GENETIC DIVERSITY; SUSTAINABLE USE OF SPECIES AND ECOSYSTEMS
- LAW OF THE SEA CONVENTION, 1981- TANGENTIAL REFERENCE TO CONSERVING LIFE AND LIFE FORMS
- CITES, 1973: PROTECTION- BY PROHIBITIONS , PENAL SANCTIONS FOR VIOLATIONS, RESTRICTIONS AND REGULATION
- HERITAGE CONVENTION, ANTARCTIC TREATY , WHALING CONVENTION, POLAR BEARS PROTECTION TREATY AND RAMSAR CONVENTION ,ETC.
- EFFORTS AFTER CBD: CONVENTION TO COMBAT DESERTIFICATION, 1994  
- NO SINGLE MEA ,THAT ENCAPSULATED ALL THE ASPECTS OF CONSERVATION, PROTECTION, SUSTAINABLE USE, SAFETY AND EQUITY IN COMMERCE CONCERNING BIODIVERSITY



The major one that we are going to consider now would be the Convention on Biological Diversity and this was in the year 1992. But as a matter of fact, even before this Convention on Biological Diversity, CBD for short, there have been for efforts in conserving and protecting life and life forms. Like, for example, in the year 1980, a strategy has worked out at the international level called the world conservation strategy.

Three major conservation goals were envisaged. Maintenance or ecological processes, preservation of genetic diversity, sustainable use of species and ecosystem was part of this particular plan of action. But it was only a plan of action, no law yet then, under the Law of The Sea Convention in 1981, there has been reference to certain ecosystems, the coastal ecosystem and the marine ecosystem which are very rich in life and life forms.

Their protection, their maintenance and management weakling is major concern under this law as well. But it is relegated to a bit of a marginal reference that these need to be conserved and protected and means and mechanism needed to be evolved at the local, national and at the international level. That is where exactly the law of The Sea Convention dealt with this.

But then in very specific terms on ecosystems which are home for certain very endemic varieties or varieties of plants and animals which are peculiar and unique to that particular ecosystem, only to be found there and nowhere else. These are very rare species of plants and animals. These are some of those which need have to have greater degree of protection because if they are lost in that place it would be lost forever for humanity.

And so, conserving them and protecting the ecosystem in they live became a matter of major concern in the year 1973. An international legal arrangement called as Convention on International Trade On Endangered Species was evolved. We will reflect on that later in the next module when we deal with a wild life law. That it was wild life about protections through prohibitions, penal sanctions for violations and restrictions and regulations over protection of certain species and ecosystems which are very rare plants and animals.

Then there was this 1980 convention called the Heritage Convention, which wanted to protect the cultural heritages which are human constructed heritage sites like the Taj Mahal as we know of and also natural heritages like the Giant Coral Reefs which are unique ecosystem of incomparable value and have to be treated as heritage of humanity for all times to come and to protect that and so legal designs were evolved at the international level through this Heritage Convention at 1980.

There is this Antarctic Treaty of protecting the Antarctic ecosystem and the Whaling Convention of protecting one particular species of an animal variety, the biggest animal, the whale. And there has been a treaty which is a regional convention of protecting polar bears and there has been this arrangement in 1971 on protecting wetlands all over the world of international significance because wetlands are the ones which are places of breeding, nurturing life and life forms.

And by protecting them you are actually going to ensure a kind of an insurance cover at the loss of species of plants and animal varieties. And support mechanism for that was provided through that called as a Ramsar Convention. But if you actually looked to that these are piecemeal efforts, in fact there is one more piecemeal effort after the Convention of Biological Diversity of 1992 and that was with regard to the growing threat of desertification.

Deserts were expanding the world over and the need to confine their existence so that life and life forms will flourish. An international arrangement worked out in 1994 called as the Convention to Combat Desertification. So, these are many of the measures as I was mentioning piecemeal measures, piecemeal measures because they deal with certain aspects of conservation. They deal with certain kinds of threats.

But not every kind of a threat, not every kind of conservation, not every kind of a management of bio resources and the knowledges associated with them in relation to which we had huge concerns which were narrated a little while back and so there was no single Multilateral Environmental Arrangement, MEA for short that encapsulated all the aspects of conservation, protection, sustainable use, safety, security and equity in commerce concerning biodiversity.

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### **CONVENTION ON BIODIVERSITY, 1992(CBD)**



- OVER 180 STATE PARTIES- ALONG WITH UNFCCC, 1992, HAS THE LARGEST SUBSCRIPTION OF MEMBERSHIP, FOR AN INTERNATIONAL TREATY, OUTSIDE THE U.N CHARTER, 1945
- INCORPORATES : PRINCIPLE OF CONSERVATION (-EX-SITU AND INSITU), RECOGNISES AND REITERATES SOVEREIGN RIGHTS (- TO EXERCISE THE RIGHT AND TO ENSURE PROTECTION OF INTERESTS), PRECAUTION (- ENSURING SAFETY, SECURITY AND INTEGRITY - IN THE APPLICATION OF SCIENCE AND TECHNOLOGY AND IN THE PROCESSES OF DEVELOPMENT), EQUITY (- SAFEGUARDS AGAINST UNJUST ENRICHMENT AND PIRACY) AND EMPHASISES COOPERATION AMONG NATIONS TO GIVE EFFECT TO ALL THESE AVOWED OBJECTS
- ENVISAGES INTERNATIONAL FRAME OF PRESCRIPTIONS AND NATIONAL LAW AND MECHANISMS FOR ENFORCEMENT



And so, in the year 1992, in the Rio summit, the Rio de Janeiro Summit of Environment and Development a very important convention was crafted. Over 180 state parties became parties to this particular arrangement. In terms of significance along with the United Nation Framework Conventional Climate Change of 1992, which was a subject of our discussion in the fifth module, this is another international arrangement which has the largest subscription of membership for an international treaty outside the United Nations Charter.

And so very important international arrangement much more than any other international arrangement this has the largest number of members of nations, community of nations which are members with this and so it is of international dimension of such reach very, similar to United Nations or that of climate change. What does it incorporate? This Convention on Biological Diversity has the following principles.

The first major principle is to conserve the principle of conservation. Conservation actually means conservation of life, protection of life, upkeep maintenance, management, ensuring quality and integrity of a particular resource, fourth EXSITU and INSITU. INSITU means within the habitat, wherever it is found which is ideal for its existence it is called as the habitat of that particular resource.

Like our own home which is the best place for us to live like that every plant and animal variety have their own home which is called as the habitat, natural habitat. And conserving them in that natural habitat is the primary concern. And there are times where you cannot conserve them INSITU mainly because of a variety of reasons. And one reason it may be because of floods or it may be because of certain other natural calamities like earthquake or anything. Then keeping them in the natural habitat would be dangerous. It even leads to their extinction.

So, under those circumstances or there is a wide spread disease as a result of which this particular specie would get lost. And so, what you will do? You take it in a place which is other than its natural habitat, simulate a condition similar to that of its natural habitat, a laboratory condition, we call it as a glass house or a green house and in those you nurture them. It is called as EXSITU conservation.

So, this law incorporates the principle of conservation and second, recognises and reiterates the sovereign right of nations that once you say a nation is a sovereign nation it actually means that it has complete authority control over every resource that is there within its territory. And every resource includes every biological resource, the flora the fauna, the plants and animal life, they all come within its territory and over which the state has the complete right over that.

And this law recognises over that right, yes. So, if anybody wants to access this, they have to have your leave, licence and permission. And the state has the power to exercise its rights and to ensure the protection of its own interests. And this is what it is provided under this law. This law insists on observance of the principle of precaution to ensure the safety, security and the integrity of the particular resource and the knowledge.

This is especially with regard to the application of science and technology and the various processes of development. When a particular specie of a plant and animal may be lost, if we put them into certain kinds of experimentation of changing its very complexion, of changing its very characteristics feature through biotechnological processes or anything like that and in that event the risk is involved you needed to put it into scientific temper to see that it changes its undergoes, if they can be reversed or there are other species available, other varieties of that available which can be stored and conserved in its original form, then to allow it to carry on and the kind of safeguard measures that you need to have is a matter of concern in law. And so, to provide that kind of a word of caution, the application of the principle of precaution, provision has been made out of this. The other objective is that biodiversity cannot be conserved, cannot be protected, the sovereign right of nation cannot be protected unless and until all nations come together as a cooperative venture.

This is a common property. And there is source if you are going to lose; it may happen to us also the next time that somebody else may commit piracy of that against our own interest. And so, we need have to co-operate that anyone who is indulging with it, we will share information, we will share technology, we will walk together in order to ensure that this piracy is eliminated and we share knowledges associated with that so that the resources are conserved, protected and put to

best to use amongst us.

So, this law envisages an international legal frame of prescriptions and with those basic frame, the details had to be worked out at the national level and so with this frame, with this outline that each and every country which is a party to this arrangement needed to work out at the domestic level, the details, the nuts and bolt aspects of working this law so has to ensure that resources are conserved, the resources are put to sustainable use, they are safe, no piracy and there is equity in ensuring the benefits derived from that or share fairly and justly.

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- **PRESCRIBES THE STRATEGY OF CONTRACTUAL ARRANGEMENTS- STANDARD FORM AGREEMENTS- OBSERVANCE OF PRINCIPLES OF CONTRACT LAW – TO ENSURE TRANSPARENCY AND FAIRNESS IN ALL COMMERCIAL DEALINGS**
- **IN SPECIFIC TERMS, IT PROVIDES FOR :**
- **SOVEREIGN RIGHTS AND RESPONSIBILITIES (A.3 &4; A.6 &7;A.13,26)**
- **PROTECTION OF TRADITIONAL KNOWLEDGE AND COMMUNITARIAN PRACTICES (A.8(j))**
- **COOPERATION AMONG NATIONS -ACCESS & ASSISTANCE(A.5,12,15,16,17,18 20)**
- **CONSERVATION- IN-SITU(A.8)- EX-SITU((A.9)**
- **SUSTAINABLE USE, INCENTIVES, IMPACT ASSESMENT, (A.10,11,14)**
- **HANDLING BIOTECHNOLOGY & BENEFIT-SHARING(A.19)**
- **FINANCIAL MECHANISM(A.21,39)- UNEP,GEF & WORLD BANK**



So this law that prescribes the strategy of contractual arrangements that I as a sovereign state, I enter into a contractual arrangement with anyone who wants to access my resources for commercial purposes and it is in the form of the standard form of agreement which clearly prescribes dos and donts when you access it, how you can access it, when you can access it, in what form you can access it, what purpose you are going to access it and how you are going to put that to two different kinds of users all put in a contractual form.

And this requires observance of all the principle of contract law. That means when somebody wants to access it he must come clean, put all his cards on the table as to why you are accessing this resource and what kind of use that you are going to put into. At what quantity and at what

rate you are making a offer and for which the host country or the one who is going to enter an arrangement with you is going to give his acceptance by giving an informed concern.

And this informed concern should be free from bias, should be free from coercion and duress, should be free from undue influence, should be free from deceit or fraud, should be free from mistake. And any of this vitiating factor makes it, it becomes an illegal arrangement and so all the elements of a contract and worked out here.

The state will prescribe norms whereby you can enter into an arrangement, how do you share the benefits derived, elements of transparency and fairness in all commercial dealings is part and parcel of this arrangement. In specific terms if you look to the specific problems of this law, it provides for certain rights and responsibilities. In the slide you will be able to find what is the reference provision of that so you can appropriately refer to them.

As to what are sovereign rights that you can lay down of conditions of access, you can prescribe the manner of access, you can lay down on a particular fee for access, you can lead on a particular arrangement whereby the benefits can be shared. The responsibility the nation is to ensure that the one who has that arrangement will have access according to their regulations and then the source from where it could be accessed is made very clear. And the rights are those who are going to be affected by this are protected.

And it also our responsibility that if somebody is going to put this particular resources in application for which he has applied and tries to get an intellectual property right over here the sovereign nation on behalf of this particular country, on behalf of those traditional right holders would be able to argue in a international forum to reclaim you that particular right of the state. So that the kind of rights and responsibilities prescribes. This is one first major international legal arrangement which provides the protection of traditional knowledges and communitarian practices associated with that.

There is a clear provision for that under this Convention which clearly says that recognition, making provision for protection, acknowledgement and sharing of benefits and putting those

knowledges and resources into application, to the communities of people the holders, the transmitters, the carriers and those who are responsible for nurturing these resources and knowledges is something which is part of this law.

It calls for the cooperation amongst the nations in science and technology, in facilitating access, in providing assistance, in accessing and putting this to various kinds of users to ensure sustainable use, in ensuring bio safe use and application and things like that.

And for which it also provides for financial mechanisms wherein the United Nation Environmental Program, the Global Environment Facility and the World Bank would put together an arrangement whereby the technological assistance and the financial assistance is made available for those countries which are in need of that to conserve, to protect, to maintain, to manage, to improve the equality, to ensure biosafety, to promote technology of access management and improving with different qualities of plants and animals varieties. Handling of biotechnology and sharing of benefits is an important provision under this law.

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- CONFERENCE OF PARTIES(A.23)
  - ADMINISTRATIVE ARRANGEMENTS(A.24,25)
  - SETTLEMENT OF DISPUTES (A.27)
- FRAMEWORK LAW- REINFORCEMENT THROUGH CARTEGENA  
PROTOCOL,2000 (- BIO-SAFETY) AND NAGOYA PROTOCOL,2010 (- EQUITY-  
ACCESS AND BENEFIT-SHARING MECHANISMS (ABS))



And the working out the nuts and bolts of the aspects of it or put in the hands of a Conference of Parties. Conference of parties is from among the parties a small group is envisaged which would



be continuously be meeting to work out the details each of these elements of this particular framework law and then they come up with additional legal arrangements which are referred as protocols to work it out.

And in terms of administrative management and settlement of claims and rights, it does not provide for an international mechanism, what it provides for is once again a clarion call for cooperation amongst patients. If there are disputes, if there are any conflicts amongst you, you need have to find ways and means of mechanism of getting into negotiation and settle between and amongst you in an amicable way through negotiation, through conciliation.

By making one of the good officers of people who are going to act as umpires and through a process of arbitration by any of this means to sort out differences rather than a centralise international control in a decentralised one way by states and not only the right of control over the resources, they also have a duty to cooperate with each other to resolve any conflicts and iron out differences amongst themselves. This is a framework law.

The reinforcement of this law is done through two major international legal arrangements, which referred to as a protocol, one on biosafety and another on equity. The biosafety arrangement is what is referred to as a Cartagena Protocol of 2000 and the equity arrangement, the details of which are worked out in another international legal arrangement called as a Nagoya Protocol on Access and Benefit Sharing Mechanisms in the year 2010. That is the subject matter of our enquiry and this course in the next session.