

Constitution of India and Environmental Governance:

Administrative and Adjudicatory Process

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Lecture 31

Legal Framework on Biosafety

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II. LEGAL FRAME FOR BIOSAFETY



- **RULES MADE UNDER EPA, 1986- PRECEDE CBD, 1992 AND BIOSAFETY PROTOCOL, 2000- FIRST ENACTED IN 1989 , AMENED IN 1993:**
RULES FOR THE MANUFACTURE, USE, IMPORT, EXPORT AND STORAGE OF HAZARDOUS MICRO-ORGANISMS, GENETICALLY ENGINEERED ORGANISMS OR CELLS, 1989
- **OBJECT: TO PROTECT THE ENVIRONMENT AND HEALTH, IN CONNECTION WITH THE APPLICATION OF GENE TECHNOLOGY AND MICRO-ORGANISMS, CELLS, SUBSTANCES AND FOOD PRODUCTS ETC.**
- **AUTHORITIES: RDAC; RCGM; IBSC; GEAC; SBCC; DLC**
- **PENALTIES FOR VIOLATION – AS PROVIDED UNDER S.15 EPA, 1986**
- LAW, PRIMARILY ADMINISTERED UNDER THE AEGIES OF THE MINISTRY OF SCIENCE AND TECHNOLOGY – TAKING CARE OF BIOSAFETY AND ADDRESSING CONCERNS OF BIOPIRACY, REMAIN CONTENTIOUS ISSUES(- REFER, Aruna Rodrigues & Ors vs Union Of India, 2012, Supreme Court; Bt Brinjal Case in Karnataka High Court, 2012)



We move on to the Biosafety aspect here, we referred to the conservation, we referred to access sharing of benefits for which the Biodiversity Act deals that with all. Unfortunately the biodiversity act does not deal with the issues of biosafety these are governed under a separate set of rules made under the Environment Protection Act 1986.

Interestingly, the rules that were made but actually were made even before the Conventional Biological Diversity came into existence in 1992, these rules were made in 1989 of course it was amended in 1993 but more interestingly if you referring to biosafety you remember, in our earlier discussion we have found that there was a protocol at the international level called as the Biosafety Protocol of Cartagena that was made in year 2000 to which India became a party.

But even one decade before that rules are already made in India. And what are the rules? Rules for manufacture use, import, export and storage of hazardous microorganisms, genetically engineered organisms or cells remember the LMOs and GMOs the same are

mentioned here as has been mentioned in the Cartagena Protocol. What is the object of this; to protect the environment and health in connection with the application of gene technology and micro-organisms and cells and substances and food products and etc.

A number of authorities are setup under this which are primarily scientific bodies. There is a mention of it here in the slide please have a look at that and these are the ones which at every stage of one either manufacturing, using, importing or exporting, storing or putting it different kinds of applications they are the one which will scrutinize all those activities, monitor them, give clearances of permissions and they take a call on that.

These are the authorities that are constituted for that purpose and if there is any violation of whatever orders passed by them or whatever instructions given by them then the penal sanctions are as provided under the Environment Protection Act about which we have already discussed earlier. So, what we see is the very interesting situation there is an aspect of biodiversity of ensuring bio-safety as a subset of conservation.

But this law is primarily administered not by the Ministry of Environment and Forest but under the aegis of the Ministry of Science and Technology and this has become a subject matter of great debate, contention and even a number of Court cases because biosafety is something which goes beyond science, which goes beyond technology and the ministry which takes care of propagation and promotion of science and technology.

The one that would actually, promote biotechnology or within the ministry of science and technology it is this which have been entrusted with the responsibility of dealing with biosafety and many a time people argue that the one who is actually promoting biotechnology how can one ensure biosafety. For that the student is advised as part of his assignment to refer to two important cases.

One decided by the Supreme Court and another still very much alive by the Karnataka High Court. And the first case is the Aruna Rodrigues and others versus Union of India case 2012 Supreme Court. And the other one in the Karnataka High court called, popularly known as the BT Brinjal case that would actually give you a particular idea about the biosafety regulations, how they are worked or how they are not worked. How adequate the provisions are, how adequate the authorities who were dealing with that and things like that part of the

assignment.

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II. EVALUATION



PRAISEWORTHY ASPECTS:

- 1. A TECHNO-LEGAL DOCUMENT -DEEPENS DEMOCRACY- STEALS A MARCH OVER THE 73RD AND 74TH AMENDMENTS – CONFERS A STATUTORY STATUS TO A UNIT OF THE LOCAL BODY (-BMCs); INSTITUTIONAL ARRANGEMENTS (NBA & SBBs), TRULY DEMOCRATIC IN SPIRIT AND FUNCTIONING – DECISIONS DRAWN FROM LONG-STANDING EXPERIENCE AND EXPERTISE, WRAPPED IN A DEMOCRATIC ATTIRE !**
- 2. ARGUABLY, THE FIRST INDIAN LAW TO RECOGNIZE AND REWARD COMMUNITARIAN CLAIMS AND INTERESTS OVER RESOURCES, ASSOCIATED KNOWLEDGE, PRACTICES AND TRADITIONS AND CUSTODIAL CARE- TRULY INDIAN IN SPIRIT (- SIGN OF INDIA COMING OUT OF THE COLONIAL YOKE OF THE NOTION OF "EMINENT DOMAIN")!**
- 3. GETS TO THE CORE OF "CORPORATE SOCIAL RESPONSIBILITY" - FAR MORE DEEPER THAN THE COMPANIES ACT!**



How do I evaluate this law? There are several praise worthy aspects to this law. One must examine the texture, the content and the manner in which his particular law is crafted. It is a wonderful techno-legal document so it is not a pure law, it is a lot of technology, it is a lot of science, it is a lot of commerce as part of this legal document and this is a law which deepens the democracy.

Far more than the 73rd and 74th Amendments the Constitution of India. The 73rd and 74th amendment actually created the third tier of governance in a form of local bodies Panchayats and Urban local bodies. But they do not have much of an independent, autonomous existence and power they depend either on the Centre of the state for transfer reassignment of functions but here under this statue a body is created which has a statutory status and it is not even a local body.

It is a small unit of the local body which depends the local body for its creation because the Biodiversity Management Committee and the most spiriting feature is to bring it to existence the biodiversity management committee, their local Panchayat or their local urban body has a role to play but, when wants it comes to existence it will have an independent existence of its own.

Even the institutional arrangements at a Higher level the National biodiversity or State biodiversity board are very truly democratic and spirited function. Their decisions are drawn from long-standing experience and expertise, composed in the various committees constituted

under it and they give a greater feel of democracy in the real sense of the term than in any formal sense

Arguably, this is the first Indian Law to recognize and reward communitarian claims there was no such law at all in India. In fact, globally communitarian claims an interests over the resources we normally believed in either the state power or in individual rights. Communitarian claims and interests were not much taken care of associated knowledge in relations to the them, the traditional knowledge systems, the custodial care that has been displayed by these were never recognized or even given any right.

But what you see its truly Indian in spirit wherein communitarian rights were recognized and this is clear sign of India coming out of its colonial yoke of the common law traditions of the king as the sovereign over everything having an eminent domain over everything. Even communities have interest in rights over resources, knowledges and have right over them, this is a lesson.

Way back in the year 2002, for the first time this particular Indian law gives and corporate social responsibility is a coinage that comes into existence through an amendment of the Companies Act in his present decade after 2010 through an amendment to the Companies Act and that too the corporate social responsibilities from the overflow or the profits, response percentage should be result for that purpose.

But here the corporate social responsibility is far deeper than the Companies Act. It makes it the statutory obligations that you are not going to do any charity, that it is a statutory obligations that the one that has enabled you to get this much of profit is mainly because of particular knowledge and knowledge systems that is made in India and you have to share it with the Indian national government, state government or as the case maybe with the local community.

Their part is anywhere corporate activity deeper and far stronger than what has been provided in the companies' law.

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• ISSUES OF CONCERN:

1. LENGTHY GESTATION PERIOD – 10 YEARS FOR THE ACT, 12 FOR RULES (- NATIONAL; AT THE STATE LEVEL – ANOTHER DOZEN YEARS!) – SENSE OF URGENCY, CONSPICUOUS BY ABSENCE
2. NOT A COMPREHENSIVE, OVERARCHING LAW- A LAW OF COMPROMISES- WORKS ALONG SIDE FOREST & WILDLIFE LAWS; RIGHTS CONCERNING PLANT VARIETIES, A SEPARATE LEGAL REGIME (- PPVFRA); AGRO-BIODIVERSITY (- INTERESTING RELATIONSHIP WITH MIN. OF AGRICULTURE-); BIOSAFETY (- NOT ITS CUP OF TEA!- EXCEPT HAVING MADE RULES IN 1989 & 1993- LONG BEFORE CARTEGENA PROTOCOL- EVEN THE ENV. MINISTRY HAS A VERY LITTLE SAY- APPROPRIATED BY MIN. OF SCI.& TECH., BIOTECH. DEPT.: ONE WHO PROMOTES BIOTECH. DEALS WITH SAFETY & SECURITY: COMBINATION OF ACCUSED, PROSECUTOR, JURY AND JUDGE!)
3. LEGISLATIVE DRAFTING: LOOSE LANGUAGE & IMPRECISE EXPRESSIONS –



These are the positive things about this law, but there are issues under these laws, if you just look at the way in which this law came into existence remember, in 1992 the International Convention came into existence CBD Indian law was made in the year 2002.

Biodiversity Act came into existence in 2002 but, bringing the act into existence is not sufficient because, along with the act you have to come up with rules and the rules at the national level came in 2004. That is not all; rules at the state level also should come into existence and believe me that these rules were being made over period of 15-16 years by the state governments.

So, in terms of bringing the law into existence in full-fledged form is very recent. Although 27 years are elapsed after we made the commitment to protect our, and conserve our and take care of our biological resources and the knowledges associated with them. Not that all, it is not just you make the law but, even to create institutions of enforcement, it took about 15-16 years in different states.

And so the real work of implementing this law has begun just in a few years from now when time is essence, the sense of urgency in making the law and bringing it into application so as to protect our bio-resource our main goal, our knowledges, to prevent it from theft and bio-safety has not happen, so sense of urgency is consisted by it is absence it is a matter of great concern.

Second, this is not a comprehensive or an overarching law. It is a law of compromises. Remember that this law is not an exclusive law, it has to work alongside the forestry and wildlife law whose mandates are different and quite not exactly and tuned with what has been provided under this and so there is always a question of adjustments and compromises and through compromises you actually dilute the basic objective with which you have made this law.

Several laws have actually created in roads in it lie the protection of plant varieties law or the committee that actually deal with Agro-biodiversity and there is a very interesting relationship with not just the biodiversity authority but even with the ministry itself. Because in terms of its revolution the environment ministry owes its very existence or genesis to a part of the agriculture ministry.

Forest and wildlife were a part of agriculture ministry and only in year 1980 that was transferred to a newly created ministry called as environment ministry hence the shadow of the strong and deep impact and influence of the agriculture ministry is very much there in the working of the environment ministry and also in the working of the biodiversity authorities.

Bio-safety; another area of concern as I have mentioned a little earlier in our discourse it is not a cup of tea the biodiversity authority or the state biodiversity board except having made the rules in 1989 and amended it in 1993, the environment ministry has a very little to say in this regard. This is actually appropriated by the Ministry of Science And Technology and Bio-Technology Department is actually enforcing it by overseeing it.

By monitoring it, by scrutinizing it and by giving approvals and so the objection to this is there is a conflict of interest issue. One more promotes bio-technology how can it deal with safety and security is almost like a combination of an accused, prosecutor, jury and judge. The final word has not come the court of law in this regard but something needs to be pointed over and acted upon is very much perfectly in order or the environment ministry to consider, to work on the bio-safety issues.

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MUCH TIME, ENERGY AND EFFORT, SPENT ON SEEKING AND SECURING CLARIFICATIONS AND COURT INTERVENTIONS (- REFER, DIVYA PHARMACY CASE, 2018) – SIMULTANEOUS EFFORTS ON, IN AMENDING/ REFORMING THE LAW !

4. INSTITUTIONAL ARRANGEMENTS:- " STILL UNDER CONSTRUCTION"-

VISION: " TO MAKE GRASSROOT GOVERNANCE STRONG"- FACT: GRASS IS YET TO DEVELOP ROOTS!- SBBs, AFTER 18 YEARS OF THE MAKING OF THE LAW, ALMOST A REALITY; BMCs- NOT EVEN HALF WAY THROUGH

5. HARDLY ANY COOPERATION FROM OTHER RELATED MINISTRIES- USUAL APPREHENSIONS, SUSPICIONS AND FEAR OF " JURISDICTION GRAB", PREVAIL

- BIODIVERSITY LAW AND ITS INSTITUTIONAL ARRANGEMENTS, VERILY, HAVE REMAINED , A "CINDERELLA" IN THE GOVT!(- EXCEPT THAT THE FAIRY TALE END, IS ELUDING IT!-)



If you remember the language of this law is a techno-legal document alright but the language is little loose and imprecise and in law there is an invitation to disaster if the language is not that very clear it gives a lot of scope for different and varied interpretations as to dilute its efforts. And here I very strongly urge the student to do one more assignment of studying a very important case decided by the Uttarakhand High Court.

The case of Divya Pharmacy in the year 2018. The gist of it is simply this that here is an Indian company which is involved in manufacture of food items and drugs, pharmaceutical drugs and other things which are derived from bio-resources and the knowledges that are very much there in India and it argued that as an Indian entity it need not have to share the benefits derived from this particular resource.

Because, the language of the law, it tried to tweak it and interpreted to its advantage. Of course, the court said that, that is not the case that whoever who gets a commercial benefit out of this particular resource and starting of that particular talent or knowledge or practice or a tradition has a obligations of sharing that will be determined by the appropriate authority either the state agency or the central one.

The national authority or the state broad through which mutual agreement and on terms which are agreeable to each based upon the conditions laid down under this law and so there is no question of an escape or an excuse an exception. Please do that reading as a student you understand the implications of the working of it.

So, it needed a court of law to interpret some of the provisions here and the known you go to the court of law it takes a lot of time. The law is not self-explanatory, and to that extent the effect of the law is a bit diluted. In terms of institutional arrangements and this is very sorry state of affairs because as we mentioned earlier the very highlight of this law has itself become a hindrance of taking governance to grassroots.

And making the governance at the grassroots very strong and for that we created under this law the Biodiversity Management Committees. But as a matter of fact, this grass is yet to develop deep roots even after 18 years of the making of the law the biodiversity management committees if all the states have not come into existence completely in both in lateral and spirit as this particular law has been made, not even half way through.

And it is very crucial for an effective working of this particular law and achieving the goals set under this law, these entities may not come into existence. Actually, even for the creation and bringing into existence state biodiversity board take more than a dozen states in India, it took more than 10 to 15 years after the making this law in India. And Biodiversity Management Committees are still coming into existence.

And there is another serious concern that this particular ministry which the nodal agencies of which is the national biodiversity authority and the state biodiversity boards they hardly have real both in real time and in active terms cooperation from other related ministries and the usual kinds of apprehensions and suspicions that are there with the other departments, other ministries that well going to be conflicts of the jurisdiction or there is jurisdictional grab and so you keep off, I take care of my part of it and do not interfere in my internal affairs or something like that.

So, many of dramatic become a ghettoed existence but each department thinks differently from the other and anything that biodiversity law would provide for which actually would require the cooperation of the other agencies it is hard to combine. And so, biodiversity law although it is a very ideal law, wonderfully crafted has many salutary stand out features unprecedented anywhere in the world perhaps unfortunately has remain the kind of if I can draw an analogy it same as Cinderella in the government, wonderful creation, an angelic existence. But, being illtreated and marginalized. But unfortunately, quite unlike that fairy

tale end with that Cinderella that fairy tale end is still eluding this biodiversity law and it is working in India but, all is not lost. When all these great ideas germinate and developed a lot of churning would occur in the process of the churning and quite possibly with the pandemic that is breeding and that has actually brought the whole community of people all over the world to in new reality, crippling the economies and lives of the people in a very big way that should actually give a great lesson to us that in biodiversity in nurturing, taking care, protecting, conserving, maintaining and managing the way the law requires the future of not just human beings, very life, yes. With that gyan let us conclude particular module for our consideration and then move on to the next module in which we will discussing about forest and wildlife law.