



A Legal Study for the protection of Natural Flora and Fauna in India

Manish Singh Tanwar

Advocate, University of Delhi.

Abstract-

Flora and Fauna are very important source for the foundation of life on this planet and their interconnections are so wide and complex that scientists have not yet discovered all their mysteries for conducting a better study. There are many challenges to flora and fauna that may be result of human activities like deforestation, hunting of animals, destruction of natural habitat or modification due to certain human activities. The importance of flora and fauna is very crucial for the sustenance of life on this earth. Ecosystem regenerate itself over a certain period of time. The importance for the protection of flora and fauna have always been a subject of major concern for Indian government as well as for international organizations and this issue has been a primary subject in several international conventions and treaties. It has been fully accepted that there is need for protection of flora and fauna and it is a subject of grave concern for mankind. The Indian Government almost two decades ago came up with "Biological Diversity Act 2002" for the protection of Flora and Fauna in India. It is right time to examine the effect of the protection provided under this act, i.e., "Biological Diversity Act 2002" and suggest the possible improvement of this act for the protection of flora and fauna in India. For this purpose this research paper has been undertaken. This research paper will examine the current legal development on the topic at international level. The Efficacy of The Biological Diversity Act will be examined in the light of international legal framework for the protection of flora and fauna and would suggest some important points for the improvement of Indian laws related with natural environment. For writing this present research paper, descriptive and analytical methods with doctrinal mode have been adopted. This research paper has taken into account various international conventions, treaties and declarations apart from Indian rules, laws, reports, journals, books.

Key Words:- Flora, Fauna, Protection, Diversity.

Introduction:

Flora and fauna is a term for natural world and it's inherent biological wealth and thus flora and fauna can be referred as "all living things on earth". It is the web of life on this planet in all it's forms including animals, plants and minute organisms which are found in soil. Flora and fauna is the basis of all life, yet because of how intricately connected all living things are, no one has yet fully understood all of its complexities. Thus, according to some experts, there are likely 1.4 million species of organisms on this planet, of which 750,000 are insect, 41,000 are vertebrates, and 250,000 are plants. The remaining are rare invertebrate, fungi, and microorganism make up the remainder. Cyril De Klemm from the Commission of Environmental Policy, Law, and Administration makes the following recommendation, "Nobody even knows the approximate number of living species: 5, 10, 30 million, according to the most recent estimates, out of which less than

two million have so far been described". The majority of the biodiversity on earth is found in the natural habitats of forests, savannas, lakes, tundras, grasslands, deserts, and rangelands, and oceans. Although the terms "flora and fauna" and "biological resources" are sometimes used similarly in everyday speech, the Convention on Biological Diversity makes a distinction between the two. In accordance to the article 2 of the above said convention, biological resources are: "genetic resources, organisms or parts thereof, populations, or any other biotic components of ecosystems with actual or potential use or value for humanity". Although not solely, 3 specific classifications that describe various features of biological systems and are quantified in various ways that can be used to depict flora and fauna: a) Gene variety within a species is referred to as genetic diversity. b) The different types of species in an area is known as species diversity, c) Ecosystem diversity is an area's variety of ecosystems. The wide availability of species, the arrangement of groups in an area, the demographic factors such as age of individuals, and modifications in community organization and composition through time are all examples of further forms of flora and fauna. The value of biodiversity cannot be overestimated. First of all, it offers a real and feasible sources of biological resources, such as food, medicines, etc. Second, it helps to keep the biosphere in a state that sustains both humanity and other life. The sphere of flora and fauna justifies its continued presence and conservation by providing new supplies of things like food and medicine. There are already an a plenty of new foods, beauty products, pharmaceuticals, soap, and other goods coming from tropical forests. According to figures, "Indians living in the Amazon Basin use approximately 1,300 native herbs, including antimicrobials, narcotic drugs, abortion services, contraceptives, anti - diarrheal agents, fungicides, anaesthetics, pain killers, and many others - the majority of which have not yet been studied by researchers." It is a truth that developing countries rely heavily on resources of flora and fauna, just like developed countries do. Almost every country on the earth draws financial benefit from its flora and fauna. According to the UN Environment Programme, "biological resources produce tangible benefits such as food, medicines, shelter and employment that can be readily translated into monetary terms".

Universal Crisis of Flora and Fauna:-

Numerous factors, including changes in the climate, the quantity of creatures, terrain, the physical soil, time, and genetics, can have an impact on flora and fauna. These elements are being drastically changed throughout time as a consequence of humankind's relentless attack on the planet. The loss of natural diversity is among the most significant environmental issues facing the world today. According to reports, many of the earth's flora and fauna have already been going extinct, which is causing ecological depletion all across the world. The ecosystem of thousands of other organisms is being invaded by the expanding world population, which is currently over six billion. The financial purpose of human society requires perpetual growth and nonstop activities, which both lead to land erosion, the loss of ocean resources, industrialization-related air pollution, as well as there's a hole in the ozone layer that protects this planet. Unfortunately, humans are both the cause of the issue and its final victims.

Response of the World Community to the Crisis of flora and fauna:

The importance and need for protection of biodiversity has long been a chief issue for the global community, and the problem has been covered in a number of international conventions. The purpose of the Antarctic Treaty of 1959 was just to make sure that "in the interests of mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international disorder". The Ramsar Convention of 1971 placed special emphasis on the effects of wetlands on flora and fauna and recognises the value of wetlands as one of the most fertile ecosystems on earth, generating environment for birds and other sea creatures. Wetland serve as a supply of fresh water, flora and fauna, and an efficient means of flood control. This Convention was adopted by India on February 1, 1982. A Agreement of principles applicable to a range of environmental agendas was adopted by "The United Nations Conference on the Human Environment" which met in Stockholm in 1972. That Declaration's Fourth Rule says: Humans has a specific duty to protect and prudently manage the legacy of

flora and fauna, both of which are currently critically in jeopardy due to a number of negative influences. Policies for economic growth must consequently prioritise environmental protection, especially wildlife. The Bonn Convention of 1979 was limited to protecting migratory species that regularly and repetitively cross international borders in search of habitat. The states stated that the primary issue limiting the special nature of all these migratory birds was environmental issues like global warming. The United Nations Environment Programme's Executive Council ordered the formation of a group of experts for research purpose to look into the viability and potential structure of the convention to coordinate ongoing actions in the field of flora and fauna. The research group observed: In this area, a variety of global treaties dealt with various dimensions of a single objective, namely the protection of the variety of habitats, flora and fauna and genetics.

Reaction of India to the Crisis of flora and fauna:

The protection of flora and fauna is generally accepted to be a "universal issue of humanity" and it is needed to require special consideration as a component of the development process. The Rio de Janeiro convention of 1992, also known as the Convention on Flora and Fauna was instrumental in convincing the nations who were parties to that convention to take concrete steps toward the accomplishment of the following three objectives:

- a) protection of flora and fauna,
- b) Utilizing its components sustainably,
- c) Efficient and reasonable distribution of perks coming out of genetic assets.

The international treaties are enforceable by law on nations who sign them because they are certain to have positive effects on the national growth of every nation, including those that are socio, financial, and ecological. States were therefore required to create policy frameworks for the preservation and appropriate use of flora and fauna. India has ratified each of these Conventions. The Rio de Janeiro Convention, established in 1992, has 196 signatories overall, including India. However, USA is not a party to this convention because it has signed the convention but has not ratified it yet. India came up with the enactment of the Biological Diversity Act in 2002 to fulfil its responsibilities & promises made under the Convention. The Act calls for the preservation of flora and fauna, the appropriate utilisation of its elements, and the just and equal distribution of benefits from the use of natural resources. The Act's salient features for regulating flora and fauna, its protection, and its appropriate use include the following:

- a) Protection and growth of regions crucial for flora and fauna in order to treat them as historical sites for bio - diversity,
- b) safeguarding and restoring endangered species,
- c) To ensure profit distribution with locals in their capacity as conservers of natural resources and custodians of information and expertise about use of resources, historic knowledge of local people relating to flora and fauna must be protected.

Law relating to flora and fauna in India:-

Flora and Fauna during Ancient Time of India (Bharat):-

The ancient rishis of Bharat lived successfully without technology and recognized that all living things are composed of the five elements that are jal, agni, prithvi, akash aur vaayu and these five components should remain pure, according to our ancient rishis and mahatmas. These five elements and the forms of them were regarded as holy and essential for life. These elements were revered because they satisfied requirements of humans. Due to the concept that man is one of the many forms in which the "supreme-self" expresses itself in this world, all living creatures, including animals, plants, rocks, and mountains, were significantly considered in tradition of ancient India. There was harmony between men and creatures of

nature, the rishis had an immense knowledge of how to keep balance between society and nature, and in this context Paul Younger noted that Hindus have knowledge of planet and behaviour of animals so Hindus keep their livelihood balanced according to their needs. The connection between flora and fauna and life, as well as the significance of human values, which were crucial in the development and implementation of Adhikara in ancient time of India. There was no term for describing human rights in ancient Sanskrit used in ancient India; so, the word Adhikara was used at that time. Because of the faith that man is one of the numerous forms in which the "supreme-self" emerges itself in this solar system, many elements and components of flora and fauna law were properly accepted in Indian tradition, and as a result, due due consideration has been given to all living creatures, living creatures, trees, stones, and mountain ranges. The Arthashastra of the Kautilya shows awareness of and care for all living things, including both pets and wild animals, plants, and other flora. Different punishment and penalty for harming living organisms were laid down in his Arthashastra. There were specific positions for Governors of forest areas, managers appointed to prevent slaughter of animals, senior managers of animals such as horses, elephants, and pastures. In ancient India, King and Village Headman were held responsible for protection of flora and fauna.

Flora and Fauna during Medieval Era:-

During this Era, No attention was given on the protection of flora and fauna. Mughal Emperors protected flora and fauna for hunting, gardens, for fruits. However, Akbar's religious policy, which was rooted in the concept of total impartiality, showed care for the conservation of animals and birds, since efforts were made in his area to prevent needless killing of animals and birds. Another set of laws were introduced by Quran in the middle ages. As per holy Quran, the preservation of flora and fauna is founded on the idea that all of its constituent parts were made by Allah, and that each living creature was given a unique set of purposes that the All-Powerful Allah carefully measured and delicately balanced. The findings confirmed that human is merely the caretaker of the planet, not its owner, and that he is a supporter rather than a destroyer. Human Beings have been given the responsibility of managing and using the planet for their advantage and the pursuing their goals. Every era has the right to utilise nature to the degree that it doesn't interfere with or adversely affect the needs of succeeding ones.

Flora and Fauna during The British Period:-

The maintenance of ecology, forestry preservation, wildlife conservation, and water pollution prevention all underwent many changes in India during the British era. Britishers enacted a several number of laws for the protection of flora and fauna. The first were The Shore Nuisance Act of 1853 which was firstly made for Bombay & Kolaba and The Orientation Gas Company Act of 1857. As per IPC 1860, Anyone who intentionally contaminates a public water or pond must pay a fine, additionally the act provided penalties for acts of negligence. The Bengal Smoke Nuisance Act of 1905 and the Bombay Smoke Nuisance Act of 1912 were two of the most notable laws that the Britishers passed to reduce air pollution. The present legal structure for forest management in the nation is defined by the Indian Forest Act of 1927, which is based on the older Act of 1878.

Flora and Fauna in current India:

The majority of environmental legislation were established during the 1970s as a result of various international convention and treaties. Although the Tiwari Committee suggested adding a new entry, "Environmental Protection," to the Concurrent List to enable the Central and State governments to create legislation on emerging ecological problems, the Parliament did not take this recommendation into consideration. The majority of flora and fauna laws in India were passed by the Parliament either under the authority of Article 252(1), which allows the Parliament to pass laws on any issue on the State list when two or more States request it via a resolution issued by their legislative assemblies respectively.

The Wildlife (Protection) Act 1972:-

This Act was passed when the issue fell within the sole constitutional power of the states. However, if a group of states enacted a resolution authorising Parliament to enact the appropriate legislation on the matter, as it did in the context of wildlife, Parliament may use its legislative authority with regard to the aforementioned subject matter. As a result, separate dates for the Act's entry into force were determined by when each legislative assembly of state adopted a resolution in accordance with Article 252 of the Constitution. Three different types of protected areas, including sanctuaries, national parks, and closed areas, are to be established under the Act of 1972. If the governments of any state believe that a particular region within their territorial limits has "adequate ecological, faunal, floral, geomorphological, natural, or zoological significance, for the purpose of protecting, propagating, or developing wild life or its environment," they have the authority to establish sanctuaries or national parks. This Act does not include any further rules for determining which sites should be designated as national parks or sanctuaries. It provides no explanations of the theoretical distinctions between sanctuary and national park.

Forest Conservation Act of 1980:-

It was realized in the late 1970s that deforestation contributes to ecosystem degradation and causes environmental destruction in the nation, raising widespread concerns, as a result of this the forest conservation act was enacted in 1980. It is pertinent to note that in the original Constitution of India, "Forest" was a term listed under the seventh schedule in the state list, It remained that way up until 1976. With the passage of the 42nd Constitution (Amendment) Act in 1976, it was moved from the State List to the Concurrent List. As a result, the State's authority was reduced. The Centre severely restricted the State's rights to its woods by using its authority. In case of Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P, the Supreme Court held that "Section 2 of the Conservation Act is necessary as a condition precedent, therefore, the mining in the Doon Valley area should be totally stopped. The Union Government has all along taken the stand that the Doon Valley is a fragile eco-system and is endowed by nature with perennial water streams, lush green forests and scenic beauty. All these factors have contributed to Mussoorie being called the queen of hill stations and Dehradun becoming an important place of tourist attraction as well as centre of education. The Court further clarified that grant of renewal is a fresh grant, therefore, it must be consistent with all the requisite conditions of law for grant of approval". Supreme Court in the case of T. N. Godavarman Thirumulpad v. Union of India, held that the "compliance of Section 2 i.e. the approval of the Forest Advisory Committee under Section 3 is necessary whether it is a case of first grant or a renewal of grant". In the case of Ambika Quarry Works v. State of Gujrat, the Supreme Court held that "1980 Forest Act applies to renewal of leases which had originally been granted before the commencement of the Act. The State Government could renew the existing leases only with the review and approval of the Central Government as contemplated by Section 2 of the Act".

Environment Protection Act of 1986:-

The Environment (Protection) Act of 1986 was passed by the Parliament with keeping four major goals in mind, among them are: (a) to put the Stockholm Declaration's decisions into practise, 1972. (b) to pass a national environmental conservation law that fills in any loopholes in the coverage of significant environmental risks because the primary areas of environmental hazards were not covered by the current laws. (c) to combine the actions of numerous governing bodies under the legislation and establish a body or bodies for the preservation of the environment. (d) to penalise individuals harshly who damage people's ecology, safety, and health. The Act is a "roof" legislation created to give the Central Government a structure for coordinating the operations of different federal and state agencies created by earlier laws like the Water Act and Air Act. This Act gives the central government the power to carry out the required actions to safeguard and enhance the environment by establishing criteria for emissions and wastes, regulation of industrial site selection, hazardous waste management and community health and well-being.

National Forest Policy of 1988:-

"The National Forest Policy" announced by the Government of India in 1988 represents yet another important advancement in the management and conservation and the environment. The policy's primary goal was to "ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium, which is vital for subsistence of all life forms – human, animal and plant, The derivation of direct economic benefit must be subordinate to this principal aim". The National Forest Policy placed a strong focus on the importance for protection of forests, which involves maintaining them and using them sustainably as well as restoring and enhancing the surrounding ecosystem. The Environment and Forest Ministry's policy emphasises the necessity for:- (a) conservation and essential maintenance of ecological system for the purpose of maintaining natural balance, (b) protecting the nation's national habitat by protecting its natural forests and flora and wildlife, (c) reducing soil erosion and salination in river, lake, (d) examining the length of the sand dunes in Rajasthan's thar desert, (e) enhancing the country's forest and tree cover through widespread tree planting and community forest initiatives, (f) supplying rural and tribal people with the fuel, food, fodder, forest products, and wood they need, (g) Raising forest production to fulfil basic requirements.

Biological Diversity Act of 2002:-

The worrisome and evident rate of extinction of biological species, wildlife ecosystems, and genetic diversity made it necessary to introduce laws for the conservation of flora and fauna. Contrarily, it was believed that laws pertaining to the conservation of the natural environment, forests, and wildlife, as well as laws against public annoyance, carelessness, and mischief, had failed to safeguard the flora and fauna. The depletion of natural resource that are the source of clothing and food would also be represented by the loss of flora and fauna. In addition, the introduction of some contemporary "miracle" types of species is also eroding the vast array of domesticated species that traditional cultures used in agriculture and animal husbandry. The loss of flora and fauna represent the destruction of natural resources which form basis for medicines, fiber, food items.

Conclusion:-

Scientists have noted that both unequitable utilisation of the resources and human activity on the planet pose dangers to flora and fauna. The most common cause of degradation of flora and fauna is loss of endangered species. When a specie goes on extinction then No one from that group remains in the ecosystem and the whole genetic diversity is lost. Numerous other animals are negatively or positively impacted when a species disappears, and the environment's balance is likewise disrupted, as a result resources and flora and fauna suffer. In the recorded human history, there were five main cataclysmic events, and a sixth is likely to occur soon. The prior tragedies were natural disasters, however the upcoming ones will mostly be caused by man. An worldwide strategy for environmental protection is established by "Convention on Biological Diversity" 1992, which emphasizes on the connection among biodiversity and climate change. Except for transfer of technology and cooperation, the Convention on Biological Diversity incorporated issues of global climate change into the Convention's additional projects. The Convention subsequently set up the "United Nations Framework Convention on Climate Change and appointed an Ad Hoc Technical Expert Panel on Climate Change issues in light of this relationship". Additionally, the Convention's Secretariat has started a display of indigenous and local communities that are particularly at risk from climate change and gave a call for the "International Expert Meeting on Responses to Climate Change for Indigenous and Local Communities and the Impact on Their Traditional Knowledge related to Flora and Fauna -The Arctic Region". The growth of interconnections between biodiversity and climate change, meanwhile, faces both opportunities and constraints. The past culture, inventions, and practises of indigenous and local groups are intrinsically tied to their cultures, social systems, economies, means of subsistence, beliefs, traditions, legal principles, health, and relationships with the local ecology. Therefore, the components that the Convention on Biological Diversity refers to as their "expertise, ideas, and practises" would likewise suffer from the substantial negative repercussions of

climate change on native and local populations, particularly the numerous effects. The following points of reformation should be taken into account to deal with the problems of laws related to Flora and Fauna: (a) identifying the locations; (b) a system for governing flora and fauna; (c) an analysis of India's "development" strategy for the past 15–20 years; (d) connection between human rights, civilization, and agro - based flora and fauna to maintain the delicate balance of life; (e) unique safeguards for tribals, craftspeople, and gypsies; (f) political and legal actions.

Recommendations/Suggestions:-

1. The government should create nationwide plans for land use that are supported by a specific policy, identify the areas that are most important for India's environmental, water, and food supply, and protect those areas from harmful development activities like mines, large dams, and factories.
2. The government should establish a system of management that incorporates the best aspects of distributed local decision-making made by those who are most familiar with flora, fauna and the environment, with creative geographic and countryside planning, structural reforms, and the management of forests, waterways, and other natural resources by centrally organised government departments.
3. The growth model that State has used, particularly over the last 15 to 20 years, needs to undergo a major revision. This is very necessary for the analysing the problems related to Flora and Fauna.
4. The State should create strong ties between nature and agriculture, as well as between culture, environment, conservation, humanright, and other facets of living beings, which are all essential to maintaining the delicate equilibrium of life and ensuring people's health.
5. The Government must take special efforts to assist some groups, including those most reliant on flora and fauna, such as gypsies, craftspeople, and tribals, including granting temporary security over territory or environmental assets.
6. The State should engage in the necessary actions in order to implement legislative and policy safeguards for habitats that have previously been ignored, such as maritime areas.

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