

CHAPTER - 4

LAWS FOR PROTECTION AND CONSERVATION OF FORESTS, WILDLIFE AND BIOLOGICAL DIVERSITY

It is important for the maintenance of proper eco-system that natural environment do not get disturbed, for this, existence of forests, wildlife and biological diversity are essential. The protection and conservation of forests is indispensable if one wants to retain the natural character of the environment. The Indian Forest Act, 1927 which regulates forests and commercial use of forest resources, though in existence for more than 75 years could not effectively stop the arbitrary exploitation of the forests. This necessitated the passing of the Forest (Conservation) Act, 1980. The Act exercises checks over the powers of State Governments to use forest land for non forest purposes and dereservation of forests.

The need for protection of wildlife has been addressed to by the Parliament through the Wildlife (Protection) Act, 1972. The Act provides for various boards and confers powers on them for protection of wildlife along with regulations for hunting wild animals and birds, establishment of sanctuaries and national parks, regulation for trade in wild animals, animal products and trophies.

The Biological Diversity Act, 2002 provides for the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources. The Act regulates access to biological diversity, creates biodiversity Authorities at national level and biodiversity boards at State level. It also enumerates duties of the Central and the State Governments for conservation of biological diversity.

A brief study of aforesaid enactments is necessary so that it may be assessed how far these enactments are capable of protecting India's rich wealth of Forests, Wildlife and Biological diversity.

4.1. The Indian Forest Act, 1927 :

The beginning of Governmental efforts for management of forest through laws dates back to the Forest Act of 1865, which laid the foundation of the British policy

towards Indian forests. The main aim of this policy was to restrict people's access to the forest resources so that the Government can secure exclusive control over the forests to meet their own increasing demand back home in England. With the same intention two other laws on forest, the Forest Act 1878 and Forest Act, 1927 were subsequently enacted by the British.

"The two main limbs of the British forest policy in India were.

- i) transfer of control and ownership over forests from village communities to the government, except in respect of the very limited area of forests and
- ii) government permitted but uncontrolled commercial exploitation of forest resources.

This policy of commercialised forest management was institutionalised by the Forest Act, 1927".¹

The Indian Forest Act, 1927 is a comprehensive legislation relating to forest management in the country; Its main object is to consolidate the pre-existing laws relating to forest, the transit of forest-produce and the duty leviable on timber and other forest produce.

Forest remained a subject in the State List in the seventh schedule of the Constitution of India till 1976. Through the 42nd Amendment Act 1976, it has been transferred from the State List to the Concurrent List.

Interpretation clause of the Act explains the meaning of certain terms. According to this clause, 'Forest-produce' includes -

- a) the following whether found in or brought from a forest or not *that is to say*- timber, charcoal, cautchone, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth myrobalans; and
- b) The following when found in or brought from a forest or not *that is to say* -
 - i) *trees* and leaves, flowers and fruits and all other parts or produce not herein before mentioned, of *trees*;

1. Nandan Nelivigi, "Biodiversity, Wildlife and Protected Area Management in India : A People Centred Approach", 37 *JILL*, 145, 152 (1995).

- ii) plants not being trees (including grass, creepers, reeds and moss), and all the parts or produce of such plants,
- iii) wild animals and skins, tusks, horns, bones, silk cocoons, honey and wax and all other parts or produce of animals, and
- iv) Peat, surface soil, rocks and minerals, including lime stone, laterite, mineral oils and all products of mines or quarries.²

4.1.1. Reserved forests :

The Indian Forest Act also makes provisions for conservation of forest and in the scheme, it provides for a state to constitute any forest-land or waste-land which is the property of Government or over which the Government has proprietary rights or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest by issuing a notification in the Official gazette.³ The following activities are prohibited in the reserved forests –

- a) clearing of forests for cultivation or for any other purpose;
- b) setting fire to a reserved forest or kindling any fire or leaving any fire burning in such manner as to endanger such a forest;
- c) kindling, keeping or carrying any fire;
- d) trespassing or pasturing cattle or permitting cattle to trespass;
- e) causing any damage by negligence in felling any tree or cutting or dragging any timber;
- f) felling, girdling, loping or burning any trees or striping of the bark or leaves from any tree or otherwise damaging any tree;
- g) quarrying stone, burning lime or charcoal or collecting or removing any forest produce;
- h) clearing or breaking up any land for cultivation or for any other purpose;
- i) hunting, shooting, fishing, poisoning water or setting traps or snares; or
- j) killing or catching elephants.

Any person who commits any of the above prohibited activities is liable to be punished with imprisonment for a term which may extend to six months or with fine

2. Section 2(4).

3. Section 3.

which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting court may direct him to pay.⁴

4.1.2. Village Forests :

State Governments have been empowered to assign the reserved forests to any village community, to be called as a village forests. The State Government may make rules for regulating the management of village forests prescribing the conditions under which the community to which any such assignment is made may be provided with timber or with other forest produce or pasture, and their duties for the protection and improvement of such forests.⁵

4.1.3. Protected Forests :

The State Government may by notification in the Official Gazette, declare any forest land or waste land which is not included in a reserved forest, but which is the property of Government, as protected forests.⁶ The State Government may by notification in the Official Gazette -

- a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;
- b) declare that any portion of such forest specified in the notification shall be closed for such term not extending thirty years;
- c) prohibit quarrying of stone or the burning of lime or charcoal or the collection or subjection to any manufacturing process or removal of any forest produce in any such forest, and the breaking up or clearing for cultivation of any land in such forest.⁷

Further, section 32 of the Act empowers the State Government to make rules to regulate certain matters enumerated under clause (a) to (e) of the section.

The Act prescribes penalties for acts in contravention of notification under section 30 or of rules under section 32. Any person who commits any of the following offences,

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4. Section 26.
 5. Section 28.
 6. Section 29.
 7. Section 30.

namely -

a) fells girdles, lopes, taps or burns any trees reserved under section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;

b) contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process or removes any forest-produce;

c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest;

d) set fire to such forest or kindles fire without taking all reasonable precautions to prevent its spreading to any trees reserved under section 30, whether standing, fallen, felled, or to any close portion of such forest;

e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion;

f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

g) permits cattle to damage any such tree;

h) infringes any rule made under section 32;

is liable to be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.⁸

4.1.4. Private Forests and Lands :

The Act authorises the State Government to exercise its power of control over those forests and lands as well which are not the property of Government. The State Government may by notification in the Official Gazette, regulate or prohibit in any forest or waste-land –

a) the breaking up or clearing of land for cultivation;

b) the pasturing of cattle; or

c) the firing or clearing of the vegetation.

when such regulation or prohibition appears necessary for any of the following purposes-

8. Section 33.

- i) for protection against storms, winds, rolling stones, floods and avalanches;
- ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
- iii) for the maintenance of a water-supply in springs, rivers and tanks;
- iv) for the protection of roads, bridges, railways and other lines of communication;
- v) for the preservation of public health.⁹

In case of neglect or wilful disobedience to any regulation or prohibition made by the State Government of the above purposes, the State Government may, after issuing a notice in writing to owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest Officer and may declare that all or any provisions of this Act, relating to reserved forests shall apply to such forest or land.¹⁰ In case the State Government considers that in lieu of placing the forest or land under the control of a Forest-Officer, the same should be acquired for public purposes, it may proceed to acquire the forest or land in the manner provided by the Land Acquisition Act, 1894.¹¹

Section 38 of the Act provides for protection of forests at the request of owners. the owner or owners of any land may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector their desire –

- a) that such land be managed on their behalf by the Forest Officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or
- b) that all or any of the provisions of this Act be applied to such land.

In either case, the State Government may apply to such land, such provisions of the Act as it may think suitable and as may be desired by the applicants.

4.1.5. Transit of Timber and Forest-Produce :

The control of all timber and other forest-produce in transit by land or water is

9. Section 35.

10. Section 36.

11. Section 37.

vested in the State Government and it may make rules to regulate the transit of all timber and other forest-produce. Such rules may –

- a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within the state;
- b) prohibit the import or export or moving of such timber or other produce without a pass or otherwise than in accordance with the conditions of such pass;
- c) provide for the issue, production and return of such passes and for the payment of fees there for;
- d) provide for the stoppage, reporting, examination and marking of timber or other forest produce in transit;
- e) provide for the establishment and regulation of depots to which such timber and other produce shall be taken by those in charge of it;
- f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;
- g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of prevention or removal from the person whose act or negligence necessitated the same;
- h) prohibit within specified local limits the establishment of sawpits, the converting, cutting, burning, concealing or marking of timber etc.
- i) regulate the use of property marks for timber and registration of such marks.¹²

The State Government may by such rules prescribe penalties for contravention of any of the above rules. The penalties may be –

- a) imprisonment for a term which may extend to six months, or
- b) fine which may extend to five hundred rupees, or
- c) both.

Penalties which are double of those mentioned above may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or when the offender has been previously convicted

of a like offence.¹³

4.1.6. Penalties and Procedure :

Any Forest Officer or police officer may seize, if there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce together with all tools, boats, carts or cattle used in committing any such offence.¹⁴ The officer, as soon as may be, has to make a report of such seizure to the magistrate having jurisdiction to try the offence. Upon the receipt of any such report, the magistrate is required to take necessary measures for the arrest and trial of the offender and the disposal of the property according to law.¹⁵ After the conclusion of any forest-offence, the forest-produce in respect of which such offence was committed, if it is the property of Government or has been confiscated, has to be taken charge of by a Forest-Officer, and in any other case, may be disposed off in such manner as the court may direct.¹⁶ Where the seized property is perishable the magistrate may direct the sale of such property and may deal with the proceeds as he would have dealt with such property and if it had not been sold.¹⁷ The punishment for wrongful seizure has been provided by the Act. If the Forest-Officer or Police-officer vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under the Act, such officer shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both.¹⁸

Any Forest-Officer or Police-Officer is empowered to arrest any person against whom a reasonable suspicion exists of his having been involved in any forest-offence punishable with imprisonment for one month or upwards, without orders from a Magistrate and without a warrant. However, officer making such arrest is required, without unnecessary delay, take or send the person arrested before the competent Magistrate or to the officer in charge of the nearest police station.¹⁹ Every Forest-officer and Police-officer is empowered under the Act to prevent and interfere for the

13. Section 42.

14. Section 52(1).

15. Section 54.

16. Section 56.

17. Section 58.

18. Section 62.

19. Section 64.

purpose of preventing the commission of any forest-offence.²⁰

4.1.7. Cattle Trespass :

According to Section 70 of the Act, cattle-trespassing in a reserved forest or in any portion of any protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of section 11 of the Cattle-trespass Act, 1871 and may be seized and impounded as such by any forest-officer or Police-officer.

4.1.8. Duty to assist officers :

Section 79(1) of the Act provides that any person :

- who exercises any right in a reserved or protected forest;
- who is permitted to take any forest-produce from, or to cut and remove timber, or to pasture cattle in such forest;
- who is employed by any such person in such forest as mentioned above; and
- who in any village contiguous to such forest who is employed by the Government or who receives emoluments from the Government for services to be performed to the community; is bound to furnish without unnecessary delay to the nearest forest officer or Police-officer any information he may possess regarding the commission of or intention to commit any forest offence. Such person are duty bound to take steps, whether required by any forest officer or police-officer or not -

- i) to extinguish any forest fire;
- ii) to prevent any fire in the vicinity of the forest;
- iii) to assist any forest officer or police officer demanding any aid –
 - a) in preventing the commission of any forest offence; and
 - b) in discovering and arresting the offender.

Any person who fails to do the above mentioned duties, without lawful excuse, is punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.²¹

20. Section 66.

21. Section 79(2).

"The framework provided by the Indian Forest Act of 1927 continues to guide the forest bureaucracy to this day. This has meant that shifts in government policy since the colonial period have largely remained on paper".²² The Act, though designed to get maximum revenue out of forest resources, may be utilised for the cause of protection and conservation of forests. The division of forests into four categories viz; reserved forests, village forests, protected forests, and non-government forests and varying degree of accessibility to these forests by common people is useful to some extent in protection and conservation of forest wealth.

4.2. The Forest (Conservation) Act, 1980 :

The Forest (Conservation) Act, 1980 has been passed by Parliament for the conservation of forests and for matters connected therewith or auxiliary or incidental thereto. The Act as amended in 1988 places restrictions on the power of the State Government concerning reservation of forests or use of forest land for non-forest purposes. The Act extends to the whole of India except the state of Jammu and Kashmir.

4.2.1. Conservation and Role of the Government :

According to section 2 of the Act, no State Government or other authority can make, except with the prior approval of the Central Government, any order directing –

- i) that any reserved forest²³ or any portion thereof, shall cease to be reserved;
- ii) that any forest land or any portion thereof may be used for any non-forest purpose;
- iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;
- iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

"Non-forest purpose" here includes the breaking up or clearing of any forest land or portion thereof for the cultivation of tea, coffee, spices, rubber, palms, oil bearing

22. S. Divan and A. Rosencranz, *Environmental Law and Policy in India*, 291 (2001).

23. Within the meaning of the expression "reserved forest" in any law for the time being in force in that State.

plants, horticultural crops, or medicinal plants. Besides this, breaking up or clearing of any forest land or portion thereof for any purpose other than reforestation also amounts to "non-forest purpose". However, any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges, culverts, dams, water wholes, trench marks, boundary marks, pipe lines or other like purposes cannot be considered as "non-forest purpose" and therefore can be allowed.²⁴

Prior approval provided under the FCA [The Forest (Conservation) Act], as condition precedent for activities in the forest area has transformed the Central Government into a guardian of forest protection. The obvious assumption is that the guardian will act only in the interests of safeguarding the forest environment and will be ever vigilant pre-empting any assault on forest.²⁵

Whether prior approval is essential when the Government grants licence for mining in forest area and whether it is necessary for the renewal of the existing licence or not? Such questions have come before the courts time and again. In *Ambica Quarry works v. State of Gujrat*,²⁶ the Supreme Court made it clear that the Act has been passed in order to arrest ecological imbalance which is a consequence of deforestation and that renewal of a licence, after the Act came into being, can be made only on getting prior permission from the Central Government. The court also held that the power of authorities is not coupled with the duty to renew all licences given. This trend has been followed by the courts in latter cases also.

In *T. N. Godavarman Thirumulkpad v. Union of India*,²⁷ the Apex Court held that term "forest" covers all the statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(1) of the Act. The court further held that the term "forest land" will not only include 'forest' but also any area recorded as forest in the Government record irrespective of the ownership and the provisions of the Act, for conservation of forests and the matters connected there with must apply clearly to all forests so understood irrespective of their classification or

24. Section 2.

25. P. Leelakrishnan, *Environmental Law in India*, 20 (1999).

26. AIR 1987 SC 1073.

27. AIR 1997 SC 1228.

ownership.

Making the point more clear in *Samatha v. State of A.P.*,²⁸ the court laid down that the expression "forest land" does not mean only reserved forest but should be given extended meaning to cover a tract of land covered with trees, shrubs, vegetation and undergrowth intermingled with trees and pastures, be it of natural growth or man made forestation. "These extended meanings of 'forest' and 'forest land' will help to preserve forest land from deforestation and maintain ecological balance".²⁹

4.2.2. Advisory Committee :

The Act also provides for the constitution of the Advisory Committee to advise the Government with regard to the grant or approval by the Central Government under Section 2 of the Act or any other matter connected with the conservation of forests which may be referred to it by the Central government.³⁰ "The law gives no direction or guidelines as to how the advisory committee is to be constituted. In fact, more often than not, its advice falls on deaf ears or is turned to the directions of the Central Government who on political pressures may need positive advice".³¹

4.2.3. Penalty and Procedure :

If a person contravenes any of the provisions contained in the Act, he is liable to be punished with simple imprisonment for a period not exceeding fifteen days.³² The penal provision is applicable for the authorities and Government Departments as well. Where any offence under the Act is committed by any department of Government or by any authority, the head of the department or every person who, at the time the offence was committed, was directly in charge of, and was responsible to the authority for the conduct of the business of the authority as well as the authority, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. But if such person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, he cannot

28. AIR 1997 SC 3297.

29. A.K. Tiwari, "Forest Conservation and the law", *AIR Jour.* 121, 124 (2001).

30. Section 3.

31. *Supra* note 25 at 26.

32. Section 3A.

be held liable to any punishment.³³

Where an offence punishable under the Act has been committed by a Government department or any authority as mentioned above and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer other than the heads of the department or in the case of an authority, any person other than persons referred to in section 3-B(1)(b), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.³⁴

For carrying out the provisions of the Act the central Government may, by notification in the official Gazette make rules.³⁵ It may be submitted, however, that the centralised policing regime under the 1980 Act undermines the 1988 policy to encourage local participation in forest management. The enactment nevertheless seems to be an effective measure for conservation of existing forests.

4.3. The Wild Life (Protection) Act, 1972 :

The wild life Act is a comprehensive legislation relating to the problem of wild life in India. The Act with a view to ensuring the ecological and environmental security, provides the statutory framework for protecting wild animals, birds, plants and their habitats. Since, prior to 1976, the entry "Protection of wild animals and birds" was in the State list of the Constitution,³⁶ the Wildlife Act was enacted by Parliament with the help of power given under Article 252. Eleven State legislatures, including legislatures of the States of Andhra Pradesh, Bihar, Gujrat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal passed the required resolution. In 1976, however, the subject "Protection of wild animals and birds" was transferred from the State List to the Concurrent List³⁷ by the Constitution (42nd Amendment) Act, therefore, presently both Parliament as well as State legislatures have concurrent power to legislate on protection of wild life. The Wild life (Protection) Amendment Act, 1991 has extended the operation of the Wild life Act to the whole of

33. Section 3B(1).

34. Section 3B(2).

35. Section 4.

36. Entry 20.

37. Entry 17-B.

India, except Jammu and Kashmir. Recently the Act has been overhauled by the Wild Life (Protection) Amendment Act, 2002.

Section 2 of the Wild Life Act defines certain terms used in the Act. The meaning of the term 'animal' given under the Act is inclusive as section 2(1) provides that "animal" includes mammals, birds, reptiles, ambhíbians, fish, others chordates and invertebrates and also their young and eggs. Thus not only the live animals and their infants but even their eggs have been included in the definition of the term 'animal'.

"Hunting", with its grammatical variations and cognate expressions, includes –

- a) capturing, killing, poisoning, snaring and trapping of any wild animal and every attempt to do so,
- b) driving any wild animal for any of the purposes specified in sub-clause (a)
- c) injuring or destroying or taking any part of the body of any such animal or, in the cases of wild birds or reptiles, damaging the eggs of such birds or reptiles or disturbing the eggs or nests of such birds or reptiles.³⁸ The Act, therefore, considers even the attempt to capture or kill any wild animal or disturbing the eggs or nests of such birds or reptiles, as hunting.

"Wild life", according to the Act, includes any animal, aquatic or land vegetation which forms part of any habitat.³⁹

"Trophy" means the whole or part of any captive animal or wild animal, other than vermin, which has been kept or preserved by any means, whether artificial or natural, and includes –

- a) rugs, skins and specimen of such animal mounted in whole or in part through a process of taxidermy, and
- b) antler horn, rhinoceros horn, hair, feather, nail, tooth, mask, eggs and nests.⁴⁰

4.3.1. Authorities under the Act :

The Wild Life Act provides for the appointment of various authorities and officers

38. Section 2(16).

39. Section 2(37).

40. Section 2(31).

for implementation of the provisions of the Act. The Central Government may appoint a Director of Wild Life Preservation; and such other officers and employees as may be necessary for the purpose of the Act.⁴¹

The State Government has got the power to appoint a Chief Wild Warden; Wild Life Wardens; one Honorary Wild life Warden and such other officers and employees as may be necessary for the purpose of the Act.⁴²

4.3.1.1. National Board for Wild Life :

According to section 5-A of the Wild Life Act the Central Government is required, within three months from the date of commencement of the Wild Life (Protection) Amendment Act, 2002, to constitute the National Board for Wild Life consisting of the Prime Minister as Chairperson and the Minister in charge of Forests and wild life as Vice-Chairperson. Other members of the Board are as follows –

- three Members of Parliament (two from the *Lok Sabha* and one from the *Rajya Sabha*).
- Member, Planning Commission in charge of Forests and Wild life;
- five persons representing non-governmental organisations;
- ten persons from amongst eminent conservationists, ecologists and environmentalists;
- the Secretary to the Government of India in charge of the Ministry of Department of the Central Government dealing with forests and wild life;
- the Chief of the Army staff;
- the Secretary to the Government of India in charge of the Ministry of Defence;
- the Secretary to the Government of India in charge of the Ministry of Information and Broadcasting;
- the Secretary to the Government of India in charge of the Department of Expenditure, Ministry of Finance;
- the Secretary to the Government of India, Ministry of Tribal Welfare;
- the Director General of Forests in the Ministry or Department of the Central

41. Section 3.

42. Section 4.

Government dealing with forests and wild life;

- the Director General of Tourism, Government of India;
- the Director General, Indian Council for Forestry Research and Education,

Dehradun;

- the Director, Wild Life Institute of India, Dehradun;
- the Director, Zoological Survey of India;
- the Director, Botanical Survey of India;
- the Director, Indian Veterinary Research Institute;
- the Member Secretary, Central Zoological Authority;
- one representative each from ten states and Union territories by rotation;
- the Director of wild life preservation who shall be the Member-Secretary

of the National Board.

The National Board, as evident from the afore said list of the members, consists of people from diverse field and therefore, the Board will have the advantage of taking decision after discussing ideas from different field of expertise but at the same time the Board may face difficulties owing to its mammoth size. It is submitted, therefore, that the Board should consists of only 10 to 15 members so that it may reach to a definite conclusion and promote the conservation and development of wild life and forests.

The Wild Life Act, recognises the importance of more focussed attention, by making provision for constitution of standing committee, committees, sub-committees or study groups by the National Board for proper discharge of the functions assigned to it.⁴³

The job of the National Board, according to section 5-C, is to promote the conservation and development of wild life and forests by such measures as it thinks fit.

The measures may provide for –

- framing policies and advising the Central Government and the State Governments on the ways and means of promoting wild life conservation and effectively controlling poaching and illegal trade of wild life and its products;

43. Section 5-B.

- making recommendations on the setting up of and management of national parks, sanctuaries and other protected areas and on matters relating to restriction of activities in those areas;
- carrying out or causing to be carried out impact assessment of various projects and activities on wild life or its habitat;
- reviewing from time to time, the progress in the field of wild life conservation in the country and suggesting measures for improvement thereto; and
- preparing and publishing a status report at least once in two years on wild life in the country.

4.3.1.2. State Board for Wild Life :

Section 6 of the Act provides for the Constitution of 'State Board for Wild Life' by the State Government within six months from the date of commencement of the Wild Life (Protection) Amendment Act, 2002. The State Board consists of the following members, namely –

- the Chief Minister of the State and in case of the Union territory, either Chief Minister or Administrator, as the case may be – Chairperson;
- the Minister in-charge of Forests and Wild Life - Vice-Chairperson;
- three members of the State Legislature or in the case of a Union territory with Legislature, two members of the Legislative Assembly of the Union territory;
- three persons to represent non-governmental organisations dealing with wild life to be nominated by the State Government;
- ten persons to be nominated by the State Government from amongst eminent conservationists, ecologists and environmentalists including at least two representatives of the Scheduled Tribes;
- the Secretary to the State Government or the Government of the Union territory, as the case may be, in-charge of Forests and Wild Life;
- the Officer in-charge of the State Forest Department;
- the Secretary to the State Government, Department of Tribal Welfare;
- the Managing Director, State Tourism Development Corporation;
- an officer of the State Police Department not below the rank of Inspector General;

- a representative of the Armed Forces not below the rank of a Brigadier to be nominated by the Central Government;
- the Director, Department of Animal Husbandry of the State;
- the Director, Department of Fisheries of the State;
- an officer to be nominated by the Director, Wild Life Preservation;
- a representative of the Wild Life Institute of India, Dehradun;
- a representative of the Botanical Survey of India;
- a representative of the Zoological Survey of India;
- the Chief Wild Life Warden, who shall be the Member-Secretary.

It is duty of the State Board for wild life to advise the State Government –

- a) in the selection and management of areas to be declared as protected areas;
- b) in formulation of the policy for protection and conservation of the wild life and specified plants;
- c) in any matter relating to amendment of any schedule;
- cc) in relation to the measures to be taken for harmonising the needs of the tribals and other dwellers of the forest with the protection and conservation of wild life; and
- d) in any other matter connected with protection and conservation of wild life which may be referred to it by the State Government.⁴⁴

4.3.1.3. Central Zoo Authority :

The Wild Life Act empowers the Central Government to constitute the Central Zoo Authority consisting of chairperson; such number of members not exceeding ten; and member secretary.⁴⁵ The Central Zoo Authority has been entrusted to perform the following functions, namely, to –

- a) specify the minimum standard for housing, upkeep and veterinary care of the animals kept in the zoo;
- b) evaluate and assess the functioning of the zoos with respect to the standard or the norms as may be prescribed;

44. Section 8.

45. Section 38A.

- c) recognise or derecognise zoos;
- d) identify endangered species of wild animals for purposes of captive breeding and assigning responsibility in this regard to a zoo;
- e) co-ordinate the acquisition, exchange and loaning of animals for breeding purposes;
- f) ensure maintenance of stud-books of endangered species of wild animals bred in captivity;
- g) identify priorities and themes with regard to display of captive animals in a zoo;
- h) co-ordinate training of zoo personnel in India and outside India;
- i) co-ordinate research in captive breeding and educational programmes for the purpose of zoos;
- j) provide technical and other assistance to zoos for their proper management and development on scientific lines;
- k) perform such other functions as may be necessary to carry out the purposes of this Act with regard to zoos.⁴⁶

The Central Zoo Authority is required to prepare its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.⁴⁷ It is necessary to obtain the prior approval of the Authority for establishment of a zoo.⁴⁸ Moreover, no zoo can acquire, sell or transfer any wild animal or captive animal specified in Schedules I and II except with the previous permission of the Authority.⁴⁹

4.3.2. Hunting of Wild Animals :

Hunting of wild animals as specified in schedules I, II, III and IV of the Act has been prohibited by section 9 of the Act. However, hunting of wild animals is allowed under following circumstances :

- i) If the Chief Wild Warden is satisfied that any wild animal specified in

46. Section 38C.

47. Section 38F.

48. Section 38H (I-A).

49. Section 38-I.

schedule-I has become dangerous to human life or to property or so disabled or diseased as to be beyond recovery, and such animal cannot be captured, tranquilised or translocated;

ii) If the Chief Wild Life Warden or authorised officer is satisfied that any wild animals specified in Schedule-II, Schedule-III or Schedule-IV has become dangerous to human life or to property or so disabled or diseased as to be beyond recovery;

The killing or wounding in good faith of any wild animal in defence of oneself or of any other person is not an offence according to section 11 of the Act.

The Chief Wild Life Warden may grant permit to any person, on payment to hunt any wild animal for the purpose of –

- a) education;
- b) scientific research;
- bb) scientific management, i.e. translocation of any wild animal to an alternative suitable habitat; or population management of wild life without killing or poisoning or destroying any wild animals;
- c) collection for specimen for recognised zoos or for museums and similar institutions;
- d) derivation, collection or preparation of snake-venom for the manufacture of life-saving drugs.⁵⁰

4.3.3. Protection of Specified Plants :

The Act has extended its protection to the specified plants as well by an amendment brought in 1991, after this no person is allowed to willfully pick, uproot, damage, destroy, acquire or collect any specified plant from any forest land and any area specified by the Central Government. Similarly, no one can possess, sell, offer for sale or transfer by way of gift or otherwise, or transport any specified plant, whether alive or dead, or part or derivative thereof. Members of scheduled tribe, however, are allowed for picking, collecting or possessing in the district he resides any specified plant or part or derivative thereof for his bonafide personal use.⁵¹

50. Section 12.

51. Section 17A.

The Chief Wild Life Warden may, with the permission of the State Government, grant a permit to any person to pick, uproot, acquire or collect from a forest land or the area specified under section 17-A of the Act or transport any specified plant for the purpose of –

- a) education;
- b) scientific research;
- c) collection, preservation and display in a herbarium of any scientific institution; or
- d) propagation by a person or an institution approved by the Central Government in this regard.⁵²

The Act prohibits the cultivation of a specified plant except under and in accordance with a licence granted by the Chief Wild Life Warden or any other officer authorised by the State Government in this behalf.⁵³ Similarly, section 17-D of the Act prohibits dealing in specified plants without licence.⁵⁴ No person is allowed to purchase, receive or acquire any specified plant or part or derivative thereof otherwise than from a licensed dealer.⁵⁵

4.3.4. Protected Areas :

The Wild Life Act envisages establishment of three kinds of protected habitats for wild life, namely, sanctuaries, national parks and closed areas. The State Government may declare any area of adequate ecological, faunal, floral, geomorphological, natural or zoological significance a sanctuary or a national park. By declaration of closed area, the State Government may prohibit hunting in such area for the specified period.⁵⁶

If the State Government considers that an area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, it may declare its intention by notification to constitute such area as a sanctuary for the purpose of protecting, propagating or developing wild life or its environment.⁵⁷ After disposal of all claims

52. Section 17B.

53. Section 17C.

54. Section 17D.

55. Section 17G.

56. Section 37.

57. Section 18.

made in relation to any land in an area intended to be declared as a sanctuary, according to the procedure given in the Act, the State Government may by notification declare the said area as sanctuary.⁵⁸

Section 27(1) of the Act prescribes restriction on entry in a sanctuary. No persons other than –

- (a) a public servant on duty;
- (b) a person who has been permitted by the Chief Wild life Warden or the authorised officer to reside within the limits of the sanctuary;
- (c) a person who has any right over property within the limits of the sanctuary;
- (d) a person passing through the sanctuary along a public highway; and
- (e) the dependants of the person referred to in clause (a), (b) or (c), can enter or reside in the sanctuary.

Every person residing in the sanctuary is bound –

- (a) to prevent the commission, in the sanctuary, of an offence against the Act;
- (b) to help in discovering and asserting the offender;
- (c) to report the death of any wild animal and to safeguard its remains until the Chief Wild life Warden or the authorised officer takes charge thereof;
- (d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading; and
- (e) to assist any Forest Officer, Chief Wild life Warden, Wild life Warden or Police Officer demanding his aid for preventing the commission of any offence against the Act or in the investigation of any such offence.⁵⁹

No person is allowed to tease or molest any wild animal or litter the ground of sanctuary.⁶⁰ The chief Wild life Warden may allow, as per section 28, a person to enter or reside in a sanctuary for investigation or study of wild life; photography, scientific research; tourism or transaction of business with any person residing in the sanctuary. The Act prohibits destruction, exploitation or removal of any wild life from a sanctuary. No person can destroy exploit or remove any wild life including forest produce from a

58. Section 26(A).

59. Section 27(2).

60. Section 27(4).

sanctuary except under and in accordance with a permit granted by the Chief Wild Life Warden. The Chief Wild Life Warden can grant such permit only where the State Government is satisfied after consulting the Board that such removal of wild life from the sanctuary is necessary for the improvement and better management of wild life therein.⁶¹

In order to secure the safety of sanctuary and wild life the Act has prohibited causing fire in sanctuary.⁶² Entry into sanctuary with weapon, except with the permission of Chief Wild life Warden, is also prohibited.⁶³ No person is allowed to use chemicals, explosives or any other substances which may cause injury to or endanger any wild life in a sanctuary.⁶⁴

The over all responsibility to control, manage and maintain all sanctuaries is of the Chief Wild life Warden, for this purpose he may, carryout necessary construction works, take steps to ensure security of wild animals and sanctuary, take measures for the improvement of any habitat of wild life and may regulate, control or prohibit the grazing or movement of live-stock.⁶⁵ He can also take steps for immunisation measures against communicable disease.⁶⁶

Whenever it appears to the State Government that an area by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting or developing wild life therein or its environment, the State Government may by notification declare its intention to constitute such area as a National Park.⁶⁷ After disposing all claims in relation to any land in an area included to be declared as National Park the State Government can declare the specified area as a National Park.⁶⁸

The procedure prescribed for declaration of an area as a national park is the same

61. Section 29.

62. Section 30.

63. Section 31.

64. Section 32.

65. Section 33.

66. Section 33A.

67. Section 35 (1).

68. Section 35 (4).

except certain minor differences. Sections 18 to 26-A of the Act lay down the procedure for the purpose of constituting a sanctuary while section 35(3) States that sections 19 to 26-A except section 24(2) (c) shall, mutatis mutandis apply in respect of national parks as well.

In respect of a sanctuary the process is initiated by the State Government issuing a notification that straight away declares an area as a sanctuary. Whereas, in the case of a national park the State Government issues a notification only declaring its intention to constitute an area as a national park. As a result of this difference, an area is constituted into a sanctuary immediately on being so declared by the State Government, while a national park does not technically come into existence until the subsequent formalities are completed.⁶⁹

Once the above mentioned notifications are issued, the remaining procedure is entirely the same in respect of both sanctuaries and national parks. Sub-section 7 of section 35 prohibits grazing of any live-stock in a National Park and also entry of live-stock in a National Park except where such live-stock is used as a vehicle by a person authorised to enter such National Park. The Act also confers power on central government to constitute sanctuaries and national parks in areas leased or transferred to the ' Central Government by the State Government.⁷⁰

4.3.5. Trade in Wild Animals :

The Wild life Act declares that every wild animal other than vermin, which is hunted or kept or bred in captivity or found dead to killed by mistake, shall be the property of the State Government. Similarly, animal article, trophy or uncured trophy, meat derived from any wild animal, ivory imported to India, article made from such ivory, vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized shall be the property of the State Government. Where any of the aforesaid is found in a sanctuary or a National Park declared by the Central Government, it shall be property of the Central Government.⁷¹

The Act has made a provision for declaration by existing holder of captive animal

69. Nandan Nelivigi, "Biodiversity Wild Life and Protected Area Management in India : A people Centred Approach, " 37 *JILI*, 145,150 (1995).

70. Section 38.

71. Section 39.

specified in Schedule-I or part II of Schedule-II, or animal article, trophy or any uncured trophy derived from such animal, skins of such animal or musk of a musk deer or the horn of a rhinoceros, within thirty days from the commencement of the Act. Further, no person is allowed to acquire, receive, keep, transfer or transport such animal, skins of such animal or the musk of musk deer or the horn of a rhinoceros, except with the previous permission of the Chief Wild life Wardens or the authorised officer.⁷² The certificate of ownership may be issued to the person having lawful possession of any wild animal article; trophy, uncured trophy by the Chief Wild life Warden after inquiry and preparation of inventories.⁷³ No person having in his possession captive animal, animal article, trophy or uncured trophy in respect of which he has a certificate of ownership shall transfer by way of sale or any other mode of consideration of commercial nature, such animal or article or trophy or uncured trophy.⁷⁴

Dealings in trophy and animal articles without licence have been prohibited by section 44 of the Wild life Act. According to this section a person without valid licence cannot –

- (a) commence or carry on the business as a manufacturer of or dealer in, any animal article; or a taxidermist; or a dealer in trophy or uncured trophy; or a dealer in captive animals; or a dealer in meat; or
- (b) cook or serve meat in any eating house;
- (c) derive, collect or prepare, or deal in, snake venom.

The Act permits the purchase of captive animal; etc., from a dealer or from a person authorized to sell or otherwise transfer the same under the Act.⁷⁵

Chapter V-A of the Act consists of sections 49-A – 49-C and prohibits the trade or commerce in captive animals, trophies, animal articles, etc., meat derived from any scheduled animal and import of ivory in India or an article made from such ivory and cooking or serving meat derived from scheduled animals.

72. Section 40.

73. Section 42.

74. Section 43.

75. Section 49.

4.3.6. Prevention and Detection of Offences :

Notwithstanding any other law in force, the Act confers power of entry, search, arrest and detention on the Director or any other officer authorised by him or the Chief Wildlife Warden or officer authorised by him or any Police Officer not below the rank of Sub-inspector. Any officer not below the rank of Assistant Director of Wild life Preservation or Wild life Warden has the power, for purposes of making investigation into any offence against any provision of this Act, –

- (a) to issue a search warrant;
- (b) to enforce the attendance of witnesses;
- (c) to compel the discovery and production of documents and material objects;
and
- (d) to receive and record evidence.

Any evidence recorded as aforesaid, shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person.⁷⁶

"A cursory study of the penalties provided under the Act reveals that 'no fault liability' has been introduced and 'mens rea' is not required to be proved to punish a person".⁷⁷ Section 51 of the Act prescribes penalties as follows –

Any person who contravenes any provision of the Act except chapter V-A and 38-J or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under the Act, shall be guilty of an offence under the Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to three years or with fine which may extend to twenty-five thousand rupees, or with both :

Provided that where the offence committed is in relation to any animal specified in Schedule-I or Part II of Schedule-II, or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where offence relates to hunting in a Sanctuary or a National Park altering the boundaries of a Sanctuary or a National

76. Section 50.

77. S.C. Shastri, *Environmental Law in India*, 271 (2002).

Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees.

Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section the term of imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.

Any person who contravenes any provision of Chapter V-A shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and also with fine which shall not be less than ten thousand rupees.

Any person who contravenes the provisions of section 38J shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Provided that in case of a second or subsequent offences, the term of imprisonment may extend to one year or with fine which may extend to five thousand rupees.

When any person is convicted of an offence against the Act, in addition to the above mentioned punishment, the animal, animal article, trophy or meat etc. and the tool, trap, vehicle, vessel or weapon issued in the commission of the offences shall be forfeited by the State Government; and licence or permit for hunting, etc. and Arms licence shall also be cancelled.

The attempt or abetment to commit the offence have been treated at par with actual commission of such offence under the Act. Therefore, any attempts or abetment to contravene the provision of this Act shall be deemed to be contravention of the provision of the Act.⁷⁸

If any person, exercising powers under the Act, vexatiously and unnecessarily seizes the property of any other person, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.⁷⁹

78. Section 52.

79. Section 53.

Section 54 of the Act makes provision for compounding the offence on payment of money or/and value of the offence committed is such for which no minimum period of imprisonment has been prescribed under Act.

No court shall take cognizance of any offence against this Act except on the complaint of any person other than –

(a) the Director of Wild life Preservation or any other officer authorised in this behalf by the Central Government; or

(aa) the Member-Secretary, Central Zoo Authority in matters relating to violation of the provisions of Chapter IV-A; or

(b) the Chief Wild life Warden, or any other officer authorised in this behalf by the State Government subject to such conditions as may be specified by that Government; or

(bb) the officer-in-charge of the zoo in respect of violation of provisions of section 38-J; or

(c) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the State Government or the officer authorised as aforesaid.⁸⁰

The Act does not bar the operation of other laws provided that no person shall be punished twice for the same offence.⁸¹ Thus, "the higher punishment provided under any other law can be awarded to the offender for an offence under this Act and simultaneously under any other law, if he is prosecuted under the other law".⁸²

Where a company has committed an offence, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. If such person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, he is not liable to be punished under the Act. When it is proved that the offence has been committed

80. Section 55.

81. Section 56.

82. *Supra* note 77 at 274.

with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.⁸³

The Act authorises both Central Government⁸⁴ and State Government⁸⁵ to make rules on different matters for carrying out the provisions of the Act. The amending Act of 2002 has inserted chapter VI-A into the Wild Life Act. The Chapter provides for the forfeiture of property derived from illegal hunting and trade.

It may be submitted that the Wild Life Act is a comprehensive enactment and provides for National and State Boards for wild life, regulations for hunting wild animals and birds, protection of specified plants, protected areas, Central Zoo Authority, regulations for trade in wild animals, animal articles and trophies, and judicially imposed penalties for violating the Act. The Parliament has tried to make the enactment more effective by making necessary amendments in the Act from time to time. The latest amendment of 2002 has brought some new features into the Act which are capable of making the Wild Life Act more effective and purposeful.

4.4. The Biological Diversity Act, 2002 :

India is a rich country in terms of biological diversity and traditional and contemporary knowledge system relating thereto, therefore, it is important that it must protect and conserve its biological diversity. This responsibility has grown even more after India became party to the United Nations Convention on Biological Diversity signed at Rio de Janeiro in 1992. The convention reaffirms the sovereign rights of the states over their biological resources. To give effect to the aforesaid convention the Parliament passed the Biological Diversity Act.

The main objectives of the Act are to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and connected matters. The Biological Diversity Act consists of 65 sections divided into twelve chapters.

83. Section 58.

84. Section 63.

85. Section 64.

The Act defines 'biological diversity' as "the variability among living organisms from all sources and the ecological complexes of which they are part, and includes diversity within species or between species and of eco-systems".⁸⁶ Under the Act 'biological resources' means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value but does not include human genetic material".⁸⁷

4.4.1. Regulation of Access to Biological Diversity :

The Act prohibits certain persons to obtain without previous approval of the National Biodiversity Authority, any biological resources occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization. Such person includes non citizens; non resident Indian; a body corporate, association or organization not incorporated or registered in India; or incorporated or registered in India having non-Indian participation in its share capital or management.⁸⁸ The transfer of the results to aforesaid persons of any research relating to any biological resources occurring in, or obtained from, India without the previous approval of the National Biodiversity Authority has also been prohibited by the Act.⁸⁹ The above mentioned prohibitions, however, are not applicable to collaborative research projects involving transfer or exchange of biological resources or information relating thereto.⁹⁰

Section 6 of the Act makes clear that no person can apply for any intellectual property right, in or outside India for any invention based on any research or information on a biological resource obtained from India without obtaining the previous approval of the National Biodiversity Authority. The application for such permission is required to be disposed of by the National Biodiversity Authority within ninety days from the date of receipt thereof. The National Biodiversity Authority may impose benefit sharing fee or royalty or both or impose conditions including the sharing of financial benefits arising out of the commercial utilization of such rights.

86. Section 2 (b).

87. Section 2 (c).

88. Section 3.

89. Section 4.

90. Section 5.

A citizen of India or a body corporate, association or organization registered in India may obtain any biological resource for commercial utilization, or bio-survey and bio-utilization only after giving prior intimation to the State Biodiversity Board concerned, however, the local people and communities of the area including growers and cultivators of biodiversity, and *vaid*s and *hakim*s, who have been practising indigenous medicine are exempt from this requirement.⁹¹

4.4.2. National Biodiversity Authority :

The Act provides for the establishment of the National Biodiversity Authority by the Central Government. Chennai has been made the head office of the National Biodiversity Authority. The Authority being a body corporate is capable of having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract. It can sue and be sued by the aforesaid name. The composition of the Authority is as follows -

- (a) a chairperson, an eminent person having knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits;
- (b) three ex official members, one representing the Ministry dealing with Tribal Affairs and two representing the Ministry dealing with Environment and Forests of whom one should be the Additional Director General of Forests or the Director General of Forests;
- (c) seven ex official members representing respectively the Ministries of the Central Government dealing with -
 - (i) Agricultural Research and Education;
 - (ii) Biotechnology;
 - (iii) Ocean Development;
 - (iv) Agriculture and Cooperation;
 - (v) Indian systems of Medicine and Homoeopathy;
 - (vi) Science and Technology;
 - (vii) Scientific and Industrial Research;
- (d) five non-official members to be appointed from amongst specialists and

91. Section 7.

scientists having special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge-holders of biological resources.⁹²

It is clear, therefore, that the authority consists of representatives of government along with experts and specialists in the field of biological diversity but the majority of the members, as evident are ex officio members representing various Ministries of the Central Government. Here it may be noted that all questions which come before any meeting of the National Biodiversity Authority is to be decided by a majority of votes of the members present and voting and in the event of equality of votes, the Chairperson has a casting vote.⁹³

There is a provision under the Act for constitution of committees by the National Biodiversity Authority for the efficient discharge of its duties and performance of its functions under the Act. A committee to deal with agro-biodiversity may also be constituted by the National Biodiversity Authority.⁹⁴ Section 18 of the Act enumerates the functions and powers of National Biodiversity Authority as under -

(1) To regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing.

(2) It may grant approval for undertaking any activity referred to in section 3, 4 and 6.

(3) It may -

(a) advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources;

(b) advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites and measures for the management of such heritage sites;

(c) perform such other functions as may be necessary to carry out the provisions of the Act.

(4) It may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in an country outside India on any biological resource obtained from India or knowledge associated with such biological resource which is derived from India.

92. Section 8.

93. Section 12 (4).

94. Section 13.

4.4.3. Approval by the National Biodiversity Authority :

As explained earlier, section 3(2) enlists certain categories of persons who are required to take approval of the National Biodiversity Authority before obtaining any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization. For this purpose, such persons are required to make an application along with prescribed fees to the National Biodiversity Authority. Similarly, any person who intends to apply for a patent or any other form of intellectual property protection in India or outside India, may make an application to the National Biodiversity Authority.

On receipt of an application as referred above, the National Biodiversity Authority may, after making necessary enquiries and consulting an expert committee, grant approval subject to regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty. The application may also be rejected by the National Biodiversity Authority by a reasoned decision after giving an opportunity of being heard to the person affected. Every approval granted in this manner is required to be notified to the public by the National Biodiversity Authority.⁹⁵

A person who has been granted approval as aforesaid can not transfer any biological resource or knowledge associated thereto which is the subject matter of the approval except with the permission of the National Biodiversity Authority. Such permission may be granted by the National Biodiversity Authority after making necessary enquiries and consulting expert committee. The application may be rejected by a reasoned decision of the Biodiversity Authority after providing an opportunity of being heard to the affected person. Public notice of every approval is essential under section 20 of the Act.

While granting approvals under section 19 or section 20 of the Act, the National Biodiversity Authority is required to secure equitable sharing of benefits arising out of the use of accessed biological resources, their by-products, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval,

95. Section 19.

local bodies concerned and the benefit claimers. Such benefit sharing can be given effect in all or any of the manner mentioned below -

- (a) grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers;
- (b) transfer of technology;
- (c) location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;
- (d) association of Indian Scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilization;
- (e) setting up of venture capital fund for aiding the cause of benefit claimers;
- (f) payment of monetary compensation and non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.

The amount of money received by way of benefit sharing may be directed to be deposited in the National Biodiversity Fund by the National Biodiversity Authority. Provided, however, where biological resource or knowledge was a result of access from specific individual or group of individuals or organizations, the National Biodiversity Authority may direct that the amount be paid directly to such individual or group of individuals or organizations in accordance with the terms of any agreement and in such manner as it deems fit.⁹⁶

4.4.4. State Biodiversity Board :

The State Biodiversity Board can be established by the State Governments of the respective states. There is no provision of a separate Board for the Union territories under the Act, the Act, however, authorises the National Biodiversity Authority to exercise the powers and perform the functions of a State Biodiversity Board for the union territories. The composition of the State Biodiversity Board is as follows -

- (a) a Chairperson, an eminent person having knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits;
- (b) not more than five ex-officio members representing the concerned Departments of the State Government;
- (c) not more than five members to be appointed from amongst experts in matters

96. Section 21.

relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources.⁹⁷

Section 23 of the Biological Diversity Act enumerates the functions of the State Biodiversity Board as under -

(a) to advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of biological resources;

(b) to regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians;

(c) to perform such other functions as may be necessary to carry out the provisions of the Act or as may be prescribed by the State Government.

The Act enables the State Biodiversity Board to restrict certain activities. Any citizen of India or a body corporate, organization or association registered in India intending to obtain any biological resource for commercial utilization, or bio-survey and bio-utilization for commercial utilization, is required to give prior intimation to the State Biodiversity Board. The State Biodiversity Board may prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity.⁹⁸

4.4.5. Biodiversity Funds :

The Act makes provisions for the establishment of National, State and local biodiversity funds. Section 27 of the Act provides for the constitution of a National Biodiversity Fund. The fund can be credited to -

(a) any grants and loans made to the National Biodiversity Authority under section 26;

(b) all charges and royalties received by the National Biodiversity Authority under this Act; and

(c) all sums received by the National Biodiversity Authority from such other sources as may be decided upon by the Central Government.

The National Biodiversity Fund can be applied for -

97. Section 22.

98. Section 24.

- (a) channelling benefits to the benefit claimers;
- (b) conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed;
- (c) socio - economic development of areas referred to in clause (b) in consultation with the local bodies concerned.

Section 32 of the Act provides for the constitution of the State Biodiversity Fund.

The fund can be credited to -

- (a) any grants and loans made to the State Biodiversity Board under section 31;
- (b) any grants or loan made by the National Biodiversity Authority;
- (c) all sums received by the State Biodiversity Board from such other sources as may be decided upon by the State Government.

The State Biodiversity Fund can be applied for -

- (a) the management and conservation of heritage sites;
- (b) compensating or rehabilitating any section of the people economically affected by notification under sub-section (1) of section 37;
- (c) conservation and promotion of biological resources;
- (d) socio-economic development of areas from where such biological resources or knowledge associated thereto has been accessed subject to any order made under section 24, in consultation with the local bodies concerned;
- (e) meeting the expenses incurred for the purposes authorized by the Act.

Section 43 of the Biological Diversity Act constitutes local biodiversity fund at every area notified by the State Government where any institution of self-government is functioning. The local biodiversity fund can be credited to -

- (a) any grants and loan made by the State Government for being utilized for the purposes of the Act under section 42 of the Act;
- (b) any grants or loans made by the National Biodiversity Authority;
- (c) any grants or loans made by the State Biodiversity Boards;
- (d) fees received by the Biodiversity Management Committees;
- (e) all sums received by the Local Biodiversity Fund from such other sources as may be decided upon by the State Government.

The Local Biodiversity Fund can be used for conservation and promotion of biodiversity in the areas falling within the jurisdiction of the concerned local body and for the benefit of the community in so far such use is consistent with conservation of biodiversity. Apart from this the State Government can prescribe the manner in which the fund is to be managed, kept and utilized.⁹⁹

4.4.6. Duties of the Central and the State Governments

The Biological Diversity Act imposes certain duties on both, the Central and the State Governments. The Central Government has been entrusted to develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of *in situ*, and *ex situ*, conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity. The Central Government is empowered under the Act to issue directives, where it believes that any biological diversity rich area is being threatened, to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance required. The Central Government can integrate the conservation, promotion and sustainable use of biological diversity into relevant sectorial or cross-sectorial plans, programmes and policies. The Central Government can undertake following measures -

(i) wherever necessary, for assessment of environmental impact of the project which is likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects, and where appropriate, provide for public participation in such assessment;

(ii) to regulate, manage or control the risk associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

It is expected that the Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity.¹⁰⁰

The Central Government, in consultation with the concerned State Government,

99. Section 44.

100. Section 36.

may notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection there of for any purpose and take appropriate steps to rehabilitate and preserve such species.¹⁰¹

Another important function assigned to the Central Government by the Act is to designate institutions as repositories for different categories of biological resources. The repositories are required to keep in safe custody the biological material including voucher specimens deposited with them. Any new taxon discovered by any person has to be notified to the repositories.¹⁰² Central Government also has discretionary power to declare that the provisions of the Act shall not apply to any items including biological resources normally traded as commodities.¹⁰³

The Act empowers the State Government to notify areas of biodiversity importance as biodiversity heritage sites after consulting the local bodies. It may frame rules for the management and conservation of all the heritage sites, in consultation with the Central Government. It is responsibility of the State Government to frame schemes for compensating or rehabilitating any person or section of people economically affected by aforesaid notification.¹⁰⁴ Both, the Central and the State Governments have rule making powers for carrying out the purposes of the Act.

4.4.7. Biodiversity Management Committees :

Section 41 of the Act necessitates constitution of a Biodiversity Management Committee with the area of every local body for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivators, domesticated stocks and breeds of animals and micro organisms and chronicling of knowledge relating to biological diversity. The National Biodiversity Authority and the State Biodiversity Boards are required to consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity

101. Section 38.

102. Section 39.

103. Section 40.

104. Section 37.

Management Committee. The Biodiversity Management Committee may levy charges by way of collecting fees from any person for accessing or collecting any biological resource for commercial purposes from areas falling within its jurisdiction.

4.4.8. Dispute Resolution :

In case a dispute arises between the National Biodiversity Authority and a State Biodiversity Board, an appeal may be preferred to the Central Government within prescribed time. Where the dispute is between the State Biodiversity Boards, the Central Government can refer the same to the National Biodiversity Authority. For this purpose the National Biodiversity Authority has been conferred powers of a civil court for the matters mentioned below -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions; dismissing an application for default or deciding it *ex parte*;
- (f) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;
- (g) any other matter which may be prescribed.¹⁰⁵

Section 52 of the Act provides a system of appeal to any person aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under the Act. The appeal may be preferred to the High Court within thirty days from the date of communication to him, of the determination or order of the National Biodiversity Authority or the State Biodiversity Board, as the case may be.

Where the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, it may allow the appeal to be filed within a further period not exceeding sixty days.

105. Section 50.

Section 53 of the Act makes it clear that every determination of benefit sharing or order made by the National Biodiversity Authority or a State Biodiversity Board under the Act or the order made by the High Court in any appeal against any determination or order of the National Biodiversity Authority or a State Biodiversity Board shall, on a certificate issued by any officer of the National Biodiversity Authority of a State Biodiversity Board or the Registrar of the High Court, as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that Court.

4.4.9. Offence and Penalty :

The Biological Diversity Act prescribes different kind of punishment for different offence. A brief description of the offences and the penalties in the tabular form is as under

OFFENCE	PENALTY
(i) Contravention or abetment for the contravention of the provisions of sections 3, 4 or 6 of the Act.	Imprisonment for a term which may extend to five years, or fine which may extend to ten lakh rupees and where the damaged caused exceeds ten lakh rupees such fine may commensurate with the damage caused, or with both. ¹⁰⁶
(ii) Contravention or attempts to contravene or abetments for the contravention of the provisions of section 7 or any order made under section 24(2) of the Act.	Imprisonment for a term which may extend to three years, or fine which may extend to five lakh rupees, or both. ¹⁰⁷
(iii) Contravention of any direction given or order made by the Central Government, the State Government, the National Biodiversity Authority or the State Biodiversity Board for which no punishment has been separately provided under the Act.	Fine which may extend to one lakh rupees and in case of a second or subsequent offence, fine which may extend to two lakh rupees and in the case of continuous contravention with additional fine which may extend to two lakh rupees everyday during which the default continues. ¹⁰⁸

106. Section 55 (1).

107. Section 55 (2).

108. Section 56.

The offences under the Act are cognizable and non-bailable.¹⁰⁹ No Court can take cognizance of any offence under the Act except on a complaint made by -

(a) the Central Government or any authority or officer authorized in this behalf by that Government; or

(b) any benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.¹¹⁰

The Act attempts to regulate access to biological diversity by introducing permit system and for this purpose constitutes National Biodiversity Authority and State Biodiversity Boards. National, State and Local Biodiversity Funds constituted under the Act may be used for conservation and promotion of biological resources. Duties have been imposed on the Central and State Governments with regard to conservation and preservation of biological diversity. Biodiversity management committees at local level have been assigned the job for promoting conservation, sustainable use and documentation of biological diversity. The Act prescribes deterrent penalties for the contravention of the provision of the Act. Only hurdle in successful implementation of the Act seems to be the lack of awareness amongst the common people and therefore, it is important to start an awareness drive so that people may know their rights and duties with respect to biological diversity.

109. Section 58.

110. Section 61.