

ACTS AND POLICIES**22.1. WILD LIFE PROTECTION ACT 1972**

- India is the first country in the world to have made provisions for the protection and conservation of environment in its constitution. On 5th June 1972, environment was first discussed as an item of international agenda in the U.N. Conference of Human Environment in Stockholm and thereafter 5th June is celebrated all over the world as World Environment Day.
- Soon after the Stockholm Conference our country took substantive legislative steps for environmental protection. The Wildlife (Protection) Act was passed in 1972, followed by the Water (Prevention and Control of Pollution) Act 1974, the Forest (Conservation) Act, 1980, Air (Prevention and Control of Pollution) Act, 1981 and subsequently the Environment (Protection) Act, 1986.

22.1.1. Constitutional Provisions

- The provisions for environmental protection in the constitution were made within four years of Stockholm Conference, in 1976, through the 42nd amendment as follows:
- Article-48-A of the constitution provides:
- "The state shall endeavour to protect and improve the environment and to safeguard forest and wildlife of the country."
- Article 51-A (g) Provides:
- It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures."
- Thus our constitution includes environmental protection and conservation as one of our fundamental duties. Some of the important Acts passed by the Government of India are discussed here.

22.1.2. The Wildlife (Protection) Act of 1972

- The passing of the Wildlife Act of 1972 constitutes an important landmark in the history of wildlife legislation in the country.
- This is because of the fact that the "Forest" including "Wildlife" was then a State subject falling in Entry 20 List II of Seventh Schedule, Parliament had no power to make law on the same except as provided in Articles 249, 250 and 252 of the constitution.
- Having regard to the importance of the matter, the Act has been adopted by all the States except that of Jammu and Kashmir which has a similar law enacted for the purpose of wildlife protection. The operation of the Act is mandatory in the Union Territories too.
- The Wildlife (Protection) Act of 1972 provides the basic framework to ensure the protection and management of wildlife. The Act was amended subsequently in 1982, 1986, 1991 and 1993 to accommodate provision for its effective implementation.

The rationale for passing Act as stated in its Statement of Objects and Reasons are as follows:

- The rapid decline of India's wild animals and birds, one of the richest and most varied wildlife resources of the country has been a cause of grave concern.
- Areas which were once teeming with wildlife have become devoid of it and even in sanctuaries and National Parks the protection afforded to wildlife needs to be improved.
- The Wild Birds and Animals Protection Act, 1935 has become completely outdated.
- This existing laws not only have become outdated but also provide punishments, which are not commensurate with the offence and financial benefits that occur from poaching and trade in wildlife produce. Further, such laws mainly relate to control of hunting and do not

emphasize the other factors which are also the prime reasons for the decline of India's wildlife namely taxidermy and trade in wildlife and products there from.

22.1.3. Salient features of the Act:

- The Wildlife Protection Act, 1972 is a product of process which started long ago in 1887 for the protection of a few wild birds and after addition of wild animals in 1912 and specified plants in 1919 it covered almost all the wildlife resources which need protection and management.
- 1. The Wildlife Act of 1972 as amended in 1982, 1986, 1991 and 1993 has 7 Chapters, 66 Sections and 6 Schedules. The Act with its various amendments provides the necessary tool to prevent damage to the wildlife.
- 2. The rating of the Schedules I to V is in accordance with the risk of survival of the wildlife (fauna) enlisted in them. Animals included Schedule are provided for total protection from hunting and the trade and commerce related to such animals are strictly regulated. The schedule VI has been added to include the specified plant species to be protected by the Wildlife (Protection) Amendment Act of 1991.
- 3. An expert committee, constituted by the Indian Board of Wildlife considers amendments to the Act, as and when necessary.
- 4. With the amendment of the Act in 1991, powers of the State Governments have been withdrawn almost totally. Now the State Governments are not empowered to declare any wild animal a vermin. Further by addition of provision, immunization of livestock within a radius of 5 km from a National Park or sanctuary has been made compulsory.

22.2. ENVIRONMENT (PROTECTION) ACT, 1986

- As compared to all other previous laws on environment protection, the Environment (Protection) Act, 1986 is a more effective and bold measure to fight the problem of pollution.
- The genesis of the Environmental (Protection) Act, 1986, thus, is in Article 48A (Directive Principles of State Policy) and Article 51A (g) (Fundamental Duties) of the Indian Constitution.
- Soon after the United Nations Conference on the Human Environment held at Stockholm in 1972, the Water (Prevention and Control of Pollution) Act, 1974 came on the statute book. The Air (Prevention and Control of Pollution) Act came in 1981 and finally came the Environment (Protection) Act, 1986.
- The Environment (Protection) Act, 1986 has 26 Sections and it has been divided into four chapters relating to i) Preliminary, ii) General Powers of the Central Government, iii) Prevention, Control, and Abatement of Environmental Pollution, iv) Miscellaneous.
- The Act consists of and deals with more stringent penal provisions. The minimum penalty for contravention or violation of any provision of the law is an imprisonment for a term which may extend to five years or fine up to one lakh rupees, or both. The Act also provides for the further penalty if the failure or contravention continues after the date of conviction. It is Rs. 5000/- per day. If the failure of contravention continues beyond the period of one year, then the offender is punished with imprisonment for a term which may extend to seven years.
- The Act empowers the Central Government to take all appropriate measures to prevent and control pollution and to establish effective machinery for the purpose of protecting and improving the quality of the environment and protecting controlling and abating environmental pollution.
- The Central Government or any other person duly authorised is empowered to collect the samples of air, water, soil or other substances as evidence of the offences under the Environment (Protection) Act, 1986.
- The Act prescribes a special procedure for handling hazardous substances and the concerned person has to handle the hazardous substances according to the procedure of the Act.
- The Environment (Protection) Act, 1986 has relaxed the rule of "Locus Standi" and because of such relaxation even a common citizen can approach the Court provided he has given a notice of sixty days of the alleged offence and his intention to make a complaint to the Central Government or any other competent authority.
- In the commission of the offence under this Act by Government Department, the Act holds the Head of the Department as guilty of the offence unless the head of the Department proves

that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- This Act also empowers and authorises the Central Government to issue directions for the operation or process, prohibition, closure, or regulation of any industry. The Central Government is also authorised to stop, regulate the supply of electricity or water or any other service directly without obtaining the order of the Court in this regard.
- The Environment (Protection) Act, 1986 grants immunity to the officers of the Government for any act done under the provisions of this Act or under the powers vested in them or functions assigned to them under this Act.
- The Central Government is also empowered to enter and inspect any place through any person or through any agency authorised by Central Government.
- The Act debars the Civil Courts from having any jurisdiction to entertain any suit or proceeding in respect of an action, direction, order issued by Central Government or other statutory authority under this Act.
- Under the Act, there will be supremacy of provision. In other words, the provisions of this Act and the rules or orders made under this Act shall have effect and supremacy over anything inconsistent contained in any enactment other than this Act

22.3. NATIONAL FOREST POLICY 1988

- The principal aim of National Forest Policy, 1988 is to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant.

22.3.1. Objectives

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which

represent the remarkable biological diversity and genetic resources of the country.

- Checking soil erosion and denudation in the catchments areas of rivers, lakes, reservoirs in the "interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.
- Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.
- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.
- Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilisation of forest produce and maximising substitution of wood.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests.

22.3.2. The major achievements of National Forest Policy, 1988,

- Increase in the forest and tree cover.
- Involvement of local communities in the protection, conservation and management of forests through Joint Forest Management Programme.
- Meeting the requirement of fuel wood, fodder minor forest produce and small timber of the rural and tribal populations.
- Conservation of Biological Diversity and Genetic Resources of the country through ex-situ and in-situ conservation measures.
- Significant contribution in maintenance of environment and ecological stability in the country.

22.4. BIOLOGICAL DIVERSITY ACT, 2002

- The Biological Diversity Act 2002 was born out of India's attempt to realize the objectives enshrined in the United Nations Convention

on Biological Diversity (CBD) 1992 which recognizes the sovereign rights of states to use their own Biological Resources.

- An Act 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 for matters connected therewith or incidental thereto.

22.4.1. Objectives

- (i) Conservation of biological diversity;
- (ii) Sustainable use of its components; and
- (iii) Fair and equitable sharing of the benefits arising from the utilization of genetic resources.
- The Act envisages a three-tier structure to regulate access to the biological resources, comprising of National Biodiversity Authority (NBA), State Biodiversity Boards (SBB) and Biodiversity Management Committees (BMC) at the local level

22.5. THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

- Forest Rights Act, 2006 provides for the restitution of deprived forest rights across India, including both individual rights to cultivated land in forestland and community rights over common property resources.
- The Act is significant as it provides scope and historic opportunity of integrating conservation and livelihood rights of the people.

22.5.1. FRA is a potential tool

- I. To empower and strengthen the local self governance
 - II. To address the livelihood security of the people
 - III. To address the issues of Conservation and management of the Natural Resources and conservation governance of India.
- For the first time Forest Rights Act recognises and secures
 - i. Community Rights in addition to their individual rights
 - ii. Right to protect, regenerate or conserve or manage any community forest resource which

the communities have been traditionally protecting and conserving for sustainable use.

- iii. Right to intellectual property and traditional knowledge related to biodiversity and cultural diversity
- iv. Rights of displaced communities & Rights over developmental activities

22.5.2. Salient Features

- Nodal Agency for the implementation is MoTA.
- This Act is applicable for Tribal and Other Traditional Forest Dwelling Communities.
- The Act provides for recognition of forest rights of other traditional forest dwellers provided they have for at least three generations prior to 13.12.2005 primarily resided in and have depended on the forest or forest land for bonafide livelihood needs. A "generation" for this purpose would mean a period comprising of 25 years.
- The maximum limit of the recognizing rights on forest land is 4 ha.
- National Parks and Sanctuaries have been included along with Reserve Forest, Protected Forests for the recognition of Rights.
- The Act recognizes the right of ownership access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries.
- The Act has defined the term "minor forest produce" to include all non-timber forest produce of plant origin, including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.
- The Act provides for the forest right relating to Government providing for diversion of forest land for the purpose of schools, hospitals, anganwadis, drinking water supply and water pipelines, roads, electric and telecommunication lines, etc.
- The rights conferred under the Act shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in the case of married persons and in the name of the single head, in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next of kin

- The Act provides that no member of a forest dwelling Scheduled Tribe or other traditional forest dwellers shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed.
- As per the Act, the Gram Sabha has been designated as the competent authority for initiating the process of determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers.

22.6.COASTAL REGULATION ZONE (CRZ)

- The coastal stretches of seas, bays, estuaries, creeks, rivers and back waters which are influenced by tidal action up to 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL are declared "Coastal Regulation Zone" (CRZ), on 19.2.1991.
- The Notification on Coastal Regulation Zone (CRZ), 1991 (as amended from time to time) aims at protecting coastal stretches in India.
- India has created institutional mechanisms such as National Coastal Zone Management Authority (NCZMA) and State Coastal Zone Management Authority (SCZMA) for enforcement and monitoring of the CRZ Notification.
- These authorities have been delegated powers under Section 5 of the Environmental (Protection) Act, 1986 to take various measures for protecting and improving the quality of the coastal environment and preventing, abating and controlling environmental pollution in coastal areas.

22.6.1. Classification Criteria and Regulatory Norms:

- The coastal regulation zone has been classified for the purpose of regulation of the permitted activities.

CRZ-I:

- Ecological sensitive area and the area between High Tide Line (HTL) and Low Tide Line (LTL).
- No new construction is permitted except for a few specified most essential activities like support activities for Atomic Energy Plants and Defense requirements, facilities required for disposal of treated effluents and other port related water front activities.

CRZ-II:

- The area that have been developed up to or close to the shore line which includes the designated urban areas that are substantially built up.
- Buildings permitted only on the landward side of the existing road (or roads approved in the coastal zone Management Plan of the area) or on the landward side of the existing authorized structures as defined in the notification.
- Reconstruction of the authorized buildings permitted subject to existing FSI/FAR norms without change in the use.

CRZ-III:

- The areas that are relatively undisturbed and those which do not belong to either CRZ-I or CRZ-II which includes mainly the rural area and those not substantially built up within designated urban areas.
- The area up to 200 meters from HTL is earmarked as "No Development Zone".
- No construction is permitted within this zone except for repairs to the existing authorized structures without exceeding existing FSI, plinth area and density.
- Development of vacant plots between 200 and 500 meters of HTL is permitted in CRZ III for the purpose of construction of dwelling units and hotels/beach resorts subject to certain conditions.

CRZ-IV

- The activities impugning on the sea and tidal influenced water bodies will be regulated except for traditional fishing and related activities undertaken by local communities as follows:-
 - (a) No untreated sewage, effluents, ballast water, ship washes, fly ash or solid waste from all activities including from aquaculture operations shall be let off or dumped. A comprehensive plan for treatment of sewage generating from the coastal towns and cities shall be formulated within a period of one year in consultation with stakeholders including traditional coastal communities, traditional fisherfolk and implemented;
 - (b) Pollution from oil and gas exploration and drilling, mining, boat house and shipping;
 - (c) There shall be no restriction on the traditional fishing and allied activities undertaken by local communities.

22.7. WETLANDS (CONSERVATION AND MANAGEMENT) RULES 2010

- The Ministry of Environment and Forests has notified the Wetlands (Conservation and Management) Rules 2010 in order to ensure that there is no further degradation of wetlands.
- The rules specify activities which are harmful to wetlands such as industrialization, construction, dumping of untreated waste and reclamation and prohibit these activities in the wetlands.
- Other activities such as harvesting and dredging may be carried out in the wetlands but only with prior permission from the concerned authorities.
- Under the Rules, wetlands have been classified for better management and easier identification.
- Central Wetland Regulatory Authority has been set up to ensure proper implementation of the Rules and perform all functions for management of wetlands in India.
- Apart from necessary government representatives, the Authority shall have a number of expert members to ensure that wetland conservation is carried out in the best possible manner.
- The Wetlands (Conservation and Management) Rules, 2010 is a positive step towards conservation of wetlands in India. This will go a long way in protecting our wetlands which are under severe threat.

22.8. NATIONAL GREEN TRIBUNAL (NGT)

- The Preamble of the act provides for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources, including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto (The National Green Tribunal Act, 2010).

- With the establishment of the NGT, India has joined the distinguished league of countries that have a dedicated adjudicatory forum to address environmental disputes.
- India is third country in the world to full fledged green tribunal followed by new Zealand and Australia.
- The specialized architecture of the NGT will facilitate fast track resolution of environmental cases and provide a boost to the implementation of many sustainable development measures.
- NGT is mandated to dispose the cases within six months of their respective appeals.
- [For more details on national green tribunal refer Shankar IAS academy's polity part II material]

22.9. THE OZONE DEPLETING SUBSTANCES RULES

- The Ozone Depleting Substances (Regulation and Control) Rules, 2000 under the Environment (Protection) Act, in July 2000.
- These Rules set the deadlines for phasing out of various ODSs, besides regulating production, trade import and export of ODSs and the product containing ODS.
- The Ozone Depleting Substances (Regulation and Control) Rule, 2000 were amended in 2001, 2003, 2004 and 2005 to facilitate implementation of ODS phase-out at enterprises in various sectors.
- These Rules prohibit the use of CFCs in manufacturing various products beyond 1st January 2003
- except in metered dose inhaler and for other medical purposes.
- Similarly, use of halons is prohibited after 1st January 2001 except for essential use. Other ODSs such as carbon tetrachloride and methylchloroform and CFC for metered dose inhalers can be used upto 1st January 2010.
- Further, the use of methyl bromide has been allowed upto 1st January 2015. Since HCFCs are used as interim substitute to replace CFC, these are allowed upto 1st January 2040.

