

LEGAL FRAMEWORK TO SAFEGUARD BIOLOGICAL DIVERSITY IN THE UNION TERRITORY OF JAMMU AND KASHMIR

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ABSTRACT

The Constitution of India mandates in Articles 48A and 51A (g) that the state shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. It shall be the duty of every citizen of India to protect and enhance the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for living creatures. The Biological Diversity Act 2002 is one of the initiatives and regulations in India that have been implemented to fulfil its constitutional obligation to conserve the environment. The Indian Forests Act, 1927, the Air Related Image (Prevention and Control of Pollution) Act, 1981. The Protection of Plant Varieties and Farmer's Rights (PPVFR) Act 2001 and others govern biodiversity in India. India's biodiversity conservation law was one of the earliest. The access and benefit-sharing mechanisms enshrined in the Nagoya Protocol are implemented in India through the Biological Diversity Act 2002 and the Biological Diversity Rules notified in 2004. Against this backdrop, the Union Territory of Jammu and Kashmir, being a part of the western Himalayas, is well-known for its natural beauty and wealth of resources. It has a constitutional commitment to its people to protect them from social, economic, and political injustice, abolish all exploitation, and take special care to enrich the material and cultural lives of the people. The union territory of Jammu and Kashmir has always been at the forefront of passing laws for the protection of biodiversity. Still, there were no explicit provisions about the conservation goals. The legislation was harshly penalized, and forest products were only graded in terms of revenue if they were fetched every year. This paper aims to analyze the legal framework of various legislations with a particular focus on Jammu and Kashmir, like the Jammu and Kashmir Forest Act, 1930, the Jammu and Kashmir Forest (Conservation) Act, 1997, and the Jammu and Kashmir Forest Corporation Act, 1978. The Jammu and Kashmir Forest (Protection) Force Act, 2001, The Jammu and Kashmir Wildlife (Protection) Act, 1978, The Environmental Protection Act of, 1986, The Biological Diversity Act, 2002 was enacted to protect biodiversity at large.

The J&K Forest Act, 1930

The legislation amended and consolidated forest and forest product transportation laws in Jammu & Kashmir.³ The Act allows the state government to proclaim any forest land or waste land as demarcated forest, which becomes the government's property or over which it has proprietary rights, or to the full or any portion of the forest output to which it is entitled.⁴ The Act defines "demarcated forest" as Forest Department controlled forest property or wasteland with clearly marked limits. The state would maintain and regulate the delimited forest. The Act outlaws and punishes setting fire to a designated forest, removing forest produce (including medicinal plants), clearing or breaking up ground, installing a fence, enclosure, or structure for agriculture, and cattle trespass. The government can also manage undemarcated forest under the Act.⁵ The Act defines forest produce as (a) timber, cautchus, catechu, wood oil, resin, natural varnish, bark, lac,

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³Jammu and Kashmir Forest Act, 1930.

http://www.jkdears.com/eers/pdf/J_K_FOREST_ACT_1987_1930_A%5B1%5D%5B1%5D.D_.pdf

⁴The J&K Forest Act, 1930, s.3.

⁵ The J&K Forest Act, 1930, s.2(c).

mahus flowers, myrabolams and krenchlobidwoladiscoria, firewood, humus, charcoal, resonant, carbon chips, rosin, turpentine, and fungi, and (b) trees, leaves, flowers, fruits, and all other forest products. Anyone who damages or encroaches on a designated or undemarcated forest must pay the government.⁶ The state governs forest product transit, especially medicinal plants.⁷ Forest produce may only be imported, exported, or transferred into, from, or within the state under such rules.⁸ The Act establishes village woods and allows the government to set management guidelines.⁹ The Act allows search and seizure, arrest, and fines for violating its provisions and norms.¹⁰ The 1930 Forest Act centralized and commercialized natural resource management. It restricts local resident's forest access. Forest land inhabitants must provide for themselves since the Act prioritizes cash above protection. The Act lacks scientific knowledge of human needs and the area's carrying capacity.

J&K Forest (Conservation) Act, 1997

The Forest (Conservation) Act 1997¹¹ protects forests and prevents large-scale deforestation that causes ecological imbalance and environmental deterioration. The Act restricted delineated forest denotification, de-reservation, and non-forest usage.¹² The state government or any officer or other Authority cannot make or issue any order to denotifying delineated forest and utilize any forest land for non-forest purposes without the Council of Ministers resolution based on the Advisory Committee's opinion under section 3 of the Act.¹³ The Government may form a committee of any number of members to advise it on denotifying any delineated forest or any portion thereof, reserving or use of forest land for non-forest purposes, or any other subject related to forest protection.¹⁴ The Act acknowledges the rights of persons living in and surrounding delimited forest areas to build roads, irrigation, and power, which can only be approved by the Administrative Department (forests) on the advice of the Advisory Committee created under section 3.¹⁵ The Act defines "non-forest purpose" as breaking up or clearing forest land or a portion thereof for the cultivation of oil-bearing plants, rural crops, medicinal plants, or any other purpose other than retention, but it does not include any work related or ancillary to conservation, elopement, and wildlife management, such as check posts, fire lines, wireless transmitters, or Communications and building fences, bridges, culverts, dams, water holds, trenches, boundary markings, pipelines, and other structures.¹⁶ The Act penalises by simple imprisonment for up to 15 days. The Act also punishes government offences.¹⁷

The J&K Forest (Protection) Force Act, 2001

⁶The J&K Forest Act, 1930, s.4 and 5.

⁷The J&K Forest Act, 1930,s.6 (a).

⁸The J&K Forest Act, 1930,s.6 (ee)

⁹The J&K Act, 1930,s.6 (f).

¹⁰ The J&K Act, 1930, s.6 (h).

¹¹Forest (Conservation)Act, 1997 (Act No. Xxx of 1997)-India Code.

https://www.indiacode.nic.in/bitstream/123456789/4434/1/forest_conservation_act%2C_1997.pdf

¹²The J&K Forest Conservation Act, 1997,s.2.

¹³The J&K Forest Conservation Act, 1997,s.2 (a).

¹⁴The Jammu and Kashmir Forest Conservation Act, 1997,proviso .s.2.

¹⁵The Jammu and Kashmir Forest Conservation Act,1997,S.4.

¹⁶Forest (Conservation) Act, 1980.

http://www.atiwb.gov.in/deptexam/index_htm_files/bare-acts/FAC1980.pdf

¹⁷Industrial Disputes Act, 1947.

<https://www.legalserviceindia.com/legal/article-942-industrial-disputes-act-1947.html>

The 2001 Jammu and Kashmir Forest (Protection) Force Act¹⁸ established the Forest Protection Force to effectively guard and secure forest property and related problems. Forest property includes demarcated forest, undemarcated forest, village forest, and forest produce as defined in the Jammu and Kashmir Forest Act, 1930, government property as defined in the Wildlife (Protection) Act, 1978; and any other movable or immovable property in which the Forest Department or other related organisation has any interest. The Act makes the Force a government department like state police departments.¹⁹ The Act requires Force members to (a) promptly obey and execute all orders lawfully issued to him by his superior authority, (b) protect and safeguard forest property (c) assist, on requisition, a Forest Officer or an Officer of the Wildlife Department or an Officer of Soil Conservation Department having territorial jurisdiction when such a plea is for forest property protection and (d) patrol vulnerable areas. The Act gives the Forest Protection Force broad powers, including warrantless arrest and search.²⁰ The Act makes Force members liable for failure of duty. It renders such offence cognizable and non-bailable.²¹ The State Government can also create Act-related rules. The State Government created the Jammu and Kashmir Forest (Protection) Rules 2012 to allow the Forest Protection Force to act against criminals like other Armed Forces. These guidelines allow Forest Protection Force members to carry and use guns against wood traffickers as necessary. These guidelines have empowered the Forest Protection Force to combat wood smuggling.

The J&K Wildlife (Protection) Act, 1978

The comprehensive Jammu and Kashmir Wildlife (Protection) Act, 1978²² protects wild animals, birds, and plants. The Act requires the Government to establish a State Board for Wildlife²³ to advise the Government on the selection and management of protected areas and policy for the protection and conservation of wildlife and specified medicinal plants²⁴ and to effectively control poaching and to balance the needs of tribal and other forest dwellers with wildlife conservation. The Board should also examine the impact of different developmental projects on nature and its habitat, review progress in wildlife conservation in the state, recommend improvements, and publish the Wildlife Report of the State at least once every three years. The Chief Wildlife Warden must be convinced that any wild animal in Schedule I, Schedule II, Schedule III, or Schedule IV²⁵ has become harmful to human life or is as desired or sick as to be beyond recovery to allow hunting.²⁶ The Chief Wildlife Warden can also approve wild hunting species listed in Schedule II, III, or IV if they are hazardous to human life or property, including standing crops on any land desired or beyond recovery. The Act also protects some flora. The Animals Protection Act allows the Government to declare sanctuaries, national parks, and conservation reserves to conserve wildlife in certain regions. The Act prohibits the destruction, exploitation, and removal of wilderness or forest produce. The State Chief Wildlife Warden oversees these regions. The Act punishes with jail, exemplary, or both. Anyone who damages or encroaches on

¹⁸Forest (Protection) Force Act, 2001 - India Code.

https://www.indiacode.nic.in/bitstream/123456789/5547/1/forest_%28protection%29_force_act%2C_2001.pdf

¹⁹ The J&K Forest (Protection) Force Act, 2001, s. 2 (d).

²⁰ The J&K Forest (Protection) Force Act, 2001, s. 3(2).

²¹ The J&K Forest (Protection) Force Act, 2001, s.11.

²² Act No. VIII of 1978, 9th May, 1978.

²³ The J&K Wildlife (Protection) Act, 1978, s.5.

²⁴ The J&K Wildlife (Protection) Act, 1978, s.7.

²⁵ The J&K Wildlife (Protection) Act, 1978, s.10(1).

²⁶ The J&K Wildlife (Protection) Act, 1978, s.10(1)(a).

a protected area must pay the Government.²⁷ Wildlife and forest officers can search, seize, and arrest encroachers.²⁸ The Government makes rules and orders schedule entries to carry out the Act's purpose, including punishing company offences.

The Environmental Protection Act, 1986

The Act was enacted under Article 253²⁹ of the Constitution of India, which empowers the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention or any decision made at any international conference, association or other body. The Act is an umbrella legislation enacted by Indian Parliament in response to a widely felt need for general legislation for environmental protection. It extends to India, including the State of Jammu and Kashmir. The Act refers to the Stockholm Conference of 1972, which relates to preserving and improving the human environment and preventing hazards to human beings, other living creatures, plants and property. By this Act, the Union Government has armed itself with considerable powers deemed necessary to prevent, control, and reduce environmental pollution. The capabilities include coordination of action by states, planning and execution of nationwide programmes, laying down ecological quality standards, especially those governing the emission or discharge of environmental pollutants, placing restrictions on the location of industries, etc. The power claimed is comprehensive; the coverage includes handling hazardous substances, prevention of environmental accidents, research, an inspection of units, establishment of laboratories, dissemination of information, etc. The Act provides for the penalties that if any person who fails to comply with or contravenes any of the provisions of the Act, rules, orders or directions issued under the Act shall be punished, for each failure or infringement, with imprisonment for a term which may extend to 5 years or with fine which may extend to one lakh rupees or with both. If the failure or contravention continues, an additional penalty may extend to five thousand rupees daily. Such loss or infringement can be used after the conviction for the first such failure or contravention. If the violation or infringement continues beyond one year after the trust date, the offender shall be imprisoned for a term which may extend to seven years.

The Biological Diversity Act, 2002

The Convention on Biological Diversity required India to pass the Biological Diversity Act 2002. The 1992 Convention on Biological Diversity and the 2002 Biological Diversity Act addressed strain on our biological resources. The Biological Diversity Act 2002, which applies to Jammu and Kashmir, is a comprehensive law that conserves, sustains, and shares physical resources. The Act's major focus is assessment and benefit sharing, but its goals include conservation, sustainable usage, and fair benefit sharing. No person (not a citizen of India, NIR/body corporate, association or organisation incorporated or registered in India or under any law for the time being in force which has any non-Indian participation in its share capital on management) shall obtain any biological resource occurring in India or knowledge associated thereto for research or commercial use. The National Biodiversity Authority must approve any transfer of research results on biological resources from India to the aforementioned parties. Transfer does not include publishing of research papers or knowledge dissemination in seminars or workshops if done according to Central Government norms. The scheme of prior approval does not apply to collaborative research projects, including the transfer or exchange of biological

²⁷The J&K Wildlife (Protection) Act, 1978,s. 50.

²⁸The J&K Wildlife (Protection) Act, 1978,s.61.

²⁹Environmental Protection Act, 1986.

https://www.indiacode.nic.in/bitstream/123456789/6196/1/the_environment_protection_act%2C1986.pdf

resources or information relating to it between institutions, including Government sponsored institutions of India and such institutions in other countries, as long as they follow the Central Government's policy guidelines and are approved by the Government.³⁰ Without National Biodiversity Authority clearance, no one may file for intellectual property rights in or outside India for any innovation based on research or knowledge on biological resources gathered in India.³¹ Approved people cannot transfer biological help or information without the National Biodiversity Authority's consent. Central Government permits and licences need equitable benefit-sharing. The National Biodiversity Fund receives benefit sharing funds. However, if biological research or knowledge was obtained from a specific individual or group of individuals or organisations, the National Biodiversity Authority may direct that the amount be paid directly to such individual or group by the terms of any agreement and in such manner as it may deem fit.³² However, the Authority can create rules to execute the benefit-sharing system along these lines. The Biological Diversity Act establishes powers to achieve its goals. The Central Government establishes the National Biodiversity Authority to advise on biodiversity protection, sustainable use, and fair distribution of biological resource benefits.³³ Section 22 of the Act allows state governments to create a Biodiversity Board by notifying the official Gazette. Boards assist state governments on biodiversity protection, sustainable use, and fair distribution of biological resource benefits, according to Central Government requirements.³⁴ The board regulates Indian petitions for commercial use, bio survey, and bio use of biological resources. The Act requires local bodies to establish Biodiversity Management Committees to conserve, sustain, and document biological diversity, including habitats, land races, folk varieties and cultivators, domesticated stocks and breeds of animals and microorganisms, and biodiversity knowledge.³⁵ Every Biodiversity Management Committee must utilise its Local Biodiversity Funds to conserve and promote biodiversity in its authority and benefit the local community as long as it does so.³⁶

Conclusion

As mentioned above, various laws have been enacted in the Union Territory of Jammu and Kashmir to protect biodiversity from time to time. Still, unfortunately, they could not save the rich biodiversity as they lack in certain aspects. Like some Acts were passed for the generation of revenue for the union territory, some were enacted to displace people from forests and make them homeless some were given to grant permission to different plants to operate irrespective of the fact that they are causing more harm to environment than gain to the economy of the country. Some were enacted to fulfil the international obligations of the government. The Biological Diversity Act 2002 no doubt provides a mechanism for the conservation, utilization and benefit sharing of biological resources. Still, the reality is different as there needs to be more implementation of the laws concerning the access and benefit sharing of biological resources as the Biodiversity Management committees have not been vested with the powers essential for their proper working. A balance is required where biological diversity development, conservation and protection will be achieved.

³⁰ Biological Diversity Act, 2002, s. 3.

³¹ Biological Diversity Act, 2002, s. 4.

³² Biological Diversity Act, 2002, s. 5.

³³ Biological Diversity Act, 2002, s. 6.

³⁴ Biological Diversity Act, 2002, s.23 (a).

³⁵ Biological Diversity Act, 2002, s.41.

³⁶ Biological Diversity Act, 2002, Rule 20(i) & (iv).