

Biodiversity Protection, Farmers and Breeders Right

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Lecture 08 : Convention on Biodiversity – Objectives and Articles

Welcome to another lecture as part of the course on biodiversity protection, farmers rights and breeders rights. Today's lecture will be dealing about the convention on biological diversity, its objectives and articles. The concepts that will be covered as part of today's lecture will be the objectives of the convention, the various articles, the obligation of the parties and the institutional structure. The convention on biological diversity is considered as one of the most important environmental agreements related to biodiversity conservation. CBD has 196 parties and of the 168 countries have ratified the convention. So it is considered as one of the most universal conventions ever adopted in the world.

The conservation of diversity of life on earth at all levels including genetic, population, species, habitat and ecosystem levels is dealt within the convention on biological diversity. It provides guidance for decision makers based on precautionary principle which states that steps to prevent or lessen a threat to significantly reduce or loss biodiversity has to be considered. It is conceived as a practical tool for transmitting the principles of agenda 21 into reality with three main objectives. The preamble of the convention elaborately deal with various aspects.

It starts by speaking about the intrinsic value of biological diversity. When we speak of intrinsic value it is not just the economic value of the resource but it also includes its ecological value, social value, cultural value, scientific value, educational value, recreational and aesthetic value also. So it means that convention on biological diversity is not only dealing with the economic value of the biological diversity but it also considers other aspects of biological diversity. It is also considered as a significant step in the history of environmental regulation because it speaks about the concept of common concern of humankind. This is actually considered as a complete shift from the previously existing concept of common heritage of mankind.

So it adopted this new concept common concern of mankind which actually speaks of scenarios where the issues that are to be dealt is not limited to the jurisdiction of a particular state but it actually transcends out of the borders of specific countries and it comes as a common concern of mankind. It also recognized that states have sovereign rights over their own biological resource. So this is also considered as a new concept because it completely deviates from the concept of common heritage of mankind. States

are responsible under the convention for conserving their own biological diversity and for using their biological resources in a sustainable manner. And it also speaks about the precautionary principle and it specifies that when there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such threat.

So it also recognizes the principle which was already mentioned as part of the Rio Declaration. The preamble also speaks about different scenarios like role of women in policy making and implementation. So the convention recognizes that women play an important role in the conservation of biological diversity and it says that women shall also have an increased role at all levels of policy making and implementation. It speaks about insight to conservation and excite to conservation also. So insight to conservation speaks of scenarios where conservation is done at the exact location where the biological resource is existing and excite to conservation is scenarios where it is conserved in a different location.

It also speaks about the need to anticipate and prevent and the attacks caused on significant reduction or loss of biological diversity. It speaks about the need to promote international, regional and global cooperation in all areas in order to conserve biological diversity at a global level. The general lack of information and knowledge regarding biological diversity is also considered as a serious issue under the convention. So the preamble of the convention speaks about the urgent need to develop scientific, technical and institutional capacities in this regard. The objectives of the convention are fair or conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of genetic resources.

So the convention on biological diversity is the first international agreement to give recognition to the principle on access and benefit sharing. So as you can see it works as a cycle. So the conservation of biological diversity can be ensured by allowing sustainable use of its components. So instead of protectionist approach it promotes sustainable use of components of biological diversity so that whenever utilization happens the fair and equitable sharing of benefits also should result and thereby conservation of biological diversity will be promoted. The convention defines various terminologies.

So in the operational part of the convention it uses different legal terms. So the word biological diversity which is also part of the nomenclature of the convention is also defined in article 2. Biological diversity means the variability among living organisms from all sources including terrestrial marine and other aquatic ecosystems and ecological complexes of which they are part. This includes diversity within species, between species and of ecosystems. The word biological resources is also defined in the

convention even though in the operational part it uses the word genetic resource.

Biological resource is a much wider term and it is defined as including genetic resources, organisms or parts thereof, populations or any other biotic component of ecosystem with actual or potential use or value for humanity. So that is why people say that there is nothing which is considered as a waste material in nature because everything within the nature may have an actual or potential use or value for humanity. So even though the value is not identified now and if there is a future potential use which is expected out of that component of nature then that is also considered as a biological resource and considered as valuable within the scope of convention on biological diversity. The word genetic resource is coming many times in the operational part of the convention. The genetic resource is defined as genetic material of actual or potential value.

The convention actually speaks about the countries which are providing genetic resources. So the country which is supplying the genetic resource whether it is collected from in situ sources or from ex situ sources will be considered as a country providing the genetic resource. But the important terminology used in the convention is related to country of origin of genetic resource. So the country providing genetic resource may be different from the country of origin of the genetic resource. Country of origin of the genetic resource means the country which possesses those genetic resources in native conditions.

So this is countries where the genetic resource has actually originated. The word genetic material is also defined in the convention which means any material of plant, animal, microbial or other origin containing functional units of heredity. Then another terminology which is used in the convention is sustainable use. It is also one of the objectives of the convention on biological diversity. The word sustainable use means the use of components of biodiversity in a way and at a rate that does not lead to long term decline of biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations.

So sustainable use means that it is actually considered as a complete deviation from the previous approach which is protectionist in nature whereby the use of biological diversity is prevented so as to ensure conservation. But the concept of sustainable use ensures that the utilization of components of biodiversity is allowed but only in a sustainable manner. The convention speaks about its principles in article 3. Under article 3 the countries are granted with the sovereign right to exploit their own resources, subject to their own environmental policies and also subject to the jurisdiction and control and with the condition that it should not cause any damage to environment of other states or areas beyond the limit of national jurisdiction. But however, this uses shall be subject to the

charter of United Nations and the principles of international law.

The jurisdictional scope of convention is limited to national jurisdictions. So every country has jurisdiction over its own natural resources. So this country shall have sovereign right over their own biological resources. But the convention does not speak about areas outside national jurisdiction. But the jurisdictional scope under article 4 specifies that in case of processes or activities regardless of whether their effects occur carried out under its jurisdiction or control within the area of its national jurisdiction or beyond the limits of national jurisdiction comes within the scope of the convention.

Article 6 of the convention speaks about the general measures for conservation and sustainable use. It provides for development of national strategies, plans and programs for the conservation and sustainable use of biological diversity. It also speaks about the need to integrate as far as possible and as appropriate the conservation and sustainable use of biological diversity into relevant sectoral cross sectoral plans programs and policies. Article 7 of the convention speaks about the need of identification and monitoring of species which are of threatened nature or endangered nature as specified in annex 1 of the convention. The article 11 of the convention speaks about providing incentive measures and it assures the state parties to adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of the components of biological diversity.

The article 8 of CBD is considered as one of the most important elements under the convention on biological diversity. It is a very elaborate provision which speaks about insight to conservation, but under the head insight to conservation it deals with various aspects of biological diversity conservation and related aspects. The subsection 1 of the article 8 requires the state parties to establish protected areas and also to develop guidelines for the selection and establishment of protected areas. So protected areas will be areas where special measures or conservation efforts is required because of their ecological significance. The conservation protection and sustainable use of biodiversity and its components is also mentioned under article 8.

So countries has to initiate special measures related to conservation protection and sustainable use of biodiversity in protected areas. The countries shall also state take special efforts to regulate or manage biological resources within these protected areas. The areas adjacent to protected areas also receive special consideration under article 8. So the state parties shall promote protection of ecosystem and environmentally sound and sustainable development in areas adjacent to protected areas. Article 8 also speaks about the need to rehabilitate and restore degraded ecosystems.

The living modified organisms are also specified under article 8. It requires the state parties to take efforts to regulate manage or control the risk associated with living modified organisms. Article 8 also speaks about the indigenous and local communities and their knowledge. So article 8 specifies that country shall respect preserve and maintain the knowledge innovations and practices of indigenous and local communities in accordance with national legislation and policies. The article 8 also speaks about the need to take special measures with regard to invasive alien species.

It specifies that the country shall take efforts to prevent the introduction of and control of invasive alien species. Article 9 of CBD speaks about ex-situ conservation. Under the conventional biological diversity importance is given to in-situ conservation. The convention speaks about the need for In-Sci-2 conservation in cases as far as possible. But in certain scenarios only Ex-I2 conservation will be possible.

So such scenarios are dealt under article 9. Article 9 requires state parties to adopt measures for Ex-I2 preferably in country of origin. So as far as possible the Ex-I2 conservation shall also be in the country of origin. The facilities of Ex-I2 conservation and research shall also be located in country of origin as far as possible. The recovery, rehabilitation of threatened species and their reintroduction into natural habitats shall also be considered.

So Ex-I2 conservation as an initial measure should subsequently lead to the recovery and rehabilitation of the threatened species in their natural habitats itself. Article 9 also speaks about the need to cooperate in providing financial and other support for Ex-I2 conservation of biological diversity. The sustainable use of components of biological diversity is one of the objectives of the convention. The sustainable use of components is dealt under article 10. Article 10 speaks about the need to integrate consideration of the conservation and sustainable use of biological diversity in decision making process.

So it requires the state parties to include the need to sustainable utilization of biodiversity into their policy making and other aspects. It requires the state parties to take efforts to avoid or minimize adverse impacts on biological diversity. Article 10 also speaks about the need to promote customary use of biological resources and also the need to develop and implement remedial action in degraded areas. Degraded areas requires special consideration under the convention on biological diversity. Article 10 also encourages the cooperation between governmental authorities and private sector.

So it also stresses the need to encourage private sector to actively participate in biological diversity conservation. The access to genetic resource is dealt under article 15. So article 15 recognizes the sovereign rights of countries over their own biological

resources. The authority to determine access to biological diversity rests with national government and it is subject to national legislation. So state parties have complete sovereign rights to determine the rigor regulation subject to which access to biological resource shall happen and this is also subject to national legislations.

So the countries are free to facilitate environmentally sound uses by other parties of the convention. So the convention also promotes the use of biodiversity by parties which are not the countries of origin of the biological resource, but such uses shall be subject to mutually agreed terms. Article 15 also speaks about the need for a prior informed consent as required by national legislations. Article 15 also stresses the need to develop and carry out scientific research based on genetic resources. All these shall be subject to legislative, administrative or policy measures for fair and equitable sharing of benefits.

So the concept of equitable sharing of benefits arising from the utilization of biodiversity was for the first time incorporated into an international agreement through the convention on biological diversity. Article 12 of the convention speaks about the research and training. The scientific and technical education and training related to biodiversity requires special consideration under the convention on biological diversity. It speaks about the need for encouraging scientific and technical education and training related to measures for identification, conservation and sustainable use of biodiversity. It also stresses the need to promote and encourage the research in developing countries.

So convention on biological diversity gives special preference to developing countries and underdeveloped countries. So it encourages developed countries to invest in promoting and encouraging research in developing countries. Article 12 also speaks about the need to promote and cooperate in the use of scientific advances. So scientific advances related to biological diversity shall be made available to developing countries as well. Article 13 speaks about the need for public education and awareness.

It stresses the need to promote and encourage the understanding of the importance and measures required for conservation of biological diversity. It requires state parties to propagate this through media and other educational programs. So it requires the state parties to encourage inclusion of biodiversity consideration into educational programs. It also requires the state parties to cooperate as appropriate with other states and international organizations in public awareness programs. Impact assessment and minimizing of adverse impacts is another area which is dealt under the convention on biological diversity.

The requirement of impact assessment especially for environmental projects is specified under article 14 under the convention on biological diversity. It stresses the need to

promote on basis of reciprocity the exchange of information whenever the activities which is undertaken within the national jurisdiction of one country may adversely affect the biological diversity of other states or areas beyond the limits of national jurisdiction. And in case of imminent or grave danger or damage originating under its jurisdiction the country has a legal responsibility to notify immediately the potentially affected states of such danger or damage. Article 14 also stresses the need to promote national arrangements for emergency responses to activities or events and encourage international cooperation. Article 16 deals about access to and transfer of technology.

So transfer of technology is another important ingredient under the convention on biological diversity. Through the requirement of transfer of technology it intends to reduce the division between the south and global south and global north. The technologies that are relevant to conservation and sustainable use of biodiversity or making use of genetic resources and do not cause significant damage to environment have to be transferred to developing countries under concessional and preferential terms. The provider country also has also should be provided access to technology including those protected by IP in accordance with mutually agreed terms. So in case the components of biodiversity which was used for research has originated from a provider country and the research on such component has resulted in the development of a technology the provider country shall be allowed or provided access to such technology as required under the mutually agreed terms.

The state parties also has an obligation to have legislative administrative and policy measures to give effect to this requirement. The technical and scientific cooperation between state parties is also mentioned under the convention. The article 19 of the convention requires the state parties to promote international technical and scientific cooperation providing special attention to strengthening national capabilities and institution building. So strengthening of national capabilities especially of developing countries is given special attention under the convention. Article 18 also provides for establishment of a clearing house mechanism under the CBD secretariat.

Article 18 also requires the state parties to encourage indigenous and traditional technologies. It also encourages the state parties to initiate joint research programs and joint ventures for the development of technologies. The CBD's governing body is the conference of parties or the COP. This is the ultimate authority of which all the signatories of CBD are members and the conference of parties are convened in every two years to review the progress and set the priorities and commit to the work plans. To date the conference of parties has been held 15 ordinary meetings and two extraordinary meetings has also happened.

It takes decisions that advance the implementation of the objectives of the convention. The recent COP 15 was held in last December in 2022. The COP meetings becomes a venue for serious discussions on various legal policy and other matters related to convention on biological diversity. There have been many important COP decisions in the past and the recent decision with regard to inclusion of digital sequence information as a subject matter of CBD was taken in the recently concluded COP 15. The institutional structure of the convention is also specified in various articles like article 23, 25 and 24.

The conference of parties is the ultimate body under the convention. Article 25 of the convention provides for establishment of a subsidiary body on scientific, technical and technological advice which is also known as SUBSTA. So SBSTTA becomes an advisory body which advises the COP on various scientific, technical and technological matters. The day to day affairs of under the convention are undertaken by the secretariat which is established under article 24.

The secretariat of the CBD is located in Montreal, Canada. The convention also provides for establishment of a clearing house mechanism which is also having an, the convention also provides for establishment of a clearing house mechanism. The convention stresses that the conservation of biological diversity is a common concern of mankind. It also recognizes that the countries are sovereign right over their own biological resources and thus there is a need to address the overriding priorities of economic, social development and eradication of poverty. The convention recognizes that the causes of loss of biodiversity are diffuse in nature and mostly arise as a secondary consequence of activities in economic sectors such as agriculture, forestry, fisheries, water supply, transportation, urban development or energy particularly activities that focuses on deriving short term benefits rather than long term sustainability.

The references of this lecture are as follows. The convention on biological diversity is considered as a very important step at international level for the conservation of environment. It is extremely important because it is considered as a complete shift from the previous concept of common heritage of mankind. It gave the recognition to the concept of sovereignty of nations with regard to biological diversity. So, thus now it is well established that countries have sovereign right with regard to their own biological diversity and shall have complete right to determine the way in which access to biological diversity happens and its utilization is allowed. Thank you very much for listening to this lecture.