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“CHALLENGES IN LEGAL PROTECTION OF MARINE PROTECTED AREAS IN INDIA: A REVIEW OF LITERATURE”

“DESAFÍOS EN LA PROTECCIÓN LEGAL DE LAS ÁREAS MARINAS PROTEGIDAS EN LA INDIA: UNA REVISIÓN DE LA LITERATURA”

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Abstract:

Marine Protected Areas (MPAs) are a concept that is widely being promoted as the preservation and conservation of marine resources becomes an increasingly important global issue. MPAs are vital for the preservation of biodiversity and, if managed appropriately, are an efficient means of safeguarding maritime ecosystems.

There are currently 25 MPAs in Peninsular India and 104 MPAs in the Islands of India, but for the preservation and conservation of these areas, there is no specific and effective legislation. Even though India, a member of the Convention on Biological Diversity, emphasises a “higher level of protection for marine and coastal biodiversity” compared to other forms, the reality is distant from this.

Therefore, managing MPAs in India is a challenging task. This paper will emphasise the challenges in managing MPAs and current legislation and its adequacy in the protection of MPAs in India.

Resumen:

Las Áreas Marinas Protegidas (AMP) son un concepto que se promueve ampliamente a medida que la preservación y conservación de los recursos marinos se convierte en un problema global cada vez más importante. Las AMP son vitales para la preservación de la biodiversidad y, si se gestionan adecuadamente, son un medio eficaz para salvaguardar los ecosistemas marítimos.

Actualmente existen 25 Áreas Marinas Protegidas en la India Peninsular y 104 AMP en las Islas de la India, pero para la preservación y conservación de estas áreas no existe una legislación específica y efectiva. Si bien India, miembro del Convenio sobre la Diversidad Biológica, enfatiza un "mayor nivel de protección para la biodiversidad marina y costera" en comparación con otras formas, la realidad dista mucho de esto.

Por lo tanto, la gestión de áreas marinas protegidas en la India es una tarea desafiante. Este documento enfatizará los desafíos en la gestión de las AMP y la legislación actual y su idoneidad en la protección de las Áreas Marinas Protegidas en la India.

Keywords: Marine Protected Areas. Management. Protection. Legislations. Challenges.

Palabras clave: Áreas Marinas Protegidas. Gestión. Protección. Legislación. Desafíos.

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1. INTRODUCTION

Around the globe, Marine ecosystems are under severe pressure, with over exploitation of the ocean's living and non-living resources, pollution, and ocean acidification posing a potential threat. Even though the world's ocean cover more than 70% of the surface of the Earth,¹ unfortunately, such a pertinent ecosystem is being ignored.

Over the past decades, Marine Protected Areas (MPAs) are progressively turning into a conservation strategies for countries worldwide to protect these ecosystems from the aforementioned pressures. However, there is no specific global convention for the protection of such marine areas. The designation of MPAs is either based on regional marine conventions, or on other general nature conservation conventions, which also apply to the terrestrial environment. Some of the International conventions dealing with MPAs are: United Nations Law of the Sea Convention, 1982 (**UNCLOS**); Convention on Biological Diversity, 1992 (**CBD**); The Ramsar Convention on Wetlands of International Importance, 1971 (**Ramsar Convention**); the UNESCO World Heritage Convention, 1972 (**World Heritage Convention**); Agenda 21, 1992 (**Agenda 21**) and World Summit on Sustainable Development, 2002 (**Sustainable Development Summit**).

As per CBD, an MPA is:

“any defined area within or adjacent to the marine environment, together with its overlying waters and associated flora and fauna, and historical and cultural features, which has been reserved by legislation or other effective means, including custom, with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection than its surroundings.”²

¹ National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. (2021, August). [How much water is in the Ocean?](#)

² Convention on Biological Diversity, COP 7 Decision VII/5. (2021, August). [Marine and Coastal Biological Diversity](#).

India has a coastline of about 8,118 km, with an Exclusive Economic Zone (EEZ) of 2.02 million Sq Km and a Continental Shelf area of half a million Sq Km.,³ spread across 9 maritime States and 7 Union Territories, including the islands of Andaman and Nicobar, and Lakshadweep, whereby India has progressively contributed to its share in marine protection. After the establishment of Gulf of Kutch in 1982 i.e., the first Marine National Park of Indian subcontinent, India has so far established 25 MPAs in Peninsular India and 104 MPAs in the Islands of India⁴

In India, the MPAs have been notified under the Wild Life (Protection) Act, 1972 (WLPA) and have been declared as either 'National Parks' or 'Wildlife Sanctuaries' or 'Conservation Reserves' where, in most cases, no extractive activities are allowed. Since these areas are specifically established for the terrestrial ecosystem, management of these as dedicated marine areas is a challenging task. Thus, the present paper will *firstly*, analyse the prior work done by various authors on the topic; *secondly*, analyse the legislations existing for the management of MPAs in India alongwith the loopholes present; and *lastly*, it will discuss as to why is there an urgent need for effective management setup of the MPAs for the country.

2. CHALLENGES IN PROTECTING MARINE PROTECTED AREAS IN INDIA

In the article titled *Marine Protected Areas in India*⁵ the author has focused on India's MPAs and the existing laws, rules, and regulations related to MPAs in force. Since there are multiple legislations managing the areas along with multiple organs of the government, thus management of the MPAs is yet to reach maturity. Hence, the author suggests that there should be the implementation of proper guidelines for India for proper management of MPAs in India, and this can be done with the help of guidelines prepared by IUCN.⁶

In the article *A study on legal aspects of Marine Environmental Protection in India*⁷, the author has highlighted the importance of MPAs for better protection and administration of the marine environment.

³ Department of Fisheries. (2021, August). [Marine Fisheries](#).

⁴ ENVIS Centre on Wildlife & Protected Areas. (2021, August). [Marine Protected Areas](#).

⁵ Singh, H.S. (2003). [Marine protected areas in India](#). *Indian Journal of Marine Sciences*, 32(3), 226.

⁶ Kelleher, G. (1999). *Guidelines for Marine Protected Areas*. IUCN, Gland, Switzerland and Cambridge, UK. xxiv +107pp.

⁷ Pandya, Amrishbhai & Bharad, Dr. B.H. (2019). [A Study on Legal Aspects of Marine Environmental Protection in India](#). *GAP GYAN-An International Peer Reviewed Open Access Journal of Social Science*, II (III).

People are reliant on marine resources for their livelihood all around the world. However, climate change and distinct anthropogenic activities, such as oil spills, dumping of waste, and significant sea bed mining, have negatively affected the quality of the oceans and the health and condition of various flora and fauna inhabiting the water.

The author makes reference to a number of cases in which the judiciary has supported novel approaches to protecting environmental rights. As a sign of its concern for environmental issues and their impact on human lives, the judicial system has issued appropriate orders, directives, and writs against individuals who have caused harm to the environment.

MPAs can play a pivotal role in curbing marine environment pollution. The MPAs are intended to mitigate and prevent the loss of marine biodiversity, however, the officials and employees involved are not sufficiently driven to conduct the required study and research.

The article titled *Legal Landscape Governing Biodiversity of Maritime Zones of India: Shortcoming and the Way Forward*⁸ emphasises on existing regime and format of the Biological Diversity Act, 2002 (**BDA**).

To fulfil and fructify India's commitment to the CBD, the Parliament of India enacted the Biological Diversity Act (BDA) in 2002. Under the existing framework, the BDA is implemented through three main statutory bodies i.e., the National Biodiversity Authority (**NBA**), the State Biodiversity Boards (**SBB**), and Biodiversity Management Committees (**BMCs**).

The BDA delineates a convoluted plan in reference to

*“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 and knowledge associated with such biological resources.”*⁹

The article focuses on the implementation of BDA in the maritime zone of India; and argues that the provisos of the BDA appertain to the components of biological diversity within the territorial waters, and hence, the present scheme of the BDA is not suited for effective implementation and enforcement of the provisions of the BDA within the territorial waters.

Therefore, the present scheme and design of BDA only appear to be suited to facilitate the preservation and sustainable use of terrestrial biodiversity, also of

⁸ Joseph, Dr. J. (2020, May 25). [Legal Landscape Governing Biodiversity of Maritime Zones of India: Shortcomings and the Way Forward](#). *Agriculture and Fisheries Law Blog*.

⁹ United Nations. (1992). [Article 1 of the Convention on Biological Diversity](#).

aquatic biodiversity in inland waters and suggests that there is an urgent need to suitably modify the legal landscape governing biodiversity conservation in India so that it is capable of addressing the multifarious challenges concerning perpetuation and sustainable use of biological diversity of the maritime zones in India.

3. EXISTING LEGISLATIONS FOR THE PRESERVATION AND MANAGEMENT OF MARINE PROTECTED AREAS IN INDIA

In India, there are a plethora of legislations dealing with the management of MPAs i.e. *The Environment (Protection) Act, 1986*; *Coastal Regulation Zone Notification, 1991* and *National Biodiversity Act, 2002* have been enacted for the conservation of the coastal and marine environment, along with the *Wildlife (Protection) Act, 1972* which is the important and primary legislation pertinent for the establishment of Protected Areas, as National parks, Wildlife Sanctuaries, Community Reserves, and Biosphere Reserves. Even though the Act has been modified numerous times, it makes no explicit distinction between MPAs and other protected areas; hence, the establishment of MPAs falls under all categories listed in the Act. Current MPAs are designated either as Reserves, Wildlife Sanctuaries, or National Parks since they were created to safeguard the biodiversity and habitats of a marine environment.

This is not a specific legislation for MPAs; rather, it deals with Protected Areas as well. The idea of protected areas for marine environment has usually been used as an extension of Protected Areas in terrestrial ecosystems, based on the postulation of identical conditions. However, this has proved a barrier to marine protection, which is the important and primary legislation pertinent for the establishment of Protected Areas, as National parks, Wildlife Sanctuaries, Community Reserves, and Biosphere Reserves. Even though the Act has been modified numerous times, it makes no explicit distinction between MPAs and other protected areas; hence, the establishment of MPAs falls under all categories listed in the Act. Current MPAs are designated either as Reserves, Wildlife Sanctuaries, or National Parks since they were created to safeguard the biodiversity and habitats of a marine environment. Also, the current level of protection given to MPAs in India is not adequate; therefore, management of MPAs through these legislations becomes a herculean task.

Besides, in India, the coastal and marine environments are managed by multifarious governance frameworks and structures. While such a framework is supposed to have favourable results from acting efficaciously in handling coastal and marine biodiversity in India, however, overlapping jurisdictions, conflicting edicts and limited synergy impede multiple agencies from effectively managing or protecting the MPAs.

4. CONCLUSION AND SUGGESTIONS

The CBD distinctly states specific legislation dedicated to marine and/or coastal biodiversity so that the MPAs enjoy a higher level of protection. Therefore, India, being a signatory to the CBD, has an obligation to come up with specific legislation dealing with MPAs in India.

Other significant reasons for having specific legislation are the implementation of **terrestrial management strategies** in marine spaces. The administrative framework established for terrestrial spaces in India is insufficient for maritime space administration and requirements. Since the Indian Forest Department's objective continues to be integrated with terrestrial conservation, their approach to administering protected areas reflects this. *Firstly*, the Indian Forest Department continues to prioritise the conservation of terrestrial components of MPAs, which is distinct from its historical role of preserving forests. *Second*, there is no indication of a department or organisation committed to conserving and managing marine regions. Notably, various segments of these marine zones are governed by various agencies, frequently with minimal cooperation and overlapping objectives and plans. Due to the absence of a central authority or coordinating body, the administration of this system becomes challenging.

Due to all the above-mentioned shortcomings, MPAs in India do not enjoy a higher level of protection. Therefore, India needs to enact specific legislation to overcome the shortcomings in the existing framework.