



# **The Paradox of Environmental Citizenship: Need for Private Participation to Promote Economic Growth and Environmental Protection**

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## **Abstract**

Article 51A (g) of the Constitution of India establishes that protecting and improving the natural environment is the moral and civic duty of every citizen. However, India's current legal framework paradoxically prevents citizens from fulfilling this constitutional duty. This paper critically examines the legal and institutional barriers embedded within India's environmental laws – namely the Indian Forest Act 1927, the Wildlife Protection Act 1972, the Forest (Conservation) Act 1980, and the Biological Diversity Act 2002— to argue that the citizen's role has been reduced from a proactive participant to a passive observer. Drawing on comparative legal experiences from countries such as South Africa, Costa Rica, and Australia, where environmental protection and livelihood generation go hand-in-hand in privately-owned conservation areas, this paper proposes the conceptual foundations of a 'Citizen Conservation and Livelihood Act' that would legally empower citizens to engage in conservation, entrepreneurship and biodiversity stewardship. It contends that true realisation of Article 51A (g) requires a legal paradigm shift from state monopoly over environmental governance, to participatory and incentive-driven ecological citizenship.

**Keywords:** Article 51A(g), Biodiversity, Environmental Conservation, Livelihood, Private Reserves

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## 1. Introduction

The term 'environment' 'includes water, air and land and the inter-relationship which exists among and between the inanimate entities and human beings, other living creatures, plants, micro-organisms, and property.'<sup>1</sup> Black's Law Dictionary defines environmental law as a collective body of rules and regulations, orders and statutes, constraints and allowances that are all concerned with the maintenance and protection of the natural environment of a country.<sup>2</sup> Article 48(A)<sup>3</sup> and Article 51A (g)<sup>4</sup> of the Indian Constitution envisions a participatory environmental ethic by mandating the State and its citizens to conserve and improve the natural environment.<sup>5</sup> Yet, more than over four decades since the insertion of Article 51A (g) in the 42nd Amendment to the Constitution, the legal landscape reflects an inherent contradiction- citizens are obligated to protect nature but are legally disabled from doing so in any meaningful economic or institutional sense. Environmental conservation in India is predominantly state-controlled,<sup>6</sup> with individuals relegated to the margins. This paradox — between constitutional duty and statutory disempowerment — forms the crux of this research.

The contemporary framework of Indian environmental law operates through command-and-control statutes inherited from the colonial administrative legacy, such as the Forest Act, 1927. While the jurisprudence of the Apex Court in these cases of *M.C. Mehta*<sup>7</sup> and *T.N. Godavarman Thirumulpad*<sup>8</sup> expanded the horizon of environmental rights under Article 21, it did little to democratise access to environmental governance. In the *Mehta*<sup>9</sup> case, the Apex Court said that law should change according to changing socio-economic norms, and if a law from the past appears outdated, the Court must evolve new law, so as to fulfil the requirements of

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<sup>1</sup> The Environment (Protection) Act, 1986, Act No. 29 of 1986, § 2(a).

<sup>2</sup> "Environmental Law: Definition, History, Principles, Examples," LLOYD LAW COLLEGE, <https://www.lloydlawcollege.edu.in/blog/environmental-law.html> (last visited Oct. 28, 2025).

<sup>3</sup> INDIA CONST. art. 48A.

<sup>4</sup> INDIA CONST. art. 51A.

<sup>5</sup> INDIA CONST. art. 48A.; INDIA CONST. art. 51A.

<sup>6</sup> Environment Protection Act, 1986 § 3.

<sup>7</sup> *M.C. Mehta and Anr. vs Union of India & Ors.*, AIR 1987 Supreme Court 1086 (Supreme Court 1986).

<sup>8</sup> *T.N. Godavarman Thirumulpad v. Union of India*, 1997 (2) SCC 267 (Supreme Court).

<sup>9</sup> *M.C. Mehta and Anr. vs Union of India & Ors.*, AIR 1987 Supreme Court 1086 (Supreme Court 1986).

a fast-changing society and keep up with the country's economic progress.<sup>10</sup> The *Godavarman*<sup>11</sup> case expanded the definition of 'forest' so as to include all types of forests, irrespective of ownership, and expanded environmental jurisprudence by merging domestic environmental jurisprudence with international environmental law. It proposed that the public participatory model be promoted for a more balanced approach towards development and environment protection, and which will help to address economic, environmental and social adversities in a cohesive manner.<sup>12</sup> This paper looks into how these legal regimes structurally preclude citizen-led conservation and explores the pathways to legal reform.

Countries such as South Africa,<sup>13</sup> South America (Latin America),<sup>14</sup> Australia,<sup>15</sup> etc. have given statutory recognition to citizen-led conservation in private protected areas and introduced Payment for Ecosystem Services, thereby enabling private land and forest owners to undertake sustainable commercial activities like eco-tourism, private parks, etc., which provide economic advantages to the owner, besides creating livelihood opportunities, while conserving the biodiversity and ecosystems of that area.<sup>16</sup>

This paper examines the constitutional, legislative provisions and judicial precedents for environmental protection, and the lacunae in the statutory framework in India for participatory environmental conservation. It also tries to understand the relation between environmental conservation and livelihood generation in achieving sustainable environmental stewardship. By comparing legislative measures with other countries that grant statutory recognition to environmental conservation in privately owned lands, this paper attempts to propose a legal framework for participatory

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<sup>10</sup> M.C. Mehta and Anr. vs Union of India & Ors., AIR 1987 Supreme Court 1086.

<sup>11</sup> T.N. Godavarman, (1997) 2 SCC at 267.

<sup>12</sup> Gayathri D. Naik, In Re: T.N. Godavarman Thirumulpad v Uoi [2024] INSC 997, 9 JOURNAL OF LAW AND PUBLIC POLICY, SOCIAL ACCOUNTABILITY FOR COMMONS (2025).

<sup>13</sup> J.K. Turpie, C. Marais & J.N. Blignaut, "The Working for Water Programme: Evolution of a Payments for Ecosystem Services Mechanism That Addresses Both Poverty and Ecosystem Service Delivery in South Africa," 65 ECOLOGICAL ECONOMICS 788 (2008), <https://www.sciencedirect.com/science/article/pii/S0921800907006167>; Ersin Esen, Fresh Look-Back at a Payment for Ecosystem Services (PES) Project in Uganda, UN ENVIRONMENTAL PROGRAMME (Aug. 3, 2016).

<sup>14</sup> Nelson Grima et al., "Payment for Ecosystem Services (PES) in Latin America: Analysing the Performance of 40 Case Studies," 17 ECOSYSTEM SERVICES 24 (2016).

<sup>15</sup> Kamaljit K. Sangha et al., "Payments for Ecosystem Services Opportunities for Emerging Nature-Based Solutions: Integrating Indigenous Perspectives from Australia," 66 ECOSYSTEM SERVICES (2024).

<sup>16</sup> Tuyet-Anh T. Le et al., Payments for Ecosystem Services Programs: A Global Review of Contributions towards Sustainability, 10 HELIYON e22361 (2024).

environmental governance in India that empowers citizens as ecological entrepreneurs. Participatory environmental governance and community-led initiatives, along with state initiatives, can help sustainable conservation efforts cover a bigger area and can help achieve economic growth through environmental protection. Besides this, participatory environmental stewardship can re-mould citizens into active custodians of environmental and economic sustainability. Development and conservation are often perceived as opposites in both political and public discourse. Development is frequently linked to environmental degradation, while the preservation of forests is viewed as requiring a sacrifice of economic progress through the conventional lens of development. However, environmental stewardship demonstrates that economic development and environment conservation and protection can co-exist. Sustainable management of the earth's natural resources not only safeguards the environment but also contributes to long-term economic growth and resilience. This balanced approach must be strengthened and supported through effective legislation.

This paper is exclusively based on both primary and secondary data. The primary data is gathered from field observations. Secondary data is collected mostly from textbooks, dictionaries, journals, encyclopaedias, Constitution of India and relevant statutes, research articles, newspaper articles, and webliography. The methodology focuses on assessing the need for a Citizen Conservation and Livelihood Act for India. It starts with understanding the lacunae in the existing legal framework, with an evaluation of landmark judicial decisions necessitating such an enactment.

## **2. Lacunae in the Legislative Framework for Environmental Protection**

The statutory environmental framework in India, which includes the Constitution and the various environmental Acts namely, The Indian Forest Act, the Wildlife (Protection) Act, the Forest (Conservation) Act, and the Biological Diversity Act, contains provisions for environmental protection. However, there are no provisions enabling citizen participation in environmental conservation. The Wild Life (Protection) Act, 1972 generally prohibits private citizens from engaging in commercial activities involving protected wildlife and specified plants. While Section 17B<sup>17</sup> permits the collection, cultivation, or transport of specified plants for limited purposes such as scientific research, education, and propagation, it explicitly excludes commercial exploitation.

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<sup>17</sup> The Wildlife (Protection) Act, 1972, Act No. 53 of 1972, Acts of Parliament, 1972 (India).

This creates a practical challenge for conservation. Effective habitat restoration, species propagation, and long-term stewardship require sustained financial resources. However, by prohibiting commercial use while permitting only narrowly defined non-commercial activities, the Act provides no clear mechanism through which private landowners or conservation enterprises can generate revenue to support these efforts. Consequently, any attempt to recover costs or develop economically sustainable conservation models may be left to the interpretation of regulatory authorities, creating uncertainty over whether such activities constitute prohibited commercial use.

Although this framework reflects the Act's objective of preventing the commercialization and exploitation of wildlife, it may inadvertently discourage private investment in conservation. This appears to be in tension with the broader constitutional objective embodied in Article 48A<sup>18</sup> of the Constitution, which directs the State to protect and improve the environment and safeguard forests and wildlife. Without a clear legal framework for conservation-based enterprises on private lands, the Act may limit opportunities to mobilize private resources in support of biodiversity conservation.

## 2.1. Constitutional Foundations: Article 51A (g) and Environmental Citizenship

Article 48A speaks of safeguarding and improving the environment, forests and wildlife of the country.<sup>19</sup> Article 51A (g) makes it a fundamental duty of citizens to preserve and improve the environment, including lakes, forests, rivers, and wildlife.<sup>20</sup> Read along with Arts. 48A and 21 of the Constitution, it forms the constitutional bedrock for environmental protection.

In the *Subhash Kumar* case,<sup>21</sup> a Public Interest Litigation (PIL) filed for the prevention of pollution of the Bokaro River, Bihar against discharge of slime by the Tata Iron & Steel Co. plants, the Supreme Court said that citizens have a collective duty to protect the environment for the present as well as future generations. The Court further stated that Art. 32<sup>22</sup> aims to protect and enforce the citizens' fundamental rights, and that every citizen has a right to recourse under it in case of any air/water pollution, adversely affecting

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<sup>18</sup> CONST. arts. 48A, 51A.

<sup>19</sup> CONST. art. 48A.

<sup>20</sup> CONST. art. 51A.

<sup>21</sup> *Subhash Kumar v. State of Bihar*, AIR 1991 Supreme Court 420; (1991) 1 SCC 598 (Supreme Court).

<sup>22</sup> CONST. art. 32.

quality of life. The Apex Court also stated that right to life under Article 21<sup>23</sup> encompasses the right to a clean environment, and the right to unpolluted water and air.<sup>24</sup> Although the judiciary has read environmental protection into fundamental rights, there is a conspicuous lack of mechanisms in the form of legislative enactments enabling citizen participation. The outcome of this is a structure where the citizen bears a duty without any corresponding right or institutional framework to act upon.

Part III and IV<sup>25</sup> of the Constitution of India make it a duty of citizens and the State to protect forests and wildlife. However, environment related Acts such as Wildlife Act, Biodiversity Act, Forest Act, etc. all entrust powers of management and protection of wildlife with the Government, with no provisions permitting breeding of wildlife as part of eco-tourism by private forest owners or by communities. There is no legislation which permits citizens or communities to carry on wildlife, birds or insect breeding as part of eco-tourism activities in privately owned forest or other areas unlike other countries such as Australia, Africa, and South America, which are discussed later in this article. This results in a legislative structure where a citizen is duty bound to protect the environment and wildlife (Art. 48A and Art. 51A(g) of the Constitution), but is prohibited from doing so on any land or forest privately owned by him, by the Wildlife (Protection) Act.<sup>26</sup>

## 2.2. Statutory and Institutional Barriers to Environmental Legislation

A review of India's principal environmental statutes reveal that the legal system largely lacks provisions for active citizen participation. All the environmental legislation centralises control in State hands, rendering citizens dependent on bureaucratic discretion.

**2.2.1 The Indian Forest Act, 1927**, enacted during the colonial period, primarily serves revenue and administrative interests. Its classification of 'reserved' and 'protected' forests effectively excludes local communities and private citizens from forest management.<sup>27</sup> Citizens who own forest land face stringent restrictions on felling, harvesting, or even maintaining private plantations.<sup>28</sup> The Act thus criminalises forms of sustainable resource use that could otherwise contribute to conservation-based livelihoods. The penalties and procedures given in this Act aimed to extend the state's control

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<sup>23</sup> CONST. art. 21.

<sup>24</sup> *Subhash Kumar*, AIR 1991 SC at 420.

<sup>25</sup> CONST. pts. III-IV.

<sup>26</sup> Wild Life (Protection) Act, 1972.

<sup>27</sup> *Biodiversity & Environment, Indian Forest Act, 1927*, <https://www.drishtias.com/to-the-points/Paper2/indian-forest-act-1927> (last visited Oct. 28, 2025).

<sup>28</sup> Indian Forest Act, 1927, No. 16, Acts of Parliament, 1927 (India).

over forests as well as diminish the status of people's rights to forest use.<sup>29</sup> The Act alienated the village communities from their age-old symbiotic association with forests.

**2.2.2 The Wildlife (Protection) Act, 1972,**<sup>30</sup> while instrumental in establishing sanctuaries and national parks (Chapter IV), adopts a prohibitive rather than participatory model. It lacks provisions for private ownership or propagating or breeding of wildlife, even for conservation purposes. Plants, and wild animals are considered Government property by the Act. The Act creates a state monopoly over conservation,<sup>31</sup> preventing citizens from developing private reserves or eco-enterprises akin to South Africa's conservation parks. Private Land Conservation (PLC), and the establishment of Privately Protected Areas (PPAs) in particular, in South Africa, has proved to be a cost-effective tool for expansion of protected and conservation areas, besides reducing the burden on national governments.<sup>32</sup>

**2.2.3 The Forest (Conservation) Act, 1980,** centralises decision-making further by requiring Union Government approval for any forest de-reservation or using forest land for any non-forest purpose.<sup>33</sup> While intended to curb deforestation, in practice, many times, it often favours large industrial projects over small-scale community initiatives.<sup>34</sup> Such cases reflect a systemic bias toward corporate actors while marginalising local conservation efforts.

**2.2.4 Finally, The Biological Diversity Act, 2002,** theoretically recognises the importance of sustainable resource use and benefit sharing. However, the Act's implementation is opaque, and examples of equitable benefit-sharing mechanisms are scarce, due to a lack of awareness among local communities and stakeholders, leading to non-compliance and inadequate implementation.<sup>35</sup> although mandated by the Act, the users have hardly any say in determining the 'Mutually Agreed Terms'.<sup>36</sup>

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<sup>29</sup> Biodiversity & Environment, Indian Forest Act, 1927, *supra* note 31.

<sup>30</sup> The Wildlife (Protection) Act, 1972.

<sup>31</sup> The Wildlife (Protection) Act, 1972, *supra* note 21.

<sup>32</sup> Dale R. Wright, Candice M. Stevens, D & Daniel Marnewick, 'Privately Protected Areas and Biodiversity Stewardship in South Africa: Challenges and Opportunities for Implementation Agencies,' 24 PARKS: THE INTERNATIONAL JOURNAL OF PROTECTED AREAS AND CONSERVATION, (2018).

<sup>33</sup> The Forest (Conservation) Act, 1980, Act No. 69 of 1980, § 2.

<sup>34</sup> Narmada Bachao Andolan v. Union of India & Ors., (2000) 10 S.C.C. 664 (Supreme Court).

<sup>35</sup> Sakshi Gupta, *Biodiversity Act, 2002, Salient Features, Objectives, Limitations*, (2023).

<sup>36</sup> Biological Diversity Act, 2002, No. 18, Acts of Parliament, 2003 (India).

The reasons for this are:

### **1. Terms are largely determined by the authorities**

Although the Act refers to ‘mutually agreed terms,’ in practice the National Biodiversity Authority often prescribes standard conditions and benefit-sharing obligations. Applicants have limited scope to negotiate these terms.<sup>37</sup>

### **2. Unequal bargaining power**

The regulatory authority possesses the legal power to grant or refuse approval. As a result, applicants often accept the prescribed conditions rather than negotiate them.<sup>38</sup>

### **3. Limited participation of all stakeholders**

In many cases, local communities, Biodiversity Management Committees, and resource users do not directly participate in negotiating the terms. Instead, negotiations are conducted primarily through the statutory authority.<sup>39</sup>

### **4. Standardised benefit-sharing guidelines**

The Authority follows notified guidelines for determining benefit-sharing percentages and other conditions. These predetermined formulas reduce the flexibility that the phrase ‘mutually agreed’ appears to promise.<sup>40</sup>

### **5. Regulatory uncertainty**

Since the authority has considerable discretion over approvals and conditions, applicants may avoid challenging or negotiating terms for fear of delaying or jeopardizing approval.

The concept of Mutually Agreed Terms implies a genuine negotiation in which all parties can influence the outcome.<sup>41</sup> If one party – typically the regulatory authority – effectively dictates the conditions, then the agreement becomes more of a regulatory contract than a negotiated one.

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<sup>37</sup> Esha Joshi & Neema P. Broome, *Access and Benefit Sharing Regulations Impinge on the Rights of Local Communities*, MONGABAY (June 16, 2025).

<sup>38</sup> *Id.*

<sup>39</sup> Joshi & Broome, *Access and Benefit Sharing Regulations*, *supra* note 37.

<sup>40</sup> *Access and Benefit Sharing In India A Handbook For Researchers*, [http://nbaindia.org/uploaded/pdf/IDB\\_ABS.pdf](http://nbaindia.org/uploaded/pdf/IDB_ABS.pdf) (last visited June 29, 2026).

<sup>41</sup> *National Biodiversity Authority Notification*, NATIONAL BIODIVERSITY AUTHORITY (Apr. 25, 2025).



The earlier Access Benefit Sharing (ABS) Regulation, 2014 mandated sharing 95% of the profits with the benefit claimers (based on the purchase price). However, the ABS Regulation, 2025 mandates sharing only 85-90% of the amount received (based on the person/entity's annual turnover) even if more than one biological resource are used, and the benefit sharing as well as the upfront payment amount is decided by the Authority.<sup>42</sup> However, there are no clear provisions on the mode of sharing the money with the indigenous or local community. Also, there is very less documentary proof of the money spent on livelihood of the local community and bio-resources conservation.<sup>43</sup> As per the 2014 Regulation all applicants were obligated to share benefits; however, the 2025 Regulation exempts persons with a turnover less than 5 crores. Biodiversity Management Committees, constituted under the Act, lack legal empowerment to impose penalties for non-compliance, leaving traditional knowledge holders without real benefits or rights.

### 3. Judicial Engagement and Its Limitations

Environmental jurisprudence in India has evolved mainly through PIL.<sup>44</sup> Through its judgements, the Courts have upheld environmental principles such as the Precautionary principle,<sup>45</sup> the Polluter Pays principle,<sup>46</sup> the principle of Absolute liability, and Sustainable Development.<sup>47</sup> In landmark cases such as *M.C. Mehta*,<sup>48</sup> the court, through environmental and judicial activism, evolved the absolute liability principle as it did not find applicability of the rule of strict liability, thereby reinstating the epistolary jurisdiction and reiterating the faith of the common man in the judiciary. In the *Vellore* case<sup>49</sup>, a landmark PIL filed against contamination of the Palar River by industries and tanneries in Tamil Nadu, discharging untreated sewage into the open agricultural lands. The Court applied the Precautionary and Polluter Pays principle, and directed the constitution of an authority under the EPA,

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<sup>42</sup> *Id.*

<sup>43</sup> Dr. Raju Narayan Swamy & Saloni Kumari, "Benefit Sharing" Regime in India Regarding the Use of Biological Resources-An Alternative Model, 1 NUJS LAW REVIEW, <https://nujslawreview.org/index.php/lr/article/download/156/29> (last visited Jan. 7, 2026).

<sup>44</sup> 2021 S. DIVAN & A. ROSENCRAZ, ENVIRONMENTAL LAW AND POLICY IN INDIA (3rd ed.).

<sup>45</sup> Aishwarya Agarwal, *Vellore Citizens Welfare Forum v Union of India*, LAWBOOMI (Mar. 18, 2024).

<sup>46</sup> *Indian Council for Enviro-Legal Action v. UOI*, AIR 1996 SC 1446; (1996) 3 SCC 212; AIR 1996 SUPREME COURT 1446 (Supreme Court of India).

<sup>47</sup> *N.D. Jayal v. Union of India*, AIR 2004 SC 867 (Supreme Court of India).

<sup>48</sup> *M.C. Mehta and Anr. vs Union of India & Ors.*, AIR 1987 Supreme Court 1086.

<sup>49</sup> *Vellore Citizens' Welfare Forum v. Union of India*, AIR 1996 Supreme Court 2715, 1996 (5) SCC 647 (Supreme Court of India).

imposed fines on tanneries, and directed the closure of non-complying units.<sup>50</sup>

### Vellore District Monitoring Committee case

Subsequent to the *Vellore*<sup>51</sup> case decision, by an award in 2001, the government appointed authority identified the affected people and determined the compensation payable. It stated that the polluting industries would continue to be liable to compensate the affected people until the ecological damage caused was undone. Ultimately when the appeal went to the Supreme Court in 2025, keeping the Public Trust Doctrine, Polluter Pays, Sustainable Development Principle and Principle of Absolute Liability in mind, the Apex Court upheld the imposition of compensation and ordered for steps to be taken for reversal of the ecological damage caused.<sup>52</sup>

Another example where the Supreme Court upheld the environmental principles is the *Futala Lake case*<sup>53</sup>, where a PIL was filed opposing constructions in and around the lake in the form of a musical fountain and a Viewer's Gallery, etc. on its bank. The petitioner contended that these structures were of a permanent nature, and hence illegal as the lake fell under definition of a 'wetland', and deserved protection. The Court in its findings said that the lake was a man-made structure and did not fall under definition of a 'wetland', also holding at the same time that the lake must exist. The Apex court, applying the Precautionary Principle and the Doctrine of Public Trust, said that the principles applied to natural bodies as well as man-made structures which are eco-friendly, created to promote environment and ecology, and thereby upheld the decision of the High Court. The Court further directed the respondent not to undertake permanent constructions near the lake, and in the interest of the Principle of Sustainable Development, directed the respondents to ensure that activities do not damage the lake and to properly and hygienically maintain the structures erected for beautification and recreation.<sup>54</sup>

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<sup>50</sup> Agarwal, *supra* note 50.

<sup>51</sup> Vellore Citizens' Welfare Forum v. Union of India, AIR 1996 Supreme Court 2715, 1996 (5) SCC 647 (Supreme Court of India).

<sup>52</sup> Vellore District Environment Monitoring Committee v. The District Collector, Vellore District & Ors., with All India Skin and Hide Tanners and Merchants Association v. Loss of Ecology (Prevention & Compensation Authority) and Ors., 2025 INSC 131 (Supreme Court).

<sup>53</sup> Swacch Association, Nagpur v. The State of Maharashtra, 2025 INSC 1199 (Supreme Court of India 2025); Simranjeet, 'Not a Wetland but a Man-Made Waterbody'; *Supreme Court Dismisses Plea Challenging Construction in and around Futala Lake in Nagpur*, SCC ONLINE TIMES (Oct. 9, 2025).

<sup>54</sup> *Id.*

All these environmental principles focus on either preventing the harm or punishing the offender by affixing liability or imposing penalty. Today there is a dire need for these environmental doctrines to be interpreted in the light of the current environmental threats. To achieve Sustainable Development, there is a need to encourage citizens to participate in environment protection as conservation actors, while promoting economic development at the same time.

The *Subhash Kumar*<sup>55</sup> case was the first of the many cases where the court held that Art. 21 includes right to a clean environment. In the *Ranjitsinh*<sup>56</sup> case, filed for protecting the critically endangered species, the Great Indian Bustard and the Lesser Florican, which are facing threats in the form of hunting habitat loss, etc., the Court, besides setting up enclosures, insulation breeding centres and satellite monitoring, ordered identifying alternatives for laying of power lines for conservation and protection of the species. The Court also stated that the right to be free from the adverse effects of climate change and the right to a healthy environment are two sides of the same coin, originating from Art.14 and 21 of the Constitution, highlighting the need to frame it as a distinct right by itself.<sup>57</sup> The then Chief Justice of India D.Y. Chandrachud also has observed that to fully realise the right to life there is a need for a clean and stable environment, unaffected by the unpredictability of climate change.<sup>58</sup>

The above cases have constitutionalised environment protection by a broad interpretation of Article 21. However, these cases perpetuate a judicially managed environmentalism that mirrors the State's paternalistic approach. Citizens participate only as petitioners, not as rights-bearing conservation actors. The courts have enforced environmental duties but have not articulated a framework for citizen-led environmental enterprise.

#### 4. Comparative Perspectives: Lessons from Global Jurisdictions

Worldwide discussions on sustainable development emphasise environmental conservation along with livelihood integration. The United Nations' Sustainable Development Goals, particularly Goal 13 (Climate Action), Goal 14 (Life below Water), and Goal 15 (Life on Land), are

<sup>55</sup> Subhash Kumar v. State of Bihar, AIR 1991 Supreme Court 420; (1991) 1 SCC 598 (Supreme Court).

<sup>56</sup> M.K. Ranjitsinh v. Union of India, 2024 SCC OnLine SC 570; 2024 INSC 280 (Supreme Court 2024)

<sup>57</sup> *Id.*

<sup>58</sup> Parth Chhapolia, *A Breath of Fresh Air: Indian Supreme Court Declares Protection from Climate Change a Fundamental Right*, HEALTH AND HUMAN RIGHTS JOURNAL, HARVARD UNIVERSITY (2025).

interrelated with Goal 1 (Poverty Reduction) and Goal 8 (Decent Work and Economic Growth). The SDGs lay emphasis on balancing the three aspects of sustainable development- economic growth, environmental sustainability, and social inclusion.<sup>59</sup> The UN has marked 2021- 2030 as the decade for ecosystem restoration and asserts that there has never been a more urgent need to restore damaged ecosystems than now, and highlighted the need to prevent, halt and reverse the degradation of ecosystems worldwide.<sup>60</sup> The Global Payment for Ecosystem Services plan aims to undo the alarming extent of biodiversity loss and deterioration of ecosystems.<sup>61</sup> As part of the Paris Agreement on climate change entered into on 12<sup>th</sup> December, 2015 at the UN Climate Change Conference in Paris, India has pledged to produce a carbon sink of 2.5 to 3 billion tonnes equivalent of carbon dioxide within 2030 by increasing forest and tree cover.<sup>62</sup>

Many countries worldwide, by giving statutory recognition to environmental protection through private ventures, have successfully blended private participation with environmental protection in PPA), thereby encouraging economic progress and preserving biodiversity and ecology at the same time. PPAs, also called Private Reserves, Ecological Reserves or Nature Reserves, are established and supervised by individuals, companies and other private bodies, with an aim to preserve biodiversity, ensure protection of certain endangered species, or of entire habitats and sizes of PPAs vary from less than 1 ha to thousands of ha.<sup>63</sup>

The International Union for Conservation of Nature (IUCN) defines a privately protected area as:

‘a protected area, under private governance of:

- i. individuals and groups of individuals
- ii. non-governmental organisations (NGOs)

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<sup>59</sup> *Transforming Our World: The 2030 Agenda for Sustainable Development*, <https://sdgs.un.org/2030agenda>, (last visited Oct. 31, 2025); *SDG Guide, "Chapter 1: Getting to Know the Sustainable Development Goals,"* <https://sdg.guide/chapter-1-getting-to-know-the-sustainable-development-goals-e05b9d17801> (last visited Oct. 28, 2025).

<sup>60</sup> *UN Proclaims 2021-2030 as Decade of Ecosystem Restoration*, INTERNATIONAL CLIMATE INITIATIVE (IKI) (Mar. 19, 2019).

<sup>61</sup> Katažyna Mikšaa et al., *Ecosystem Services and Legal Protection of Private Property. Problem or Solution?*, 1 GEOGRAPHY AND SUSTAINABILITY 173.

<sup>62</sup> Manu Moudgil, *A Forest to My Name*, MONGABAY (July 19, 2019).

<sup>63</sup> Benedikt Hora, Carla Marchant & Axel Borsdorf, *Private Protected Areas in Latin America: Between Conservation, Sustainability Goals and Economic Interests. A Review*, 10 MANAGEMENT & POLICY ISSUES (2018).

- iii. corporations – both existing commercial companies and sometimes corporations set up by groups of private owners to manage groups of PPAs
- iv. for-profit owners
- v. research entities (e.g. universities, field stations)
- vi. religious entities.<sup>64</sup>

#### 4.1. African Countries

South Africa's National Environmental Management Act (1998) (NEMA) provides for co-operative, environmental governance<sup>65</sup> and recognises private game reserves and community conservancies as legitimate conservation entities.<sup>66</sup> NEMA is a comprehensive legislation of environmental conservation in South Africa. Section 24 of South Africa's Constitution states that everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; secure sustainable development and sustainable use of natural resources, while promoting justifiable economic and social development. There are many Privately Protected Areas (PPAs) in South Africa. The term 'private' here includes ownership by individuals, other profit and non-profit companies, tourism operators, religious institutions and research bodies.<sup>67</sup>

Tanzania has Privately Protected marine and terrestrial areas. The first Marine Protected Area in Tanzania, the Chumbe Island Coral Park Ltd., was an initiative of a private investor, who was a development worker.<sup>68</sup> The terrestrial PPAs, such as Mwiba (40,000 ha) and Kasulu (157,500 ha), are supported by the Wildlife Conservation Act No 5 of 2009.<sup>69</sup> The Sinya Wildlife Conservancy, a private wildlife reserve in Tanzania covering 223 sq.

<sup>64</sup> IUCN WCPA Privately Protected Areas and Nature Stewardship Specialist Group, IUCN, <https://iucn.org/our-union/commissions/group/iucn-wcpa-privately-protected-areas-and-nature-stewardship-specialist> (last visited Mar. 3, 2026).

<sup>65</sup> National Environmental Management Act, 107 §§ 2(4), 23(2)(d) (1998).

<sup>66</sup> Alta De Vos, et al., "The Dynamics of Proclaimed Privately Protected Areas in South Africa over 83 Years," 12: e12644 CONSERVATION LETTERS: A JOURNAL OF THE SOCIETY FOR CONSERVATION BIOLOGY.

<sup>67</sup> S. Afr. Const. § 24.

<sup>68</sup> SUE STOLTON & NIGEL DUDLEY, PROGRAM ON AFRICAN PROTECTED AREAS & CONSERVATION (PAPACO), PRIVATE GOVERNANCE OF PROTECTED AREAS IN AFRICA: CASE STUDIES, LESSONS LEARNT AND CONDITIONS OF SUCCESS, IUCN, [https://papaco.org/wp-content/uploads/2015/04/PAPACO-study-19\\_GOVERNANCE-STUDY-2-FINAL-REPORT-PRIVATE.pdf](https://papaco.org/wp-content/uploads/2015/04/PAPACO-study-19_GOVERNANCE-STUDY-2-FINAL-REPORT-PRIVATE.pdf) (last visited Nov. 28, 2025).

<sup>69</sup> *Id.*

kms, bordering Kenya's Amboseli National Park, is located on the west of Mt. Kilimanjaro. Commercial activities here include birdwatching, walking safaris, long treks in the foothills of Mt. Kilimanjaro, a visit to a local Maasai village and interacting with the locals there, etc.<sup>70</sup>

Namibia has a centralised register having a list of private game parks and nature reserves established under its Nature Conservation Ordinance of 1975, Section 22. Although Namibia's Ministry of Environment and Tourism (MET) does not have an official definition for such PPAs, records show the existence of 153 private game parks and nature reserves covering a total area of 13,116 km<sup>2</sup>, which is approximately 1.6 per cent of the land surface of Namibia. Gondwana Cañon Park in the Karas Region of the country, covering an area of 126,000 ha, is an example where the owner, a company, has all rights over management of the area, except punitive rights.<sup>71</sup> The NamibRand Nature Reserve, located in southern Namibia, one of the largest private not-for-profit nature reserves in Southern Africa, covering an area of 202,200 ha, was established for the protection and preservation of the south-west Namib Desert's unique ecology and wildlife.<sup>72</sup>

The Berenty Private Reserve in Madagascar is a private forest reserve along the Mandrare River, South of Madagascar.<sup>73</sup> The De Heaulme family, who owns the Berenty estate, founded a sisal plantation along the Mandrade River in agreement with the local Tandroy tribe, and has conserved 1000 ha of private forest as reserves to date. It is one of Madagascar's prime tourist destinations, and for the past 40 years, it has been the focal point of scientific research on lemurs.<sup>74</sup>

In Gambia, Privately Protected Areas are restricted to forest areas covered under the Department of Forestry (DoF). The Koofung Private Forest Reserve, located in Gunjur, the West Coast area of Gambia, was established in 1990<sup>75</sup> and protects around 25 ha of coastal forest. The private land owner, Dr. Bakary Touray,<sup>76</sup> created the private forest with the aim of conserving

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<sup>70</sup> *Tanzania Wildlife Conservancies*, AFRICAL SPICE SAFARIS, <https://africanspicesafaris.com/tour/tanzania-wildlife-conservancies/#:~:text=Sinya%20Wildlife%20Conservancy%20is%20a,adjacent%20to%20Amboseli%20in%20Kenya>. (last visited Jan. 5, 2026).

<sup>71</sup> STOLTON AND DUDLEY, *supra* note 70.

<sup>72</sup> *Id.*

<sup>73</sup> STOLTON AND DUDLEY, *supra* note 70.

<sup>74</sup> Alison Jolly et al., *Berenty Reserve: A Research Site in Southern Madagascar* 32 (2006).

<sup>75</sup> SUE STOLTON & NIGEL DUDLEY, "PRIVATE GOVERNANCE OF PROTECTED AREAS IN AFRICA: CASE STUDIES, LESSONS LEARNT AND CONDITIONS OF SUCCESS" (2015).

<sup>76</sup> *Kofung Private Forest - The Home of Indigenous Flora and Fauna*, MY GAMBIA, May 2023.

the habitat, indigenous tree species, medicinal species, and wildlife species having their home in the forest, for the benefit of the future generations. The private forest also includes an Eco-Lodge for visitors wishing to relax amidst indigenous greenery.<sup>77</sup>

The Odzala-Kokoua National Park, located in the north-west of the Republic of Congo, is a park of untouched wilderness, with high biological diversity, covering an area of 13,546 km<sup>2</sup>, protecting sizeable and well-preserved savannah habitats and a forest ecosystem, with high concentrations of lowland gorillas. The establishment of the park dates back to 1935, during the French Colonial period. In November 2010, the NGO African Parks took over the management of Odzala-Kokoua in partnership with the government of the Republic of Congo.<sup>78</sup>

#### 4.2. South America

Brazil, with an intention to delay deforestation and fragmentation of habitat, has enacted regulations governing the use of private land. Brazil passed the Native Vegetation Protection Law, or New Forest Code, in 2012 as an improvement to the original Brazilian Forest Code of 1965, which, like the original Code, aims to ensure conservation of natural habitats and biodiversity by encouraging forest conservation on privately owned lands.<sup>79</sup> Brazil has a flourishing system of privately-protected areas, with around 1500 Private Natural Heritage Reserves (RPPN, from its Portuguese name) covering 772000 hectares, making Brazil home to some of the largest privately-protected areas worldwide. Activities in connection with scientific research, tourism, recreation and education are allowed on such lands, provided they do not interfere with the resource protection within the PPA. Such PPAs also play a significant role in the provision and protection of ecosystem services.<sup>80</sup>

Columbia has over 540 private parks covering a total of 70 000 ha. 83 PPAs, which are situated in the Andean region and are managed mainly by private individuals. 144 PPAs together have formed a network called the Asociación Red Colombiana de Reservas Naturales de la Sociedad Civil (RESNATUR) in 1993, co-financed by the WWF and the Foundation for Higher Education (FES).<sup>81</sup>

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<sup>77</sup> STOLTON AND DUDLEY, *supra* note 70.

<sup>78</sup> *Id.*

<sup>79</sup> Amy Zuckerwise, *Private Forests, Public Good: Threats to Forest Protection Laws Endanger Wildlife*, YALE ENVIRONMENTAL REVIEW (June 18, 2019).

<sup>80</sup> *Private Natural Heritage Reserves, a Brazilian Success Story*, IUCN (Sept. 3, 2018).

<sup>81</sup> Hora, Marchant, and Borsdorf, *supra* note 64.

Chile is a remarkable example of a country encouraging private protected initiative. It has 308 PPAs, encompassing a huge 1651916 ha, or 2.1 % of Chile's surface area, together forming the Association of Conservation Initiatives in Private Areas and Indigenous Territories of Chile which includes owners, users of private lands or indigenous people conserving and making sustainable use of renewable natural resources and biodiversity. In 2016, Chile passed a law recognising the right of conservation, giving a private land owner the right to preserve their environmental heritage.<sup>82</sup>

Costa Rica's legislation traditionally supports the setting up of privately-owned protected areas. The Wildlife Conservation Law<sup>83</sup> promotes the establishment of national wildlife refuges on government-owned and private properties. The Forestry Law<sup>84</sup> permits landowners to voluntarily declare their land as a protected forest or the government to acquire land in the public interest and establish a protected forest. Property owners often conserve a part of their land for agriculture and ecotourism without officially declaring it as a privately protected area. Some are also associated with the Red Costarricense de Reservas Naturales Privadas, the Costa Rican Network of Private Nature Reserves, which gives them the benefit of being part of a much larger regulatory organisation without officially registering their property with the state government.<sup>85</sup>

Costa Rica's Payment for Ecosystem Services (PES) program compensates private landowners for maintaining forest cover. The PES is an unprecedented financial program in the country and the entire region, promoting forest ecosystem conservation and curbing the degradation of land. The landowners are paid outright for the environmental services produced by their lands by adopting sustainable land-use and forest management methods. During the 1970s and 1980s, large-scale deforestation in Costa Rica reduced its forest cover to 25%. The introduction of the PES program helped Costa Rica become one of the pioneers in environmentally sustainable development.<sup>86</sup>

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<sup>82</sup> *Id.*

<sup>83</sup> Wildlife Conservation Law No. 7317, art. 7(c) (Costa Rica 1998).

<sup>84</sup> Forestry Law, Law No. 7575 (Costa Rica) art. 2 (1996).

<sup>85</sup> Fabiano C. & Ahmed H., *International Outlook for Privately Protected Areas: Costa Rica Country Profile*, [https://landconservationnetwork.org/wp-content/uploads/2022/09/Costa20Rica20Country20Profile20on20Privately20Protected20Areas\\_7\\_24\\_2019-1.pdf](https://landconservationnetwork.org/wp-content/uploads/2022/09/Costa20Rica20Country20Profile20on20Privately20Protected20Areas_7_24_2019-1.pdf) (last visited Jan. 5, 2026).

<sup>86</sup> "Payments for Environmental Services Program | Costa Rica," UNITED NATIONS CLIMATE CHANGE, <https://unfccc.int/climate-action/momentum-for-change/financing-for-climate-friendly-investment/payments-for-environmental-services-program>, (last visited Oct. 31, 2025).



The Mexican government legally certified the first PPA in 2002. By June 2023, these PPAs covered a total of 718526 ha, which includes 175006 ha of private land, 9860 ha of public property and 486082 ha of community lands conserved by indigenous people and local communities.<sup>87</sup> PPAs in Mexico are formed after government approval and are managed mostly by private landowners. Also, there are private Natural Reserves, formed without government approval, which have the advantage of providing diverse environmental services.<sup>88</sup>

### 4.3. Australia

Although Australia is one of the highest-level biodiversity hotspots of the world, it accounts for around 40% of threatened ecological communities listed nationally. There has been a 20% increase in the threatened ecological communities during the five years ending June 2021, which are mostly in regions altered for development or agriculture purposes.<sup>89</sup> New South Wales faced environmental issues such as salinity, degraded water quality, decrease in forest cover and biodiversity, etc., besides threatening flora, fauna, and habitats,<sup>90</sup> while its carrying capacity decreased to 29% of its original natural level as compared to the time of its colonisation.<sup>91</sup> To counter this, Australia started the Biodiversity Banking and Offsets Scheme with an aim to introduce market-based incentives which promotes conservation and reduced biodiversity impacts. This is a voluntary offset scheme aimed at negating the impacts of development on biodiversity.<sup>92</sup> 'Biodiversity banking', also called 'conservation banking' or 'mitigation banking,' is a system for mitigating environmental impacts of a project off-site, on a separate piece of land, known as 'biobank sites.' Managing the biobank site implies either improving or preserving the overall biodiversity values of the site by the landowners.<sup>93</sup> Developers then purchase matching biodiversity 'credits' from the owner of the biobank site, and after minimising and mitigating the on-site impacts, offset the development site impacts.<sup>94</sup> The

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<sup>87</sup> Juan E. Bezaury-Creel, *Privately Protected Areas in Mexico, a 2012–2023 Update*, FRONTIERS IN CONSERVATION SCIENCE (2024).

<sup>88</sup> Hora, Marchant, and Borsdorf, *supra* note 64.

<sup>89</sup> Steven Cork, Paul Sattler & Jason Alexandra, *Biodiversity*, AUSTRALIA STATE OF THE ENVIRONMENT 2021 (2007).

<sup>90</sup> Sasha Rodricks, *Biodiversity Banking and Offset Scheme of New South Wales (NSW)*, GIST, <https://www.cbd.int/financial/offsets/australia-offsetnsw.pdf> (last visited Nov. 28, 2025).

<sup>91</sup> *Environment in Freefall: NSW State of the Environment Report "Truly Alarming,"* NATURE CONSERVATION COUNCIL (June 26, 2025).

<sup>92</sup> Rodricks, *supra* note 90.

<sup>93</sup> *Id.*

<sup>94</sup> Rodricks, *supra* note 90.

Biodiversity Banking and Offsets Scheme thus enable individuals to trade credits for habitat restoration.<sup>95</sup>

These examples set by other countries for environmental protection and economic development through statutory backing for private participation demonstrate that conservation and commerce need not be antithetical.

## 5. Strengths of Private Reserves

Private reserves offer many advantages: economic, ecological, social, etc. Providing statutory protection to them will help in ecology and biodiversity protection, besides generating income and providing livelihood and job opportunities to local youth.

1. Ecological considerations: Private reserves provide ecological services such as water production, air and water purification, climate control, and fulfil social functions of recreation, bioprospecting use, are home to migratory birds requiring small and temporary habitats, and help visitors connect with nature on a deeply emotional or spiritual level.

One key strength of private reserves is that they help to preserve biodiversity, as well as rare and endangered species. Reserves are biological islands preserving the last remains of a fast-disappearing habitat.<sup>96</sup> In central USA, the Spring Hill Ranch, owned and developed by Steven Jones and his wife in 1878, was a private reserve, which acted as a buttress protecting a large area of rare and valuable habitat. It was later sold multiple times to different owners, and was known as the Bar Z ranch in the 1950s, when it was acquired by the Nature Conservancy which, along with the National Park Service, started the Tallgrass Prairie National Preserve and made it a formal park.<sup>97</sup> Private reserves are an excellent means of ecological restoration. One third of Colombia's 108 ecological restoration projects, were done on indigenous territories and privately owned areas.<sup>98</sup>

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<sup>95</sup> "Generate and Sell Biodiversity Credits," ENVIRONMENT AND HERITAGE, NSW GOVERNMENT, <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/biodiversity-stewardship-agreement/generate-sell-credits>, (last visited Oct. 31, 2025).

<sup>96</sup> Jeffrey A. Langholz & James P. Lassoie, *Perils and Promise of Privately Owned Protected Areas* JEFFREY A. LANGHOLZ AND JAMES P. LASSOIE, 51 *BIOSCIENCE* 1079 (2001).

<sup>97</sup> David Sachs, *Spring Hill Ranch*, SAH ARCHIPEDIA (2012).

<sup>98</sup> Heather Bingham et al., *Privately Protected Areas: Advances and Challenges in Guidance, Policy and Documentation*, 23.1 *PARKS: THE INTERNATIONAL JOURNAL OF PROTECTED AREAS AND CONSERVATION* (2017).

In India, the Applied Environmental Research Foundation (AERF) undertook ecological restoration of sacred groves in Sangameshwar, Ratnagiri district, Maharashtra, with community involvement at each step. AERF launched an incentive-based forest restoration and conservation programme in 2007, a first of its kind in India, to curb deforestation in the Northern Western Ghats and to encourage biodiversity conservation. It has brought more than 10,000 acres of private forests under long-term conservation, and mangrove restoration has been undertaken on private forest areas along Maharashtra's west coast.<sup>99</sup>

2. Economic considerations: The biggest advantage of private reserves is their potential profitability. When engaged in commercial activities such as ecotourism in particular, reserves support livelihood as they have both an economic and ecological potential. Ecotourism reserves in Latin America and sub-Saharan Africa have a huge profitability margin with revenues exceeding those from alternate use of land such as livestock rearing or agriculture.<sup>100</sup> Besides private owners, the government also gets economic benefits by way of costs avoided on preserving such areas.

Conservation for profit can provide financial benefits and job opportunities to local rural communities living in areas which are home to most of the valuable habitat and biodiversity hotspots, besides inculcating in them a sense of stewardship.<sup>101</sup> Renewable energy projects like solar energy and wind energy are sustainable and mitigate climate change, besides generating income and conserving the environment.<sup>102</sup>

3. Social and political issues: since the residents happen to be the people who affect, and are most affected by such private reserves, they should control decision-making and not merely participate in it.

Private reserves can form meaningful ties with their neighbouring communities by building school facilities, infrastructure such as roads, providing job opportunities, creating environmental awareness, etc.<sup>103</sup>

4. Private conservation area owners can respond faster without bureaucratic hurdles, to counter environmental changes, opportunities or threats as there is scope for decentralised individual initiatives involving a wider

<sup>99</sup> Hema Bhatt, *India's First Incentive-Based Forest Restoration Program by Applied Environmental Research Foundation (AERF)*, RESTOR (Apr. 4, 2024).

<sup>100</sup> Micheal Smart, Ibrahim Glan & Prince Blessing, *The Rise of Eco-Tourism and Its Contribution to Wildlife Conservation*, [https://www.researchgate.net/publication/405265862\\_The\\_Rise\\_of\\_Eco-Tourism\\_and\\_Its\\_Contribution\\_to\\_Wildlife\\_Conservation](https://www.researchgate.net/publication/405265862_The_Rise_of_Eco-Tourism_and_Its_Contribution_to_Wildlife_Conservation) (last visited June 22, 2026).

<sup>101</sup> Rich Stockdale, *The Business of Conservation*, OXYGEN CONSERVATION (2023).

<sup>102</sup> *Id.*

<sup>103</sup> Langholz and Lassoie, *supra* note 96.

stakeholder base, and diverse sources of funding such as from charitable and philanthropic organisations.<sup>104</sup>

## 6. Challenges

In spite of all the advantages and benefits, private reserves face challenges from many fronts such as ecological, economic, social, political, etc., mainly due to lack of statutory protection:

1. Ecological aspects: One main negative aspect of privately owned reserves from an ecological point of view is their weak status with no statutory protection. Adding to this is the small size of private reserves, as compared to public parks, except for a few, such as the Hato Pinero reserve in Venezuela, spanning 80,000 hectares, the 270,000-hectare reserve in Pumalin, Chile, and Brazil having many reserves of over 100,000 hectares. Due to their small extent, such areas are unable to support megafauna.<sup>105</sup>
2. Economic aspects: Dependence of private reserves on eco-tourism poses a risk as it is an industry open to wide fluctuations, due to reasons such as political instability, natural calamities, pandemic, etc. Reserves dependent on tourism may start placing profit above preservation, and attempt to degrade resources, such as, for example, a wild caiman was kept caged in an eco-tourism reserve in Costa Rica, far from its native habitat, as a tourist attraction. Other issues include inappropriate constructions of tourist accommodation, roads, and infrastructure development in the case of excessive tourism. Many times, owners protect only the nature walk part of the reserve and let the remaining habitat deteriorate. Eco-tourism reserves, coupled with conservation, thus need external supervision and evaluation by way of a statutory framework.<sup>106</sup>
3. Social and political aspects: Private reserves often tend to cater to the elite tourists, making them inaccessible to the surrounding communities.<sup>107</sup>
4. Transfer of ownership: Conservation objectives can be affected if the ownership of the PPA changes.<sup>108</sup> Urbanisation, infrastructure development, commercial activities, and habitat fragmentation lead to habitat fragmentation and degradation. This reduces the size of

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<sup>104</sup> Bingham et al., *supra* note 101.

<sup>105</sup> Langholz and Lassoie, *supra* note 96.

<sup>106</sup> *Id.*

<sup>107</sup> Langholz and Lassoie, *supra* note 96.

<sup>108</sup> IUCN WCPA Privately Protected Areas and Nature Stewardship Specialist Group, *supra* note 65.

wildlife habitats, isolates wildlife populations, and interrupts ecological processes.<sup>109</sup>

5. Although private reserves can aid in biodiversity conservation, their fate is tied many times to the charitable and philanthropic funding sources.<sup>110</sup>

## 7. Towards a Citizen Conservation and Livelihood Act

In the *M.C. Mehta*<sup>111</sup> case, decided on 20 December, 1986, the Supreme Court highlighted the need for law to keep pace with the changing socio-economic conditions, stating that law must grow to meet the needs of a fast-changing world, and cannot afford to remain static.

Inger Anderson, Executive Director, UNEP Programme, also, underscoring the dynamic connection of law with an evolving society, said that Law is not static, but that it moves and evolves.<sup>112</sup>

The Indian judiciary, time and again, has reiterated that law needs to keep changing with the change in times, which is evident from its decisions.

In the *Ranjitsinh*<sup>113</sup> case filed for protection of the Great Indian Bustard, the Court, interpreted Art. 48(A) and 51(A)(g) in the light of Art. 21, for the first time, encompassing within it the right against the adverse effects of climate change besides right to a clean environment.

In the *Hanuman Laxman Aroskar*<sup>114</sup> case, a PIL filed challenging the Environmental Clearance granted to the Mopa greenfield international airport of Goa, the Court highlighted the need for a “transformative change” through well-designed policies and their implementation, compliance and enforcement procedure.

In the *Mohd. Salim* case,<sup>115</sup> the Court created history in the area of Indian environmental law by granting personhood rights to the Ganga and Yamuna

<sup>109</sup> Dr. Vineet Sharma, *Conservation Challenges in India's Protected Areas*, 9 INDIAN JOURNAL OF RESEARCH IN PHARMACY AND BIOTECHNOLOGY (IJRPB) (2021).

<sup>110</sup> Lorena Pasquini et al., *The Establishment of Large Private Nature Reserves by Conservation NGOs: Key Factors for Successful Implementation*, 45 ORYX, FAUNA & FLORA INTERNATIONAL 373 (2011).

<sup>111</sup> *M.C. Mehta and Anr. v. Union of India & Ors.*, AIR 1987 Supreme Court 1086.

<sup>112</sup> *Prosecutors Are Key to Progressing Environmental Law*, UN ENVIRONMENT PROGR MME (Aug. 9, 2019).

<sup>113</sup> *M.K. Ranjitsinh v. Union of India*, 2024 SCC OnLine SC 570; 2024 INSC 280.

<sup>114</sup> *Hanuman Laxman Aroskar v. Union of India*, AIRONLINE 2019 SC 318 (Supreme Court).

<sup>115</sup> *Mohammed Salim v. State of Uttarakhand and Others*, Writ Petition No. 126 of 2014.

rivers and ten days later, in the *Lalit Miglani*<sup>116</sup> case, the Court declared the Himalayas, Glaciers, water bodies and streams as juristic persons, for their preservation and conservation. Although in July 2017, the Supreme Court stayed both these decisions, and the case is yet to be decided, it proved to be a historical one in the area of environmental law, where the judiciary showed that law needs to evolve with the changing times.

The above cases highlight the need for constitutional environmental law to expand, in view of the emerging threats to the ecology and environment, animal and plant life.

There is a need to have a legislative framework legalising eco-related commercial activities in privately owned or community-managed conservation areas in a sustainable manner.

### 7.1. Environment Conservation through Private Participation

As per the India State of Forest Report, 2023, India has a total Forest and Tree cover of 8,27,357 sq. km, which is 25.17% of the nation's geographical area. This includes a Forest Cover of approximately 7,153,43 sq. km. (21.76%) and a Tree Cover of 1,12,014 sq. km. (3.41%).<sup>117</sup> India is famous for its rich and abundant ecological heritage worldwide. However, this heritage is increasingly under stress because of rural poverty, habitat fragmentation, change in land use patterns, and land-use disputes.<sup>118</sup> Conservation through Government-led initiatives by demarcation of protected areas has achieved noteworthy success, although there still remains a vast extent of privately owned and/or community-managed land placed within private forests, buffer zones, no development zones (NDZs), and near perennial water-body areas.<sup>119</sup>

Government and community initiatives alone are not sufficient to solve environmental issues which are faced by even the privately owned lands, and to achieve Sustainable Development Goals.<sup>120</sup> There is an urgent need to preserve and protect ecology and biodiversity on privately owned lands, which will enable India to truly achieve the Sustainable Development Goals. In the area of environmental protection, citizen-led conservation that

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<sup>116</sup> *Lalit Miglani v State of Uttarakhand*, Writ Petition (PIL) No.140 of 2015.

<sup>117</sup> INDIA STATE OF FOREST REPORT 2023, VOLUME I, [https://fsi.nic.in/uploads/isfr2023/isfr\\_book\\_eng-vol-1\\_2023.pdf](https://fsi.nic.in/uploads/isfr2023/isfr_book_eng-vol-1_2023.pdf) (last visited June 22, 2026).

<sup>118</sup> *Goa State Biodiversity Strategy and Action Plan 2025-2030 (Draft)*, <https://gsbb.goa.gov.in/wp-content/uploads/2025/05/action-plan.pdf> (last visited Mar. 1, 2026).

<sup>119</sup> *Private Forests in Goa*, FOREST DEPARTMENT | GOVERNMENT OF GOA, <https://forest.goa.gov.in/private-forest> (last visited Jan. 5, 2026).

<sup>120</sup> *Private Sector Engagement*, UN ENVIRONMENT PROGRAMME, <https://www.unep.org/about-un-environment/private-sector-engagement> (last visited Jan. 6, 2026).

simultaneously sustains local livelihoods represents not merely a policy option but a constitutional, environmental, and developmental necessity. To operationalise Article 51A (g), India requires a legislative framework that empowers citizens as ecological entrepreneurs. There is a pressing need for a law which establishes mechanisms for granting legal recognition to private and community-managed conservation areas, incentivises sustainable practices, and simplifies trading of carbon and biodiversity credits. Such a legislative framework would shift the paradigm from state dominance to collective environmental governance. Private forests came into prominence in India only after the adverse impact of economic liberalisation became apparent on the ecology. Such private forests, which are in vogue today, could prove to be the answer to deforestation, environmental pollution, and loss of wild flora and fauna.<sup>121</sup>

Many private forests are providing ecosystem services in India. Sadhana forest, founded on 19<sup>th</sup> December, 2003, by Aviram and Yorit Rozin in Auroville, South India, brought back to life 70 acres of eroded, arid land, and an endangered ecosystem, by regenerating the Tropical Dry Evergreen Forest (TDEF), which was unique to the region. Today, the Sadhana forest hosts events, guided tours, workshops, and provides stay facilities in houses made of natural materials.<sup>122</sup> Vanvadi, a clear-felled land 26-27 years ago, was regenerated in 1994, and today homes a large private forest in the foothills of the Sahyadri Mountains. It has over 50,000 trees, with a rich plant biodiversity, which includes 50 edible plant species, more than 30 medicinal species and around 21 timber species. Water harvesting helped to recharge groundwater, which also benefited the downstream villages. Vanvadi organises weekend workshops, nature trails, and a yearly forest festival, 'vanutsav'.<sup>123</sup>

The Union Environment Ministry, in January 2026, permitted private entities in all states and union territories to lease their privately owned forest land for cultivating plantations for economic benefit, marking a shift in how India's forests have been traditionally managed. The forest department normally carries out such forestry activities and plantations, since forests are considered public property. This action allowed non-government entities to rent privately-owned forest land for restoration purposes or silviculture, with permission to reclassify it as 'forestry activity'.<sup>124</sup>

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<sup>121</sup> Moudgil, *supra* note 62.

<sup>122</sup> *Id.*

<sup>123</sup> Moudgil, *supra* note 62.

<sup>124</sup> Simrin Sirur, *Government Opens up Forest Plantation to Private Sector, Critics Question Its Conservation Value*, MONGABAY (Jan. 28, 2026).

However, forest restoration experts have expressed their reservations as to its consequences on the forest-dwelling communities who rely on forest resources for their food and livelihood, and whether this fulfils the conservation aims, as destroying natural ecosystems for commercial tree plantation does not amount to ecological restoration and can, on the contrary, be ecologically harmful.<sup>125</sup> This again reiterates the need for a dedicated legal framework for ecological conservation and livelihood generation for citizens.

Forest lands, in spite of having a significant role in the area's ecology, currently provide limited economic and livelihood opportunities for their owners, which often leads to degradation due to unauthorised or unregulated development by land conversion. Private land owners also resort to forest thinning to bring the land out of the definition of a private forest. The reason for this is the economic benefit gained by using the land for urbanisation, tourism and/or industrial development.<sup>126</sup>

## 7.2. Need for a 'Citizen Conservation and Livelihood Act'

All the above highlights a need for a Citizen Conservation and Livelihood Act, which will give legal recognition to eco-related commercial activities in privately owned or community-managed conservation areas and incentivise the adoption of sustainable practices as far as private forest owners are concerned. A need for a new legal framework that integrates citizen stewardship, sustainable enterprise, and climate finance; an Act which will generate income and provide private landholders livelihood and job opportunities under transparent government oversight. This legal framework will empower private citizens as 'Citizen Conservators,' to take part in national conservation efforts, promote sustainable livelihood opportunities by way of eco-tourism and biodiversity-based businesses, habitat restoration, and carbon credit mechanisms, enrich ecological connectivity by protecting buffer zones and private forests, mobilise green finance for local ecology protection through carbon and biodiversity markets, establish social inclusion by linking local communities, forest dwellers, and self-help groups, in benefit-sharing mechanisms. The proposed new law will fulfil the vital requirements of having a single window clearance and easy licensing for its activities. A Citizen Conservation and Livelihood Act will thus link conservation incentives with livelihood generation in private lands, with an aim to make environment & biodiversity protection a profitable, participatory, and patriotic enterprise, and help in conserving the ecologically rich areas which would otherwise be vulnerable to unrestricted and unregulated development to meet the needs of urbanisation and tourism.

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<sup>125</sup> *Id.*

<sup>126</sup> Reboni Saha, *Goa's Private Forests, a Last Defence against Global Warming*, DOWN TO EARTH (Aug. 27, 2019).



### **7.3. Policy Design of the proposed Act**

A Citizen Conservation and Livelihood Act should pursue four linked objectives-

First, it should create a statutory category for registered private and community-managed conservation areas, especially in buffer zones, private forests, ecologically sensitive catchments, wetlands, and other lands performing ecosystem services.

Secondly, it should establish a system of Conservation Agreements between registered citizen conservators and public authorities. Such agreements should specify conservation baselines, permissible low-impact enterprises, restoration obligations, benefit-sharing commitments, and audit requirements.

Thirdly, the Act should authorise carefully regulated eco-enterprises, including low-impact ecotourism, habitat restoration, environmental education, research partnerships, sustainable non-timber forest produce under ecological limits, and participation in carbon or biodiversity-credit frameworks where legally permissible.

Fourthly, it should create a dedicated institutional architecture, including a national nodal authority and district-level committees, to provide single-window approvals, technical guidance, registration, periodic audits, and grievance redress.

#### **Eligible Areas**

The proposed Act will apply to lands in the following areas:

- i. Private or community land in buffer zones of wildlife sanctuaries and national parks.
- ii. Land categorised as private forests under State or Central notifications.
- iii. No Development Zones under environmental laws or coastal regulations.
- iv. Land within 500 meters of perennial rivers, lakes, or wetlands, supporting ecosystem services.
- v. Catchment areas for perennial sources of fresh water, rain-shed areas.

#### **Citizen Conservators**

Landowners or community groups registered under the Act as Citizen Conservators will enter into Conservation Agreements with the State Forest Department or local District Conservation Committee (DCC).

These agreements should specify:

- i. Conservation and land-use objectives;
- ii. Performance indicators such as canopy density, ;
- iii. Benefit-sharing mechanisms;
- iv. Permitted eco-enterprises;

### **Permitted Eco-Enterprises**

The eco-enterprises permitted under the proposed Act would include activities which are sustainable, environment-friendly, and which would keep a check on the carbon footprints. These would include:

1. **Eco-tourism and Nature-based Hospitality** – this will include low-impact accommodations, guided trails, interpretation centres.
2. **Habitat Restoration and Rewilding** – such as removal of invasive species, native tree plantation, wetland revival.
3. **Carbon and Biodiversity Credit Projects** – by mandating registration under national or global carbon standards.
4. **Environmental Education and Research** – this will be done by having partnerships with universities and NGOs.
5. **Sustainable Non-Timber Forest Produce (NTFP)** - this will include collection of forest produce under ecological guidelines.
6. **Wildlife, insect and micro fauna breeding and release** - Citizen Conservators should be allowed to establish conservation breeding centres, butterfly parks, insectariums, native seed banks, rescue and rehabilitation facilities, and ecological research centres. All breeding programmes should follow scientifically approved conservation protocols. Only indigenous species should be permitted, and releases into the wild should require approval from competent wildlife authorities after ecological assessment. Only controlled predetermined commercial exploitation to be permitted. Introduction of exotic species, genetic manipulation without approval, and activities that may threaten wild populations should remain strictly prohibited.

### **7.4. The proposed Institutional Framework**

The law adopts a three-tier governance framework. The Central Government is responsible for framing the rules and regulations that govern environmentally sensitive areas. State Governments identify and notify such areas, allocate resources, implement the law, and impose penalties for violations. At the local level, Panchayats play a crucial role by granting licences and permissions in accordance with the law, monitoring compliance, and facilitating effective implementation at the grassroots level.

The regulatory framework under the proposed Citizen Conservation and Livelihood Act would include establishment of a National Citizen Conservatory Authority at the National level and District Conservation Committees at the District level.

#### **7.4.1. National Citizen Conservation Authority (NCCA)**

The National Citizen Conservatory Authority will be a statutory body under the Ministry of Environment, Forest and Climate Change of India (MoEFCC) which will perform the following functions:

- i. Maintain a National Registry of Citizen Conservators;
- ii. Develop guidelines and certification standards;
- iii. Facilitate access to carbon markets and green finance; and
- iv. Co-ordinate with international climate funding mechanisms.

#### **7.4.2. District Conservation Committees (DCCs)**

There will be one District Conservation Committees established in each eligible district, will be a statutory body under the Ministry of Environment, Forest and Climate Change of India (MoEFCC) which will be chaired by the District Collector and include representatives from:

- i. Forest Department,
- ii. Panchayati Raj Institution,
- iii. Local academic/ecological experts,
- iv. Citizen Conservator associations.

The DCCs will perform the following functions:

- i. approve and monitor projects,
- ii. ensure compliance with the proposed law, and
- iii. facilitate community participation.

### **Incentive Framework**

The proposed incentive framework encourages conservation and sustainable land management by offering a combination of financial, fiscal, infrastructural, capacity-building, and social benefits:

**Financial incentives** include access to carbon credit markets, biodiversity offset programs, Payment for Ecosystem Services (PES) schemes, and green credit certification recognized by the Ministry of Environment, Forest and Climate Change (MoEFCC), enabling participants to earn income from conservation activities.

**Fiscal incentives** further enhance economic viability through income tax rebates on verified conservation-related earnings and property tax exemptions for certified eco-friendly enterprises.

**Infrastructure support** is provided through eco-tourism development grants and concessional financing from institutions such as NABARD, SIDBI, and other green funding mechanisms.

**Capacity-building incentives** ensure that participants receive technical training, knowledge support, and skill development through agencies like the Forest Department, the Indian Council of Agricultural Research (ICAR), and national skill development programs.

**Social incentives** promote public recognition through initiatives such as the 'National Citizen Conservator Awards' and inclusion in government-led green branding campaigns, thereby enhancing the visibility, credibility, and social prestige of individuals and organizations contributing to environmental conservation.

## 8. Safeguards and Compliance

Every law is susceptible to being exploited through loopholes and misused by vested interests, such as the builders' lobby, to facilitate construction activities in ecologically sensitive areas. Therefore, this legislation, more than most others, requires robust safeguards, stringent enforcement, and a high level of continuous monitoring to ensure that its objectives are not undermined and that environmentally sensitive zones remain effectively protected. The proposed Citizen Conservation and Livelihood Act will supplement and function in compliance with the existing environmental legal framework (duly amended) relating to Wildlife, Forest, Environment, and CRZ, so as to ensure that related areas are not affected:

All projects carried out under the proposed Citizen Conservation and Livelihood Act will have to comply with the Wildlife (Protection) Act, 1972, Forest (Conservation) Act, 1980, and Environment (Protection) Act, 1986. An amendment to the Wildlife (Protection Act) especially S. 17(B), to incorporate provisions to help private citizens partner in breeding and releasing them in protected areas is suggested.

Construction carried out under the proposed framework must adhere to Eco-Sensitive Zone (ESZ) norms. Suggested draft norms for an 85-15 formula (85% habitat protection and forest regeneration, 15% area for infrastructure for eco-entrepreneurship like eco-lodging, souvenir shop, café, breeding, research centres, museums, etc.)

Periodic ecological audits to be mandatorily conducted to assess biodiversity and carbon outcomes.

Citizen Conservators will also be required to submit annual conservation reports verified by the DCC.

All this would help transform environmental protection into a viable livelihood strategy, fulfilling the constitutional vision of participatory ecological citizenship and Sustainable Development Goals.

## 9. Conclusion

India's environmental laws, though well-intentioned, remain anchored in colonial and command-control frameworks that exclude citizens from active participation. The paradox of Article 51A (g) lies in the gap between the citizen's duty and the State's monopoly over environmental governance. To bridge this gap, the law must evolve to recognise and reward citizen-led conservation. Taking examples of citizen-led conservation through legal recognition from other countries such as South Africa, Costa Rica, and Australia, there is a need to encourage citizen-led environmental conservation enterprises in India with statutory backing, which will promote economic growth, while protecting the environment and biodiversity at the same time. Large-scale deforestation due to urban development and an increase in tourism has led to the degradation of India's biodiversity, forests, and coastal stretches. Incentivising eco-tourism on privately-owned areas will help preserve India's natural beauty and also provide a means of livelihood to people. The proposed law 'Citizen Conservation and Livelihood Act' hopes to link environmental protection with livelihood generation, which will advance ecological sustainability and also deepen the democratic realisation of constitutional duties in its citizens. The purpose of this law is not to transfer the responsibility for protecting reserve forests and wildlife sanctuaries to private citizens. Rather, it is to encourage individuals and enterprises to establish forests and sanctuaries on privately owned land. The law seeks to promote habitat regeneration and conservation, protect and breed wildlife species, and, at the same time, create sustainable economic opportunities that depend on these conservation efforts.