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### RESEARCH ARTICLE

#### BIODIVERSITY - WILDLIFE CONSERVATION LAWS IN INDIA.

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#### Abstract

Wildlife conservation is a collective effort by the people and Governments with conscious to protect earth's biological diversity. Wildlife conservation activities relate to the protection of plants and animal species, and their habitats. Conservation efforts are made by the Governments by enacting laws with a goal to preserve the nature, and the endangered species for the future generations. This article discusses about the wild life protection provisions enshrined under various legislations, the constitutional mandates to the citizens and, judicial role in wild life conservation and biodiversity.

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#### Introduction

Traditionally speaking wildlife encompasses all non-domesticated animals like birds, fox, bison, frogs, coyotes and so on. Broadly speaking, ecology is the study of environmental systems and everything that resides within those environments. An ecosystem is a community of natural bodies that live and work together in an interconnected web for survival. The best way to think about this is the food chain. In school we're taught about how the lion eats the hyena, the hyena eats the coyote, the coyote eats rabbits, the rabbit eats vegetation and small insects and microorganisms eat vegetation – all of which require oxygen or sun to survive and all of which share a localized environment, or ecosystem<sup>1</sup>.

It is much evident that each variable is interdependent on the other to continue the life cycle. It's this circle of life that maintains the three areas of study within ecology – *populations*, *ecosystems* and *communities* – in balance. *Population ecology* focuses on the variable amount of wildlife within an ecosystem and the distribution of that population. The Government of India has passed some stringent legislations to protect wildlife and habitats. The Supreme Court, in the critically endangered Bengal Florican issue calls for New Standards to save these Endangered Species, and also called for an 'eco-centric approach' vs. a human centric approach.

#### Meaning, object and scope

Wildlife conservation is very important since wildlife and wilderness play an important role in maintaining the ecological balance. The term Wildlife has come to envelope all kinds of undomesticated life from microorganisms to vegetation including fungi as well. The Wild Life (Protection) Act, was enacted by Parliament of India in 1972 which defines under Section 2 that , animal includes amphibians, birds, mammals, and reptiles, and their young ones, and also includes, in the cases of birds and reptiles, their eggs. Animal article means an article made from any captive or wild animal, other than vermin, and includes an article or object in which the whole or any part of such

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Animal has been used and an article made therefrom. According to this section capturing, killing, poisoning, snaring, or trapping any Wild animal and, every attempt to do so amounts to hunting<sup>2</sup>, injuring, destroying or taking any body part of any such animal, or in the case of wild birds or reptiles, disturbing or damaging the eggs or nests of such birds or reptiles.

The scope of wildlife is vast and there is no possible way to discuss the importance of each contributor to the ecological system as a whole but, without wildlife, in fact, human life would not exist. The recent Supreme Court judgment in Centre for Environmental Law WWF-1<sup>1</sup> on Lion's conservation has called for completely new standards for endangered species conservation in the country. It has asked for lions to be re-introduced to Madhya Pradesh<sup>2</sup>. It has also asked the Ministry of Environment and Forests (MOEF) to take urgent steps and start species recovery plans for some of our most threatened species viz., the Great Indian Bustard (GIB), the Bengal Florican, Manipur Brow-antlered deer, dugong and wild buffalo.

### **Constitutional safeguards for Wild Life<sup>3</sup>**

#### **Fundamental Duties<sup>4</sup>**

Under Article 51A (g) of the Constitution places a duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. It also included forests and protection of wild animals in the Concurrent List under Seventh Schedule, Article 256 of the Constitution.

#### **Directive Principles of State Policy**

Article 48 of the Constitution of India provides that State shall endeavour to Organisation of Agriculture and Animal Husbandry and Article 48A provides that State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Hence, the State has to take steps for preserving and improving the breeds, and prohibiting the slaughter of cows, calves and other milch and draught cattle.

Article 246 of the Constitution of India gives law making powers upon some specific subjects to the parliament and state legislatures of our country. Parliament has absolute authority to make laws in respect to any matters in List- I and for matters on List -III, Both Parliament and the legislature have the authority to make laws. Hence, the concerned authority can make laws for prevention of cruelty to animals, protection of wild animals and birds, prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

### **Legislative Framework for Wildlife Conservation in India**

The Government of India has introduced various types of legislation in response to the growing destruction of wildlife and forests. These are<sup>5</sup>:

#### **The Wildlife (Protection) Act, 1972 and Amendments**

The Wildlife (Protection) Act (WLPA), 1972 is an important statute that provides a powerful legal framework for: Prohibition of hunting; Protection and management of wildlife habitats; Establishment of protected areas; Regulation and control of trade in parts and products derived from wildlife; Management of Zoos. The Wild Life (Protection) Act has been further amended in the subsequent years 1982, 1986, 1991, 2002, 2006, 2013. The amended WLPA does not allow for any commercial exploitation of forest produce in both national parks and wildlife sanctuaries, and local communities can collect forest produce only for their *bona fide* needs. The 2006 amendment introduced a new chapter (IV B) for establishment of the National Tiger Conservation Authority and notification of Tiger Reserves and WCCB<sup>6</sup> to monitor and control the illegal trade in wildlife products. Before this amendment, Tiger Reserves were not defined under the law, but were merely administrative designations to enable funding under Project Tiger.

#### **The Indian Forest Act, 1927**

<sup>1</sup>Centre for Environmental Law WWF-1 vs. Union of India and others, Supreme Court<sup>1</sup>, 2013

<sup>2</sup>Intervention Application 100, Biodiversity Conservation Trust of India, FaiyazKhudsar, in writ petition 337, 1995. And Wildlife First and Ors.vs. Union of India and Ors. (WP 109 / 2008),

The main objective of the Indian Forest Act (1927) was to secure exclusive state control over forests to meet the demand for timber. Most of these untitled lands had traditionally belonged to the forest dwelling communities. The Act defined state ownership, regulated its use, and appropriated the power to substitute or extinguish customary rights. The Act facilitates three categories of forests, viz., (i) Reserved forests (ii) Village forests and (iii) Protected forests.

Reserved forests are the most protected within these categories. Felling trees, grazing cattle, removing forest products, quarrying, fishing, and hunting are punishable with a fine or imprisonment.

#### **The Forest Conservation Act, 1980**

In order to check rapid deforestation due to forestlands being released by state governments for agriculture, industry and other development, the federal government enacted the Forest Conservation Act in 1980 with an amendment in 1988. The Act made the prior approval of the federal government necessary for de-reservation of reserved forests, logging and for use of forestland for non- forest purposes.

This powerful legislation has, to a large extent, curtailed the indiscriminate logging and release of forestland for non-forestry purposes by state governments. The Supreme Court of India has currently imposed a complete ban on the release of forestland for non-forestry activities without the prior approval of the federal government.

#### **The Biological Diversity Act (2002)**

India is a party to the United Nations Convention on Biological Diversity. Section 59 says that, the provisions of the Biological Diversity Act are in addition to and not in derogation of the provisions in any other law relating to forests or wildlife<sup>7</sup>.

#### **National Wildlife Action Plan (2002-2016)<sup>8</sup>**

This Action Plan replaces the earlier Plan adopted in 1983 and was introduced in response to the need for a change in priorities given the increased commercial use of natural resources, continued growth of human and livestock populations, and changes in consumption patterns. The Plan most closely represents an actual policy on protection of wildlife. It focuses on strengthening and enhancing the protected area network, on the conservation of endangered wildlife and their habitats, on controlling trade in wildlife products and on research, education, and training. The Plan recognizes the need to reduce human-wildlife conflict and emphasizes the establishment of effective compensation mechanisms. It includes the restoration of degraded habitats outside protected areas as a key objective.

#### **National Forest Policy (1998)**

The National Forest Policy, 1988, (NFP) is primarily concerned with the sustainable use and conservation of forests, and further strengthens the Forest Conservation Act (1980). It marked a significant departure from earlier forest policies, which gave primacy to meeting government interests and industrial requirements for forest products at the expense of local subsistence requirements. The NFP prioritizes the maintenance of ecological balance through the conservation of biological diversity, soil and water management, increase of tree cover, efficient use of forest produce, substitution of wood, and ensuring peoples' involvement in achieving these objectives. As can be seen from this article, India has a strong set of laws, Acts and policies for the protection of forests and wildlife. It is for citizens to study these carefully and apply them appropriately while conducting conservation advocacy campaigns.

#### **Penalties under the Wildlife Protection Act**

Penalties are prescribed in section 51. Enforcement can be performed by agencies such as the Forest Department, the Police, the Wildlife Crime Control Bureau (WCCB), the Customs and the [Central Bureau of Investigation](#) (CBI). Charge sheets can be filed directly by the Forest Department. Other enforcement agencies, often due to the lack of technical expertise, hand over cases to the Forest Department.

#### **Amendments**

The Code has been amended several times from 1982 to 2017. The 2002 Amendment Act which [came into force](#) in January, 2003 have made punishment and penalty for offences under the Act more stringent. For offences relating to wild animals or their parts and products included in schedule-I or part II of Schedule- II and those relating to hunting or altering the boundaries of a sanctuary or national park the punishment and penalty have been enhanced, the minimum imprisonment prescribed is three years which may extend to seven years, with a minimum fine of Rs.

10,000/-. For a subsequent offence of this nature, the term of imprisonment shall not be less than three years but may extend to seven years with a minimum fine of Rs. 25,000. Also a new section (51 - A) has been inserted in the Act, making certain conditions applicable while granting bail.

In order to improve the intelligence gathering in wildlife crime, the existing provision for rewarding the *informers has been increased from 20% of the fine and composition money respectively to 50% in each case*. In addition to this, a reward up to Rs. 10,000/- is also proposed to be given to the informants and others who provide assistance in detection of crime and apprehension of the offender. At present, persons having ownership certificate in respect of Schedule I and Part II animals, can sell or gift such articles. This has been amended with a view to curb illegal trade, and thus no person can now acquire Schedule I or Part II of Schedule II animals, articles or trophies except by way of inheritance except live elephants.

Stringent measures have also been proposed to forfeit the properties of hardcore criminals who have already been convicted in the past for heinous wildlife crimes. These provisions are similar to the provisions of 'Narcotic Drugs and Psychotropic Substances Act, 1985'. Provisions have also been made empowering officials to evict encroachments from Protected Areas. Offences related to trade and commerce in trophies, animals articles etc. derived from certain animals<sup>9</sup> attracts a term of imprisonment up to three years and/or a fine up to Rs. 25,000/-.

### **Judicial Contribution**

#### **Supreme Court on Forest Rights Act:**

Hearing a petition today filed by a small group of wildlife NGOs, the Supreme Court today declined to hold that the historic Forest Rights Act of 2006 was “beyond the legislative competence” of Parliament to pass. The petitioners had claimed before the court that this law is “essentially a land distribution scheme” and hence fell within the jurisdiction of the State governments and not the Central Parliament. After hearing all parties at length on this claim, the Court did not endorse this notion and asked the petitioners to continue with their other arguments.

The petitioners in this case do not represent the views of most wildlife conservationists, who support the recognition of the rights of forest dwellers and ensuring that they can protect and manage their forests. Indeed, just six months ago, more than twenty Indian wildlife experts and forty international organisations had written to the Environment Ministry asking it to stop violating this law and stating that “disregarding the Forest Rights Act or undermining it will greatly damage environmental protection in the country.”

The petitioners in this case instead want to restore the rule of the Forest Department, with all its colonial powers, by using a technical Constitutional argument. The court has not endorsed this backdoor attempt to attack people's rights. The case will now proceed on the other claims of the petitioners, but we are confident that these too will be defeated.

#### **Details of the Case**

*Wildlife First and Ors vs. Union of India and Ors*<sup>10</sup>. along with several related writ petitions being heard by Justices held that Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air, water, sanitation without which life cannot be enjoyed<sup>11</sup>. These specific Constitutional provisions and landmark judgments of the Apex Court form the bedrock on which protection and conservation of wildlife rests empower civil society institutions as well as citizens to constructively participate in the process of protecting forests and wildlife.

While dealing with the *Goa Foundation v Union of India & Ors*<sup>12</sup>. case question before sc was that, within what distance from the boundaries of National Parks and Wildlife Sanctuaries, is mining not permissible in the State of Goa. And the sc has applied the Justice Shah Commission's report which has stated in its report that the National Board for Wild Life (NBWL) adopted the Wild Life conservation Strategy-2002” and took a decision in its meeting held on 21.1.2002 under the Chairmanship of Prime Minister to notify the areas within 10 kms. from the boundaries of National Parks and Sanctuaries as eco-fragile zones under section 3(v) of the Environment (Protection) Act.

### **Conclusion**

Imbalanced ecosystems have detrimental effects on wildlife and humans. According to the the World Health Organization's report released in 2005 claimed that the state of ecosystems worldwide are contributing to increased

illness and mortality rates of populations throughout South America, Africa, and Asia. Factors like deforestation, natural disasters and animal migration are huge reasons why ecosystems become imbalanced. Deforestation causes native animals to relocate – bringing potential bacteria and illnesses with them to habitats that may be gravely affected by their presence. It is imperative that all conservationists familiarize themselves with these laws, so that they can contribute effectively by creating awareness among the public and sensitizing the people about the importance of wild life protection for human survival.

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<sup>1</sup>Brittani Sponaugle ; The Importance of Wildlife: Human Survival Depends on It, MAY 20, 2014, <https://blog.udemy.com> › Students › Education

<sup>2</sup> Section 9 of the Wildlife Protection Act, 1972

<sup>3</sup>Pandey, J.N. - The Constitutional Law Of India, 851 pages; Publisher: Central Law Agency; 51 edition (2014)

<sup>4</sup>P.M.Bakshi, Constitutional Law of India, 2017

<sup>5</sup>Praveen Bhargav ( managing trustee of Wildlife First and was a member of the National Board for Wildlife ,2007-10), Legal Framework for Wildlife Conservation in India.

<sup>6</sup>The Wildlife Crime Control Bureau (WCCB) was constituted vide the 2006 amendment to monitor and control the illegal trade in wildlife products.

<sup>7</sup> Section 59 under Chapter XII of the Biodiversity Act, 2002

<sup>8</sup>Praveen Bhargav ( managing trustee of Wildlife First and was a member of the National Board for Wildlife ,2007-10), Legal Framework for Wildlife Conservation in India

<sup>9</sup> Exception has been provided Under chapter V A and section 38J

<sup>10</sup> WP 109 / 2008

<sup>11</sup>IA 670/2002 AIR SC 724

<sup>12</sup> Goa Foundation v Union of India &Ors, SC 2013