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AN OVERVIEW OF WILDLIFE CONSERVATION IN INDIA

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ABSTRACT

Wildlife is a heritage in which India takes pride due to its variety and uniqueness. Wildlife and forests have always played an important role in the culture, tradition and religion of India. Being a natural resource on the verge of becoming extinct, it needs to be preserved. The main legislation that provides for the conservation and protection of wildlife in India is the Wildlife Protection Act, 1972. However, the road of its enactment was rocky to say the least. To ensure better implementation of wildlife protection laws, the Wildlife Protection Act must be included under the jurisdiction of the National Green Tribunal, as the flaws in the Wildlife Protection Act argues that local participation and needs cannot be ignored and must be incorporated under the Wildlife Protection Act.

Keywords: *conservation, implementation, National Green Tribunal ,protection, Wildlife*

INTRODUCTION

In ancient India, associating animals with gods ensured their protection. Rulers such as king Ashok is also known for strictly prohibiting the killing or hunting of animals. The shift from a moral duty to a legal duty for preserving the environment and wildlife is pretty evident in the ancient times.

However, when India was ruled by the Mughal dynasty, there was a shift on how animals were viewed. Mughals were very fond of hunting and poaching, and therefore there was an increase in hunting during this period. This exploitation of wildlife animals continued even during the reign of British rulers who were also very fascinated by hunting, which they considered a sport.

During the later stage of the British rule, it was evident that Indian fauna was going extinct due to such hunting activities. As a result of concerns for such extinction as well as discussions at the international level, the British adopted some wildlife conservation policies in India such as the Wild Birds Protection Act, 1887 and the Wild Bird and Animal (Protection) Act, 1912.¹

This Act was amended in 1935, introducing the concept of 'sanctuary' for the first time in India. The Indian Forest Act, 1927 was also an important step towards conservation of wildlife, because it ensured the protection of the natural habitat of the wildlife as 'reserve'. Moreover, provisions regarding protection of certain wildlife were also mentioned in the substantive criminal law of India i.e., the Indian Penal Code, which prescribed punishment for the killing and maiming of animals.

After Independence, the Indian government enacted provisions for the preservation and conservation of wildlife resources. The Constitution of India provided that the forests and wildlife would be under the State list. However, it was later realized that this was not practical. Forests and wildlife were later brought under the Concurrent list after Constitution (42nd Amendment) Act, 1976.

Modern wildlife laws were developed and got recognition in India after the Stockholm Declaration in 1972. As a result, Wildlife Protection Act came into force and provided comprehensive provisions for protection, conservation, improvement of the wildlife resources. The statute introduced some new concepts for protection through its various amendments which includes restriction on hunting, protection of flora, declaration of protected areas, regulation of trade in wildlife, etc. The Wildlife Protection Act was amended in 1982, 1986, 1991, 1993, 2003 and 2006.

¹ Wild Bird and Animal (Protection) Act 1912, s 3

RESEARCH QUESTIONS

- What is the present wildlife protection legal framework?
- Whether the wildlife protection laws are adequate?
- What reforms are needed to ensure that the laws for wildlife protection are more efficient?

LEGAL FRAMEWORK OF WILDLIFE PROTECTION IN

INDIA: AN OVERVIEW

At present, the Wildlife Protection Act, 1972 is the main legislation on wildlife protection and conservation. It protects almost each and every wildlife resource within its ambit and has classified the species into different categories as per the risk posed onto them. It contains provisions for both the state and central government to apply them at the respective levels for smooth functioning under this legislation. Chapter II of the Wildlife Protection Act prohibits the hunting of wild animals, and permits it only in special circumstances. Chapter IIIA provides for the protection of specified plants by prohibiting its picking, uprooting, possession, cultivation, trading without a license. Chapter IV provides for the creation and rules regarding for sanctuaries, national parks and closed areas. Chapter IVA provides for the law regarding recognition of zoos and their functions and regulations. Chapter V provides restricts the trading of wild animals, animal articles and trophies. Chapter VI regulates the detection of offences to relating to Wildlife. It grants the power of entry, searching, arresting and detention of the offenders to the Chief Wildlife Warden or wildlife authorities and lays out penalties for offenders. Chapter VII provides for rules for other matters related to wildlife protection and management. The six Schedules under the Wildlife Protection Act give a list of the wildlife species protected under the Wildlife Protection Act.

Background of wildlife Protection in India

The Wildlife Protection Act has undergone several changes since its inception to cull out the errors that were present in it and to meet the requirements of present time. The most important amendments in this regard are 42nd, 73rd and 74th Constitutional Amendments. The matters relating to “wildlife and forests” were moved to the Concurrent List from the State List through 42nd Constitutional Amendment. Moreover, Art. 48A was also inserted in the Constitution which stated that “*the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of*

the country”.

Amendments were made in the fundamental duties as well wherein Art 51A was inserted which stated that “it shall be the duty of every citizen of India, to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures”. Moreover, the role played by the 73rd and 74th Constitutional Amendments cannot be forgotten as the self-governmental institutions were given the constitutional status.

Inspiration to enact the Wildlife Protection Act was mainly gained through 1952 Forest Policy. But in 1988, New Forest Policy Resolution was enacted and its focus was mainly on the management of the resources of forest, that too with the help of local communities i.e. by engaging as much local community as possible to preserve and manage the forest resources. Moreover, some impact of the Convention on Biological Diversity is also evident in the present Wildlife Protection Act.

Right after the successful completion of Stockholm Conference, India adopted the Wildlife Protection Act. The reasons provided for adopting it were “to arrest the rapid deterioration of and preserve the wildlife population; with the realization that the Wild Birds and Animal Protection Act of 1912 and current state laws on the subject were outmoded, obsolete, and limited in outlook and approach; and to make the laws on the subject more stringent.”² The Wildlife Protection Act can be regarded as the first detailed statute at national level which along with being comprehensive is also specific in its objective. The objective is “providing the conservation of plants, birds and, wild animals with a view to ensure the ecological and environmental security of the country.” This law came into being on the request of the state governments as they requested to consider wildlife a subject matter of the state.³ The Act contains provisions regarding hunting and classifies the areas with proper “flaura, fauna, ecological, zoological and natural significance.” In order to provide assistance to the governments to make decision relating to the wildlife matters some boards were constituted, named the Wildlife Advisory Boards. These boards are now present as State Boards for Wildlife and National Board for Wildlife.⁴ This law has barred the public from entering into the premises so as to preserve the wildlife, habitat in the areas named as protected areas.

² Wildlife Protection Act 1972, Statement of Objects and Reasons

³ Pradeep Krishen v Union of India AIR 1996 SC 2040

⁴ Wildlife Protection Act 1972, s 5A

The original legislation's whole objective was to preserve the wild animals and to put restrictions on trade as well as hunting. The plant species on the other hand had to wait for almost a period of two long decades to get included in the statute, they were included by the 1991 amendment. India had signed CITES way back in 1973 and this inclusion was regarded a response to that only. Sanctuaries enjoy less protection as compared to the national parks, his might be due to the fact that grazing is permissible to a certain extent in the sanctuaries but the same is not the case with the national parks.⁵ But, what about this distinction? Can it be regarded as superfluous? One thing is certain that such distinction is far from the ground realities and is artificial in nature.

As a result, the demarcation of areas that are regarded as protected areas often confuses the state government because of lack of proper policy under the Wildlife Protection Act. Along with governing in the national parks and wildlife sanctuaries, the Wildlife Protection Act also takes into account the governance in biosphere reserves and corridors. Therefore, the Wildlife Protection Act can be regarded as the only legal statute to govern the subject matter of wildlife.

The balancing of work and responsibility has been taken care of in this legislation, and it is pretty evident from the fact that the central government takes care of all the matters relating to the administration while the state government looks after the matters of managing the protected areas. The protected areas in the National Wildlife Action Plan have been recognized as “reservoirs of precious biodiversity, providers of watershed resources, and a buffer to counteract the impact of climatic change.”⁶ Therefore, it can be clearly seen that the focus of Wildlife Protection Act is on conservation only.

Authorities under the Wildlife Protection Act

The Central Government appoints the Director of wildlife preservation and Assistant Directors of wildlife preservation who exercise their rights and powers in accordance with the directions of the Central Government.⁷ The State Government appoints the Chief Wild Life Warder and Wilf Life Warders with duties as directed by the State Government.

⁵ Wildlife Protection Act 1972, s 35(7), s 29 and s 33(d)

⁶ Report of the High-Level Committee on Forest and Environment Related Laws, OM No. 22-15/2014-IA.III, 29 August 2014

⁷ Wildlife Protection Act 1972, s 3

A National Board of Wild Life is constituted by the Central Government through the Wild Life (Protection) Amendment Act, 2002 with the Prime Minister as its Chairperson. It includes other members such as the Minister In-Charge of Forests and Wildlife, Director General of Forests, Director General of Tourism and all other stakeholders of the government which influence and are involved in wildlife protection. It is the duty of the Board to “promote the conservation and development of wild life and forests by such measures as it thinks fit.”⁸ Similarly, a State Board for Wildlife in every state is also constituted.

Under the Wildlife Protection Act, the Central Zoo Authority is also constituted by the Central Government with the functions to “recognise or derecognise zoos”, “identify endangered species of wild animals for purposes of captive breeding and assigning responsibility in this regard to a zoo”, etc.⁹ A National Tiger Conservation Authority is also constituted¹⁰ with the mandate to approve the Tiger Conservation Plan prepared by the State Governments.

The most important authority which is tasked with “collecting and collating intelligence related to organized wildlife crime activities and to disseminate the same to State and other enforcement agencies for immediate action, so as to apprehend the criminals and to establish a centralised wildlife crime data bank”¹¹ under the Wildlife Protection Act is the Wildlife Crime Control Bureau. It is pertinent to note that it not only mitigates the wildlife crimes but also curbs trans-boundary wildlife crimes. In spite of being constituted under the Wildlife Protection Act, it is an independent body, possessing power to investigate independently against any crime related to wildlife.

As far as the working of this bureau is concerned, it is clear that it works independently, collects all the required information relating to the crime, promotes awareness about the issues being faced by the wildlife, punishes the violators i.e. the hunters, poachers etc., provides proper infrastructure assistance to all the states who does not have the required resources to combat the wildlife issues and also provides security to the animals who are at the verge of getting extinct.

Moreover, in order to mitigate the problem related to wildlife this bureau plays different roles and

⁸ Wildlife Protection Act 1972, s 5C

⁹ Wildlife Protection Act 1972, s 38C

¹⁰ Wildlife Protection Act 1972, s 38K

¹¹ Wildlife Protection Act 1972, s 38Z

responsibilities such as establishing a central crime data bank where all the data related to the wildlife crimes is recorded, entering into agreements and co-ordinate with other nations, implementing various protocols and conventions related to wildlife conservation, keeping a check on the illegal trade, hunting and poaching of wildlife animals.

Whenever a crime is reported to the bureau, an officer is assigned a task to investigate the crime, he goes to the place where the crime was committed, records the necessary information related to the investigation in the diary kept by him. If the investigating officer finds any material on the site where the crime was committed, he handovers the same to the magistrate and should also send a sample for the purpose of examination. Thereafter, the accused gives his confession, the same has to be recorded within 6-12 hours of arrest. It is pertinent to note here that the accused has to sign each and every page of his confession and he should not be subjected to any duress or cruelty by the concerned officers. Thereafter, the officer not below the rank of Assistant Conservator examines the witnesses, and the process of collection of evidences also takes place. Each and every type of evidence is recorded i.e. documentary, digital and forensic. All the evidences collected are then examined and if they make a prima facie case against the accused then a complaint is filed against him. The complaint contains the facts, evidences etc. sufficient to prove the accused guilty of the offence. Moreover, it is important to note here that the complaint should contain a prayer and after the complaint is filed there remains no further scope of investigation.

The provision relating to investigation followed by the bureau might not seem problematic per se but contains some lacunas. At first, the accused is required to sign his confession which should not be done and needs immediate overhaul. Even in the Code of Criminal Procedure the accused is not required to sign the statement that he gives to the investigating officer as the same might be taken under coercion, undue influence, etc. making the evidentiary value of such statement null and void in the eyes of law. There are high chances that the investigating officer in order to close the case immediately might influence the accused to give certain specific type of confession and might use against him during the trial. The accused is considered innocent until proven guilty and he should be given fair chance to lead his case according to the principles of natural justice. Even the Constitution of India guarantees some basic rights to the accused under Article 14, 19 and 21, violation of which is impermissible in law. Therefore, the provision needs to be changed and the accused shall not be required to sign the statement.

Moreover, not allowing further investigation after the filing of complaint is also one lacuna in the provisions. There might arise a situation in which the investigation officer might not have conducted a proper investigation and the witnesses and evidences are not sufficient to convict the accused but the investing officer files the complaint and the judge after going through all the evidences deems that the case requires further investigation in order to adjudicate the case. But due to lack of provision related to further investigation they won't be able to exercise such power and it may lead to conviction of an innocent person. Therefore, such provision also needs immediate overhaul in the interest of law and justice.

THE NEED TO EXPAND THE JURISDICTION OF THE NGT TO INCLUDE WILDLIFE PROTECTION ACT

The National Green Tribunal was formed in 2010¹² to specifically look into matters related to substantial questions of environment. The Supreme Court recommended a system of specialised “Environmental Courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner.”¹³ This was due to “the overburdening of local courts with environment cases and difficulty in dealing with these cases due to technical questions involved, the apex court recommended a system of specialised courts for environment matters.”

Section 14 of the NGT Act defines the subject matter jurisdiction of the NGT. It provides that “The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.” The Enactments mentioned in Schedule 1 include the Environment (Protection) Act, 1986, the Biological Diversity Act, 2002, etc. However, NGT is not empowered to hear all issues related to conservation of forest or wildlife because the Wildlife (Protection) Act is not included in the list of enactments in Schedule 1 of the NGT Act.

However, in the case of Tribunal at its Own Motion v. Ministry of Environment & Forests,¹⁴ it was held that “wildlife is a part of environment and any action that causes damage or is likely to cause

¹² National Green Tribunal Act 2010

¹³ Indian Council for Enviro-Legal Action v. Union of India, 1996 SCC (3) 212

¹⁴ 2014 SCC OnLine NGT 860

damage to wildlife, could not be excluded from the purview of this tribunal.” In this case, the question was whether the mines in dispute were allowed to operate in violation of the Environment (Protection) Act, 1986. NGT stated that the term ‘environment’ under the Environment Protection Act includes water, air and land and the inter relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property. Wildlife as a part of the ecosystem has to be considered as a part of environment and therefore the matters related to wildlife are liable for adjudication before the NGT.

However, in other cases, the NGT has been reluctant to assume jurisdiction over cases involving wildlife protection. For example, in the case of Shivaji Suryabhan Sangle vs State Of Maharashtra, it was held that *“It is quite clear that only implementation of the seven (7) Enactments enlisted in Schedule I, will be within the jurisdiction of the NGT Act. Wild Life (Protection) Act is outside the list of those seven (7) enactments and hence, the National Green Tribunal (NGT) has no jurisdiction to decide any question relating to implementation of the provisions of that Act.”* Further, in the case of Sachin & Others v. The State of Maharashtra, it was held that *“A bare reading of Section 14, will make it clear that jurisdiction available to this Tribunal, is in respect of only the enactments, which are stated in Schedule-I, appended to the NGT Act. Those seven (7) enactments mentioned in the Schedule-I, do not cover the Wildlife (Protection) Act, 1972. It is explicit, therefore, that question pertaining to Sanctuary of Great Indian Bustard, falls outside jurisdiction of this Tribunal.”*

Therefore, the position regarding the jurisdiction of the NGT regarding cases involving wildlife protection is unclear. Recently, the Supreme Court sought assistance from Advocate General KK Venugopalan to consider if the jurisdiction of the NGT can be extended to the Wildlife Protection Act. In this case, the question was regarding the installation of bird diverters and underground cabling to protect endangered birds. However, the matter is yet to be clarified.

Wildlife is a part of the ecosystem and needs prompt protection. In fact, the Law Commission¹⁵ when it was considering the formation of a green court, recommended that, these proposed courts should deal with matters concerning *“The protection of natural environment, forests, wild life, sea, lakes, rivers, streams, fauna and flora”* This includes wildlife as well. The NGT was created with aim of protecting the environment, and therefore, limiting its powers by excluding the Wildlife Protection

¹⁵ Law Commission of India, 186th Report (2003)

Act does not make sense. The supposed reason why the Wildlife Protection Act is excluded from the ambit of the NGT is that the NGT Act applies only to civil cases, and excludes criminal offences. The United Nations Environment Programme has recommended that while forming Environment Courts and Tribunals, “inclusion of jurisdiction over criminal environmental laws, such as illegal hunting and trafficking in wildlife and illegal fishing, is key to achieving environmental justice and sustainable development.”³³ In light of this recommendation, it is our opinion that excluding Wildlife Protection Act from the scope of the NGT is detrimental to the environment and conservation in India. Therefore, the scope of the NGT must be expanded to include wildlife protection under its ambit.

NEED TO REFORM WILDLIFE PROTECTION ACT TO MAKE IT MORE LOCAL FRIENDLY

Top-down Approach under the Wildlife Protection Act

The Wildlife Protection Act has adopted a top-down approach. Thus, many critics argue that the Wildlife Protection Act is divorced from the needs of the Indian people. Others argue that the Wildlife Protection Act is based on international instruments, which is ultimately influenced by western ideas. This is evident from the adoption of the concept of ‘national parks’ and ‘sanctuaries. Traditional customs find no recognition in the Wildlife Protection ACT.

The Wildlife (Protection) Amendment Bill, 2013 incorporates some provisions which suits the Indian circumstances. For example, “it allows certain activities such as grazing or movement of livestock, bona fide use of drinking and household water by local communities, and hunting under a permit”.¹⁶ Further, the T.S.R. Subramanian Committee formed to review environmental laws in India, suggested the implementation of an umbrella law on environment protection based on inclusivity and public participation. However, these reforms have not been implemented.

It may also be argued that due to this lack of inclusion of local interests, India has violated its obligations under Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries¹⁷ as well as the objects of the Biological Diversity Act of 2002 made in pursuance of the Convention on Biological Diversity.

¹⁶ Wildlife (Protection) Amendment Bill 2013

¹⁷ Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957) 328 UNTS 247

Further, the administrative structure under the Wildlife Protection Act also lacks local participation. The Wildlife Protection Act provides for a two-tier structure for administration, one at the central level and other at the state level. At the central level there are Director and Assistant Directors of Wildlife Preservation. And at the state level, there is a Chief Wildlife Warden and several wildlife wardens under him or her. In this administrative structure which is highly bureaucratic, there is no local participation involved. Local participation is necessary in administration because it would facilitate easier and more efficient tracking of criminals involved in wildlife trafficking.

Land Acquisition under the WILDLIFE PROTECTION ACT

Laws regarding National Parks and Sanctuaries recognized under the Wildlife Protection Act are blind to the needs of the local populace. For example, the collection has discretionary power to allow “in consultation with the Chief Wildlife Warden, the continuance of any right of any person in or over any land within the limits of the sanctuary”. However, entry to the Sanctuary is only possible when one rights over the immovable property in the within the Sanctuary.

The process of acquisition provided in the Wildlife Protection Act is based on the Land Acquisition Act, 1894 which does not recognise the traditional rights of inhabitants. These are may include rights over resources from the land which is traditionally enjoyed by a certain community of people. The Wildlife Protection Act does not recognize these rights. Even though the Object of the Wildlife Advisory Board is to “suggest ways and means to harmonise the needs of the tribals and the protection of the wildlife”, this is not seen in practice. This is so because the District Collector who decides the rights of the local populace has minimal to no experience about the wildlife.

Environmentalist Ramachandra Guha has argued that “the forests, wildlife and the human inhabitant therein share a mutually dependent symbiotic relationship which is essential for their existence, for instance controlling forest fire and managing forest produce. Hence, such apprehension about the damage that local people can cause to wildlife is unwarranted and is derived for an ill-conceived functioning of the relations in environment” Therefore, as recommended by Sunita Narain Committee, “*wherever possible, communities of the forest dependent or the hunters should become the first option to look to for recruitment and creation of intelligent protection forces*”.¹⁸

¹⁸ Sunita Narain, ‘The Report of the Tiger Task Force: Joining the Dots’ (2005)

CONCLUSION

India has a strong legislation regarding wildlife conservation in the Wildlife Protection Act, however it requires reform focusing local participation and decentralization. Further, as argued in the present protect, the National Green Tribunal must be provided with the jurisdiction to try cases under the Wildlife Protection Act. This would ensure efficient protection to the wildlife in India. Another area of reform is the administrative structure which has too many bodies with little powers. In adopting reforms, there is a need to look local traditions cultures and practices to make a policy more suited to the Indian circumstances. Therefore, the wildlife law reforms that are adopted, must be founded on decentralization, administrative structures that are accountable, efficient and transparent, wildlife prosecutions that are speedier and fairer, a more inclusive wild life management approach and decision-making that is participatory There must be a planned approach to safeguarding wildlife. Such planning must be made mandatory to ensure higher degree of compliance requirements. This will further the capability to make better informed and quality decisions especially on issues wildlife. Therefore, the Wild Life Management Plans may help in effectively regulating and managing protected areas.

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