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# **WILDLIFE (PROTECTION AND CONTROL OF POLLUTION) ACT, 2022** **AMENDMENT ANALYSIS**

AUTHORED BY - SEERAT AGARWAL

## **ABSTRACT:**

This paper based on the amendment of the Wildlife (Protection and Control of Pollution) Act, 2022 amendment familiarizes the reader with the topic related facts, changes brought in by the government in the Wildlife Amendment Act 2022 as compared to the Wildlife (Protection and Control of Pollution) Act, 1972 and the theories about it. The paper gives a detailed comparison amongst the amendments of 2002, 2006 and 2022.

The paper states the overview of Wildlife (Protection and Control of Pollution) Act, 1972 and deals with the harshening of the fines with the amendment of the act in 2002, 2006 and 2022. It states how the climate change issues were addressed with the implementation of the further amendments. The obligations under the CITES which were previously not covered were covered under the 2022 amendment. The paper states the changes brought in by the new 2022 amendment in the Project Elephant launched by The Wildlife Act 1972 wherein the elephants were allowed to be used for religious and 'other purposes'. Therefore the paper does a comparative analysis and gives conclusion about whether the new amendments have been successful in covering the deficiencies of the Wildlife (Protection and Control of Pollution) Act, 1972, helping for the further protection of the endangered species and fulfilling of the government obligations under the act.

## **INTRODUCTION OF THE MAJOR AMENDMENTS-**

### **Wildlife (Protection and Control of Pollution) Act, 1972:**

The act was passed on 21<sup>st</sup> August 1972 and September 9, 1972 was its implementation date. This act was enacted by the Indian Parliament which was an integral part of the environment and the ecology

and played a crucial role in the protection and safeguard of the wildlife (flora, fauna and animals) in the country and prevent their trade. Wide range of species like – birds, mammals, fisheries, plants, etc are included in this act.

This act has six schedules included which gives different degrees of protection and the offences committed under these schedules attract the maximum penalties.

SCHEDULE I	Covering endangered species
SCHEDULE II	Covering animals having high protection
SCHEDULE III and IV	Covering species that are not endangered. It includes species that are protected but the penalty for any offence is less than the first two schedules.
SCHEDULE V	Includes animals which can be hunted
SCHEDULE VI	Includes plants that are forbidden from cultivation

The Act provides for the appointment of the Wildlife Warden and other forest officials. The Wildlife Warden is responsible for the wildlife protection and management in their respective jurisdictions meanwhile the forest officials are empowered to arrest and prosecute defaulters/offenders and to search for vehicles or premises suspected of being used for wildlife crime.

For keeping up with the changing and upcoming circumstances of the society, various new Wildlife Amendments have been passed. The Wildlife act has been instrumental in the protection of several endangered species like tigers, elephants and rhinoceros.

The Wildlife Protection Act, 1972 also provides for the implementation of the ‘CITES’ ( Convention on International Trade in Endangered Species of Wild Fauna and Flora) in India. Under this the trade in the specimens of species listed under the CITES are regulated and controlled by the Central Government as they have been granted the power for the same.

Under CITES, the species are classified into appendices which are based on the level of protection required by them. The three appendices are:

APPENDIX	The species that are threatened with extinction and trade in specimens of these species are prohibited, except in exceptional circumstances.
APPENDIX 2	The species that are not really threatened with extinction, still their trade with the specimens is controlled to avoid utilization incompatible with their survival.
APPENDIX 3	The species that are protected in AT LEAST one country, which has other CITES parties for assisting in controlling the trade.

### **Wildlife Protection Act, 2002 Amendment:**

This amendment came into force in January 2003 and it harshened the punishment for the defaulters under the Wildlife (Protection and Control of Pollution) Act, 1972.

Earlier the penalty for contravening the provisions of Chapter VA was imprisonment of not less than a year which may extend to seven years and a fine of not less than five thousand rupees. With the 2002 Amendment, the minimum imprisonment prescribed is three years which may extend to seven years with a minimum fine of rupees 10,000/-. Also a new section: 51-A, was inserted in the act which made certain conditions applicable while granting bail: “When any person accused of the commission of any offence relating to Schedule I or Part II of Schedule II or offences relating to hunting inside the boundaries of National Park or Wildlife Sanctuary or altering the boundaries of such parks and sanctuaries, is arrested under the provisions of the Act, then notwithstanding anything contained in the Code of Criminal Procedure, 1973, no such person who had been previously convicted of an offence under this Act shall be released on bail unless -

- (a) The Public Prosecutor has been given an opportunity of opposing the release on bail; and
- (b) Where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail”.

**Wildlife Protection Act, 2006 Amendment:**

The purpose of this act amended in 2006 was to combat the crime against tigers and other endangered species through the special Crime Control Bureau in order to strengthen their conservation.

**Wildlife Protection Act, 2022 Amendment:**

The Rajya Sabha recently passed the Wildlife (Protection) Amendment bill, 2022 which seeks to give effect to the obligation of India under the Convention on International Trade on Endangered Species of Wild Fauna and Flora ( 'CITES' ). The words “protection of wild animals, birds, and plants” mentioned under the Wildlife (Protection) Act, 1972 have been substituted by the words “conservation, protection and management of wildlife”.

**OBJECTIVE OF THE BILL:**

- Protection of Endangered species- it seeks to enhance punishment for illegal wildlife trade.
- Better Management of Protected Areas- it provides certain permitted activities by the local authorities like grazing or movement of livestock and Bonafide use of drinking and household water.
- Protection of Forest Lands- the rights of the people living since ages in the forest areas are protected under this.

A new schedule for species was proposed by this Amendment listed in Appendices under CITES.

**NEED FOR THE NEW AMENDMENT:**

*Threat of blacklisting*- India has been blacklisted by the CITES once, and if the same thing would have happened again, then India would have not been able to trade in important plant specimens, affecting large sections of Indian society dependent heavily on this trade.

*Non-uniform listing*- there was non uniform listing as some species were listed under English names, some under families, others under scientific names and others under orders.

*Issues in implementation*- such non-uniform listing was very confusing for wildlife and forest officials on the ground to implement.

S.NO	TOPIC	WILDLIFE ACT 1972	WILDLIFE ACT 2022 AMENDMENT
1.	Penalty for Offenses	For General offenses: maximum fine Rs.25,000 In case of Specially Protected Animals: minimum fine Rs.10,000 Hunting, trading, poaching of wildlife: maximum imprisonment 3 years	For General offenses: maximum fine Rs. 1 lakh In case of Specially Protected Animals: minimum fine of Rs. 25,000 Hunting, trading, poaching of wildlife: maximum imprisonment of 7 years
2.	Rationalising Schedules	The act has six schedules: One for Specially protected plants Four for Specially protected animals One for Vermin species	The act reduced the schedules to four by: Inserts a new schedule for specimens listed in the Appendices under CITES (scheduled specimens). Two for specially protected animals (one for greater protection level) Removes schedule for Vermin species
3.	Control of Sanctuary	The Act gives the power to the Chief Wildlife Warden appointed by the State Government to control, manage and maintain all sanctuaries in the state	The Bill specifies the actions of the Chief Wildlife Warden which should be in accordance with the management plans for the sanctuary.  The plans will be prepared as per the guidelines of the Central Government, and as approved by the Chief Warden
4.	Conservation Reserves	Only the State Government had the power to declare areas as a conservation reserve, adjacent to national parks and sanctuaries, for protecting flora and fauna and their habitat	The new Amendment Bill gives the powers to the Central Government as well to notify a conservation reserve.

*Constant threats to wildlife*- the threats include: illegal wildlife trade, habitat destruction, human-animal conflict, invasive species, climate change, pollution, etc.

### THE PROPOSED AMENDMENTS:

1. Section 6- it has been amended to constituted Standing Committee to exercise delegated power by the State Board of Wildlife to exercise such powers and duties.
2. Section 43- it was permitted the use of elephants for 'religious or any other purposes' (wherein the words 'any other purposes' has been vaguely defined)
3. Section 49E- to enable Central Government to appoint a Management Authority.
4. The amendment allows the Central Government to appoint a Scientific Authority to provide guidance on matters relating to the impact on the survival of the specimens on being traded.
5. The bill also gives the power to the Central Government to regulate and stop the import, trade or possession of invasive plant or animal alien species.

## COMPARISON OF THE WILDLIFE ACT 1972 WITH THE 2022 AMENDMENT:

### FURTHER PROVISIONS OF THE NEW BILL WERE:

**Scientific Authority:** The advices on aspects related to the survival of the specimens being traded are given by it.

The removal or modification of the identification mark of the specimen is prohibited by the scientific authority.

It is mandatory to obtain a registration certificate from the Management Authority for every person possessing live specimens of scheduled animals.

**Invasive alien species:** The Central Government is empowered to regulate or prohibit the import, trade, possession, or proliferation of invasive alien species.

**Surrender of captive animals:** The bill provides for any person to voluntarily surrender any captive animals or animal products to the Chief Wildlife Warden. There will be no compensation given to such person and the surrendered items will become property of the state government.

## CONCLUSION

Overall, the 2002 amendment strengthened the Wildlife (Protection) Act, 1972 and brought it in line with international standards for the protection of wildlife. The increased penalties, the establishment of the National Board for Wildlife, and the Wildlife Crime Control Bureau have all contributed to better enforcement of the Act.

### **Case studies:**

#### **Indian Handicrafts Emporium v. Union of India**

In this case the petitioner had challenged the constitutional validity of Amendment Act 44, 1991, to the Constitution of India, which prohibited trade in imported ivory.

The learned senior counsel appearing for the appellants, urged that the impugned provisions of the Amendment Act violate Article 19(1)(g) of the Constitution of India inasmuch as thereby the right of the appellant to trade in ivory has unjustly been prohibited. The learned counsel would submit that restrictions imposed by reason of the said Amendment Act being excessive, the same must be held to be confiscatory in nature. The Amending Act is also ultra vires Article 14 of the Constitution of India, being irrational and arbitrary. The learned counsel has drawn attention to the fact that the population of elephants has gone up in several countries, e.g., Botswana, South Africa, Namibia and Zimbabwe, and these countries have been permitted by Convention on International Trade in Endangered species of Wild Fauna and Flora (CITES) to deal in ivory subject of course to certain restrictions. Attention has further been drawn to the fact that ivory which was placed in Appendix-I of the CITES has now been placed in Appendix-II thereof. It was also submitted that ivory collected from dead animals should also be permitted to be dealt in.

The Court reasoned, that trade in imported ivory being dangerous to ecology has been regulated by imposing total prohibition by Wildlife (Protection) Amending Act of 1991. Such Amending Act indirectly seeks to protect Indian Elephant and to arrest their further depletion. Traders and non-traders constitute two different classes and the classification is founded on an intelligible difference clearly distinguishing one from the other. "A machinery must be so construed as to effectuate the liability imposed by the charging Section and to make the machinery workable."

Court judgement:

The Supreme Court held that the Wildlife (Protection) Act of 1991 indirectly seeks to protect Indian elephant and to restrict its further depletion, and so, the appellants petition was dismissed.

**Mahaveer Nath v. UOI (2019)**

Facts: The constitutional validity of Sections 9 and 11 was challenged on the ground that the restrictions mentioned under those Sections deprived the petitioner of his right to livelihood.

The petitioner is a member of the Nath/Sapera community who is deprived to carry out the vocation of snake charming for his livelihood except on certain days where snakes are worshipped. This community was referred to as “barefoot conservative educators” to highlight their vital role in sensitizing people to reptiles.

Held: The petition was challenged on the ground that Section 9 has resulted in the prohibition of keeping of snakes and thus, it violates the fundamental right to trade under Article 19(1)(g) and Article 21 of the Constitution. The Court observed that Article 19(1)(g) is not an absolute right but a qualified right and reasonable restrictions can be imposed on the same for the general welfare of the public.

**Tarun Bharat Sangh, Alwar v. Union of India & Ors**

This case dealt with illegal mining activity in an area declared as Tiger Reserve. The petitioner, a voluntary organization interested in protecting the environment, approached the court complaining of the widespread illegal mining activity going on in the area declared as a Tiger Reserve in the State of Rajasthan. It prayed that in the interest of ecology, environment and rule of law, the activity should stop. It was alleged that there were notifications prohibiting all mining activity, and yet the State Government had granted hundreds of licences for mining marble, dolomite and other materials and that such section was contrary to law.

The Court appointed a committee to ensure due observance of the various Acts and Notifications that had been issued in respect of the protected area. The committee stated that there were 215 mines completely falling within the areas declared as protected forest while 47 mines fell partly inside and

partly outside the areas declared as protected forest.

The court emphasized that this was not a case where the court was called upon to shut down an activity being carried on lawfully, in the name of higher considerations of ecology and environment. It was a simple case to ensure observance of enacted laws made by the State to protect the environment and ecology of the area. In such a case, there was no need to be oppressed by considerations of balancing the interest of economy and ecology. That had already been done by the Legislature and Parliament. It observed that no mining lease could have been granted or renewed within the forest without clearance from the Central Government in accordance with the forest (Conservation) Act, 1980 and the Rules made there-under. Admittedly, no such prior approval or clearance of central Government was obtained. It concluded that the mining activity was illegal and had to stop. Besides that, it was directed that the mining activity in the mines situated outside the protected forest areas but within the tiger reserve could continue for a period of four months. If no permission to continue mining was obtained from the Central Government within the said period of four months, the mining activity in the entire area declared as tiger reserve had to stop.

**MS Ivory Traders And Ors. v Union of India And Ors.**

*Fact Summary*

The petitioners are dealers and artisans in ivory who carry on the business and trade in ivory including the manufacture of articles derived from ivory lawfully imported into India prior to the ban. They imported part of the stock of mammoth ivory from Russia and part of it from Hong Kong for the purposes of the business.

It is further asserted that ivory derived from mammoth, extinct species of wild animal, and ivory derived from elephants cannot be treated at par or on the same footing as both are different from each other and can be distinguished.

Therefore, they plead that they are persons affected by the Amendment Act 44 of 1991. The Amendment Act has been enacted to carry out the mandate of the directive principles enshrined in Article 48A of the Constitution of India:

"Protection and improvement of environment and safeguarding of forests and wild life: The State

shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country."

The Court reasoned, that the Amendment Act explicitly bans the use of ivory for commercial use: "No person can commence or carry on business as a dealer in ivory imported into India or articles made, there from, or as manufacturer of such articles." The Court puts special emphasis on the words "ivory imported into India", as being designed deliberately. The intention is to cover all descriptions of ivory, including from mammoth.

***Court judgement:***

Impugned legislation falls within the power and competence of the Parliament as the same is meant to protect the Indian elephant. To achieve that purpose, the Parliament has undoubted power to deal with matters which, effectuate the same. It can legislate with regard to all ancillary and subsidiary subjects including the imposition of ban on trade in imported ivory of all descriptions, whether drawn from mammoth or elephant, for the salutary purpose of the preservation of the Indian elephant. Based on the above reasoning, the Court dismissed the appeal petition.

