

# WILDLIFE PROTECTION IN INDIA : A LEGAL ANALYSIS

Razit Sharma

(Asst. Professor Law College Dehradun, Uttarakhand University, Uttarakhand, India),

Ayush Raturi

(B.A.LL.B.Hons, 10<sup>th</sup> Semester, Law College Dehradun, Uttarakhand University, Uttarakhand, India.)

## INTRODUCTION

The wildlife occupies an important place in our cultural and religious tradition. Our care for animal including many endangered species leaves a lot to be desired. The earliest enactments to protect wild animals in India were Elephant Preservation Act., 1879 and Wild Birds Protection Act, 1887.

It is understood that preservation of wildlife is almost essential not only for animals but also for survival of human races. Due to increasing depletion of wildlife, environmental concern regarding the flora and fauna came to the lime light long after independence.<sup>1</sup>

After the commencement of the Indian Constitution in the division of powers between centre and states, 'wildlife' was originally a State subject and the Parliament had no Constitutional power to make law in respect of wildlife unless the legislatures of two or more states pass a resolution in pursuance to article 252 empowering the Parliament to pass necessary legislation thereto. The first comprehensive law for the protection of wildlife and its habitat was perhaps the Hailey National Park Act, 1936 which established the Hailey (now Corbett) National Park in the State of Uttar Pradesh.

The primary intent of most of the early statutes was to preserve game animals for hunting. The Indian Forest Act, 1927 included restrictions in reserved or protected forests and authorised the establishment of sanctuaries. Law should be passed to protect the endangered species and severe punishment should be given to those hunters who indulge in their illegal and senseless killings and the poachers who hunt them out of personal gains. India is probably the first Country to enact the Wildlife Protection Act.<sup>2</sup>

After Independence, the Constituent Assembly in Draft Constitution placed "Protection of Wild Birds

<sup>1</sup>"Environmental legislation", *The Statesman*, 19 January 2017

<sup>2</sup>Indira Gandhi Conservation Monitoring Centre (IGCMC), New Delhi and the United Nations Environmental Programme (UNEP), World Conservation Monitoring Centre, Cambridge, UK. 2001. *Biodiversity profile for India*

and Wild Animals" at entry No. 20 in the State List and State legislature had been given power to legislate.<sup>3</sup> It was later shifted to Concurrent List by 42<sup>nd</sup> Amendment Act 1976. It has given a greater say to the centre by placing subjects 'forests'<sup>4</sup> and 'protection of wild animals' and birds, in the Concurrent List.<sup>5</sup> Realising the importance of wildlife resource and in order to prevent its depletion, several steps have been taken in the country by way of enactment of various Wildlife Acts.

In the following pages important legislations related to wildlife shall be taken up one by one in chronological order.

### **Madras Elephant Preservation Act, 1873**

In the field of wild life protection early legislation was limited to specific areas and particular species. In 1873, Madras enacted the first Wild Life Statute for the protection of Wild Elephants. The law introduced a general prohibition on the destruction of wild elephants and imposed a penalty on those who violated the embargo. The first effort by Central Government came six years later with the passing of the Elephant Preservation Act, 1879.<sup>5</sup>

### **The Elephant Preservation Act, 1879**

This Act was enacted for the preservation of elephants. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless in defence of himself or some other person, when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road and any railway or canal or as permitted by licence- granted under this Act. Whoever contravenes sec.3 of the Act shall be punished with fine which may extend to Rs. 500 for each elephant concerned. And whoever breaks any condition contained in a licence granted under this Act shall be punished with fine which may extend to Rs. 500. Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine or with both. When any person holding a licence under this Act is convicted under this section such licence shall become void and shall be delivered up to the Magistrate.<sup>6</sup>

### **The Wild Birds and Animals Protection Act, 1912**

In 1887, the Centre enacted the Wild Birds Protection Act prohibiting the possession or sale of wild birds recently killed or taken, during notified breeding season. In 1912, the Central Government enacted a broader Wild Birds and Animals Protection Act. Extending to most of the British India, this law specified closed hunting seasons and regulated the hunting of designated species through licenses. Indeed all the

<sup>3</sup>Entry 17B, Schedule VU, The constitution of India.

<sup>4</sup>Entry 17A, Schedule VII, The Constitution of India.

<sup>5</sup>The Elephant Preservation Act, 1879, Sec3.

<sup>6</sup>The Elephant Preservation Act, 1879. Section7.

legislations primarily related to the regulation of hunting and did not regulate trade in wildlife.<sup>7</sup>

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

A law is nothing but a reflection of the aspirations and mores of a society, and undergoes changes with time. Till the middle of the last century, wildlife in India was abundant and their habitat largely intact. Hunting was a popular sport. In the early seventies it became clear to decision makers that unless a uniform, well structured law was promulgated across the country, survival of wildlife would be in danger. The Wildlife (Protection) Act, 1972 was therefore put into place. It became applicable to all the States of India except Jammu and Kashmir, which later enacted its own law called the Jammu and Kashmir Wild Life (Protection) Act,1978.

### **National Zoo Policy,1998**

In October 1998, the Ministry of Environment and Forest, released a comprehensive policy entitled 'National Zoo Policy, 1998' dealing in detail with the issues pertaining to the management of zoos in India. The National Zoo Policy declares that:

The main objectives of the zoos shall be to complement and strengthen the national efforts in conservation of the rich bio-diversity of the country, particularly the wild fauna. This objective can be achieved through the following protocol:

> Supporting the conservation of endangered species by giving species, which have no chance of survival in wild, a last chance of survival through coordinated breeding under ex-situ conditions and stocks for rehabilitating them in wild as when it is appropriate and desirable.

> To inspire amongst zoo visitors empathy for wild animals, an understanding and awareness about the need for conservation of natural resources and for maintaining the ecological balance.<sup>8</sup>

### **Provisions under other Laws**

#### **(a) The Prevention of Cruelty to Animals Act,1960**

<sup>7</sup>A commentary on the Wildlife (Protection) Act 1972, and includes a compilation of the Supreme Court and High Courts judgements on Wildlife (Protection) Act 1972, Indian Forest Act, 1927, Forest (Conservation) Act, 1980 and other relevant statutes.

<sup>8</sup>indiacode.nic.in/qrydisp.asp?tfnm=200316

The Prevention of Cruelty Act, 1960 classifies all living creatures into two classes: human beings and animals and seeks to regulate the behavior of the former towards the latter. This Act pertains to captive and domestic animals.<sup>9</sup> It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering. Sec. 11 of the Act enumerates the various forms of cruelty of animals which are prohibited. If any person beats, kicks, over-rides, over drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain, employs or labour any animal for which it is unfit, shall be punishable. Other forms of cruelty are willfully administering any injurious drug or injurious substance, keeping the animal chained, not providing sufficient food, drink or shelter, to permitting any animal to die in any street, killing or mutilating any animal by strychnine injections in the heart or any other cruel manner.<sup>10</sup>

If any person treats animals with cruelty he shall be punished for the first offence with fine up to fifty rupees and for second or subsequent offence committed within three years of the previous offence, with fine up to one hundred rupees or with imprisonment up to three months or with both. Performance of experiments on animals for the purpose of advancement by new discovery of physiological knowledge or of knowledge which will be useful for saving or prolonging life or for combating any disease, whether of human beings, animals or plants is not prohibited and is lawful. Rules relating to experiments on animals are made under Sec.17 if those rules are not complied with, the Committee has the power to prohibit experiments on animals

## JUDICIAL REFERENCE

In *Wild Life Protection Society, Hyderabad v. State of A.P.* the petitioner took cognizance of the report pertaining to the killing of 13 months old tigress in the Nehru Zoological Park and Killing of other wild animals and extraction of the their body parts like nail, skin, eyes, tail etc and sought directions from the court for constitution of special vigilance and enforcement cell under the administration of C.B.I, and to place a detailed report about the alleged incident. The State Government filed a detailed counter affidavit showing that adequate steps had already been taken for the protection of wild animal and the Central Government had already released sufficient finance to the State Government for effective enforcement of provisions of Wild Life (Protection) Act, 1972 under the scheme of development of National Parks and Sanctuaries. In view of the circumstances the Court declined to issue any further direction.

<sup>9</sup>Raju Z. Moray, From Cruelty to Compassion, The Lawyers, Vol. 10(6), 1995, p 4.

<sup>10</sup>The Prevention of Cruelty to Animals Act, 1960, Sec 11.

In the case of *Tilak Bahadur Rai v. State of Arunachal Pradesh*, it was held that to decide whether in killing an animal the accused acted in self defence or not, the nature and ferocity of animal shall be relevant. Thus, in this case of killing the tiger in good faith and in defence of oneself it cannot be said that the accused was committing any offence prior to shooting the tiger that charged at him and thus the killing was held to be justified.

In *Chief Forest Conservator (Wildlife) v. Nisar Khan*, the appellant had been granted a license for carrying on business as a dealer in birds which were bred in captivity. His application for renewal of the license for the next year was rejected by the licensing authority on the ground that it would not be possible for him: to carry on the business of breeding of captive birds without hunting which includes trapping of birds. The Supreme Court held that licensing authority rightly refused to renew the license as business of breeding of birds in captivity by procuring them by trapping is prohibited under section 9 read with section 2(16) of the Wild Life (Protection) Act, 1972.

It has been held in *State of Bihar vs. Murad Ali Khan*<sup>11</sup> that hunting is an offence under Section 51(1) of the Wildlife Protection Act. In the present case the Range Forest Officer filed a complaint in Magistrate's Court in writing that the accused had shot and killed an elephant in Range Forest and had removed the tusks. The Magistrate ordered issue of process against the accused, even though the investigations by police were in progress in relation to same offence.

The respondents approached the High Court under Section 482 of the Cr.P.C. for quashing the order of the Magistrate. Taking cognizance of the alleged offence and issuing summons, the High Court of Patna accepted the petitioner's contention and quashed the order of the Magistrate. In view of the High Court the Magistrate acted without jurisdiction in taking cognizance of the offence and ordering issue of process against the accused. Relying on this the High Court quashed the proceedings. The decision of High Court was based on two grounds. Firstly, the learned Magistrate acted contrary to the provision of Section 210 of Cr.P.C. and Secondly on the merits of the complaint.

Hon'ble Supreme Court observed that the High Court has erred in coming to the right conclusion. The Court said, "Cognizance of an offence against the 'Act' can be taken by a court only on the complaint of the officer mentioned in Sec. 55 and it has been done in this case." The Court also said that the Section 482 of Cr.P.C. should be used sparingly and that an offence under Sec. 9(1) read with Sec. 2

(16) and 51 of the Wildlife Protection Act in its ingredient and content is not same or substantially the same as section 429 of the Indian Penal Code. Therefore, in case of killing an elephant, the report of the police investigation, which made out that no offence was committed under section 429 of Indian Penal Code would not bar with initiation of such proceedings under Sec. 9(1) read with Sec. 51 of the Wildlife

<sup>11</sup>AIR 1989 SC 1.

Protection Act, 1972. Hence the Court set aside the High Court order and the Magistrate order was restored.

Hunting of wild animals is to be permitted in certain cases, for example, in self defence. To decide whether in killing an animal the accused acted in self-defence or not, the nature and ferocity of the animal will be a relevant factor.

In *Trilok Bahadur vs. State of Arunachal Pradesh*,<sup>12</sup> it was argued that whether the accused acted in self-defence or not. The brief facts of the case are that the petitioner was a guard in Changlai camp, when on sentry duty he observed the presence of a tiger. He reported the same to his Commander. Accordingly, he was ordered by his Commander to fire two or three rounds in the air. The tiger instead of fleeing came towards him and attempted to assault him. The accused had no option but to fire at the tiger. As a result the tiger died.

The Deputy Commissioner sentenced the accused for 6 months simple imprisonment under section 51 of the Wildlife Protection Act. A Criminal Revision was filed before the High Court. The basic question before the Court was to determine whether the accused killed the tiger in hunting or self-defence. The Court observed that the ferocity of the animal would be relevant in that context.

A tiger is an animal, what the Romans called a *ferae naturae*. Tiger by nature is a dangerous animal. In the case of attack by '*ferae naturae*' the victim cannot be expected to weigh the chances in golden scale. The inference can be drawn that he was acting in good faith in defence of oneself and it can't be said that the accused was committing any offence prior to shooting the tiger that charged at him. Therefore, he will be completely protected under sub-section (2) of Sec 11. The impugned order of conviction and sentence is contrary to the provisions of Sec 11 of the Wildlife Protection Act and as such it is liable to be set aside.<sup>107</sup>

In another case, *Jagdish Singh vs. State of Bihar*<sup>13</sup> the accused was held for killing a Bison and the Trial Court convicted him for the imprisonment of 3 months. The petitioner filed the appeal against this order. The facts of the case are that while the Wildlife Warden was patrolling the forest along with his staff in the Belta Reserved Forest, he found the petitioner killing a Bison. The Wildlife Warden prepared the seizure list and arrested the petitioner and filed the case before the Sub-Divisional Magistrate. He charged him under Sec. 51 of the Wildlife Protection Act. Against this order the petitioner filed an appeal before the Sessions Judge. The petitioner contended that the Wildlife Warden had no jurisdiction to file a complaint; only Chief Wildlife Warden or any authorized person under the Act by the State Government had power to do so. In view of Rule 31 of 1973,<sup>109</sup> framed by the State Government, besides the Chief

<sup>12</sup>1985 CrLJ. 1314 (Pat.)

<sup>13</sup>The Bihar Wild Life Protection Rules, 1973, Rule 31



Wildlife Warden, the Divisional Forest Officer or the Deputy Conservator of Forest is also entitled to file complaint.

In Jagdish Singh vs. State of Bihar,<sup>14</sup> the complaint was filed after obtaining sanction from the Divisional Forest Officer who was authorized to file the complaint. It is relevant to mention here that under the Wildlife Protection Act the authorities concerned are given power to delegate his powers to any of his subordinate officers.

Therefore, it can't be said that no other person except the Chief Wildlife Warden or such other officer who has been authorized by the State Government can file a complaint upon which cognizance can be taken. Before the enactment of Wildlife Protection Act, 1972, the position was totally different. In the absence of the Act; the courts were guided by mainly the provisions of Indian Penal Code and Wild Birds and Animals Protection Act, 1912. Even before that there were legislations like the Forest Act, 1878, which dealt with wild animals and plants.

The Prevention of Cruelty to Animals Act, 1890 dealt with prevention of cruelty against domestic animals. If we look at the Forest Act (1878), in Sec. 26 it defined the word 'hunt'. The word hunt implies motion, a chase and a pursuit. Hence any person who was one of the party beating up game in a reserved forest in this fashion was a member of the hunt, and even though he himself may not be within the prohibited areas he was guilty of the offence along with the rest of the hunt.<sup>112</sup>

#### 4. CONCLUSION

Wildlife conservation includes all human efforts to preserve wild animals from extinction. It involves the protection and wise management of wild species of their environment. Some species have become extinct due to natural activities. The progress of man throughout has been beneficial for the human race but it is the wildlife that has suffered through the years. Inventions of sophisticated weapons, industrialization, urbanisation, and even increasing human population have been some of the major causes for dwindling of our rich resources. Hunting, clearing of forests, drawing of swamps and damming of rivers for irrigation and industry - this is what we appraise of man's progress. These activities have vastly reduced the natural habitats of our wildlife and many species are endangered or nearly extinct.

Extinction is a 'biological reality' for no species has as yet existed for more than a few million years without evolving into something different, or dying out completely. Success in evolution is measured in terms of survival and failure by extinction. Once a species is extinct because of natural causes or human activities, it is gone forever. It is believed that each individual wild creature has a right to survive without human interference, just as each human being has the right to survive.

<sup>14</sup>1985 CrLJ1314 (Pat.)

There are important differences between the present mass extinction and those in the past. First, the present mass extinctions are caused by us. Such extinction cannot be balanced by speciation because it takes between 2,000 and 10,000 generations for new species to evolve. Second, it is taking place in only a few decades rather than over several million years. Third, plant species are disappearing as rapidly as animal species, thus threatening many animal species that otherwise would not become extinct at this time.

Poaching for the purpose of meat, skin, ivory, rhino horns, musk, etc. has considerably reduced wildlife even to the extent of annihilation of species. The majority of recent extinctions, both in plants and animals are due to the environment change arising from alteration, degradation or destruction of natural habitats, deforestation, agricultural expansion, unresisted grazing and spreading urbanisation. There are many factors that necessitate the conservation of wildlife and answer the need to protect wildlife. Wildlife has economic importance as it provides meat for food and skin for fur. The plants also provide food, timber, paper, gums, resin, drugs, fibers, rubber, oils, sugar, etc. Animals provides fur, wool, silk, leather, musk, ivory etc.

In many cases, wildlife can be helped by ensuring that their environment is favourable with regard to availability of food, water and shelter. This method is called habitat management. It involves soil conservation, good forestry, and practice and wildlife management. Several species have been threatened with extinction due to destruction of habitat by human activities like deforestation for farming, pollution of air, water, land, plants and animals etc. Excessive increase in number of one species in a given area threatens not only its own endurance but also that of other species by consuming major portion of available food. Such numbers must be reduced by controlled hunting or by restoring its natural enemies where they have become scarce. Sometimes species find it extremely difficult to survive in their own once favourable environment. Such species can be protected by breeding in captivity and releasing in a protected area that satisfies the conditions favourable for survival.

India despite of long history of civilisation and vast population, still have wildlife in better conditions because the conservation is our cultural tradition. The Indian tradition goes back to ancient period of the Vedas and has continued throughout the history. Throughout India, edicts carved on rocks and iron pillars remind us that Emperor Ashoka made it a king's duty to preserve animal life and forest trees. He was the first and perhaps the only monarch to forbid the killing of a large number of species of animals for sport and food.

The Indian tradition for love, respect and reverence for nature could also be traced back to Indus valley civilisation. The images of rhino, elephant, bull etc., found on Indus valley seals speak of the sense of



human fascination for wildlife at that time. The most wide ranging wildlife imagery is founding Indian miniature paintings. Early literature like 'Panchtantra' and 'Hitopdesha' contains animal fables that have been used to preach both wisdom and morals. The theme of Hindu God Shri Krishna's life depicted in miniature paintings underlines and appreciation of ecological balance. In more recent historical times, Mughal emperor Babur's memories (Babur Nama), Guru Nanak's hymns or 'Baramaha' (the season) depicting each month with a dominant bird image and Emperor Jehangir's memoires showing his keen interest and study in wildlife provide fine illustrations of Indian tradition.

Rivers are worshipped with reverence as they are considered to be the manifestation of Hindu Goddess. The festival of 'Nagapanchami' snake worship is celebrated as a thanks-giving after the harvest season. Sacred groves maintained for purpose of worship. 'Bhisnois' are well known for the sacrifice of their lives for the protection of wildlife and trees. This long tradition and abiding faith in conservation of nature is alive in recent times also.

