

Laws for the civilised in safe guarding the wild

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INTRODUCTION

Environment is a complex of numerous factors, which encompasses man and in addition the living creatures. Environment incorporates water, air and land and the interrelationships which exist among and between water, air and land and individuals and other living animals, for example, plants, creatures and miniaturized scale living beings. Environmental law alludes to laws that are coordinated towards ensuring characteristic and social assets, including laws identifying with contamination, clamor, arrive utilize and improvement, social legacy, asset extraction, and undermined species assurance. The challenge for the modern world is to use our knowledge, both ancient and modern, to support the intelligent, sustainable use of our environment. Wildlife Conservation is the act of securing wild flora and fauna in the living world. Wildlife assumes an essential part in adjusting the earth and gives steadiness to various common mechanisms of nature. The objective of wildlife protection is to guarantee that nature will be around for future ages to appreciate and furthermore to perceive the significance of wildlife life and wild for people and different species alike. Nature has made its own rules in order to balance harmony in the environment but we humans took control over and thus made changes in the ecosystem. Now there are various problems faced by the human being like climate change, acid rain, pollution, etc because of the interruption in ecosystem. In order to restore the environment the need of creating laws came into existence which has limited or encouraged certain activities of individuals, state or any other legal entity.

HISTORICAL EVOLUTION

India has a splendid heritage which shows a deep reverence towards the environment. A peep into the environment jurisprudence reveals that preservation of environment has been the prime focus in various ancient spiritual teachings and sacred texts. One of the pioneers in the field of environment was Kautilya¹, who was the Prime minister of Chandragupta Maurya. As early as 300 BC, he realized the significance of the environment and formulated rules which mandated the rulers to protect forest and animals. In laws concerning forests, there were specific rules on the State to maintain forests; selling of trees; damaging trees; forest produce; forest reserves for wild animals; etc. penalties were also prescribed. Similar writings were also found in the fifth Rock Edict of Asoka. In the late 19th century, efforts were made to conserve wildlife. Two significant enactments in this regard were the Elephant Preservation Act, 1873 and the Wild Birds Protection Act, 1887. The latter Act was replaced by the Wild Birds and Animals Protection Act, 1912, which for the first time, prohibited the killing of any kind of wild animal or bird, other than those specified in schedule. The biggest breakthrough in efforts for wildlife conservation was the idea of protected areas like wildlife preserves of all kinds i.e. national parks, sanctuaries etc. Wild-life trafficking is sadly evaluated to be among the most lucrative illicit and money minting trades. It has mushroomed worldwide risk that disintegrates biodiversity, strips nations of their national resources, potential outcomes from tourism. The UNDP-GEF (Global Environmental Program) biodiversity and biological communities portfolio is the biggest in the UN framework, covering more than 130 nations with subsidizing and co-financing totaling USD 5 billion. UNDP is supporting 13 nations in the GEF-financed Global Wildlife Program, a worldwide association planning to lessen poaching, trafficking and interest for unlawful wildlife items. To address the difficulties postured by wildlife trafficking, more grounded establishments and law implementation are required.¹ As far as international scenario is concerned the First UN conference on the Human Environment was held in 1972 at Stockholm where for the first time concern for

environment protection was raised. The conference had the effect of initiating worldwide participation by urging governments all over the world to consider that the environment must be protected in order to operationalize the right to life. It marked a watershed in international relations as it placed the issue of protection of biosphere on the official agenda of international policy and law. Another landmark event was Montreal Protocol which came into force from January 1989 was aimed at the elimination of ozone-depleting substance like Chlorofluorocarbons at a uniform rate irrespective of the development status of a country. India has ratified various international conventions one of the conventions is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which was ratified in 1973. The convention worked as a milestone for the Convention on Biological Diversity, 1992. The pivotal role of this convention was addressing biodiversity conservation and sustainable usage, habitat preservation, and protection of indigenous people's rights, and intellectual property. The impact of the convention was the enactment of Wildlife (Protection) Act, 1972 enacted.

PROTECTING WILDLIFE

Globally, there are two ways to deal with the field of preservation of wild species. One goes for securing the species paying little mind to their territory, which is typically trailed by the created nations. A case of such an approach is the imperiled species act, 1973 of the US. The other approach, goes for safeguarding the natural surroundings or biological community whereby the species is ensured consequently, which is trailed by creating nations. A case of this approach is the Wildlife Protection Act, 1972 of India. This demonstration was sanctioned after the Forty-Second Constitutional Amendment moved wildlife and forest from the State List to the Concurrent List. India has dependably taken after a blend of both methodologies where living spaces have been saved as well as been various projects focused at particular leader species, similar to Project Tiger, Project Elephant and so on. Another way to deal with moderate territories intends to assign holds, for example, Tiger Reserves and Biosphere Reserves, which are not lawfully classified under the statutes but rather are authoritative systems. In spite of such differed measures, issues, for example, unlawful exchange wildlife and its items, expanding wildlife life offenses, negligible feelings in courts, and absence of mindfulness among legal, deficient points of reference on wildlife life statute have represented prevention to protection of wildlife.

Dangers to wildlife in India: Deterioration and annihilation of living space has been the two most

noteworthy variables that undermine wildlife in India. Different government activities have turned out to be hurtful for wildlife life and their environment, which were taken purportedly for the benefit of both human culture and wildlife. For instance, the Uttar Pradesh Chief Wildlife Warden allowed evacuation of fallen timber to meet the prerequisites of neighborhood individuals, thinking that it was a decent fire avoidance measure. However extreme expulsion of such timber turned out to be dangerous for the biological community¹ Wildlife exchange has developed as another risk to the safeguarding of the same. Uncontrolled poaching in wildlife life and its items are for the most part determined by the requests for these in the universal markets. It is trusted that illicit exchange wildlife items are second just to the worldwide exchange opiates. For the situation Ivory Traders Manufacturers Association v/s Union of India², the Delhi High Court commented that business in creature species very nearly elimination being perilous and malevolent is, in this way not secured by Article 19(g) of the Indian Constitution.' With a specific end goal to secure the wildlife life, the Indian Board for wildlife (IBWL) was set up in 1952 and on its proposals, different State Governments set up Wildlife Advisory Boards. In 1970, under the aegis of the IBWL, a specialist panel was constituted to look at the patterns to wildlife life preservation. This board alongside the Convention on International Trade in imperiled types of Wild Fauna and Flora started the sanctioning of the Wildlife Protection Act, 1972, which was the main extensive bit of enactment regarding the matter.

Project Tiger: India felt the need for a special conservation programme for tigers, which is now a gravely endangered species. Realizing the need to conserve the tigers remaining in India, an initiative called "project Tiger" was started by the Central Government in 1973 with 9 tiger reserves which presently covers 41 tiger reserves. A tiger conservation Authority has been set up under these provisions with a view to give special attention to the needs of a conservation programme aimed only at tiger. A multi-disciplinary Tiger and other endangered species crime control Bureau has been constituted in 2007 to combat illegal hunting of tigers. Section 51C was inserted into the Act which prescribe imprisonment for a term of not less than three years and which may extend to seven years and with fine of not less than fifty thousand and may extend to two lakhs. The state governments have been mandated to develop strategies to ensure that the primary concern of tiger conservation is not compromised with. New tourist infrastructure has been banned in the core area of tiger reserves unless they conform to the law.

Statutory Framework on Wildlife Protection

The objectives of wildlife (Protection) Act, 1972, is of threefold:

- To have a uniform legislation on wildlife throughout the country;
- To establish a network of protected areas;
- To regulate illegal trade in wildlife and its products

According to the Act the definition of 'Animals' include mammals, birds, reptiles, amphibians, fish, and other chordates and invertebrates including their young ones and eggs.¹ According to the Act the definition of 'wild animals' include any animal specified in Schedules I to IV of the Act and found wild in nature. This broad definition aims to cover all wild species in order to combat illegal poaching effectively.² According to the Act the definition of 'wild life' include any fauna whether aquatic or terrestrial which forms part of any habitat. This definition is significant since it enforces that destruction of a habitat amounts to destruction of wildlife itself. This becomes further clear where the act empowers the chief wildlife warden under section 29 and section 35⁶ to issue permits to destroy any habitat which is necessary for the improvement and better management of wildlife.² It is also important to discuss the various authorities related to wildlife protection act. The central government may appoint a director of wildlife protection. He is the highest officer and is assisted by the assistant directors and other officers.¹ The state government may appoint a chief wildlife warden who is assisted by wildlife warden and other officers.¹ The apex body, which opines on wildlife matters in the centre, is the national board for wildlife¹ and in the state is the state wildlife advisory board³. Chapter III of the Act lays down the provision relating to hunting of wild animals. Section 9 expressly prohibits the hunting of any wild animal as specified in Schedule I to IV, except as provided under section 11 and 12. Furthermore any area can be declared as a sanctuary under section 18 if:

1. The area does not comprise of any reserve forest or territorial water and is of adequate ecological, faunal, floral, Geo-morphological, natural and zoo-logical significance
2. It has been notified so with clear specification as to the situation and limits of the area
3. A notice has been given to all persons claiming any right to refer a written claim before the collector and applying for compensation
4. The legitimate claim have been settled by the state

Under section 35 any area can be declared as a national park if a notification expressing such an intention and specifying the limits of the area is issued.

JUDICIAL PRONOUNCEMENTS

In a Supreme Court judgment *Balram Kumavat versus Union of India*⁴, appellants M/s Unigems had imported mammoth fossil said to be of an extinct species in the year 1937. Mammoth is said to be pre-historic animal which disappeared due to climatic conditions prevailing in Alaska and Siberia. According to the appellants the distinction between mammoth and elephant ivory is that whereas mammoth belongs to an extinct species, the Ivory of elephant is of an extant living animal. The appellants stated that mammoth ivory is distinguishable by visual and non-destructive means vis-a-vis elephant ivory and even in convention on International Trade in Endangered Species (CITES) their distinguishing features have been pointed out. In this case right to freedom of occupation was also challenged. Therefore it was contended on behalf of the appellants that the mammoth fossil does not come under the purview of banned trade of ivory under wildlife protection act. But the court held that the mammoth's fossils are also covered under the banned trade in ivory under wildlife protection act 1972. In this case amendment of the aforesaid act in 1991 was also changed as a violation of freedom of occupation. But the court held the amendment constitutional. In *Tarun Bharat Sangh, Alwar Vs. Union of India and others*¹, The petitioner, Tarun Bharat Sangh, Alwar, alleged that despite the notifications and the clear mandate against carrying on of mining operations in the Protected Area both units core and buffer zones, Government of Rajasthan has, illegally and arbitrarily, issued about 400 mining privileges to various persons enabling them to carry on mining operations, constituting a threat to the habitat of Wild Life.

CONCLUSION

The act of wildlife protection deals with a few shortcomings in terms of implementation of the law. First need is for conservation and subsequent designation of certain areas as protected areas has led to a conflict with the people residing in those areas. Since the entire process is not participatory in nature, people are always left out of the scheme, leading to more alienation of the indigenous public. Second the law has lacked in proper implementation and has failed to take the requisite strict action against illegal poaching and trade in wildlife and its products. These two are the main areas of deficiency that have plagued this legislation.