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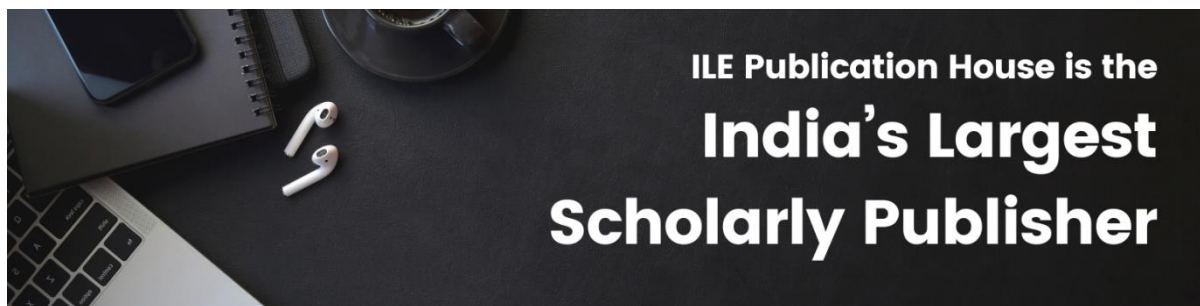
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## LEGISLATION COMMENTARY ON WILD LIFE PROTECTION ACT, 1972

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### Abstract

The wildlife Protection Act in 1972 was enacted for the protection of wildlife. Under the constitution of India it also made some provision for the protection. The preservation of animals and environment is one of the fundamental duties under article 51 clause g and one of the directive principles of State Policy. The act contains 66 sections which are divided into 7 chapters. It has 6 schedules. By this act various bodies are constitute. By this actor various director are appointed for the wildlife preservation. This actor also gives permission for hunting for special purpose. It recognizes some areas as protected areas for their future existence .When we look about the current status of the act it implement some conservation project for the presentation of extinct species but this act is not a complete act it need improvement. There also exists some practical implementation problem. There is large difference in the practical and theoretical work of this act. Any how the act helps some way.

**Keywords:-** Wild life protection act, Sanctuaries, National park, Wild animals, State government, Central government, Constitution.

### I. INTRODUCTION

In India the wildlife Protection been an old practice from the ancient time we can see the protection of wildlife. But as a time start going the protection gradually decreases. We can't avoid wild life it's being the part of our life so its protection is very important for our future life. Wildlife Protection Act in 1972 is the act that maintained for the protection and conservation of wild life. Act is developed when the people

realizing the protection of wildlife is important. This act covers all the gaps that were present in the earlier laws. But still there is a gap existing in the present law. There is a vacuum between the theoretical law and its practical implementation.

It is essential to have an act for the protection of wildlife it is one of our duty to protect the flora and fauna of our country. India is varied with different species. Day by day new and new species are grown by the different natural process like cross pollination. Unfortunately we are unable to protect the species due to the intervention of human. We have the duty to protect the each and every species for the ecological balance .Before the enactment of this act there's an act name Wild birds and animals protection 1935 but this act does not upgrade to the extent of present act. So this act is very useful for the present scenario

This Act provides for the Protection of a listed species of animals, birds, and plants, and also for the establishment of a network of ecologically-important protected areas in the country. The Act provides for the formation of wildlife advisory boards, wildlife wardens, specifies their powers and duties, etc. It helped India become a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is a multilateral treaty with the objective of protecting endangered animals and plants. It is also known as the Washington Convention and was adopted as a result of a meeting of IUCN members. For the first time, a comprehensive list of the endangered wildlife of the country was prepared. The Act prohibited the hunting of

endangered species. Scheduled animals are prohibited from being traded as per the Act's provisions. The Act provides for licenses for the sale, transfer, and possession of some wildlife species. It provides for the establishment of wildlife sanctuaries, national parks, etc. Its provisions paved the way for the formation of the Central Zoo Authority. This is the central body responsible for the oversight of zoos in India. It was established in 1992. The Act created six schedules which gave varying degrees of protection to classes of flora and fauna. Schedule I and Schedule II (Part II) get absolute protection, and offences under these schedules attract the maximum penalties. The schedules also include species that may be hunted.<sup>37</sup>

## **II. Background**

The protection of wildlife statute was become from the from British period in 1887 the first law for the protection of wildlife was passed, wild birds Protection Act 1887. It only deals with the illegal position and sale of wild birds. After that in 1912 another Law was enacted called the wild birds and animals Protection Act it was amended in 1935. In this period the protection of wildlife was not a priority. It was only in 1960 that the issue of protection of wildlife and the prevention of certain species from becoming extinct came into force. Finally the wild life protection act 1972 was passed. Before the Act, there have been only five designated national parks. The Act led to the creation of lists of protected plants and animals which made it illegal for anyone to hunt or poach these species. The Act recognized that some species in India were more endangered than others and hence it created six schedules that list the species in various degrees of the danger of extinction.<sup>38</sup>

## **III. Constitutional Provisions**

Our constitution protects all our citizen and also flora and fauna. In the drafting of the constitution of India the constituent assembly

also deals with the issues about forest and wild animals and their inclusion in the list. At the time of constitution enactment forest wild animals and birds where included in the state list later it was amended in 1976 and their production were concurrent list under the seventh schedule. This amendment enables both the central and state government enacts law on forests and wildlife. Article 48 A in the Directive Principles of State policy, mandates that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51 A (g) of the Constitution states that it shall be the fundamental duty of every citizen to protect and improve the natural environment including forests and Wildlife. By this provisions we know that the constitution also protect wild life under article 252 of the constitution Act 1972 was enacted This Act provides for the protection of a listed species of animals, birds, and plants, and also for the establishment of a network of ecologically-important protected areas in the country. It prohibit hunting of wild animals specified in appropriate schedule, prohibition of cutting or uprooting specified plants, It declare and protection of wildlife sanctuaries and national parks, various bodies under this act for protection.

## **IV. Analysis of Provision**

Wildlife protection act in 1972 it's one of the acts that provide protection to the wildlife. It contains 66 section 7 chapter and 6 schedules. By this act the protection of wildlife becomes more strengthened. It makes some areas of protected area and makes some necessary amendment for the protection of wildlife. The preamble of the act says that " An act to provide for protection of wild animals, birds, plants and for matters connected there with or ancillary or incidental thereto with a view to ensuring the ecological and environment security of the country." The act extended to whole of India. Chapter 2 of the act is named us authorities to be appointed or constituted under the act. Under this by Section 3 of the act the director and other officer of wildlife preservation was appointed. They are appointed by the central

<sup>37</sup> <https://byjus.com/free-ias-prep/wildlife-protection-act-1972/#:~:text=Article%2048A%20of%20the%20Constitution,for%20the%20people%20of%20India.>

<sup>38</sup> <https://legalreadings.com/wildlife-protection-act/>

government they are bounded to the direction specified by the Central government. Section 4 of the act appoints Life warden and other officer. They are appointed by the state government. The director of wildlife preservation and life warden can delegate the power to the subordinate with the approval of central government and state government respectively as per section 5 of the act.

A national board for wildlife protection is constituted under section 5 A of the Act. Its main function is to promote the conservation and development of wild life and protection. The board is chaired by prime minister of India. There is also a state board for wildlife which is constituted under section 6 of the Act. It is chaired by chief minister and on union Territories it is by chief minister or administrator. State board shall meet at twice a year. It has no special procedure to follow. Its main function is to advise the state government in matter of protected the place as protected area, policy for specified plants etc. As per section 8 of the Act.

Chapter 3 of the Act deal with hunting of animals. It prohibits hunting of animal as per section 9 of the Act. It grants permission for hunting of wild animals in certain situations when it is satisfied by the chief wild warden when the animals are dangerous. And also grant permission to hunt the animals for special purpose with the approval of chief wild warden. The next chapter, 3A deals with the protection of specified plants. As per that it protects the specified plants. It prohibit the plucking, destroying the specified plants. For the cultivation of the plants there need a license from the specified authority. And also must have a license for the possession. The specified plants are considered as government property. Chapter 4 deals with protected areas. The state government may by its notification declare some place as sanctuaries and take necessary steps to the protection of sanctuaries. For the protection of sanctuaries state government appoint collector to inquiry into and the

determine the existence, rights of the person who hold the land. The act made provision for the protection of the sanctuaries from destruction. The act also prescribes immunization against communicable disease of livestock that kept or within 5 km of sanctuaries. For the protection of the sanctuaries an Advisory committee is constituted by the state government for conservation and management purposes. The act also protect the national park

Under this act a central zoo authority is constituted for the protection of animals and their management. There is also a national tiger reservation authority for the conservation of tiger. The act prohibits the trade, commerce of the wild animals. If any person done any act in violation of the provision the empower the authority the search, seizure and detention power. The act also made provision for the forfeiture of illegal hunting and trading of animals. By the above provision it is some extent helps the protection of wild animal's birds and specified plants etc.

## **V. Current status of wildlife development under Wildlife Protection Act, 1972**

### **A. Project Conservation**

Project Tiger Conservation was launched in 1973 to ensure and maintain the population of Bengal tigers. The project tiger is still ongoing with the help of the Ministry of Environment, Forest, and Climate Change. It allows for the adoption of a conservation plan as specified under Section 38V by the state government for the protection of tiger reserves and their specific habitats. This is for maintaining their population. It is also to maintain ecologically compatible land used in tiger reserves including the linking of it with other protected areas to name a few. India along with the Kingdom of Bhutan, Bangladesh, Russia, Cambodia, China, Indonesia, Lao, Malaysia, Myanmar, Thailand, Vietnam, and Nepal also entered into the St. Petersburg Declaration to save the remaining tigers in the

wild that are on the verge of imminent extinction. Further, the NTCA in collaboration with the Wildlife Institute of India has published a document 'Connecting Tiger Populations for Long-term Conservation' under which: Thirty-two tiger corridors have been identified for managing tiger movements. These corridors help in streamlining the infrastructure projects and at the same time include mitigation measures for the safe passage of tigers. The Eco-friendly Measures to Mitigate Impact of Liner Infrastructure Report is based on 'development without destruction' and allows for mainstreaming biodiversity at every stage of the development process. This could have been possible by making suitable changes in various legislations such as the Forest Conservation Act, 1980; Coastal Regulation Zone Notification 2011; Forest Rights Act, 2006 and the Environment Impact Assessment Notification of 2006 (as amended in 2009). All of these legislations are in consonance with the objectives under the Wildlife Protection Act, 1972.

#### B. **Project Elephant**

Elephant is a central scheme that was launched by the central government in 1992. It proposed a National Elephant Conversation Authority under it to extend financial assistance to states for the protection and conservation of elephants. They are included in Schedule I of the Act. Project tiger has also implemented the Monitoring the Illegal Killing of Elephants ('MIKES'). Certain elephant corridors were also identified under the 2010 Report of the Elephant Task Force under the Ministry of Forest, Environment, and Climate Change. Total 88 corridors were identified under the Act. The Courts have also come forward for the protection of elephant corridors. In a landmark judgment of *A. Rangarajan v. UOI* (2018), the Court ordered the Tamil Nadu government to close all the illegal resorts in the Nigari hills within 48 hours as around that area, the main elephant corridor is there

#### C. **Conservation reserves and community reserves as protected areas added by the 2003 amendment**

There has been a continuous amendment in the Acts such as the 2003 Amendment that extended the concept of the protected area beyond the sanctuary and national park to include conservation reserves and community reserves under Section 36A and Section 36C respectively. Conservation and community reserves are referred to as buffer zones and migration corridors which are established in between the protected areas such as the national parks and sanctuaries. Currently, there are 97 conversation reserves and 214 community reserves respectively. Recently, in 2020, Tillari in Maharashtra was declared as a conservation reserve. This was proposed in the National Wildlife Plan (2002-16). The centrally sponsored scheme (Integrated Development of Wildlife Habitats) was based on the principle of ecocentrism which is nature-centric and allows the human interest to be harmoniously balanced with non-human needs. Protected areas are important and have been globally accepted within the planning approach for the protection of wildlife and conservation of biodiversity.

#### D. **Wildlife corridors**

Recently, India's first urban wildlife corridor is being planned between New Delhi and Haryana. The corridor is near the Asola Bhatti wildlife sanctuary to provide safe passage to wildlife animals such as leopards and other animals. Wildlife corridors hold a lot of importance in India as these are connected with the protected areas and allow the movement of animals without interfering in human settlement. Often animals in the southern region travel from the protected reserves to other places in search of water. In such cases, wildlife corridors play a major role such as the Mudahalli Elephant Corridor is connected with the Sathyamangalam Tiger Reserve which usually faces drought during summers. Because of this, many mammals migrate to Karnataka and Kerala forests in search of water. But because of the corridor, the movement of animals did not interfere with the



human population. That is why wildlife corridors are important to minimise human-wildlife conflict.<sup>39</sup>

## VI. Case laws

### A State of Bihar v, Murad Ali Khan, Farukh Salauddin (1988)

It is a case that dealt with poaching and hunting of elephants for the smuggling of ivory tusks where the court observed that the "largest single factor in the depletion of the wealth of animal life in nature has been the civilised man operating directly through excessive commercial hunting".

### B. Inalram Kumawat v. UOI (2003),

The court re-emphasised that the act puts a complete ban on the trade of African elephant ivory and there cannot be a legitimate claim of violation of the right to freedom of trade under Article 14 and Article 19(1) (g) since the ban is a reasonable restriction under Article 19(2).

### C. Sansar Chand v. State Of Rajasthan (2010)

In this case highlighted the detrimental effect legal trading and commerce of wildlife has caused to the environment and the same is not effectively curbed despite the prohibition under the Wildlife Act. These organized crimes are transnational because there is apparently no trade taking place within India but the same is smuggled outside India to meet the demands of other countries such as poaching of tigers for the Chinese medical industry.

## VII. Conclusion

The Act is comprehensive and covers almost every aspect of protecting and conserving wildlife. The law's exhaustiveness is reflected from the fact that it allows for the establishment of numerous committees and authorities that would exercise powers with specific goals such

as the Tiger conservation authority. It also allows for the delegation of powers. But with such division of powers to different authorities at times create the issue of accountability since the powers are dispersed. Too many committees and authorities tend to dilute the objective of the act the more power gets divided the better chances of failure in monitoring it arises. The need is to have a strong regulatory framework at the center that can create checks and balances within the sub-framework. Because just making different committees and assigning work to different authorities will not lead to wildlife conservation unless the implementation of the Act gets better. There is also a strong system needed for the protection of animals from hunting and poaching.

## VIII. References

1. [https://legislative.gov.in/sites/default/files/AI\\_972-53\\_0.pdf](https://legislative.gov.in/sites/default/files/AI_972-53_0.pdf)
2. <https://www.ndtv.com/india-news/ramgarh-wildlife-sanctuary-know-all-about-indias-52nd-and-newest-tiger-reserve-in-rajasthan-2469480>
3. <https://cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf>
4. [https://www.forests.tn.gov.in/tnforest/app/w\\_ebroot/img/document/legislations/NATIONAL%20WILDLIFE%20ACTION%20PLAN%20\(2002-2016\).pdf](https://www.forests.tn.gov.in/tnforest/app/w_ebroot/img/document/legislations/NATIONAL%20WILDLIFE%20ACTION%20PLAN%20(2002-2016).pdf)
5. <https://timesofindia.indiatimes.com/city/bhubaneswar/odisha-ivory-smuggling-racket-busted-three-held/articleshow/80893900.cms>
6. <https://byjus.com/free-ias-prep/wildlife-protection-act-1972/#:~:text=Article%2048A%20of%20the%20Constitution,for%20the%20people%20of%20India.>
7. <https://legalreadings.com/wildlife-protection-act/>
8. <https://www.google.com/amp/s/blog.ipleaders.in/the-wildlife-protection-act-1972-and-its-impact-in-protecting-wildlife-in-india/%3famp>

<sup>39</sup> <https://www.google.com/amp/s/blog.ipleaders.in/the-wildlife-protection-act-1972-and-its-impact-in-protecting-wildlife-in-india/%3famp=1>