

LEGALFOXES LAW TIMES

LEGAL PROVISIONS ON ANIMAL PROTECTION AND WILD LIFE WELFARE

By PAVITHRA.M

INTRODUCTION

India, the seventh largest country in the world, It is one of most bio-diverse regions of the world containing four of the world's 36 biodiversity hotspots. it is home to animals ranging from the Bengal tigers to Great Indian rhinoceros. animal protection and welfare in the country has taken a prominent position over the recent years. protection of animals is enshrined as fundamental duty in the Indian constitution and there exist several animal welfare legislations in such as the prevention of cruelty to animals act(1960) and the wildlife protection act(1972) at central level and cattle protection and cow slaughter prohibition legislations at levels.

The Indian penal code(IPC)1860 is the official criminal code of India which covers all substantive aspect of criminal law.sec.428 and sec.429 of the IPC provides for punishment of all the acts of cruelty such as killing, poisoning, maiming or rendering useless animals,

Like forest wildlife consists of animals, birds, insects etc. living in the forest is a national resource which not only helps in maintaining ecological balance but also helps in various economic activities that generate revenue from tourism. The rich flora and fauna also plays a major role in maintaining ecological balance. Due to urbanization , pollution and human intervention wildlife is disappearing from the our planet.

Today the biodiversity of world is threatened due the extinction of species there are 35 hotspots around the world which supports 43 % of birds, mammals, reptiles, and amphibians as endemic.

The IUCN has compiled a list of species under extinct, critically endangered, less endangered, vulnerable near threatened, and least concern. This list is called RED DATA BOOK. According to world wildlife fund (WWF) the number of birds, animals, marine and freshwater creatures has dropped by almost one third of its earlier population.

WILDLIFE PROTECTION ACT-

The act constitutes the “wildlife board “of powers of regulations in every state or union territory. The purpose of the act is to protect, propagate and develop wildlife and its environment, both the state and central government are empowered to announce wildlife sanctuaries and national parks.

The government can transfer wild animals from one sanctuary to another sanctuary and from one national park to another national park. Hunting wild animals and keeping wild animals in captivity, keeping animal articles are punishable under the wildlife protection act. The first class magistrate can try this offence and impose punishment on a complaint from the wildlife warden or other authorised officer or even from a non-official.

The act also abolishes trade of wildlife animals and animal articles other than articles made from peacock feathers, commercial fellings, exploitation of wildlife is banned. The stocks of wildlife articles in the possession of dealers are verified and identity marks fixed on the articles. Total ban is imposed on export of birds. It also prohibits the imports of ivory and ivory articles. Hunting for pleasure or for game is strictly prohibited. Licence is required for collecting snake venom. ‘State wildlife board ’is constituted to harmonise the needs of tribal people and the conservation of wildlife. Further central zoo authority was constituted to supervise, set minimum standards, recognise and derecognise zoos and to maintain and breed wild animals, to do research and training in zoos and to provide Technical and Management Assistance for developing Zoos technically.

The Prevention of Cruelty to Animals Act, 1960

The basic cruelty law of India is contained in the Prevention of Cruelty to Animals Act 1960. The objective of the Act is to prevent the infliction of unnecessary pain or suffering on animals

and to amend the laws relating to the prevention of cruelty to animals¹. The Act defines “animal” as any living creature other than a human being.

In accordance with Chapter II of the Act, the Government of India established the Animal Welfare Board of India (AWBI) with some of the following functions:

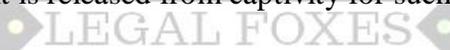
1. Advising the central government regarding amendments and rules to prevent unnecessary pain while transporting animals, performing experiments on animals or storing animals in captivity.
2. Encouragement of financial assistance, rescue homes and animal shelters for old animals.
3. Advising the government on medical care and regulations for animal hospitals.
4. Imparting education and awareness on humane treatment of animals.
5. Advising the central government regarding general matters of animal welfare.

The Act enumerates different variants of cruelty to animals under Section 11 as the following actions:

- a) Beating, kicking, overriding, overloading, torturing and causing unnecessary pain to any animal.
- b) Using an old or injured or unfit animal for work (the punishment applies to the owner as well as the user).
- c) Administering an injurious drug/medicine to any animal.
- d) Carrying an animal in any vehicle in a way that causes it pain and discomfort.
- e) Keeping any animal in a cage where it doesn't have reasonable opportunity of movement.
- f) Keeping an animal on an unreasonably heavy or short chain for an unreasonable period of time.

¹ Overview of Animal Laws in India by Taruni Kavuri Michigan State University College of Law, Last updated: 2020

- g) Keeping an animal in total and habitual confinement with no reasonable opportunity to exercise.
- h) Being an owner failing to provide the animal with sufficient food, drink or shelter.
- i) Abandoning an animal without reasonable cause.
- j) Willfully permitting an owned animal to roam on streets or leaving it on the streets to die of disease, old age or disability.
- k) Offering for sale an animal which is suffering pain due to mutilation, starvation, thirst, overcrowding or other ill-treatment.
- l) Mutilating or killing animals through cruel manners such as using strychnine injections.
- m) Using an animal as bait for another animal solely for entertainment.
- n) Organizing, keeping, using or managing any place for animal fighting.
- o) Shooting an animal when it is released from captivity for such purpose.



However, the Act does not consider as cruelty the dehorning/castration of cattle in the prescribed manner, destruction of stray dogs in lethal chambers in prescribed manner and extermination of any animal under the authority of law. This Section provides somewhat of a leeway.

Part IV of the Act covers Experimentation of animals. The Act does not render unlawful experimentation on animals for the purpose of advancement by new discovery of physiological knowledge or knowledge to combat disease, whether of human beings, animals or plants. It envisages the creation of a Committee for control and supervision of experiments on animals by the central government which even has the power to prohibit experimentation if so required.

Chapter V covers the area of performing animals. Section 22 prohibits exhibiting or training an animal without registration with the AWBI. The Section prohibits animals such as monkeys, bears, lions, tigers, panthers and bulls from being utilized as performing animals². An additional

² Section 22 of IPC

leeway provided by the Act is that under Section 28, nothing contained in the Act shall render it an offence to kill any animal in a manner required by the *religion* of any community. Considering the diversity of religions and traditions in India, this Section was considered imperative³.

Treating animals cruelly is punishable with a fine of Rs. 10 which may extend to Rs. 50 on first conviction. On subsequent conviction within three years of a previous offence, it is punishable with a fine of Rs. 25 which may extend to Rs. 100 or imprisonment of three months or with both. Performing operations like Phooka or any other operations to improve lactation which is injurious to the health of the animal is punishable with a fine of Rs. 1000 or imprisonment up to 2 years or both. The government further has the power to forfeit or seize or destroy the animal. Contravention of any order of the committee regarding experimentation on animals is punishable with a fine up to Rs. 200.

State of U.P Vs. Mustakeem and Ors⁴ Custody of animals, in cases of cruelty, shall not be given to the accused but to the nearest *gaushala* or *pinjrapole*, until the conclusion of the trial: Supreme Court

Gauri Maulekhi Vs. Union of India and Ors⁵ Strict implementation of prohibition of cattle smuggling across the border for *Gadhimai* animal sacrifice in Nepal. Additionally, several welfare recommendations shall be adopted: Supreme Court

Nair, N.R. and Ors. Vs. Union of India and Ors⁶ Bears, monkeys, tigers, panthers and lions shall not be trained or exhibited as performing animals: Kerala High Court

Animal Welfare Board of India vs. A Nagaraja and Others⁷ Bulls cannot be performing animals. *Jallikattu* and other animal races and fights are prohibited: Supreme Court

Protected Areas under the Wildlife Protection Act

There are five types of protected areas as provided under the Act. They are described below.

³ Section 28 of IPC

⁴ Criminal appeal no. 283-287/2002

⁵ No.486 of 2014

⁶ 2001(3) SCR 353

⁷ Civil appeal no. 5387 of 2014

1. Sanctuaries: “Sanctuary is a place of refuge where injured, abandoned, and abused wildlife is allowed to live in peace in their natural environment without any human intervention.”

1. They are naturally-occurring areas where endangered species are protected from poaching, hunting, and predation.
2. Here, animals are not bred for commercial exploitation.
3. The species are protected from any sort of disturbance.
4. Animals are not allowed to be captured or killed inside the sanctuaries.
5. A wildlife sanctuary is declared by the State government by a Notification. Boundaries can be altered by a Resolution of the State Legislature.
6. Human activities such as timber harvesting, collecting minor forest products, and private ownership rights are permitted as long as they do not interfere with the animals' well-being. **Limited human activity is permitted.**
7. They are open to the general public. But people are not allowed unescorted. There are restrictions as to who can enter and/or reside within the limits of the sanctuary. Only public servants (and his/her family), persons who own immovable property inside, etc. are allowed. People using the highways which pass through sanctuaries are also allowed inside.
8. Boundaries of sanctuaries are not generally fixed and defined.
9. Biologists and researchers are permitted inside so that they can study the area and its inhabitants.
10. The **Chief Wildlife Warden (who is the authority to control, manage and maintain all sanctuaries)** may grant permission to persons for entry or residence in the sanctuary for the study of wildlife, scientific research, photography, the transaction of any lawful business with persons residing inside, and tourism.
11. Sanctuaries can be upgraded to the status of a ‘National Park’.
12. **Examples:** Indian Wild Ass Sanctuary (Rann of Kutch, Gujarat); Vedanthangal Bird Sanctuary in Tamil Nadu (oldest bird sanctuary in India); Dandeli Wildlife Sanctuary (Karnataka).

2. National Parks: “National Parks are the areas that are set by the government to conserve the natural environment.

1. A national park has more restrictions as compared to a wildlife sanctuary.
2. National parks can be declared by the State government by Notification. No alteration of the boundaries of a national park shall be made except on a resolution passed by the State Legislature.
3. The main objective of a national park is to protect the natural environment of the area and biodiversity conservation.
4. The landscape, fauna, and flora are present in their natural state in national parks.
5. Their boundaries are fixed and defined.
6. Here, **no human activity is allowed.**
7. Grazing of livestock and private tenurial rights are not permitted here.
8. Species mentioned in the Schedules of the Wildlife Act are not allowed to be hunted or captured.
9. No person shall destroy, remove, or exploit any wildlife from a National Park or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within a national park.
10. They cannot be downgraded to the status of a 'sanctuary'.
11. **Examples:** Bandipur National Park in Karnataka; Hemis National Park in Jammu & Kashmir; Kaziranga National Park in Assam. See more on [List of National Parks in India](#).

3. Conservation Reserves: The State government may declare an area (particularly those adjacent to sanctuaries or parks) as conservation reserves after consulting with local communities.

4. Community Reserves: The State government may declare any private or community land as a community reserve after consultation with the local community or an individual who has volunteered to conserve the wildlife.

5. Tiger Reserves: These areas are reserved for the protection and conservation of tigers in India. They are declared on the recommendations of the National Tiger Conservation Authority.

The amended Wildlife Act doesn't allow any commercial exploitation of forest produce in both wildlife sanctuaries and national parks, and local communities are allowed to collect forest produce only for their bona fide requirements.

THE FOLLOWING ARE THE AUTHORITIES TO PROTECT WILDLIFE -

The central government appoints the following officers:

1. Director of Wildlife Preservation.
2. Assistant Director of wildlife Preservation.
3. Other Officers and employees.

The State government appoints the following officers:

1. Chief wildlife wardens.
2. Wildlife wardens.
3. Other officers and employees.

WILDLIFE ADVISORY BOARD:

State government also constitutes the 'wildlife Advisory Board' which consist of the following members:

1. The Minister in charge of forest department.
2. Chief secretary of the State government or the union territory.
3. Two members of the State legislature/Union territory.
4. Secretary in charge of forest department.
5. Chief conservator of forest.
6. A nominated officer by the director of wildlife preservation.
7. Chief wildlife warden.
8. Such other officers and non-officials not exceeding 15 interested in the protection of wildlife the board meets twice a year and has its own procedures for regulations.

DUTIES -

- a) Selection of area for sanctuaries, national parks and game reserves, closed areas.
- I. Sanctuary is any declared area, which is of adequate ecology, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment.
 - II. National park means an area within sanctuary or not, by reason of its ecological, floral, geomorphological or geological importance to be constituted as national park for the purpose of protecting, propagating or developing wildlife or its environment.
 - III. Game reserves mean any area or any wild animal hunting except under a valid licence.
 - IV. Closed area means any area closed to hunting for specified period and hence no hunting of any wild animals is permitted in such area during the specified period.
- b) To formulate policies in granting licences and permits.
- c) Amendment of schedule.
- d) Any other matter connected with the protection of wildlife.

HUNTING OF WILD ANIMALS,

1. No person should hunt any wild animal specified in schedule I.
Schedule I speaks about mammals, amphibians and reptiles, birds. There are 41 types of mammals, two amphibians and reptiles and 18 kinds of birds specified.
2. No person must hunt wild animals mentioned in II, III, IV except as per conditions specified in licence granted.

Schedule II specifies totally 26 animals

Some of the important mammals are deer, cheetah, leopard, fishing cat, golden cat, Indian lion, Indian wild ass, Indian wolf, Kashmir stag, Rhinoceros, Tiger, wild buffalo.

Some of the important birds are bazas, great Indian bustard, mountain quail, pink headed duck, Siberian white crane, white bellied sea eagle, white winged wood duck.

Schedule III contains 19 animals.

Some of the important animals are Andaman wild pig, four horned antelope, Himalayan black bear, hyaena, mouse deer, sambar, Tibetan wolf, and wild pig.

Schedule IV 10 animals and 36 birds.

Some of the important animals are desert cat, desert fox, hares, red fox and Tibetan fox.

Some of the birds are blue birds, cranes, ducks, falcons, owls, pelicans, sunbirds and swans.

LICENCE TO HUNT WILD ANIMALS-

- 1) Any person desiring to obtain a licence must apply in the prescribed form and pay prescribed fee to the chief wild life warden or any other authorised officer.
- 2) The application may be for all or for any of the following kinds of licences:
 - a) Special games hunting licences – it contains 26 animals as specified in schedule II.
 - b) Big game hunting licences – it contains 19 animals as specified in schedule III.
 - c) Small game hunting licences – it contains 10 animals and 26 birds as specified in schedule IV.
 - d) Wild animal hunting licences.

On receipt of the application for licence, the authorised officer make necessary enquiry regarding the fitness of the applicant for the purpose of issue of the licence and then grant licence or refuse granting licence, but after recording reasons in writing for such grant or refusal. The licence is in the prescribed form, valid from a prescribed period and subject to prescribed terms, conditions and restrictions and non- transferable.

Every licence holder must maintain a record of the wild animals killed or captured during the licence period. If any animals specified in schedule II or III is killed, wounded or captured by the licence holder, then he must intimate the same within 15 days to the chief wild life warden Further he must also surrender the records maintained by him and sign the declaration about the accuracy of the records.

PERMITS FOR HUNTING WILD ANIMALS AND FOR SPECIAL PURPOSES:

The chief wild life warden permit in writing with reasons any person to hunt any animal in schedule I or schedule II or schedule III or schedule IV which has become dangerous to human life or become diseased or suffering from disease beyond recovery.

Killing or wounding of any animal good faith and in defence of oneself or another is not an offence. The animal so killed or wounded become the government property.

Further chief wildlife warden can grant permit to any person to hunt any wild animal specified in the permit for following three purposes-

1. Education
2. Scientific research
3. Collection of species for zoological garden, museums and similar institutions.

The chief wild life warden can suspend or cancel any licence after giving reasonable opportunity of being heard, for sufficient reasons recorded in writing. Any aggrieved person can make an appeal within 15 days to the state government against such suspension or cancellation.

RESTRICTIONS ON HUNTING-

The wild animals should not be hunted in the following methods:

- 1) By a wheeled or mechanically propelled vehicle on water, land, or aircraft.
- 2) By using an motor vehicle or aircraft or launch.
- 3) By using chemicals, explosives, nets, pit falls, positions or poisoned weapons, snares or traps.
- 4) By any special game or big games other then using riffle.
- 5) By setting fire to any vegetation.
- 6) By using any artificial light.
- 7) During hours of night.
- 8) While the wild animals are in the salt lick, water hole or drinking place.
- 9) If the wild animal on any land is not owned by the government, then without the consent of the owner of the land, o hunting is permitted.
- 10) During closed time.
- 11) With help of dogs.

TRADE OR COMMERCE IN WILD ANIMALS-

a) Government property:

Every hunted wild animal to be government property.

- 1) Every hunted wild animal dead or killed without a licence or by mistake, animal article, trophy or uncured trophy or meat of any wild animal in a sanctuary or national park is the property of state government.
- 2) Any person who is in possession of such government property must report to the nearest police station or authorised officer within 48 hrs of obtaining position and handover such property to a police officer or authorised officer.
- 3) No person without previous permission can acquire or keep in his possession, custody or control or transfer to any person by gift, sale or otherwise or destroy or damage such property.

Rajendra Kumar V. Union of India⁸ the petitioner challenged the above clause which imposed a complete ban on import of ivory and articles made from it. It affected the rights under Article 19(1). Moreover, he contended that ivory derived from a mammoth was not ivory derived from a scheduled animal, therefore, any article made out of such fossil ivory could not be brought within the purview of the Act. But the Supreme Court observed that, the Chapter V-A of this Act, is incorporated in accordance with the direction of **CITES**. The object was to make clear that trade in African ivory is proposed to be banned after giving due opportunity to traders to dispose of the existing stocks. So this Section cannot be void.

State of Bihar Vs Murali Ali Khan⁹ The respondents had allegedly shot an elephant and skinned it, and also removed its tusks. The issue was whether the magistrate is entitled to take cognizance of a case while its police investigation has not come to an end, then Court backed this by saying that in some cases, it might be necessary to do so as the ecological imbalance and harm to wildlife might be so great that in case such stringent steps are not taken, the overturning of the imbalance might be impossible

⁸ AIR 1988 Raj. 165

⁹ 1, 1988 SCR Supl. (3) 455

PREVENTION AND DENTENTION –

The director or the chief wild life warden or any authorised officer or forest officer or police officer the cadre of sub- inspector can do the following acts:

1. Require such person to produce for inspection the captive animals, wild animals, animal article.
2. Stop any vessel conduct search or enquiry.
3. Enter upon and search any premises, land vehicles etc., and open ad search any baggage.
4. Seize any captive animals, arrest without warrant, detain person.

PENALTIES

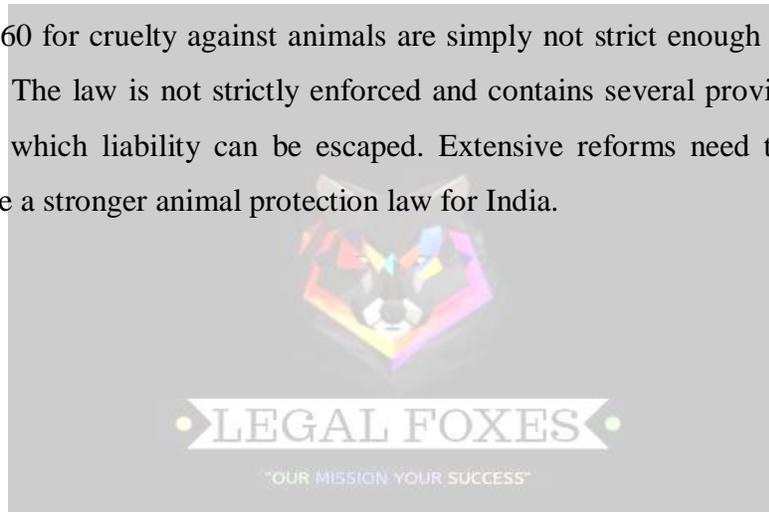
- 1) Any person who violates the provisions of the wildlife protection act 1972 or violates the conditions of the licence or permit is punishable with imprisonment upto 2 years and fine upto 2000/- or both.
- 2) If any offence committed relates to any animal or animal article or trophy or hunting in a sanctuary or in national park then the punishment is imprisonment from 6 months to 6 years and fine of not less than Rs.500/-for any second or subsequent offence, the punishment is not less than one year and fine not less than Rs.1000/-
- 3) After conviction of the person, the court can order to surrender to the state government the article and repents.

CONCLUSION

The preservation of Wildlife is a matter of Public Interest. It is the duty of each and every citizen to protect the natural environment, including lakes rivers, and wild life, and to have compassion for all living creatures. Wild Life forms vital part in our ecosystem and main focus needs to be satisfy our aims of sustainable development. Moreover, charismatic species of wildlife embody Incomparable Values, and comprise a major resource base for sustainable development but it involves the protection of entire ecosystems.

The 42nd Amendment to the Indian Constitution in 1976 was a progressive step towards laying the groundwork for animal protection in India. The constitutional provisions establishing the duty of animal protection have resulted in the enactment of animal protection legislations both at the central and state level, most notable of which being the Prevention of Cruelty to Animals Act 1960. Furthermore, over the years Indian courts have developed a growing legal jurisprudence in animal law.

However, there is still a long way to go in truly developing a solid foundation for animal law in India. The provisions for animal protection in the Indian Constitution remain principles instead of concrete law enforceable in courts. The penalties under the Prevention of Cruelty to Animals Act 1960 for cruelty against animals are simply not strict enough to truly deter crimes against animals. The law is not strictly enforced and contains several provisions which provide leeway through which liability can be escaped. Extensive reforms need to take place in this regard to provide a stronger animal protection law for India.

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