

# LEGALFOXES LAW TIMES

## PROTECTION OF WILDLIFE

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### ABSTRACT

The flora and fauna of a country are just like ornaments which decorate the country. Without these gifts of nature, our world would turn into a dead barren land. The biggest part of our ecosystem includes this flora and fauna, which controls the entire ecological balance of the country. These gifts of nature are in danger. People are destroying these precious gifts just for monetary profit and selfish motives. What they forget is they are going to lose too much for too little. This paper deals with the current condition of the wild life and what preventions should be taken to conserve the wildlife also the steps which are being implemented by the government.

### I. INTRODUCTION

India has always been home to numerous species of flora and fauna, which has attracted the entire world. Lots of measures have been taken with passing time to conserve this natural beauty of the country. Taking this to next level wildlife tours and reserved natural parks have been developed to spread awareness among people and it's also a great tourist attraction.

The government of India came up with various wildlife conservation projects and programs to wildlife awareness among the people. Project Tiger, Jungle Lodges, and nature camps are few such projects that only promote the wildlife of India but also promote eco-tourism which is helpful for the economy of the country.

Wildlife in India is facing the danger of becoming extinct because of illegal trading, excessive poaching, increasing population, loss of habitat, and deforestation. This extinction will have a great impact on the entire ecological balance which has been scientifically proven. Therefore, wildlife conservation is the need of the hour.

The disturbing fact which we are not aware of is wildlife scientists have predicted if strict conservation methods are not undertaken then the next generations will see wildlife only in books and movies. However, as the famous idiom goes "It's better late than sorry". Now the government has not left a single stone unturned to protect the wildlife.

Many animals have become extinct in our country and many are endangered species. The national animal of the country i.e. Tiger is one of the endangered animals.

## II. CURRENT SCENARIO

Animals being tortured and ill-treated in the zoo for the purpose of entertainment, sane individual throwing stones at stray dogs simply for having a good laugh, shooting of beautiful birds, leaving innocent animals to die of starvation, well-known companies experimenting their drugs on animals, men overloading and beating up their cattle while carrying them on a truck and the cruelty regime goes on. All these are a common observation in the country in spite of having well-framed laws for the protection of these animals although there is a lot we humans can do for these creatures even without taking the help of the legal system. However, with slight amendments to the existing laws, this brutal scenario can be improved to a great extent. In order to do, we must acquaint ourselves with the existing law, the loopholes which must be filled in so that the laws can be implemented to the maximum.

The welfare of animals is ensured by the Constitution of India by making it a fundamental duty of the citizens to respect all living creatures and treat them with care and compassion [Article 51A(G)]. It is the State's duty to arrange animal and agricultural husbandry on modern, scientific lines and to take necessary action for preserving and improving breeds, prohibition for the slaughter of cows, and calf. The State also has the duty under Article 48A to protect, safeguard and improve the forests and wildlife of the country (42<sup>nd</sup> Amendment, 1976). List III authorizes both Centre and the State to prevent cruelty of animals and protect wild animals and birds.

The Prevention of Cruelty to Animals Act, 1960 is the Central Legislation related to the protection of animals in the country. The aim of enacting the Act is to prevent the suffering of animals from any unnecessary pain.

The Wildlife Protection Act, 1972 is another one of the important acts enacted for the protection of animals, plants, birds, etc. All the principle laws related to wildlife are included in this Act such as poaching, shooting, poisoning, trapping, or harming them in any other way of any wild animal or bird. The Establishment of Wildlife Advisory Boards in every State is also provided under this Act.

- Under Section 2(37), this Act includes any land or aquatic vegetation which forms a part of any habitat and animals hence giving the term 'wildlife' a wide meaning.
- Hunting of any wild animal (those provided in Schedule 1, 2, 3, and 4) is prohibited under Section 9 of this Act with a punishment of imprisonment which may extend up to 30 years or fine extending up to Rs 25000 or both.
- The Act authorizes both the Centre and State to declare any area 'restricted' as national park, wildlife sanctuary, etc. No industrial activity is permitted in such an area.
- Transportation of any wild animal, birds, or plants without the permission of the Chief Wildlife Warden or any other authorized official is prohibited under Section 48A of the Act.

- The Act, under Section 49, also does not permit the purchase of wild animals from a dealer without a license.

### III. PENALTIES UNDER THIS ACT

The State is under the duty to protect all the citizens and animals are no exception. Unfortunately, these creatures cannot demand justice for themselves hence it is we the humans who must ensure that our faunal health must not be harmed by any means. Section 51 of the Wildlife Protection Act, 1972 provides penalties for the above mentioned. Penalties depend on-

1. The schedule of the animal to which the offence relates;
2. Nature of the offence;
3. The Area where the offence took place;
4. Whether the accused is a repetitive offender

The minimum punishments in which Article 51 sets out specify minimum punishments for a certain time duration. Sadly, it has been observed that many courts grant permission less than minimum punishment subscribed. Re-examination must be conducted in such cases and the judicial officers must also be well aware of the minimum punishments. Article 51(2) empowers the court which is conducting the trials to order the surrender of any captive animal or derivative or any tool, vehicle, or weapon used for the commission of such offence to the State Government. Such surrender of property must be done only after the trial court convicts the accused. Under Article 57, the Act specifies that whenever an individual is found to be in possession, custody, or control of any captive animal such ownership or custody shall be considered to be illegal and it is the liability of the prosecution to prove the case beyond a reasonable doubt. As specified in Chapter VI-A, the surrender of property obtained from illegal trade and hunting is applicable only in cases where the accused has been convicted with a punishment of imprisonment for a period of three years or more.

### IV. LANDMARK JUDGEMENTS

*State of Uttarakhand vs. Akbar Ali Ansari* (2007) - Five unlicensed leopard skins were seized and the Magistrate has convicted the accused of one year and three months whereas the minimum punishment prescribed was for a period of three years.

*R. Simon vs. Union of India* - The petitioner, who was the manufacturer of coats, caps, gloves, and other snake skin items bags, shoes, and briefcases, challenged the validity of the 1991 amendment which prohibited trade in animal articles. The contention was that the Act was colorable legislation as it indirectly provides for deprivation of fundamental right to carry on any business or trade under Article 19(1)(g) and certain wild animals serve no useful purpose and are harmful by nature. Rejecting these contentions, the Delhi High Court every animal is equally important for

the environment to maintain the ecological balance and it is the duty of all citizens to protect the country's wildlife. No fundamental right is absolute by nature and they can be restricted in the public interest. Protection of wildlife is very much in public interest hence 1991 amendment is quite constitutional.

*Tarun Bharat Sangh, Alwar vs. Union of India*-Granting of 215 mining licenses in an area which was declared to be a Tiger Reserve in Alwar district of Rajasthan was challenged by the petitioner. The Hon'ble Supreme Court eventually cancelled all of them as they pertained to a tiger reserve area.

## V. LOOPHOLES IN THE EXISTING LAWS FOR WILDLIFE PROTECTION IN INDIA

In order to provide a better future to our fauna, we must analyse the loopholes in the existing laws. Having China as the largest importer of wildlife and wildlife products such as tiger derivatives and ivories, India is in a serious condition about its wildlife protection laws and porous border. The existing principle enactment is aimed only at protection for indigenous species and does not mention anything about international trade which is major concern wherein foreign species might be trafficked through India. India happens to be a preferred hunting ground for wildlife whereas India together with other countries accounts for 60%-70% biodiversity in the world.

With the unsatisfactory implementation of legislation and corruption in the official system, wildlife trade is growing uninterrupted in India. International trade is increasing rapidly and has been also addressed by the UN Convention of International Trade in Endangered Species of Wildlife Flora and Fauna (CITES). The CITES lists Appendix I, which mentions the most endangered species to Appendix III talking of species of lesser concern. There are many more exhaustive lists which strictly prohibits the trade of these species. Unfortunately, our domestic law does not have any provision for the protection of these species nor does it prescribes any measures to do so. The country is home to 2.9% of the IUCN-designated threatened species but the Wildlife Protection Act does not give them a special status nor does it acknowledge this issue at all. Several Regional Red Lists have been released to assess the risk of species extinction. Due to such an approach taken by the law, India has become a wildlife trade hotspot globally. These endangered species are often told to be of foreign species and sold off. The Ministry of Environment and Forest has recently taken a bold move to ensure that the trafficked species are non-indigenous and not beyond the scope of the Wildlife Protection Act by recently constituting a special CITES cell for strengthening the implementations of CITES in India.

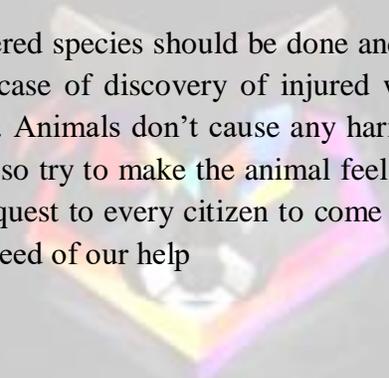
Trade-in tiger parts are the most concerning part of the trade. They are trafficked to Nepal and China through India's porous borders and vice versa. Corrupt officials passing these off as foreign or non-indigenous animals foster this trade to flourish to a great extent. Another major reason for the depletion of wildlife is the consumption of food. In most cases, the most

convenient way to pass off wild animals as captive-bred species of tiger bones are for instance mislabelled or sold under various titles.

## VI. REMEDIES AND CONCLUSION

Although a lot of new and specific animal protection Acts have been passed in our country, they are not properly implemented because most of the people are not aware of animal laws and the laws should be much stricter. People should be given proper education from a tender age so that they grow up to become responsible citizens. The strict check should be kept on animal trafficking and trading. The Utilization of foreign aids should be done in an efficient way so that the best can be made out of it. Harsh punishments should be given for poaching and hunting. The killing of animals for the production of various goods should be banned. Animals kept in zoos should be treated properly; they should be kept in a spacious area with proper food and treatment. People should never tease animals in the zoo.

Monthly counting of the endangered species should be done and proper care should be taken for their help and development. In case of discovery of injured wild animals, the forest officials should be reported for their help. Animals don't cause any harm without any cause. They often attack when they feel threatened so try to make the animal feel safe around you to avoid animal attacks. Lastly, it is an earnest request to every citizen to come forward and help Mother Nature to flourish again. It's terribly in need of our help



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