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SECTION 11 OF THE WILDLIFE (PROTECTION) ACT, 1972: AN OVERVIEW

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ABSTRACT

The Wild Life (Protection) Act, 1972 is an Act passed by the Parliament of India on August 21, 1972, and later implemented on 9 September 1972. This Act was enacted for the protection of plants, birds and animal species.

The Wildlife Protection Act is an umbrella Act to protect wild animals and plants. Before this Act was enacted there were very few national parks. This Act includes provisions for protection of plants and animals, hunting, harvesting and various other ancillary matters connected thereto. It has six schedules which extend to all over India. Under this Act, various kinds of penalties are also laid down for the violation of the laws contained therein.

This Act contains 66 sections and six schedules. This paper focuses on Section 11 of National Wildlife (Protection) Act, 1972.

INTRODUCTION

Wildlife plays an important role in balancing the environment. Wildlife provides stability to different processes of nature. Wildlife and nature have been largely associated with humans for emotional and social reasons. The importance of wildlife can be categorized as ecological, economic and investigatory importance as well as conservation of biological diversities etc. Animals have also been highly useful to us in providing food, clothing and source of income.

Our life is almost impossible without the support of wildlife. We are also a part of wildlife to make ecological balance on earth. It plays a very crucial role in our life.

1. Ecological importance

Wildlife helps in maintaining the ecological balance of nature. Killing of carnivores leads to an increase in the number of herbivores which in turn affect the forest vegetation, thus due to lack of food in the forest they come out from the forest to agriculture land and destroy our crops. This makes us know that wildlife helps in maintaining ecological balance even by being predators of each other. Animals are great predators which is the major reason for ecological development. Therefore, once the equilibrium and stability is disturbed it leads to many problems.

2. Economic importance

Wildlife can be used to earn money. Wild plant products like food, medicine, timber, fibres, etc. are of economic value and the wild animal products such as meat, medicines, hide, ivory, lac, silk, etc. are of tremendous economic value. Wildlife provides us the raw and basic material to start any industry, factory etc. for our earnings. Wildlife is also considered to be the one of the greatest factors for increase and better development of world trade and increase in national income. It also helps the farmers the most by providing a better way in ploughing and other techniques. Therefore, wildlife is of immense value to all in economic development. Since wildlife is the source of income to many they play a vital role in their life as the economic factor.

3. Investigatory importance

Some wild organisms are used for scientific experiments such as to test effect of medicine. Generally monkeys, chimpanzees, etc. are used for scientific experiments. Also animals like rats are first used to do experiments and test before trying them on humans because rats have somewhat the same nature and body design that supports scientific experiments. No doubt wildlife supports scientific research a lot.

4. Conservation of biological diversities

By conserving wildlife, diversity in the environment can be conserved. According to some scientists an ecosystem with more diversity is more stable.

5. Importance in agriculture

Wild organisms are very important for modern agriculture. Importance of wildlife in agriculture field is as follows: -

1. Production of a new hybrid variety using wild plants.
2. Production of a better hybrid variety of animals used for agriculture using wild animals.
3. New species of plants and animals can be produced by them.

INTRODUCTION

The Wild Life (Protection) Act, 1972 is an Act of the Parliament of India enacted for protection of plants and animal species. Before 1972, India had only five designated national parks. Among other reforms, the Act established schedules of protected plant and animal species; hunting or harvesting these species was largely outlawed.

1] The Act provides for the protection of wild animals, birds and plants; and for matters connected therewith or ancillary or incidental thereto. It extends to the whole of India.

It has six schedules which give varying degrees of protection. Schedule I and part II of Schedule II provide absolute protection - offences under these are prescribed the highest penalties. Species listed in Schedule III and Schedule IV is also protected, but the penalties are much lower. Animals under Schedule V, e.g. common crows, fruit bats, rats and mice, are legally considered vermin and may be hunted freely.

2] The specified endemic plants in Schedule VI are prohibited from cultivation and planting. The hunting to the Enforcement authorities have the power to compound offences under this Schedule (i.e. they impose fines on the offenders). Up to April 2010 there have been 16 convictions under this act relating to the death of tigers.

Schedules under the Act

The Wildlife (Protection) Act, 1972 has divided the protection status of various plants and animals under the following six schedules:

Schedule I

It covers endangered species that need rigorous protection. The species are granted protection from poaching, killing, trading etc. A person is liable to the harshest penalties for violation of the law under this Schedule. Species under this Schedule are prohibited to be hunted

throughout India, except under threat to human life or in case of a disease that is beyond recovery. Some of the animals granted protection under the this schedule.

Schedule I include:

The Black Buck,Bengal Tiger,Clouded Leopard,Snow Leopard,Swamp Deer,Himalayan Bear, Asiatic Cheetah, Kashmiri Stag, Fishing Cat,Lion-tailed Macaque,Musk Deer,Rhinoceros,Brow Antlered Deer,Chinkara (Indian Gazelle),Capped Langur,Golden Langur,Hoolock Gibbon

Schedule II

Animals under this list are also accorded high protection with the prohibition on their trade.They cannot be hunted except under threat to human life or if they are suffering from a disease/ disorder that goes beyond recovery.

Some of the animals listed under Schedule II include:

Assamese Macaque, Pig Tailed Macaque, Stump Tailed Macaque,Bengal Hanuman langur,Himalayan Black Bear,Himalayan Newt/ Salamander,Jackal,Flying Squirrel, Giant Squirrel,Sperm Whale,Indian Cobra, King Cobra

Schedule III & IV

Species that are not endangered are included under Schedule I and II..

This includes protected species with hunting prohibited but the penalty for any violation is less compared to the first two schedules.

Animals protected under Schedule III include:

Chital (spotted deer),Bharal (blue sheep),Hyena,Nilgai,Sambhar (deer),Sponges

Animals protected under Schedule IV include:

Flamingo,Hares,Falcons,Kingfishers,Magpie,Horseshoes Crabs

Schedule V

This schedule contains animals that are considered as vermin (small wild animals that carry disease and destroy plants and food). These animals can be hunted.

It includes only four species of wild animals: Common Crows,Fruit Bats,Rats,Mice

Schedule VI

It provides for regulation in cultivation of a specified plant and restricts its possession, sale and transportation.

Both cultivation and trade of specified plants can only be carried out with prior permission of competent authority.

Plants protected under Schedule VI include:

Beddomes' cycad (Native to India), Blue Vanda (Blue Orchid), Red Vanda (Red Orchid), Kuth (Saussurea lappa), Slipper orchids (Paphiopedilum spp.), Pitcher plant (Nepenthes khasiana)

"**Animal**" includes amphibians, birds, mammals, and reptiles, and their young ones, and also includes, in the cases of birds and reptiles, their eggs.

"**Animal article**" means an article made from any captive or wild animal, other than vermin, and includes an article or object in which the whole or any part of such animal has been used and an article made therefrom.

"Hunting" includes

- (a) Capturing, killing, poisoning, snaring, or trapping any wild animal, and every attempt to do so
- (b) Driving any wild animal for any of the purposes specified in sub clause
- (c) Injuring, destroying or taking any body part of any such animal, or in the case of wild birds or reptiles, disturbing or damaging the eggs or nests of such birds or reptiles.

"Taxidermy" means the curing, preparation or preservation of trophies.

"Trophy" means the whole or any part of any captive or wild animal (other than vermin) which has been kept or preserved by any means, whether artificial or natural. This includes:

- (a) Rugs, skins, and specimens of such animals mounted in whole or in part through a process of taxidermy
- (b) Antler, horn, rhinoceros horn, feather, nail, tooth, musk, eggs, and nests and shells.

"Uncured Trophy" means the whole or any part of any captive animal (other than vermin) which has not undergone a process of taxidermy. This includes a freshly killed wild animal, ambergris, musk and other animal products.

"Vermin" means any wild animal specified in Schedule V.

"Wildlife" includes any animal, bees, butterflies, crustacean, fish and moths; and aquatic or land vegetation which forms part of any habitat

Many non-endangered species, such as Papilio buddha are also protected.

SECTION 11 OF THE WILDLIFE (PROTECTION) ACT, 1972

Wildlife plays a very important role in agricultural development because animals like cows , buffaloes etc. help in ploughing or tilling of soil etc. Also many microorganisms and small animals like reptiles etc. also help in increasing the fertility of soil and providing a good base for agricultural activities .Micro Organism are said to be the friends of farmers for example earthworm losses the soil and help in decomposition of dead remains and then add humus to the soil. This increases soil's fertility.

Hunting of wild animals to be permitted in certain cases

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV

(a) the Chief Wildlife Warden may, if he is satisfied that any wild animal specified in Schedule I has become dangerous to human life or is so disabled or deceased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted: 1[Provided that no wild animal shall be ordered to be killed unless the Chief Wildlife Warden is satisfied that such animal cannot be captured, tranquilised or trans located: Provided further that no such captured animal shall be kept in captivity unless the Chief Wildlife Warden is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same are recorded in writing.

(b) the Chief Wildlife Warden or the authorised officer may, if he is satisfied that any wild animal specified in Schedule II, Schedule III, or Schedule IV, has become dangerous to human life or to property (including standing crops on any land) or is so disabled or deceased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt 2 such animal or group of animals in a specified area or cause such animal or group of animals in that specified area to be hunted].

(2) The killing or wounding in good faith of any wild animal in defence of oneself or of any other person shall not be an offence: Provided that nothing in this subsection shall exonerate any person who, when such defence becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made thereunder.

(3) Any wild animal killed or wounded in defence of any person shall be Government property.

Explanation- For the purposes of clause (a), the process of capture or translocation, as the case may be, of such animal shall be made in such manner as to cause minimum trauma to the said animal. (b) the Chief WildLife Warden or the authorised officer may, if he is satisfied that any wild animal specified in Schedule II, Schedule III, or Schedule IV, has become dangerous to human life or to property (including standing crops on any land) or is so disabled or deceased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt 2 such animal or group of animals in a specified area or cause such animal or group of animals in that specified area to be hunted.

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SALIENT FEATURES OF THE ACT

- It defines the wild-life related terminology.
- It provides for the appointment of wildlife advisory Board, Wildlife warden, their powers, duties etc.
- Under the Act, comprehensive listing of endangered wildlife species was done for the first time and prohibition of hunting of the endangered species was mentioned.
- Protection to some endangered plants like Beddome cycad, Blue Vanda, Ladies Slipper Orchid, Pitcher plant etc. is also provided under the Act.
- The Act provides for setting up of National Parks, Wildlife Sanctuaries etc.
- The Act provides for the constitution of the Central Zoo Authority.
- There is provision for trade and commerce in some wildlife species with license for sale, possession, transfer etc.
- The Act imposes a ban on the trade or commerce in scheduled animals.

- It provides for legal powers to officers and punishment to offenders.
- It provides for captive breeding programme for endangered species.

Prohibition of hunting: It prohibits the hunting of any wild animal specified in Schedules I, II, III and IV of the act.

Exception: A wild animal listed under these schedules can be hunted/ killed only after getting permission from the Chief Wildlife Warden of the state if:

It becomes dangerous to human life or to property (including standing crops on any land).

It is disabled or suffering from a disease that is beyond recovery.

Prohibition of Cutting/Uprooting Specified Plants: It prohibits the uprooting, damage, collection, possession or selling of any specified plant from any forest land or any protected area.

Exception: The Chief Wildlife Warden, however, may grant permission for uprooting or collecting a specific plant for the purpose of education, scientific research, preservation in a herbarium or if a person/institution is approved to do so by the central government.

1. Declaration and Protection of Wildlife Sanctuaries and National Parks:

2. The Central Government can constitute any area as a Sanctuary, provided the area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance.

3. The government can also declare an area (including an area within a sanctuary) as a National Park.

Government Property: Hunted wild animals (other than vermin), animal articles or meat of a wild animal and ivory imported into India and an article made from such ivory shall be considered as the property of the Government.

THE RATIONALE BEHIND PASSING THE ACT (WHY WAS THIS ACT PASSED?)

- The rapid decline of India's wild animals and birds, one of the richest and most-varied wildlife resources of the country, was a cause of grave concern.

- Areas which were once teeming with wildlife had become devoid of it and even in Sanctuaries and National Parks the protection afforded to wildlife needed to be improved.
- The Wild Birds and Animals Protection Act, 1935 had become completely outdated.
- The existing laws not only had become outdated but also provide punishments, which were not commensurate with the offence and financial benefits that occurred from poaching and trade in wildlife produce.

DRAWBACKS OF THE ACT

Some of the major drawbacks of the Act include.

- Mild penalty to offenders.
- Illegal wildlife trade in J & K.
- Personal ownership certificates for animal articles (tiger, leopard skins etc.) are permissible which very often serve as a tool for illegal trading.
- No coverage of foreign endangered wildlife.
- Pitiably condition of wildlife in mobile zoos.
- Little emphasis on protection of plant genetic resources.

BODIES CONSTITUTED UNDER THE ACT

1. National Board for Wildlife (NBWL): As per the act, the central government of India shall constitute the National Board for Wildlife (NBWL).
2. It serves as an apex body for the review of all wildlife-related matters and for the approval of projects in and around national parks and sanctuaries.
3. The NBWL is chaired by the Prime Minister and is responsible for promotion of conservation and development of wildlife and forests.
4. The Minister of Environment, Forest and Climate Change is the Vice-Chairperson of the board.
5. The board is 'advisory' in nature and can only advise the Government on policy making for conservation of wildlife.

AUTHORITIES APPOINTED UNDER THE ACT

1. The Central Government appoints the Director of Wildlife Preservation and assistant directors and other officers subordinate to the Director.
2. The State Governments appoint a Chief Wildlife Warden (CWLW) who heads the Wildlife Wing of the department and exercises complete administrative control over Protected Areas (PAs) within a state.
3. The state governments are also entitled to appoint Wildlife Wardens in each district.

DISCUSSION OF THE ACT WITH REFERENCE TO IMPORTANT JUDICIAL DECISIONS

The definitions section of the Act plays a part in setting out its scope in terms of the articles to which it applies. The Act's protection extends to wild animals and captive animals, both of which are defined as animals belonging to a species which is listed in Schedules I-IV of the Act.⁶ The Act's provisions on trade, possession and transport of protected species relate not just to captive and wild animals, but also to the uncured trophies, trophies, animals articles, and meat derived from such animals.

1. In **Cottage Industries Exposition Limited and Another v. Union of India and Others 2007(143) DLT 477**, the **Delhi High Court** was dealing with a writ petition by a company carrying on a business in shahtoosh wool, which is made from the hair of the Tibetan antelope, a protected species listed in Schedule I of the Act. The petitioner argued that a shahtoosh shawl would not fall within the definition of "animal article" since the definition did not specifically include the word 'hair.' The court refused to accept this contention. After quoting a series of judgments that a statute must be construed so as to avoid absurdity and mischief, the court held that:

"In fact, the acceptance of the plea of the petitioner to the effect that the definition of 'animal article' would exclude 'hair' merely because of the definition of 'trophy' including 'hair' within its sweep would lead to an absurd result proscribed by the above judgments of the Hon'ble Supreme Court..... In our view, the definitions of 'uncured trophy', 'trophy' and 'Scheduled animal article' are not separate, distinct and exclusive compartments but are complementary to one another. Any other construction would defeat the object of the Act and the intention of the Legislature."

Accordingly, any and all parts of a captive or wild animal will either fall within the definitions of meat, uncured trophy (if it has not undergone a process of taxidermy or preservation), trophy (if it has undergone a process of preservation), or animal article (when it has undergone further

Is processed to become an article, such as a shahtoosh shawl).

2. **In State of Tamil Nadu and Another v. Messrs Kaypee Industrial Chemicals Private Limited and Others 2005 AIR (Mad) 304**, the Madras High Court allowed the collection of coral for commercial use in lime manufacture. It held that dead pieces or the outer skeleton of a protected marine living organism would not fall within the definition of animal article or wild animal and that therefore its collection was not banned. This judgment is contrary to the Delhi High Courts view in **Cottage Industries Exposition Limited (Supra)** since as per that view, the dead coral would fall within the definitions of trophy or uncured trophy and would therefore be protected. The judgment was appealed by the State to the Supreme Court where a stay was granted on such collection. Owing to the stay, the Madras High Court declined to allow collection of coral in **C. Rathinavel v. State of Tamil Nadu and Others 2008 INDLAW MAD 1875**.
3. Since the Act is a penal legislation, it is important that the crimes that it defines are clear so that a person is not punished for something he did not know was a crime. One of the key areas for clarity vis-a-vis the Act is the species that are listed in its Schedules. Most of the items in the Schedules are named by both a common name for the animal, as well as a scientific name. The scientific name of a species (or a family or genus) is always clearer in its application than the common name will be. It is therefore important that Courts, while interpreting the items in the Schedules go by the scientific classification rather than the dictionary or common meaning. Good examples of this are the approach of the court in **J.P. Samuel and Company (Supra) and Samir Thapar (Supra)**.
4. On the other hand, in the case of **Mohd. Rahamatulla Hussain v. State of Andhra Pradesh 2006 INDLAW AP 466**, the Andhra Pradesh High Court was dealing with a case where some persons were found to have hunted what were claimed to be rabbits. No species of wild rabbits are found in India, whereas hares are protected under Schedule IV of the Act. The Court looked at the encyclopaedia meanings of hares and rabbits and held that the accused had not killed a protected species. Given the facts of the offence though (the accused were found out at night hunting), it appears improbable that the accused were hunting rabbits, since they are not found in the wild in India, whereas hares are. Although the mistake in this case appears to have been committed by the prosecution by averring that the accused had hunted a rabbit, it serves as good illustration as to why both the prosecution and the Court should insist on identifying a seized item by its scientific classification, rather than a common or dictionary name.

CONCLUSION

The key environmental challenges that the country faces relate to the nexus of environmental degradation with poverty in its many dimensions, and economic growth. These challenges are intrinsically connected with the state of environmental resources, such as land, water, air, and their flora and fauna. The proximate drivers of environmental degradation are population growth, inappropriate technology and consumption choices, and poverty, leading to changes in relations between people and ecosystems, and development activities such as intensive agriculture, polluting industry, and unplanned urbanisation. The status of wildlife in a region is an accurate index of the state of ecological resources, and thus of the natural resource base of human well-being. This is because of the interdependent nature of ecological entities, the web of life in which wildlife is a vital link.

Moreover, several charismatic species of wildlife embody Incomparable Values, and at the same time, comprise a major resource base for sustainable development. Conservation of wildlife, accordingly, involves the protection of entire ecosystems.

We have to keep these perspectives in mind while going through the Wildlife (Protection) Act 1972. Since wildlife is a vital link in the web of lives, it is our utmost duty to preserve and protect the richness of wildlife as it can be made available to generations. So the endangered species of flora and fauna should be protected. The Wildlife (protection) Act, with timely amendments, facilitates the protection of wild life in India. With these observations, I conclude my topic on Wildlife (Protection) Act, 1972.

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