



WILDLIFE BEARS THE BRUNT- IMPACT OF HUMAN INTERVENTION ON WILDLIFE IN INDIA

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1. Abstract

“What we are doing to the forests of the world is but a mirror reflection of what we are doing to ourselves and to one another.”

-Mahatma Gandhi

As the Human civilization spreads its limbs across the lands with increasing human population and the inherent need to accommodate the population; Development and housing projects become inevitable. Acres of forest land is converted to residential facilities, commercial hubs, roads and railway tracks that slice through the hearts of wildlife habitat. The linear infrastructure that springs up subdivides the wildlife landscape to such an extent where habitats are restricted to patches leading to habitat fragmentation that vividly increases the chances of extinction of species which are higher in food chain and this singular event generates the possible extinction of species lower down the order due to the eventual domino effect. Human intervention has been dismantling the sensitive ecological harmony in the forests of India whether it is the resounding echo of gunshots or the eerily silent setting of traps and snares to add to the rising illegal poaching and killing of wildlife species for the insatiable thirst of the elite class for peculiar commodities or the harvesting of vital flora to a point of no regeneration. The

Judicial fraternity has in recent times taken remarkable steps such as giving legal sanctity to ‘protected’ areas and restricting the usage of roads inside sanctuaries yet implementation continues to be a challenge.

Keywords- Loss of Habitat, Fragmentation, Wildlife Jurisprudence, Wildlife Trade, Poaching, Development Projects, NGT, Maintainability.

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Introduction

Environmental ethics vary exceedingly but one common characteristic that is often observed is that these ethics are tainted by the belief that the needs of human beings should be prioritized in terms of lifestyle, development or industrialization irrespective of the irreparable damage that is done to the environment. Anthropocentrism¹ is an approach that celebrates this practice which is one of the major causes of human intervention. The lack of consideration for wildlife and their habitats is because of this inclination towards anthropocentrism that is, seeking what is best for human beings as opposed to an eco-centric approach which attaches value to non-human beings, flora and fauna and what is best for them. The Supreme Court rightfully laid down² that non-human entities also deserve equal

¹ K.V. Kortenkamp and C.F. Moore, Ecocentrism and anthropocentrism: Moral reasoning about ecological commons dilemmas 21 *Journal of Environmental Psychology* 261–272 (2001).

² *Centre for Environmental Law WWF-India v. Union of India* (2013) 8 SCC 234.



consideration and the right to have meaningful existence which is distinct from whether or not it benefits human beings.

The Wildlife Protection Act, 1972 sprints without fail to keep up with the international standards of Wildlife Conservation hitherto the incomprehensive legislation in certain cases unequivocally allows the advantage one can take of the loopholes of the 'posit et lege' or the laid down law. The rising environmental activism and jurisprudence is of the view that its time the wildlife is given the deserved crucial attention it needs under the tenet of equality. After all the Principle of equality does not require equal or identical treatment; it requires equal consideration.

3. Historical Background

The holy texts of most religions revere the animals of the wild; sanctifying them to such an extent that scripts as old as *Manusmriti* condemn the killing of wild animals and deem the trading and consuming of them as the most heinous of all sins.³ India as a country has seen a major shift in wildlife management and conservation but the subject of poaching and hunting has remained the same through the developments. Before the country's wild was devoured by the colonizers, *Maharajas* and Princes took pride in hunting wild animals. In a peculiar era, such as this hunting and poaching was a favourite pastime of the elite and also deemed to be a sport of the royalty. The impact of the sport was so atrocious that during the Mughal reign it has been often stated by historians that wildlife saw a significant diminution. It

³M. Rangarajan, *India's Wildlife History* 20 (Orient Blackswan, 2005).

is important to note that the Asiatic Cheetah was declared extinct in the 20th century being one of the first mammals to go into extinction due to unnatural causes. The British Raj collectively took up the hunting cause creating hunting reserves for themselves. Rewards were situated upon the hunting of tigresses and cubs and any clearance of forest land was looked at as an opportunity to generate revenue through timber. Over 80,000 tigers, more than 150,000 leopards and 2,00,000 wolves were slaughtered in the fifty years from 1875 to 1925⁴. The Forest Act, 1865 the first ostensible environmental legislation didn't have a single bone of conservation in its objectives or the mention of wildlife rather it further enabled the Raj to plunder the forest resources. The legislation sang to the tune of optimum exploitation of forest resource to the thriving timber trade that the British most profited from. This led to loss of wildlife habitat and the wildlife itself was massacred like vermin which meant more land for cultivation and clearance and eventual income. It is interesting to note that the British government had appointed a "forest conservator" it came to be known as the office that did more damage than conservation.

4. Wildlife and Contemporary Issues.

Organized crime by avaricious and rapacious person have destroyed large parts of wildlife of India and eventually brought many species of animals like Lion, Tiger

⁴S. Bhatt and A. Majeed, *Environmental management and Federalism: The Indian experience* 102 (Uppal Publishing House 2002).



etc. to the brink of extinction.⁵ According to Global Financial Integrity in its report 2017 annual illegal wildlife trade ranges from \$5 billion to \$23 billion⁶, this wildlife trade is the greatest threat to our wildlife preservation and ecological balance, the wealth turnover involved in illegal trading of all the wildlife flora and fauna gives another reason to exploit for illegal organization's benefit.

India upon independence observed a complete period of indifference towards the wildlife. It only was an obstacle in the progress of a developing country that was facing stark poverty and a food crisis. The forest lands saw more influx of agriculture to keep up with the growing agrarian needs of an incessantly growing population. Poaching and hunting of wildlife went on unchecked. The first Wildlife regulatory board called the Indian Board for Wildlife was established in 1952 which consisted of ardent hunters⁷ who enjoyed it as a sport, set the theme for how the conservation of wildlife would turn out in the coming years. Wildlife is under siege today despite the existing legislations wildlife trafficking is on an inundated rise. What demands the drive for wildlife products are highly unusual. The foremost reason for the desire of animal articles are for (a). Ostentatious display of

status and wealth whereas the other closely following reason being (b). Superstitious beliefs that vest medicinal value to the animal products. The Ivory derived from Elephants tusks⁸, trade of which is one of the most extensive networks of illegal trade find its demand in the former whereas trade in Rhinoceros⁹ horn and gall bladder extraction of Himalayan Brown bears¹⁰, pangolin scales are demanded for the latter reason. It's interesting to note that articles derived from tigers are traded for diverse perverted uses. The hide or the cured skin of the animal for the grandiose of it and its bones and claws for medicines that are believed to cure sterility in men.

The demands and beliefs of these articles are popularly shared by mainly a network of three countries- China, Vietnam and Thailand¹¹ the Wildlife Crime Scorecard Report by the WWF¹². The Delhi High Court in stated "Since there is hardly any market within the country for wild animals or articles and derivatives thereof, the stocks acquired for trade within the country are smuggled out to meet the demand in foreign markets. This clandestine trade is abetted by illegal practices of poaching which have

⁵*Sansar Chand v. State of Rajasthan*, (2010) 10 SCC 604.

⁶Transnational Crime and the Developing World, available at:<http://www.gfintegrity.org/report/transnational-crime-and-the-developing-world/> (Last Modified March 24, 2018).

⁷D.P. Chattopadhyaya, *Environment Evolution and Values* 53 (Concept Publishing Company, 1st edn., 2007).

⁸The Wildlife (Protection) Act, 1972 Schedule 1 part 1 Entry 12B Vide Notification No. S.O. 859(E), dt. 24-11-1986.

⁹*Id.* Entry 30.

¹⁰*Id.* Entry 3A Vide Notification No. S.O. 859(E), dt. 24-11-1986.

¹¹What drives demand for wildlife? available at:<http://www.usaidwildlifeasia.org/resources/reports/what-drives-demand-for-wildlife> (Last Modified on March 24, 2018).

¹²WWF wildlife crime scorecard report 2012 available

at:http://awsassets.panda.org/downloads/wwf_wildlife_crime_scorecard_report.pdf (Last Modified March 25, 2018)



taken a heavy toll of our wild animals and birds.”¹³ Asserting how wildlife trade has increasingly become a lucrative business for international markets. The act provides for National Board for Wildlife on the central level and State Wildlife Boards which act as advisory bodies and National Wildlife Crime Control Bureau which together are watchdogs of detecting and curbing poaching and trade in wildlife articles yet in recent cases habitual smugglers who have interestingly served time due to illicit wildlife trading were found to be engaging in the same racket.¹⁴ Poaching appears to be an easy getaway with lesser cases reported and a meagre number of convictions as the implementation of the act remains frail. Poaching is a sinister act that must not be always associated with wounding animals with modern weapon. The regulation continues to be primitive while poachers find newer escapes to hunt and trade silently by setting snares and traps or poisoning carcasses of prey animals that predators feed on and pass away silently without a gunshot to alert the officials. Does technology set us so far back that it becomes seemingly impossible to nab culprits trading online and poachers to move silently in our forests robbing the heritage of the country? The Andhra Pradesh government¹⁵ has provided forest guards to have access to equitable technology as the poachers such as firearms

and wireless communication devices that would bring them on levelled field.

Another aspect of the legislation that is completely overlooked is the fact that flora and fauna cannot be divorced from one another and together they form wildlife. Schedule VI of The Wildlife Protection Act enlists plants and foliage that are protected under the same. A racket of medicinal plant export takes 90% of derivatives from the wild which are cultivated ruthlessly in unsustainable ways which put a halt to regeneration of the plants.¹⁶ Human intervention in the form of development projects cause immense distress to the wildlife. Highways, Railway lines and other linear infrastructures have caused the death of numerous endangered animals. Railway tracks and their auxiliary electric cables in recent years resulted in innumerable deaths of elephants due to collision and electrocution. Elephants which are protected under Schedule I Part I of the Wildlife Protection Act yet the issue of their decimation cannot be brought under the National Green Tribunal. This is because for a petition to be filed under S.14 there must be a civil dispute under the legislations provided under Schedule I of the Act, The Wildlife Protection Act is not one of them. In a recent judgment of the Principal Bench, National Green Tribunal which discussed the issue of protection of Elephant Corridors and stated that Elephant Corridors are ecologically sensitive zones that must be protected under the Environment Protection Act, 1986.¹⁷

¹³*M/s. Ivory Traders & Manufacturers Association, and Others v Union of India and Others* AIR 1997 Del. 267.

¹⁴*T.N Godavarman v. Union of India* (2012) 3 SCC 277.

¹⁵S. Upadhyay and V. Upadhyay, *Handbook On Environmental Law: Forest Laws, Wildlife Laws And The Environment* 127 (LexisNexis Butterworth, 1st edn., New Delhi 2002).

¹⁶ Samir Sinha, *Illegal Wildlife Trade in India: An Overview*.

¹⁷*Dr Kashmiri Kakati v. Union of India* (Original Application No. 19/2014 NGT).



5. Legal Aspect

a) International Stand

This contemporary issue of Wildlife preservation is of international importance and it does not seem to catch adequate attention of authorities sitting at the table. There are different reasons such as poverty, unemployment etc. stipulated by the exploiters and reasons such as lack of education is given by the governments to justify their incapability to preserve wildlife but that cannot justify the killing and poaching of innocent animals, not just for trade but also for recreational hunting. Rapid increase in illegal trade has made it second largest illegal occupation in the world after smuggling of drugs.¹⁸ The species and habitats are diminishing at rate higher than ever and to curtail this issue of illegal occupation of wildlife trade the requirement for International cooperation has grown manifold and with this partial objective *Convention on International Trade in Endangered Species* was formulated.¹⁹ *Convention on International Trade in Endangered Species* draft was based on the purpose that 'international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade',²⁰ while using the word 'over-exploitation' *Convention on International Trade in Endangered Species* is declaring its intention to curb the issue of over exploitation but it also leaves one end open by allowing governments to exploit wildlife for their economic development by

trading wildlife based on the appendices²¹ in which that specie is placed. The conflict between trade and conservation in sustainable use of Flora and Fauna is a question that needs to be answered by *Convention on International Trade in Endangered Species* and India being party to this Convention needs to fill this void in *Convention on International Trade in Endangered Species* through national legislations.

'A just world that values and conserves nature' with this vision *International Union for Conservation Nature* frames its mission to influence, encourage and assist societies to conserve the diversity of nature. *International Union for Conservation Nature* is an ideological actor which involves not only in conservation action but it distributes definition of what constitutes conservation.²²

b) Constitutional Development

In spite of being world's bulkiest Constitution, India did not have any specific provision for Wildlife protection and promotion. Nation's commitment towards wildlife protection was shown when Prime Minister Mrs. Indira Gandhi at United Nations Conference on Human Environment, 1972²³ said: "nature conservation including wildlife must receive importance in planning for economic development" and through 42 Amendment

²¹ CITES, 1st mtg., Conf. 1.2 (Berne, 1976).

²² IUCN: A History of Constraint, Kenneth Iain MacDonald, available

at: <https://perso.uclouvain.be/marc.maeschalck/MacDonaldInstitutionalReflexivityandIUCN-17.02.03.pdf>

(Last Modified March 21, 2018)

²³ U.N. Doc. ED/WS/397 (June 5, 1973).

¹⁸ Supra Note 5.

¹⁹ CITES Mar. 3, 1973, 27 U.S.T. 1087, T.I.-A.S. No. 8249, 993 U.N.T.S. 243.

²⁰ *Ibid.*



Act, 1976 Article 48-A and 51-A (g) were added as express provisions for protection and promotion of Environment and Wildlife.

Though The Wildlife Protection Act was enacted through resorting Article 252 of Indian Constitution at the request of 11 states but post enactment after introduction of Entries 17 - A and 17 - B in the List - III of the constitution (Forty - second Amendment) Act, 1976 the Parliament was empowered to enact laws relating to the Wild Life, without recourse to Article 252 of the constitution.²⁴

c) National Legislation

The Wildlife Protection Act being the host of legislation in India aimed at protecting the Wildlife from exploitation and maintaining the ecological balance and in its entirety was expected to fill the lacuna but so far, the conservation aimed, does not seem to be achieved. The Hon'ble Supreme Court raised the apprehension of ecological imbalance and its subsequent damages and indicated that humans are progressing at the expense of damage to the environment which he cannot repair and cannot foresee.²⁵ The Wildlife Protection Act which contains regulatory framework for protecting wildlife species through different means and ways, with few main objectives in the enactments which is, to have a Uniform Wildlife Legislation across the country; to establish a network of protected area i.e. national parks, sanctuaries, Zoos etc. and to regulate illicit trade in wildlife and its products. Under section 2 (37) 'Wildlife includes any animal, bees'

butterflies, crustacean, fish and moths and aquatic or land vegetation which forms part of habitat'. This is very specific and wide definition of Wildlife as compared to International definitions adopted in different conventions. More than that Indian legislature went a step ahead and enlisted wildlife²⁶ which includes any specified in Schedule I, II, III, IV, V and VI or wherever found. In general, The Wildlife Protection Act covered most of Wildlife flora and fauna of the country, moreover to be more illustrative, if a dog is found in a sanctuary or if a tiger is found in streets then both will be categorized as wildlife animals, this wide definition of Wildlife under The Wildlife Protection Act is made to achieve the third objective i.e. to prevent illegal trade, and this illegal trade of animals irrespective of animal being wild or not.

d) Judicial Approach

A Writ Petition filed in year 2015 order of which came in 2018 to form a committee to review the conservation policy and improve the conservation status of species like Great Indian Bustards, snow leopards, the Himalayan Brown Bear and Indian wolves, which are on the verge of extinction.²⁷ The time span which extends for a favorable order to come is much more in Supreme Court as compared to National Green Tribunal a specialized body to determine cases relating to the environment and hence it is technically equipped to handle cases even under the Wildlife Protection Act, but because of procedural irregularities National

²⁴The Constitution of India, art. 252.

²⁵*State of Bihar v. Murad Ali Khan & others* (1988) 4 SCC 655.

²⁶ The Wildlife (Protection) Act 1972 (Act 53 of 1972), s. 2 (36).

²⁷*Vidya Athreya & Anr. Vs. Union of India Ors* (Writ Petition (C) no. 275 of 2015).



Green Tribunal's jurisdiction excludes The Wildlife Protection Act.

Hunting has been one of the major causes for the extinction of the wildlife species across India and offenders have been using The Wildlife Protection Act as their protective umbrella to escape punishment. Under section 2(16) hunting means capturing, killing, poisoning, snaring etc. and Section 9 partially prohibits the hunting of animals with Section 11 and Section 12 as its exception. Section 11 evidently shows the fragility of the act, since conflict between human and animal is fueled by human encroachment yet under this provision human's triumphs over animals and use this provision to evade sanctions. Since legislations are man-made, the rights of other sentient beings are only secondary to the rights of humans. The Supreme Court stated that environmental justice can only be achieved if we drift away from the principle of anthropocentric to eco-centric.²⁸ Anthropocentric principle means the needs of human being supersede the needs of the ecosystem. It cannot be left unobserved that humans are using animals as an apparatus for their puerile experiments.

The countless incidents of illegal trading of animal articles are immersed in normalcy to such an extent that the debauchery goes unchecked. Ivory trading which encapsulates narcotizing elephants for the purpose of extracting ivory, which often results in death of elephants. Court prohibited trading of ivory by restricting the 'fundamental right to freedom of trade' and stated that 'trade and business at the cost of disrupting life forms and linkages necessary

²⁸Supra Note 14.

for the preservation of bio-diversity and cannot be permitted even once'²⁹ in another judgment, the Hon'ble Supreme Court prohibited the trapping and of birds by declaring it as hunting within the purview of the Act.³⁰

As in the landmark judgment of *Sansar Chand*³¹ Court raised serious concerns over the state of wildlife protection in India in light of continuous poaching incidents and also requested Central Government and State Government and their respective agencies to make all necessary efforts to preserve wild life of the country and take stringent actions against those who are violating the provisions of The Wildlife Protection Act.

It is indisputable that the court often portrays an anthropocentric outlook themselves. The court has been found strengthening human intervention that enables depletion of wildlife, this quandary of deciding between the two matters can be evidently seen in the case of *Consumer Education and Research Society vs. Union of India*³² where the petitioner challenged the decision of High Court through a special leave petition which denied its contention to challenge the notification of State Government reducing the area of 'Narayan Sarovar Chinkara Sanctuary' from 765 sq. kms to 95 sq. km. For the purpose of mining. Apex Court in this case decided against the petition and declined to overrule the decisions of State Government and High

²⁹*Ivory Traders Manufacturers Association v. Union of India* AIR 1997 Del 267.

³⁰*Chief Forest Conservator Wildlife v. Nisar Khan* AIR 2003 SC 1867.

³¹Supra Note 5.

³² AIR 2000 SC, 975



Court and stated that: “It will not be proper to invalidate the resolution of the State legislature on such a ground when we find that it took the decision after duly deliberating upon the materials which was available with it and did not think it necessary to call for further information” The judgment clearly displays a anthropocentric quality where the need for excavation of minerals for human beings was adjudged at the expense of the protected habitat of wildlife.

Another widely celebrated environmental principle of ‘polluter pays’ also has an underlying condition of certain extent of harm to human beings. The apex court in Indian Council for Enviro-Legal Action vs. Union of India³³ stated that “the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.” The following was reiterated in Vellore Citizens Forum case³⁴ and Kanpur Tanneries case³⁵ that the principle is only applicable if along with the environment, harm to human beings is present and explicitly so.

This approach is not only witnessed in judgments and executive decisions but also the constitution of the country paints a similar picture wherein access to clean and healthy environment is an inherent fundamental right that human beings are entitled to under article 21 and Article 48A that states “Protection and improvement of environment and safeguarding of forests and

wild life: The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country”. Even though the content is very noble due to its characteristic of being a directive principle is not enforceable as a right per se.

The destruction or depletion of other forms of life would create ecological imbalances endangering human life, no one can be given the privilege to endanger human life as that would violate Article 21 of the Constitution. Basically, it is extremely essential for the survival of man to co-exist with nature, and to preserve and protect wildlife³⁶

Recommendation and Conclusion

While The Wildlife Protection Act encompasses most issues relating to wildlife it does not address the issue of human-wildlife conflict and how to reduce these confrontations. The legislature must take necessary steps to resolve this issue by establishing district registries in areas where the locals can report animal encounters immediately so they don’t indulge in actions which can be detrimental to the wildlife. Human settlements around, within or in the peripheries of protected areas should be discouraged.

Initiatives like Tiger project and Elephant projects that were initiated in the wake of crisis have been relatively successful. Initiatives such as these must be taken to preserve the wildlife species in order to prevent possible extinction by compartmentalizing each and every specie.

³³ 1996(3) SCC 212.

³⁴ *Vellore Citizens Welfare Forum v. Union of India* (1996) 5 SCC 647.

³⁵ *M. C. Mehta v. Kamal Nath* (1997) 1 SCC 388.

³⁶ P Leelakrishnan, *Environmental Law Case Book*, (Lexis Nexis Butterworths, 2nd edn., 2004).



Tiger project is centrally funded scheme with National Tiger Conservation Authority which pigeon-holes the problem of tiger population diminution. As suggested by Supreme Court to Governments and their agencies, National Tiger Conservation Authority to take stringent action against those who violate provisions of The Wildlife Protection Act³⁷ there must be strict reprimands against offenders under The Wildlife Protection Act that deter them.

Influx of tourists towards protected areas has been increasing at constant rate which needs to be curtailed so that animal habitats are not disturbed. Turning protected areas into zoo exhibits is contrary to the objective of the legislation which strives to provide a safe haven to the wildlife.

Use of new technology shall be incentivized by agencies to have better patrolling in protected areas and also enhanced tactical instruments that bring forest guards at par with the offenders to prevent poaching and trophy killing. Little to no attention is paid to the flora facet of the wildlife as offences of smuggling medicinal derivatives from plants is widespread yet remains unrestricted and unreported. Authorities should monitor Cultivation of scheduled plants that must only be done through scientific means that encourages regeneration. As the demographic expands from the snow-capped Eastern Himalayas to the sultry ends of the Deccan plateau in India, habitats of the native animals get restricted unjustly. Preservationists continue to dream of the Era of Asoka's edicts and the reign of Indira Gandhi in whose tenure the first and only legislation with the idea of conservation of

wildlife came into effect- The Wildlife Protection Act, 1972 with the succession of The Project Tiger in 1973; Conservation and longevity of wildlife was boldly defended amidst a growing dissent. Public participation and a changed outlook of compassion and ominous importance towards the wildlife would significantly halt the diminishing numbers of the wealth of our nation. A Native American proverb puts simply the rude awakening that awaits us as we continue to treat the wildlife as vermin: "When the last tree has been cut down, the last fish caught, the last river poisoned, only then will we realize that one cannot eat

money".

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³⁷ SupraNote 5.



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