

LAWS FOR PROTECTION OF WILDLIFE IN INDIA : NEED FOR AWARENESS TOWARDS IMPLEMENTATION AND EFFECTIVENESS

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Introduction

The rules and regulations related to wildlife protection become the talk of the town and hug the limelight when a filmstar is arrested for hunting a wild blackbuck, or when a dinner party with exotic dishes of meat from several wild animals is organised for the invited VVIPs comes to light. TV talkshows and newspapers report at regular intervals that such offences are not unknown and occur regularly in many remote corners of the country. Often we come across news regarding seizure of tiger skins, elephant tusks, rare butterflies, star turtles and rare birds or medicinal plants at the time of smuggling. Let us examine whether existing laws and rules related to wildlife protection and conservation are sufficient as a deterrent to control crimes against wildlife in our country.

Wildlife Laws

The wildlife laws in India have a long history. The earliest codified law can be traced back to the third century BC, when Emperor Ashoka enacted a law in the matter of preservation of wildlife and environment (Joshi *et al.*, 1998). The first codified law, The Wild Bird Protection Act, 1887 was enacted by the British. The British Government passed The Wild Birds and Animals Protection Act, 1912 and

amended it in 1935 when it was realised that these laws were not adequate to protect the wildlife. The Government of India brought out a comprehensive legislation, the Wildlife (Protection) Act, 1972 (WPA). WPA provides the basic framework to ensure the safety and well being of wild animals and plants. The primary Act was amended from time to time (eg. in 1976, 1982, 1986, 1991 and 1993), as and when the need arose to accommodate provisions for better implementation. Sections 48, 48A and 51A (g) of the Constitution of India also emphasise the responsibility and obligation to protect and save our country's national heritage is with the people of India and the Government.

The preamble of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of which India is a signatory since October, 1976, recognises that :

"Wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of natural system of earth which must be protected for this and generation to come."

Besides WPA, Indian Penal Code, 1960; Code of Criminal Procedure, 1974; Customs Act, 1962; Indian Forest Act, 1927

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(with various amendments); Forest (Conservation) Act, 1981; CITES 1975 (its resolutions and notifications); Environment (Protection) Act, 1986; Prevention of Cruelty to Animals Act, 1960; Arms Act, 1959 etc. are some more legal instruments available to the enforcement agencies to check and control wildlife offences including trade.

Despite all these laws and policies the illegal trade in wildlife continues to flourish. Just as mere laws do not bring down the incidence of heinous crimes in society, the poaching of animals, uprooting of plants and their subsequent trade also has to be dealt with in the field. We firmly believe that the time has come to recognise the gravity of the situation and try to arrest the cataclysmic decline of species (Menon and Kumar, 1998). One important aspect in crimes related to wildlife is the trade in wild animals, plants and their parts, products and derivatives, a massive business with annual turn over running into millions of rupees and according to one estimate in profits second only to drug trafficking, says Shri S.K. Mukherjee, then Director, Wildlife Institute of India (1998). India is an importer, exporter and a conduit for wildlife that enters the \$25 billion annual global trade (Menon and Ashok, 1998).

Trade in Wildlife Flora

In recent years, trade in medicinal plants and wild plant materials has grown tremendously along with growing fear of piracy of genetic resources and hijacking traditional knowledge of medicinal plants, mainly from developing countries like India. Joshi *et al.* (1998) comment, "WPA does not emphasise the legal options for ensuring the protection of plants and

microbial wild genetic resources in the same way as that of game animals". India, one of the mega biodiversity rich countries in the world, with rich flora and fauna, due to its vast area and wide variations in climate, soil, geographical location and evolutionary history etc., is a major exporter of medicine plants. Germany, the United Kingdom, France, USA, Switzerland and Japan are major importers of Indian medicinal plants. In the commercial market it is accepted that nearly 95% of the medicinal plants in use are obtained from the wild. About 7000 medicinal plants are used by the various traditional medicine systems and most of them are endemic to India, according to them. Joshi *et al.* further state, "Leaving apart timber yielding plants species and antibiotic producing microbes, the trade in non-timber products derived from wild plants and microbes that are used as bio-fertilizers runs into several billion dollars. The use of microbes in detoxifying highly polluted soil and water is fast emerging as a multimillion dollar industry. Besides these biota, several hundreds of animals, plants and microbial species do not constitute genetic resources, but are useful in maintaining ecological processes. Consequently the threats to the wild genetic resources of plants and microbes are several hundred times more pronounced than the ones that endanger game animals. The inadequacies of the present protection Act is exemplified with respect to medicinal plants."

Protection of Wild Fauna

The WPA was enacted originally for the protection of wild fauna. Chapter IIIA was introduced in 1991 for the first time to provide protection to endangered flora. By amending the Import-Export Policy and

the Customs Act, the instruments by which India regulates import and export currently, the regulation of import and export trade in wild plants and animals was brought about. According to Kumar (1998), "Even today regulation of the domestic and international trade in endangered plants is in its early stages. The schedules covering endangered plants is far from comprehensive. All this need to be rectified on priority basis to check thoughtless and wanton exploitation of highly useful plants."

Currently, the WPA does not cover foreign endangered wildlife species effectively. If detected, Indian wildlife authorities cannot do much except asking customs authorities to intervene, which is not practical. Therefore, Kumar (1998) opines, there is a need to cover endangered species from other countries so that India can better discharge its obligations under CITES.

The 1986 and 1991 amendments provided more teeth to WPA and removed many loopholes. But a study conducted by Wildlife Protection Society of India in 1995 on the impact of WPA, showed that the major weakness in wildlife crime law enforcement is the snail's pace at which cases 'progress' in the courts of law. In the last five years or so, no more than two or three persons in India have actually received jail sentences for crimes against even major species such as tiger, elephant, rhino etc. In all other cases studied, the traders and poachers had received bail and the cases were progressing in lower courts at a snail's pace. Many wildlife traders and poachers are believed to be continuing their illegal activities, despite several cases pending against them. So far the Act has not proved to be much of a deterrent to

offenders, comments Kumar (1998). He observes further, "District Courts in India are burdened with a backlog of over 12 million cases. This results in considerable delay in obtaining a verdict, as long as 10 years or more in many instances. In the meantime, professional wildlife traders get bail and continue to decimate the country's wildlife. Very few forest officers who are empowered to file wildlife court cases are trained and have resources to conduct sustained investigation and interrogation, take evidence, frame charges and pursue court cases. In the years it takes, the prosecuting officers are transferred, witnesses go missing or die. Public prosecutors are poorly remunerated. Senior advocates are rarely retained in wildlife cases by the prosecution. Then there are appeals. In one instance, a major wildlife trader of Delhi was apprehended in 1974 but finally went to jail in 1994, after a lapse of 20 years and that too only due to NGO action."

The enforcement of law is a complex issue. On the one hand the Forest Department has been given the task of protecting the forests of India without adequate policing powers, which creates problems for seizure and confiscation of illegally felled timber or poached animals; even where such seizures take place the low penalties and anticipatory bail do not help in stopping the theft of wood and animals. On the other hand, since the Forest Department has traditionally played an exploitative role, it has managed to alienate the local people who can actually help in stopping illegal felling or poaching. It requires the participation of the local people and human input through labour (Singh, 2000).

In criminology, three basic factors

make up deterrence - (i) certainty, (ii) time taken for punishment to be awarded, and (iii) the actual weight of the punishment. Studies have shown that the most important factor is the certainty of punishment. In India, the conviction rate for serious crime is very low. In cases related to wildlife crimes, it is still poorer. The second most important factor that constitutes deterrence is the time taken for awarding the punishment. In India, criminal cases including serious ones like rape and wildlife offences take a long time, even more than four to five years before a judgement is delivered. So a criminal knows that he probably won't get caught and if he gets caught, there is only a poor chance of getting convicted and that too four to five years down the road. So, even if WPA prescribes a stringent punishment up to three years imprisonment and/or fine up to Rs. 25,000, the penalty becomes counter productive and the offender might go to the extreme. Unless legal and wildlife experts sit together and close the loopholes in the above three aspects, the WPA will remain a paper tiger.

Need for implementation

There is no "quick fix" solution for the problem of low rate of conviction and just change in law will not suffice. Several steps would need to be taken. The first is restructuring the investigative process. *This requires special training and sensitisation of the law enforcing personnel.* Most of the Foresters and Rangers in the State Forest Departments have to deal with forest wealth protection and related departmental activities at grass root level, in several avatars simultaneously, eg., do policing as territorial wing staff, attend to wildlife

protection related offences and management issues as staff of wildlife wing, initiate rural peoples participation in Joint Forest Management activities as social forestry wing staff, attend to research activities in forestry sector and attend to VVPs and study visits to sanctuaries and national parks, either simultaneously or when transferred from one wing to another. There may be a few staff exclusively selected in the State Forest Departments, who are to be trained in dealing with wildlife cases and to handle the cases at *various stages more effectively.* Their experience in various cases will be useful in developing methods to deal with serious cases more accurately. Most of the advocates engaged by the government are also not sensitised enough to estimate the seriousness of wildlife crimes and deal vigorously and advise the field staff effectively so that timely action can be taken by the prosecuting officers to reduce the time taken at various stages in court cases.

It is known fact that any endangered wildlife cannot survive, unless its habitat and environment is protected. In this regard The Environment Protection Act, 1986, Indian Forest Act, 1927 and Forest (Conservation) Act, 1981 are very relevant instruments. More than 60 - 70% of wild fauna exists outside the Protected Area Network of national parks and sanctuaries. More than two thirds of India's tiger population lives outside Tiger Reserves, with minimal protection. The quantity and number of endangered species and their habitats available outside the protected area network is yet to be assessed, and plans drawn to safeguard these habitats are yet to be formulated.

The Supreme Court has also widened

the scope of Article 21 of the Constitution of India (Right to life) by stipulating that a clean environment is essential for human survival. In *T.N. Godavardan vs. Union of India*, the Supreme Court (1996) provided a definition for 'forests' so that Forest (Conservation) Act can be implemented more rigorously. Such landmark judgements may help in acting against pollution problems and destruction of natural habitats.

Given the proximity of human habitation to the boundaries of most Indian Protected Areas (PAs), human-wildlife conflict is inevitable. Deer, pig, elephant and other herbivore destruction of crops sown in fields adjoining PAs is common place. So too is cattle lifting by tigers, lions and leopards. Human deaths due to attacks by such wide-ranging, large mammals such as bears, lions, tigers and elephants, often outside Protected Areas, are now a regular occurrence. It is not surprising that there is little support for such state-imposed conservation efforts among village communities. In the light of local dissatisfaction with the current exclusionary model of wildlife conservation, can we afford to continue with an approach that sees the separation of humans from 'nature' as necessary? (Saberwal *et al.*, 2000).

Conclusions

Protection of wildlife is not possible by the government machinery alone. Active cooperation of the public, committed and active and educated non-governmental organisations and individuals are essential ingredients for successful wildlife protection. There should be more a participatory approach to wildlife conservation. There should be a complete change in the vocabulary of conservation, a total rupture with the past mode of thinking, a radical shift in mental attitudes. The founding categories of the past discourse need to be reconfigured: 'separation' and 'exclusion' ought to be replaced with 'integration' and 'inclusion'. Local alienation stemming from exclusionary conservation policies have resulted in an active undermining of state conservation policies (Saberwal *et al.*, 2000). We must remember that all species were created equal and man has no right to arrogate to himself the power to cause their extinction. We in India have inherited a remarkably rich heritage not only from cultural and historical point of view but also a treasure of wildlife unique on the surface of the earth. We must not lose these treasures in the mad race towards urbanisation and industrialisation by following the footsteps of Western cultures.

SUMMARY

Various laws have been enacted for protection and conservation of wildlife and to stop illegal trade in wildlife in India. These are wanting in view of growing international trade in medicinal plants and other faunal and floral derivatives. To be more effective, these laws are to be implemented with certainty, minimum time taken for awarding punishment and exemplary weight of punishment. Local peoples participation is essential for proper and effective implementation of wildlife protection laws and conservation of wildlife biodiversity.

भारतवर्ष में वन्यप्राणियों की सुरक्षा के लिए बनाए कानून : उन्हें लागू करने और प्रभावकारी बनाने के लिए जागरूकता लाने की आवश्यकता

ए० सामन्त सिंहार

सारांश

वन्यप्राणियों की सुरक्षा और संरक्षण तथा वन्यप्राणियों का अवैध व्यापार करने की रोकथाम के लिए भारत में कितने ही कानून बनाए हुए हैं। औषध-पौधों तथा पेड़-पौधों और पशु-पक्षियों से व्युत्पन्न पदार्थों के निरन्तर बढ़ रहे अन्तरराष्ट्रीय व्यापार को देखते हुए से अपर्याप्त से लगते हैं। इन्हें अधिक प्रभावकारी बनाने के लिए इन कानूनों को निश्चयपूर्वक लागू करने तथा दण्ड देने और दण्ड का प्रभावकारी भार डालने में कम से कम समय लगाया जाने की जरूरत है। वन्यप्राणियों की सुरक्षा करने वाले कानूनों तथा वन्यप्राणियों की जैवविविधता संरक्षण को प्रभावशाली ढंग से और समुचित रूपेण लागू करने के लिए इसमें स्थानीय लोगों को अपने साथ सम्मिलित रखना अनिवार्य है।

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