CHAPTER - 4

LEGAL MECHANISM WITH CRITICAL APPROACH
4.1. INTRODUCTION

After the realization about scientific needs of wildlife, people became socially aware about the necessity of wild animals in nature. Being the social animal, man has acquired the knowledge about utility of jungle and beast. So their survivals are required for our survival as well as existence of all living creature in the earth. Many social movements and agitations were demonstrated for conservation of natural resources. Political thoughts and supports were developed time to time for conservation of wildlife and protection of animals at every corner of the modern world. But without proper and appropriate laws no society can run for long time smoothly. In the modern civilization people felt the importance of powerful laws for protection of environment and conservation of natural resources. To save the wildlife from extinction, different international laws were adopted by almost all the nations in the world. Poaching and indiscriminate killings are the main threat to the population of wildlife. In international level lots of conventions have been brought for protection of whales, polar bears, seals, birds, tigers etc. Many penal provisions were introduced in national level for conservation of wildlife and save them from poachers, animal traders and cruel people but those initiatives have failed to erase the problem totally. Martin Luther King Jr. nicely said, “it may be true that law cannot change the heart but it can restrain the heartless”. So to save the wildlife, some penal laws were made to punish the criminal who has done offence against the wild animals or nature. After 1972 Stockholm Declaration, people got the idea that through law environment can be protected or pollution can be controlled. At that Conference, then Secretary General of United Nations, Kurt Waldheim called upon the need for recording the world priorities to solve the problems of the planet earth, which was endangered by arm race, chemical warfare, nuclear tests and industrial pollution.¹ In 1992 ‘United Nations Conference on Environment and Development’ (UNCED) at Rio, Brazil gave a clarion call for the conservation of environment and again in

¹ Text Book on Environmental Law, Dr. N.Maheshwara Swamy; Pp 350
2002 ‘World Summit on Sustainable Development’ in Johannesburg, South Africa, was an international platform about sustainable development to resolve the eternal problems between development and environment.

Indian judiciary has also observed the importance of wildlife laws very carefully and always interpreted cases on light international law. In *Murad Ali* case², Supreme Court said, “The of the preservation of fauna and flora, some species of which are getting at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect last ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitivity to the enormity of the risks to mankind that go with the deterioration of environment.” The Supreme Court has given importance to the norms of international laws in many cases³ relating to wildlife conservation and the Supreme Court has quoted the ‘International Wildlife Laws’, a book written by Simon Lyster where in the foreword, H.R.H.Prince Philip, The Duke of Edinburgh said, “Many people seem to think that the conservation of nature is simply a matter of being kind to animal and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that........ As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regretfully progress in this direction is proving disastrously slow”. So a wildlife law has become an important law in the modern time for better ecology and environment.

² State of Bihar v/s Murad Ali Khan, AIR 1989 SC 1 (Para 4)
4.2. INTERNATIONAL LAWS RELATED TO WILDLIFE

Laws are made out of social, economic and political needs and in the case of wildlife laws scientific principles took important role to promote those elements. Social and ecological awareness moved people to be united and organize in international level to make laws for survival of mankind. International law deals with various environmental issues which is trans-boundary in nature like, air pollution or conservation of birds to provide developed form of justice to regulate environment in international level at the same time in regional level also.

In India the concept of wildlife laws is very new one comparatively other European and American countries. Earlier during British period there were several laws which indirectly saved the natural resources including forests and wild animals. Again in recently, Indian judiciary has taken an activist role for protection of wildlife, forest and more precisely environment and ecology. Presently higher judiciary more or less developed the concept of modern laws for conservation of wildlife in India. But most important role played by international laws in generating awareness among the masses in India and through out the world. In fact judiciary interpreted the national cases on the light of principles of international laws and established modern wildlife laws in India. At the same time legislature has enacted all the laws for wildlife and environment are based on concept of various principles adopted in different treaties and conventions. The Supreme Court of India has already decided that international conventions unless inconsistent with fundamental right must be read with statutory provision of municipal laws to enlarge the meaning for the object of constitutional guarantee.\(^4\) So sources of wildlife conservation laws in India are mainly Common laws, Statutory laws and Judicial precedents out of those legislature and judiciary were very much followed the international laws.

\(^4\) Vishaka v/s State of Rajasthan, AIR 1997 SC 3011 (Para 7)
Then without the study of international laws the knowledge of wildlife laws will not be completed. After World War II philosophy of recreation changed new concept of conservation relating to ecological balance or biological diversity was born. The United Nations organized the first ever international conference on conservation after World War II. In 1949, the first ‘World Scientific Conference on Conservation and Utilization of Resources’ was convened in Lake Success to emphasize that nature’s plentiful ness is a heritage and that not to be squandered to the impurity. But in modern international environmental jurisprudence, Stockholm Conference was like a milestone that changed the dimension of environmental laws in national and international level both. Afterwards many conventions, treaties and protocol were organized in regional and international level for conservation and protection of wildlife and natural resources. Out of those some were very important like Conservation of Polar Bears, Migratory wild species, Antarctic marine living resources, CITES in 1973 and more recently on Biodiversity in 1992. Before Stockholm Declaration in 1972, Ramsar Convention was most

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5 Text Book on Environmental Law, Dr. N.Maheshwara Swamy, Pp 350
important treaty regarding the conservation of wetlands for the conservation of waterfowls. But among all the international conventions most related was ‘Convention on International Trade in Endangered Species of Wild Fauna and Flora’ in 1973 which was directly related for ecological matter. If Stockholm Declaration was the Magna Carta for international environmental laws then CITES was undoubtedly Milestone for international wildlife law in ecological matter. Importance of international law very well defined in the Nairobi Declaration in 1982 and as per its Principle 5, the human environment would greatly benefit from an international atmosphere of peace and security, free from the threats of any war, especially nuclear war, and the waste of intellectual and natural resources on armaments, as well as from apartheid, racial segregation and all forms of discrimination, colonial and other forms of oppression and foreign domination.\(^6\)

4.2.1. CONVENTIONS ON WILDLIFE CONSERVATION

AT INTERNATIONAL LEVEL

The concept of wildlife for conservation of ecology came in international law regime very later but preservation or use of natural resources was very prominent among the western countries mainly European nations from very early. Previously the concept of international wildlife laws was limited only treaties made by two or more nations. In 1843 most probably the first wildlife treaty was made when France and Great Britain both agreed for limitation of catching fishes in North Sea. Later in 1882, ‘North Seas Fisheries Convention’ was organized when other than France and Great Britain, Germany, Belgium and Denmark all joined on agreement. So in early treaties the concept of wildlife was limited only on fishes because there was over consumption of such species on those days. Another treaty was signed in 1900 between United Kingdom, Germany, Spain, Belgium, France, Italy and Portugal as ‘Convention designed to ensure the conservation of various species of wild animals in

\(^6\) Nairobi Declaration, 10\(^{th}\) Governing Council Session, 18\(^{th}\) May, 1982
Africa which are useful to man or inoffensive’ in London. In 1911 USA, UK and Russia made ‘Convention for Preservation and Protection of Fur Seals’ as fur traders of Russia started to move to the northern pacific islands for searching of seals and otters. The first global regulations relating to wildlife conservation was ‘Convention for Regulating of Whaling’ in Geneva where 26 nations signed together in 1931. During the 1930s most important and useful international document was ‘Preservation of Fauna and Flora in their Natural State’ in 1933 which created world wide awareness. After the devastation of World War II the national leaders of all nations realized the necessity of conservation of ecology including forests and wildlife and those periods some major steps were taken. The international conferences relating to Whaling Regulation in 1948, Protection of Birds in 1950, Antartic fauna and flora in 1964 and African convention for conservation of nature and natural resources in 1968 were some very important legal regulation in international level for wildlife in nature.

CONVENTION RELATIVE TO THE PRESERVATION OF FAUNA AND FLORA IN THEIR NATURAL STATE, 1933

In the modern society international awareness for the conservation of wildlife and ecology mainly started from beginning of 19th century which got its dimensions after the World War II and got his force mainly in the decade of 1970s. This convention relating to the preservation of Fauna and Flora was most probably first effective international conventions of this nature. In 8th November, 1933 this convention was held in London consisting 19 Articles and one Protocol. First time in this convention some important definitions were given. The expression National Park defined as an area (a) placed under public control, the boundaries of which shall not be altered or any portion be capable of alienation except by the competent legislative authority, (b) set aside for the propagation, protection and preservation of wild animal life and wild

7 International Legal Protection of Wild fauna and flora, P. Van Heijnsbergen, Pp 14-15 [http://books.google.co.in]
vegetation, and for the preservation of objects of aesthetic, geological, prehistoric, historical, archeological or other scientific interest for the benefit, advantage, and enjoyment of the general public, (c) in which the hunting, killing capturing of fauna and the destruction or collection of flora is prohibited except by or under the direction or control of the park authorities. In accordance with the above provisions facilities shall, so far as possible, be given to the general public for observing the fauna and flora in national parks.

The another term Strict Natural Reserve shall denote an area placed under public control throughout which any form of hunting or fishing, any undertakings connected with forestry, agriculture or mining any excavations or prospecting, drilling, leveling of the ground or construction any work involving the alteration of the configuration of the soil or the charter of the vegetation any act likely to harm or disturb the fauna and flora. In this conventions the definition of animals or species were defined as all vertebrates and invertebrates including non-edible fish, but not including edible fish except in a national park or strict natural reserve and their nests, eggs, egg-shells, skins and plumage.

INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING, 1946

The International Convention for the Regulation of Whaling is an International agreement which was signed by 42 nations in Washington, D.C on December 2, 1946 to make whaling sustainable for betterment in future. This convention came into effect on November 10, 1948. It governs the commercial, scientific, and aboriginal subsistence whaling practices between the member countries. Later a protocol relating to whaling was signed in Washington on November 19, 1956 between the member countries. Before this convention, an International Agreement for the Regulation of Whaling was signed in London on June 8, 1937, and the protocols relating to that agreement signed in London on June 24, 1938, and November 26, 1945 already. Through this international
agreement, an international monitoring authority like “The International Whaling Commission” was later established.

INTERNATIONAL CONVENTION FOR THE PROTECTION OF BIRDS, 1950

In international level a convention was organized to reduce the decrease of number of migratory birds and to give the protection of certain species of birds. This convention was adopted by member countries on 18th December 1950 at Paris in France. The main objectives of this convention were to give protection to all the birds during their flight to their breeding ground and to protect the endangered species throughout year. It was also decided that measures should be taken to prohibit destruction of eggs, shells and taking of young birds. Restriction was imposed to certain methods of hunting the birds, snare, nets, poisoned bait, blinded decoy birds, etc. It was also decided in this convention that each party would draw up lists of birds which may be lawfully taken or killed in compliance with this convention. Parties will also take measures to prevent destruction of birds by water pollution, electric cables, insecticides and poisons and to educate children and the public in the need for protection of birds.

INTERNATIONAL PLANT PROTECTION CONVENTION, 1951

This convention was held in Rome on 6 December 1951 between the contracting Governments to recognise the usefulness of international cooperation in controlling pests and diseases of plants and plant products. 173 countries participated in this convention where India was a signatory and finally convention was ratified on 9th June, 1952 by India. The Food and Agriculture Organization (FAO) of the United Nations took major initiatives for this convention. Each member countries assumed the responsibility to fulfill all requirements of this Convention within their own territories with the

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8 Text Book on Environmental Law, Dr. N.Maheshwara Swamy, Pp 351
9 www.fao.org/legal/treaties.htm
purpose of effective action to prevent the introduction and spread of pests and
diseases of plants and plant products and also to promote measures for their
control. The contracting parties undertook to adopt the legislative, technical
and administrative measures specified in this Convention. It was also decided
that member countries should make provision, as soon as possible and to the
best of its ability, for an official plant protection organization to distribute
information within the country regarding the pests and diseases of plants and
plant products and various means for their prevention and control and also
research in the field of plant protection.

CONVENTION ON FISHING AND CONSERVATION OF LIVING
RESOURCES OF THE HIGH SEAS, 1958
The convention of fishing and conservation of living resources of the high seas
is an agreement that was designed to solve through international cooperation
the problems involved in the conservation of high seas, considering that
because of the development of modern technology some of these resources are
in danger of being overexploited. It was opened for signature on 29 April 1958
and entered into force on 20 March 1966. At present there are 38 signatories to
the convention.¹⁰

CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE
ESPECIALLY AS WATERFOWL HABITAT, 1971
IUCN launched a project in 1961 for protection of wetlands and finally Ramsar
Convention was signed by member countries in 1971 which was only
international convention regarding conservation of wetlands. This convention
was held on 2⁰ February, 1971 and the proposal of this convention was
adopted by member countries through an intergovernmental treaty at Ramsar in
Iran. This convention was adopted in 1971, entered into force in 1975 and as of
August 2006 has 152 parties. The headquarter is located in Gland, Switzerland.
The technical assistance and support for setting up wetlands of national

¹⁰ Civil Service Chronicle, VOL XVIII NO. 3; September 2007; Pp 106
importance is provided by IUCN with International Waterfowl Research Bureau (IWRB).

As per Article 3, the contracting parties shall formulate and implement their so as to promote the conservation of the wetlands and as far as possible their wise use. IUCN shall perform the continuing bureau duties as per Article 8 of Ramsar Convention under this convention until such time as another organization or government is appointed by majority of two-third of all contracting parties. Ramsar convention had 11 recommendations including conservation of five specific wetlands in the world like Wadden Sea in North-Western Europe, Thjorsarver in Iceland, North Bull Island in Ireland, Lakes Ab-i-istada and Dasht-e-Nawar in Afghanstian and Medway Estuary in England. The convention also discussed about Oil Pollution and pollution related to Pesticides. The convention also recommended for research and investigation on Promotion of Wetlands Research, Promotion of Hunting Research and Education, African Wetlands and the Man and the Biosphere Program. India was a party in the international convention regarding wetlands for waterfowl habitats at Ramsar in Iran. In August 2006, 1,610 wetlands of International importance, totaling 145.2 million hectares, have been designated.¹¹

This convention was amended by the protocol on 3rd December, 1982 and again through an Amendment on 28th May, 1984. Under this treaty each party agreed to promote wetland research and also to conserve wetlands and waterfowls. So India has also implemented the international norms of Ramsar Convention for Wetland Conservation in Protocol of 1982 and six sites are declared as Ramsar sites those are Chilika Lake (Orissa), Sambar Lake (Rajasthan), Loktak Lake (Manipur), Keoladeo National Park (Bharatpur), Harike Lake (Punjab) and Wular Lake (Jammu & Kashmir). A National Level Committee in India has identified twenty one wetlands for intensive conservation and management purposes on priority basis.

¹¹ Civil Service Chronicle, VOL XVIII NO. 3; September 2007; Pp 28
CONVENTION FOR PROTECTION OF THE WORLD’S CULTURAL AND NATURAL HERITAGE, 1972
This convention held under the auspices of The General Conference of the United Nations Education, Scientific and Cultural Organization (UNESCO) in Paris from 17 October to 21 November, 1972. The purpose of this convention was mainly to protect the physical and biological formations of the nature which have universal value from the aesthetic or scientific point of view. Many objectives were outlined in the following convention but a reference has been made to deal with only “natural heritage”. Natural heritage sites are nature’s laboratories for evolution of wild species in response to change in environmental conditions. Geological and physiographical formations and precisely delineated areas, which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science of conservation. In November 1992 the convention had ratified by 129 nations in which India was also a party. Recently an externally aided project titled “World Heritage Bio-diversity Program for India: Building Partnerships to Support UNESCO's World Heritage Program” considering the importance of World Natural Sites is being undertaken. The preamble of World Heritage Convention, 1972 declares in its deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all nations of the world.

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FLORA AND FAUNA, 1973
In 1963 IUCN started to draft an international instrument to control and regulate the trade, import and export of endangered species of wildlife because in 60’s there was a rapid declination of wildlife population due to over exploitation and trade of wildlife articles. In early 60’s some group of citizen

and some countries especially Kenya created started awareness program to get support for an international treaty to protect international trade of endangered species. IUCN drafted a plan to control wildlife trade and to impose ban on trade of threatened wildlife to be drawn up and updated along with Red Data Book and on advice of international expert committee. Again in Stockholm Declaration, 1972, the same issue was raised and in the same year United States and Kenya produced a working paper on the same matter. The final negotiations were held from 12th February to 2nd March, 1973 in Washington, D.C. On 3rd March 1973, one of the most important steps was taken in international level for protection of wildlife and finally ‘Convention on International Trade in Endangered Species of Wild Flora and Fauna, 1973’ took place.

The CITES is a multilateral treaty and 25 articles of this convention are treated as ‘Magna Carta’ for wildlife by most of conservationists in the world. It accords varying degrees of protection to more than 33,000 species of animals and plants.13 The convention came into force on 1st July 1975. This convention initially ratified by 10 countries and came into operation on 1st July 1975. India signed this convention in July, 1974 and ratified on 20th July, 1976. India became a party to convention from 18th October, 1976. India recently represented in the meeting of the Standing Committee of CITES held at Geneva during 14th to 18th July 2008 as well as in the 23rd meeting of the Animal Committee of CITES held at Geneva, during 19th to 24th April 2008.14 Total 169 States had become parties to the Convention within August 2006 and States that were not signatories may become parties by acceding to the convention.

The CITES has prepared a list of species to restrict the international trade and also categorized all species into three lists, like, Appendix I, II, III. Appendix I include species threatened by extinction, Appendix II covers species not presently threatened but future may be threatened and now requires

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13 Civil Service Chronicle, VOL XVIII NO. 3; September 2007; Pp 107
special needs. Appendix III covers those animals which are required protection to prevent their exploitation. In 1977 CITES listed the African Elephants as an Appendix II animal, presently ‘Threatened’ with being endangered and impose certain limitation on the trade in elephant tusk.

CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS, 1979

The convention on migratory species was adopted in Bonn, Germany which was signed by 21 nations in 1979. The Convention came into force in November, 1983. It is an intergovernmental treaty concerned with the conservation of wildlife and habitats under the aegis of the United Nations Environment Program. After the establishment of IUCN, it took constant initiative for protection of migratory wild species. That effort was also recognized in UN Convention on Human Environment in Stockholm at 1972. Finally the Convention for conservation of migratory species was organized in 1979. The convention was mainly drafted by Francoise Burhenne-Guilmin who later became Head of IUCN’s Environmental Law Commission.

The principal object of this convention was to protect endangered species and to endeavor to conclude agreements for the protection and management of migratory species whose conservation status is unfavorable and of those whose conservation status would substantially benefit from the international cooperation deriving from an agreement. IUCN and Convention on Migratory Species (CMS) both work together for framing list of endangered species with help of technical scientific unit like Species Survival Commission (SSC). A secretariat, based in the UN Campus in Bonn, Germany, under the auspices of the United Nations Environment Program (UNEP) provides administrative support to this Convention. The decision-making organ of the Convention is the ‘Conference of the Parties’ (COP) An Indian delegation participated in the 9th Conference of Parties (COP-9) of the CMS held at Rome,

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15 Role of IUCN in governance of biological resources, Anwar Sadat; Indian Journal of International Law, Oct-Dec, 2005, ISIL, (vol. 45 no. 4)
Italy from the 1st to 5th December 2008. Again a ‘standing Committee’ provides policy and administrative guidance between the regular meetings of the COP. A Scientific Council consisting of experts appointed by individual member states to give advice on technical and scientific matters. India has signed a MoU with the CMS on 28th May 2008 at Bonn, Germany for the conservation and management of Dugongs and their habitats.

WORLD CHARTER FOR NATURE, 1982

World Charter for Nature is an international declaration for protection of nature and represents philosophy of life on this planet. The world charter for Nature drafted by the United Nations in 1982 makes a candid admission for the first time in modern period that man is a part of nature. Man is dependent upon the natural systems for his life and growth. The charter is like an epic document which proclaimed, “Every form of life is unique, warranting respect regardless of its worth to man”. Reaffirming the Fundamental purposes, the United Nation adopted ‘Charter for Nature’ on 28th October 1982 to achieve international cooperation in solving international problems of an economic, social, cultural, technical, intellectual or humanitarian character. The charter is consisting 24 principles with 5 General Principals, 8 Functions, and 11 Implementations. As per Article1 Nature shall be respected and its essential process shall not be impaired. The genetic viability on the earth shall not be compromised and according to general principles the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival and their habitats shall be safeguarded. Charter also affirms all areas of the earth, both land and sea, shall be subject to principles of conservation under Charter and special protection shall be given to of all the different types of ecosystems and to the habitats of rare or endangered species. U.N. Charter also says Natural resources

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17 Civil Service Chronicle, VOL XVIII NO. 3; September 2007; Pp 107
shall not be wasted and Living resources shall not be utilized in excess of their natural capacity for regeneration.

The UN Charter for Nature is to be analyzed in the light of world being one large ecological unit and also to comprise of single species of mankind along with living in an interdependent world. But this charter is a soft law and it does not have any binding force and do not have any regime of sanctions attached to it. Support and cooperation of member countries is needed for fulfillment of its objects. Biologist view of world seems the norm in contemporary civilization. Leading anthropologist like Rene Dubos, Margaret Mead have laid world with emphasis on the fact that all men are part of the species with instinct for cooperation and love.

CONVENTION ON BIOLOGICAL DIVERSITY, 1992
The debate and discussion on biodiversity in international level reached on climax at Convention on Biological Diversity (CBD) under the auspices of United Nations Conference on Environment and Development (UNCED) in Rio-de-Jenerio. Biodiversity is one of the most important phrases regarding the conservation of natural resources in the environment. The term “biodiversity” was probably coined by Walter G.Rosen in 1985 for the first planning meeting of the National Forum on Biodiversity held in Washington DC in 1986 but In 1980 Norse and McManus first defined “biological diversity” which combines genetic diversity i.e. the amount of genetic variability within species and ecological diversity i.e. the number of species in a community.

This ‘Convention on Biological Diversity’ first time recognized that the conservation of biological diversity is the part of the development process in international law and also provides sufficient scope for manipulation within the directory framework. This Convention was adopted at the ‘Earth Summit’ in

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19 Role of IUCN in governance of biological resources, Anwar Sadat; Indian Journal of International Law, Oct-Dec, 2005, ISIL, (vol. 45 no. 4)
20 Environmental Laws and the Global Order, S.Bhatt, ENVIRONMENTAL MANAGEMENT AND FEDERALISM, Pp 18
21 Anatomy Of Environment And Biodiversity- An Exposition In Outline For Animating Environmental Awareness, N.C.Dutta, Environmental Awareness And Wildlife Conservation; Pp 26
Rio de Janeiro on 5 June 1992 where 189 countries were the parties to the convention and entered into force on 29 December 1993. USA is the only country that has signed the convention but not ratified it. India was also party their and finally India ratified the convention on 24th February 1994. The International Convention on Biological Diversity, came in force since December 1993, acknowledges that genetic resources are no longer to be treated as a common heritage of mankind but as the sovereign property of the country of origin and also gave value of the conservation practices and knowledge of tribes, herders, fishermen, peasants and other communities of people who are not a part of the modern scientific establishment. The Convention asks the parties to the Convention to respect this knowledge and share the benefits of its commercial use with the holders of knowledge. USA has not ratified the Convention on Biological Diversity and will not abide by its provisions, while it exerts all its might to persuade us to conform to the provisions of GATT.\textsuperscript{22} This convention links traditional conservation efforts to the economic goal of sustainable using of biological resources including all species and genetic resources in ecosystems. Biodiversity is the backbone of all life on Earth and the United Nations has declared year 2010 as the International Year of Biodiversity (IYB).

The Cartagena Protocol on Biosafety, the first international regulatory framework for safe transfer, handling and use of ‘Living Modified Organisms’ (LMO) was negotiated by 130 countries under the auspices of the main convention i.e. ‘Convention on Biological Diversity’ (CBD). India has acceded to the Bio-safety Protocol on 17th January, 2003 and has come into force on 11th September, 2003.

\textsuperscript{22} Ecological Journey, Madhav Gadgil; Pp 219
WORLD CONFERENCE ON NATIONAL PARKS

Protected Areas free from permanent human settlement or biomass extraction are indispensable for different representatives every species in the ecosystems of our nature. So conservation without parks or protected areas is unthinkable. Parks are important for ethical reasons also because simultaneously it gives effort to underprivileged people for living with human dignity. Parks themselves are the outcome of specific moments in human history and were a project for nationalist or imperial aspirations. So they are called National Park as it depicts the conservation status of a nation as well as governmental policy for development of forest dwellers within the parks. They are also important for land, forest and wildlife management. National Parks and sanctuaries are mainly created to preserve the original ecosystem of nature and also to protect the wildlife from destruction. An important role is being played by the World Conservation Union (WCU) which organizes the Congress in every ten years to take necessary action for Protected Areas, appraise progress and setbacks, and chart the course for Protected Areas over the next decade. 23

The First World Conference on National Parks (Seattle, US, 30 June - 7 July 1962) aimed to establish a more effective international understanding of national parks and to encourage further development of the national park movement worldwide. In this conference the effects of humans on wildlife; species extinction; the religious significance and aesthetic meaning of certain parks and wilderness; international supervision of boundary parks; the economic benefits of tourism; the role of national parks in scientific studies; and some practical problems related to park management all of these issues were discussed.

The Second World Conference on National Parks (Yellowstone, US, 18-27 September 1972) addressed several important issues relating to the effects of tourism on protected areas; broad aspects of park planning and management; special social, scientific and environmental problems within national parks in wet tropical, arid and mountain regions; controversial aspects

23 Official website of World National Park Congress
of wildlife management in Protected Areas; the social, scientific and
environmental problems of marine, island, polar and sub-polar Protected Areas;
the problems associated with communicating park values to visitors and raising
environmental awareness; international training opportunities; opportunities to
expand and improve the global park system; and the need for and benefits of
public support for Protected Areas.

The Third World Congress on National Parks (Bali, Indonesia, 11-22
October 1982) focused on the role of Protected Areas in sustaining society and
recognized 10 major areas of concern, including the inadequacy of the existing
network of terrestrial Protected Areas worldwide and the need for more marine,
coastal and freshwater Protected Areas; improving the ecological and
managerial quality of existing Protected Areas; a system of consistent
categories of Protected Areas to balance conservation and development needs;
links with sustainable development; capacity to manage Protected Areas and
economic tools to support and promote their value; monitoring; international
cooperation mechanisms; and developing a global program on Protected Areas
using the IUCN network.

The Fourth World Congress on National Parks and Protected Areas:
Parks for Life (Caracas, Venezuela, 10-21 February 1992) emphasized the
relationship between people and Protected Areas, and the need for: the
identification of sites of importance for biodiversity conservation; a regional
approach to land management; investments as part of an overall development
package; and building a stronger constituency for conservation. The Caracas
Action Plan synthesized the strategic actions for Protected Areas over the
decade 1992-2002 and provided a global framework for collective action under
four objectives: integrating Protected Areas into wider planning frameworks;
expanding the support for Protected Areas by involving local communities and
other non-traditional interest groups; strengthening the capacity to manage
Protected Areas; and expanding international cooperation for the financing,
development and management of Protected Areas.
The Fifth IUCN World Congress on Protected Areas, (Durban, South Africa, 8-17 September 2003) or World Parks Congress (WPC) organized the Congress to take stock of protected areas (PAs), appraise progress and setbacks, and chart the course for PAs over the next decade. The theme of the 2003 WPC was "Benefits beyond Boundaries." The main issues were about the role of PAs in alleviating poverty; how PAs adapt and anticipate global change; PAs’ place in our sustainable future. So from very beginning to the present time wildlife and conservation laws are coming from various bilateral and treaties and international conventions.

4.2.2. CLASSIFICATION OF INTERNATIONAL WILDLIFE LAWS

After critically examining, various international conventions or agreements for ecological balance and to check the depletion of biological resources can be classified into two types. One Category of convention which deals with general Ecological Matters Directly like, Convention Relative to the Preservation of Fauna and Flora in their Natural Habitat, 1933 or Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973 or the Convention on Biological Diversity, 1992 etc where main object is conservation of all biological components broadly. Second Category of convention which deals with for protection and conservation of Particular Type of Species in the ecology like, International Convention for the Protection of Birds in 1950 or International Convention for the regulating of Whaling in 1946 and others.

Again all the international laws relating to wildlife and ecology can be classified in Two types where One Type is related to protection of habitats of wild animals like Convention relative to the Preservation of Fauna and Flora in their Natural State, 1933 or Ramsar Convention on Conservation of Waterfowl Habitat, 1971 or Convention on the Conservation of European Wildlife Natural Habitat, 1979 etc. Second Type of international conventions or treaties are mainly based on protection of species like Convention on
Conservation of Migratory Species of Wild Animals, 1980 or Atlantic Seals, 1972 or Polar Bear, 1973 or Plants, 1951 and others which are primarily based on concept preservation of species on their on habitats and huge financial support is necessary for such projects.

**Kinds of International Conventions on Wildlife**

![Diagram showing categories of international conventions on wildlife]

Worldwide conservation movement and international conventions or conferences generated awareness about the loss of biological diversity, imbalanced ecosystem and the degradation habitats. Various efforts were taken, both at the international and national level, to envisage this conservation movement. The impact of international environmental legislations on Indian environmental laws was very much bold. India, by becoming a signatory to an international environmental instrument, commits to its adherence and compliance at the national level. As early as 1939, India ratified the London Convention Related to the Preservation of Fauna and Flora in their Natural State of 1933 and it ratified the Rome International Plant Protection Convention in 1952 to fulfill international obligations resulting thereby, Article 253 of the Constitution enables the Indian Parliament to enact laws in this regard.
4.2.3. CONVENTIONS AT REGIONAL LEVEL ON WILDLIFE AND THEIR HABITAT CONSERVATION

Bilateral and multilateral agreements in regional level have also played a complimentary role for shaping the legislations for of wildlife in regional levels. The present world has more than 200 international environmental laws, about 600 bilateral agreements and more than 150 regional legislations most of them among European Union. But the third world countries and the underdeveloped countries have also become more aware about ecological and conservation matter. These regional conventions and agreements have given new dimension to their national environmental jurisprudence in regional and state levels.

There are several regional conventions and treaties but some of them very important. The Convention on Nature protection and wildlife preservation in the western Hemisphere, 1940, originally consisting 12 Articles, was signed on 12th October 1940 at Pan American Union, Washington, DC. The Government of the American Republics through this Convention wished to protect and preserve in their natural habitat representatives of all species and genera of their native flora and fauna, including migratory birds, in sufficient numbers and over areas extensive enough to assure them from becoming extinct through any agency within man’s control. Again in 1949, an agreement for the establishment of General Fisheries Council for the Mediterranean was made between France, Greece, Italy, Lebanon, turkey, UK, Yugoslavia and all the members of Food and Agriculture Organisation of UNO at Rome. In 1956 a Plant Protection Agreement was signed for Southeast and Pacific Region in Rome. A European Convention was organized in 13th December 1968 for the Protection of Animals during International Transport in Paris. Again an International Convention was held in Rome for the Conservation of Atlantic Tunas in 23rd October 1969. Again during the period of 1970s some more important regional conventions and agreement were made between the interested countries. The Convention for Conservation of Atlantic Seals was very useful one which was made to curb rapid killing of seals for skins in 1972.
Agreement on Conservation of Polar Bears in 1973 was another important for protection of endangered polar bears which are suffering for human pollution. In the modern times marine pollution is one of the dangerous evil for environment and the Convention on the Conservation of Atlantic Marine Living Resources in 1980 was a giant step to protect the marine resources from pollution. So these regional level conventions also helped for development of international environmental jurisprudence.

4.2.4. IMPACT OF MAJOR INTERNATIONAL ENVIRONMENTAL CONVENTIONS

Apart from bilateral and multilateral treaties between the nations for protection of wild animals and natural resources and convention in various regional levels, the international conventions in the modern times also helped actively to execute norms of conservation laws in national level.

MARINE POLLUTION

During the period of 1970’s also legal framework was formed to control the marine pollution and conserve the wildlife in the marine ecosystem. This marine pollution awareness generated after the industrial development in the western countries and mainly after disasters like Torrey Canyon, a Liberian oil vessel, caused the huge damage in British coasts and marine life after a collision with rock in 1967 and in Santa Barbara near California suffered a huge environmental loss after a blow out of an oil well in 1969. People realized the necessity of strict provision to control oil pollution to protect the marine life. Then ‘the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircrafts’ (MARPOL) was introduced to cope with marine pollution in international level. This MARPOL convention modified previous Convention for Prevention of the Pollution of the Sea by Oil of 1954. The ship borne wastes from normal operation are regulated by ‘the Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft’ of 1973. But this convention is limited essentially to the North-East Atlantic area.

In the 1970s a number of countries stopped dumping radioactive waste in the seas. In spite of that a huge tones radioactive waste was dumped in the Atlantic by many countries like Britain, the Netherlands, Belgium and Switzerland even 1982. In 1983, Pacific Island nations proposed an immediate ban on the dumping of nuclear waste at sea. They made their proposal to the London Dumping Convention, the organization that regulated the sea pollution caused by dumping. The London Convention is a global Convention and wider than Oslo Convention. After 1996 protocol the dumping of all wastes are prohibited and it completely prohibits incineration at sea and the dumping of industrial wastes.

STOCKHOLM DECLARATION
In true sense Stockholm Declaration of 1972 was a Magna Carta for international environmental laws and also to create awareness about right to environment of every human being in the world. This convention brought the environmental right within the legal framework. People through out the world first time realized that pollution could be controlled through the process of law and the concept of modern environmental administration was developed. The government representative of 113 countries assembled at Stockholm in 1972 to participle in UN conference on Human Environment. The Stockholm Declaration was addressed by on late Prime Minister Mrs. Indira Gandhi, Mr. Olof Palme, then prime minister of Sweden and Dr. Kurt Waldheim, then Secretary Gen. of UNO. In the words of then secretary general, “no nation, no

²⁴ Regulating transboundary movements of hazardous wastes, B.C.Nirmal, ENVIRONMENTAL MANAGEMENT AND FEDERALISM; Pp 152
continent, no hemisphere, no race, no system can handle alone”. He also added that “the quality of one atmosphere and oceans can be nothing else but the product of the behavior of nations.” Stockholm Conference tried to resolve the problem for developing as well as for developed countries also. This conference suggested that developing countries must direct their efforts towards balancing their priorities with the need to check the increasing population. The increased population was realized as a great threat for environment and ecology. The conference also identified the areas and laid down the principles on which the nations should enact laws for protecting and improving the environment. The document prepared during the conference, highlighting these principles, is known as the Stockholm Declaration. The Stockholm Declaration was a call to seek harmony of man with nature.

In this Conference, a working group was established to examine and consider the draft Declaration of the Human Environment which contains 26 principles for the protection and improvement of the environment at the national and international level and an “action plan” consisting of 109 recommendations should be taken to protect and improve human environment. In that conference 3 committees from all the participating States were formed. (i) The first committee dealt with human settlement and non-economic aspects. (ii) The second Committee was concerned with natured resources and development aspects. (iii) The third committee related to pollutants and organizational aspects. The Global environment movement for the protection of environments in modern was developed after the year 1972 with the United Nations adopting the Stockholm Declaration on human environment.

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25 International responsibility and liability under International environmental law; Dr. Krushna Chandra Jena, INDIAN BAR REVIEW; volume- XXVIII (4) 2001
26 Environmental Law In India, P.Leelakrishnan, Pp9
The decade of 1970 is very important for environmental jurisprudence as various international conventions were taken place at that period. At the same time many countries developed or developing with also made number of provisions for ecological protection and wildlife conservation.

Various ecological initiatives during 1970’s at international level

- Rachel Carson’s “Silent Spring”
- World Earth Day 22nd April, 1970, USA
- Stockholm Declaration 1972
- UNESCO. World Heritage Convention 1972
- Dept. of Environmental in U.K. 1970
- Ramsar Convention, 1971
- CITES, 1973
- Convention for the prevention of pollution form ships, 1973
- CMS of Wild animals, 1979
- Torrey Canyon disaster, England, 1967
- Decade of 1970’S

Figure 8

4.2.5. POSITION OF WILDLIFE CONSERVATION LAWS IN OTHER COUNTRIES

Presently almost each and every country has separate legislations for protection of wildlife and other natural resources of environment. People all over the world realized the necessity of wild animals in our nature. The environmental awareness mainly generated after long devastation of World War II but direct protest or movement stated mainly in the period of 1960s and 1970s in the capitalists’ countries. This political movement and international conventions
created environmental law making process in third world countries as well as major parts of the world.

UNITED KINGDOM

There are three layers of sources for all environmental laws in United Kingdom which are International Laws, Laws of European Community (EC) and National Laws passed by Parliament. Very early, King William I of England in 1084 A.D. ordered for preparation of the Domesday Book, an inventory of all lands, forests, fishing areas, agricultural areas, hunting preserves and productive resources of his kingdom for making rational plans for the country's management and development. Most probably that was the first step to administer for separate lands for forests, wild animals and hunting preserve in England. But modern conservation laws developed in United Kingdom from 1945 and after the World War II, The Agriculture Act, 1947 and The Town & Country Planning Act, 1947 were important laws. But modern conservation laws and policies were adopted mainly after the publication of two reports of 'Huxley Committee' and 'Ritchie Committee' during the period of 1947. According to some writer conservation approach was very among the people at large and some voluntary organization and world's first developed conservation movement started in United Kingdom. The development of conservation laws started from Victorian age in the form of protection of wild animals. The Sea Birds Protection Acts of 1869, 1872 and 1880 were mainly to prohibit the killing of sea birds and to restrict the international trade on feathers for hats and clothes. In 1916, Britain made Migratory Birds Treaty with USA for enforcing laws by respective legislature to control hunting of migratory birds like doves and waterfowls. In England and Wales, national parks are usually owned and managed by the government as protected community resources which do not usually include permanent human communities.

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28 Policy, Law and Administration for Protected Area Management in Bangladesh, Laskar Muqsudar Rahman, Pp 23
30 Political Theory, Ideas And Institutions ; Amal Roy & Mohit Bhattacharya; Pp 326
England, national parks are designated under the National Parks and Access to the Countryside Act 1949 which are often integral parts of the landscape and land within a national park remains largely in private ownership. Parks are managed by National Park Authority to conserve wildlife and cultural heritage of the area and also to promote opportunities for the understanding of the park's special qualities by the public.

But conservation laws for wildlife were mainly developed through the development of international environmental treaties and declarations. United Kingdom made its first international wildlife treaty with France on 1867 relating to fisheries. Though on those times such types of protection was only for commercial purposes and totally matter of state sovereignty on the natural resources. But due heavy industrial development country has suffered a lot and UK appointed ‘Faulkner committee’ in 1952 for prevention of pollution of sea by oil. In 1954 UK organized an international conference to prohibit discharge of oil in sea and coastal areas. Again during 70’s another wave came for rapid development of environmental and ecological legal framework. In 1970 the Department of Environment was established in England and became a part of ministerial portfolio. Those early initiatives for protection of natural resources later helped a lot for development of concept about conservation laws for wild animals or other renewable natural resources in the world for ecological purposes.

RUSSIA

After revolution the Bolsheviks declared all forests, waters and minerals as property of the state and natural preserves were established. Forests were divided into exploitable sectors and protected ones and commercial development or tourism was banned. In Soviet Union also ecological problems arose from the very beginning with the development of heavy industry and use of chemical fertilizers and pesticides. Finally USSR introduced a

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32 Marine oil pollution: International Control, G. Ajith Kumar; LAW AND ENVIRONMENT, Pp 203
comprehensive program in April 1970 to curb industrial pollution, sewage disposal and contamination of water through administrative and criminal legal sanctions.\textsuperscript{33} Norway and Russia started negotiating over the boundaries of their maritime zones in the Barents Sea since the early 1970s. At the time of U.S. President Richard Nixon one agreement was made between the United States of America (USA) and the Union of Soviet Socialist Republics (USSR) on May 23, 1972 for cooperation in the field of Environmental Protection. Then after the agreement the U.S. Fish and Wildlife Service (FWS) and its Russian counterpart launched a cooperative program to study and protect wildlife and their habitats focusing on shared species of migratory birds, fish and marine mammals; refuges and parks; and the vast ecosystem represented by the Bering and Chukchi Seas which link the two countries.\textsuperscript{34} Again in April 1986 Russia's ecology became a topic for open discussion after Chernobyl catastrophe which was the worst radioactive disaster in the world. They realized the bad impact of industrial development on environment and ecology. Many production plants were closed for violating environmental laws. A new green movement began with the establishment of ‘State Committee for the Protection of Nature’. Soviet environmental groups also united into the Socio-Ecological Union and in 1993 former President Gorbachev developed ‘Green Cross International’. In 1991, President Yeltsin signed an ambitious environmental law to regulate electromagnetic radiation to the maintenance of health resorts. Although the Soviet Union passed several advanced environmental laws but those were seldom implemented. Recently in 2009, the Russian parliament has passed new legislation on wildlife hunting and conservation of wildlife resources. Previously a hunting law was signed by Emperor Alexander III in 1892 but was repealed in 1917 during Russian Revolution.\textsuperscript{35} So in Russia, there were very little developments during 1970s unlike other countries of the world but again the nation got the dimension for environmental awareness mainly after the

\textsuperscript{33} NEW YORK TIMES, 28 April, 1970 [as mentioned in “Law in the changing society”, W.Friedmann, Universal; Pp 200]
\textsuperscript{34} Wildlife without Borders, US Fish & Wildlife Service, summary report, 2001-2002
\textsuperscript{35} Coalition against wildlife trafficking, www.ca wtglobal.org
Chernobyl disaster which is till developing and recent law for protection of wildlife is the example such furtherance.

UNITED STATES OF AMERICA
USA was pioneer in generating awareness for conservation of wildlife and protection of their natural habitat in the country. Awareness was generated among the people after the extinct of many wild creatures in countries like South Africa and dramatic declination in the population Bison in North America was only due to human interference. Bisons were used to hunt for food, sport and also for leather machine belts made from bison hide. Ecologists, politicians and businessmen took the initiatives from very early for protection of wildlife and their habitat. President Andrew Jackson signed a law for preservation of ‘Hot Spring’ in the state of Arkansas in 1832. In 1864 during the regime of Abraham Lincoln, American Congress donated ‘Yosemite Valley’ to California State for preservation as a ‘State Park’ as being the part of ecological program and in 1872 American Congress again reserved the spectacular Yellowstone country as a National park. The creation of Yellowstone National Park in 1872 was the impact of early conservation movement in USA and Yellowstone developed a model for conservation movement rest of the world. The National Park Service (NPS) was created on August 25, 1916, by Congress through the National Park Service Organic Act to preserve unique resources and existing parks facilities and also to develop the natural resources. The United States Park Police (USPP), a distinct unit of the National Park Service under the Department of the Interior, is a full service enforcement agency for protection of National Parks. The United States Forest Service also is an agency of the ‘Department of Agriculture’ to administer national forests and national grasslands and to maintain quality and conditions of forests in the United States. The United States Fish and Wildlife Service (FWS) was created to conserve, protect, and enhance fish, wildlife, plants and their habitats. Other than Fish & Wildlife Service, The National Marine Fisheries Service (NMFS) is responsible for the management of particularly
nation's living marine resources and their habitat. In 1916 again USA and Britain made Migratory Birds Treaty for enforcing laws by respective legislature to control hunting of migratory birds like doves and waterfowls and subsequently American congress introduced Migratory Birds Act for ecological purpose in 1918.36

In 1968 American President Johnson in an address to the Congress observed that Conservation concern now is not only for Man’s enjoyment but for Man’s Survival. The modern environmental legislative process in USA was developed through various civil rights movements during the period of 1960s and 1970s and celebration of ‘World Earth Day’ on 22nd April in 1970 by American people. American President then established an advisory panel on pesticide and American Congress enacted ‘Marine Mammal Protection Act’ in 1972 and ‘The Endangered Species Act’ in 1973 for the conservation of wildlife in the ecology. In the mid-1970s during the bicentennial of the American Revolution, the two dozen historical parks were benefited commemorating the Revolution as part of national development program.

But the Endangered Species Act, 1973, one of the strong wildlife protection laws, had also failed to protect the ecology of nature from rapid destruction of forests, wetlands, rivers, coastal estuaries and other wildlife habitats and even some environmentalists labeled this law as ‘chronicle of extinction.’37 The U.S. government deliberately sought to weaken environmental regulation at the time of President Ronald Regan and the entire staff of the ‘Council of Environmental Quality’ was eliminated for the development corporations and capitalist setup. Tough mainstream U.S environmental groups38 emphasised lobbying action to promote new legislations in the area of conservation but most of these organizations dependent heavily on corporate funding. However in 1987, again 25 environmental groups filed the first of three spotted owl lawsuits through the

36 Political Theory, Ideas And Institutions ; Amal Roy & Mohit Bhattacharya; Pp 326
37 The Vulnerable Planet, John Bellamy Foster, Pp 128
38 The Sierra Club, the Audubon Society, the National Wildlife Federation, the Natural Resources Defense Council, the Wilderness Society etc.
Sierra Club Legal Defense Fund\textsuperscript{39} and the motion about many chain of events led to set a panel for report. Finally in April 1990, a scientific study carried out in conformity with the Endangered Species Act, 1973 by an interagency panel of government biologists, known as the panel’s chairperson Jack Ward Thomas Report, which listed the owl as threatened in the spring and summer of 1990. Report also proposed setting aside more than 5 million acres of federal timberland in the form of “habitat conservation areas” to protect the northern spotted owl.\textsuperscript{40} In April 1991, under pressure from the law, the courts, the environmentalists and the Thomas report the U.S Fish and Wildlife Service announced that it would evaluate up to 11.6 million acres in Washington, Oregon, and Northern California for possible protection to preserve the habitat of the northern spotted owl.\textsuperscript{41} Again in 1992, the Marbled Murrelet, a tiny sea bird and three wild species of Salmons were listed as threatened species under the provision of the Endangered Species Act.\textsuperscript{42}

NEWLY INDEPENDENT COUNTRIES

After the colonial regime and mainly after attaining the state sovereignty maximum African and Asian countries tried to preserve their natural resources and realized the utility of forests and wildlife. Large mammals had become the focus of newly independent nation states in many parts of the world. So the survival of the European Bison in Poland of the 1920s or protection of ‘giant sable antelope’ to postcolonial Angola became important to the rulers of the newly developed countries.\textsuperscript{43}

The legislative efforts are concerned, Bangladesh has 182 laws related to Environmental issues and has adopted National Environmental policy in 1992. But in 1970s, Bangladesh also made laws for conservation of wildlife and Bangladesh Wildlife (Preservation) (Amendment) Act was passed in 1974 to

\textsuperscript{39} Ecology against capitalism, John Bellamy Foster; Pp 118
\textsuperscript{40} ibid; Pp 109
\textsuperscript{41} ibid; Pp 110
\textsuperscript{42} ibid; Pp 124
\textsuperscript{43} Making Conservation Work, edited by Ghazala Shahabuddin & Mahesh Rangarajan, permanent black; Pp 6
framework basic guidelines for the conservation of wild animals. Before that the Bangladesh Wild Life (Preservation) Order, 1973 (President's Order 23 of 1973) was the first comprehensive legislation for control and management of wild animals including its habitat. Under Article 2 of this Bangladesh Wildlife (Preservation) Order, 1973 include four kinds of Protected Areas like Game Reserve, National Park, Private Game Reserve and Wild Life Sanctuary. Reserved Forests and Protected Forests are declared till under the Forest Act, 1927 like India made by British. Again latest legislation the Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995) has the provision to declare any area as ‘Ecologically Critical Area’. So, this subcontinent got the legislative dimension for conservation or protection wildlife mainly after Stockholm Conference.

In Pakistan, wildlife is treated as a provincial rather than a federal matter. Two Federal laws like Pakistan Forest Act 1927 and the Pakistan Environmental Protection Act 1997 are applicable in all the provinces. Most of the wildlife laws were legislated mid-1970s for Conservation of Wildlife. The basic legislation for wildlife is the Punjab wildlife (Protection, Preservation, Conservation and Management) Act 1974 and the Rules framed there under. The present legislations like the North West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 and the Northern Areas Wildlife Protection Act 1975 mainly deal with ecological problem of local areas. Previously the hunting in the Protected Forests and Reserved Forests is prevented under Pakistan Forest Act, 1927 and provisions of Hazara Forest Act, 1936 are applicable also as made in British India. In both pre-independent and post-independent Wildlife legislations days were concerned entirely with the hunting and shooting of game species. In 1993, the National Conservation Strategy (NCS) was framed as a national environmental policy and in 1998 the government of Pakistan made a ‘National Biodiversity Action Plan’ in accordance with the Convention on Biological Diversity (CBD)

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44 Policy, Law and Administration for Protected Area Management in Bangladesh, Laskar Muqsudar Rahman, Pp 23
to balance at global level. In Pakistan same trend is seen like other where wildlife or conservation laws were mainly formed during decade of 70s after the international awareness.

In 1973, Nepal implemented the National Parks and Wildlife Conservation Act to provide legal protection for various species of mammals, birds and reptiles and protected zones for ecosystem of natural resources. Many plant species have been protected under the provision of the Forest Act, 1992 within the country. Bhutan also enacted Nature and Conservation Act, 1995. Sri Lanka has the National Environmental Act, 1980 and also Forest laws. The Stockholm Declaration in 1972 created the massive force in national and international level to make laws for the protection of environment and biological diversity. It is not always correct only after independence or achieving state sovereignty all the resource management laws were made by the economically poor countries. In spite of colonization and heavy imperialism by white people some rare species as well as ecology were protected mainly by their efforts in many under privileged countries with rich natural resources. The Kruger Park in South Africa and the Virungas in the Belgian Congo secured to preserve the fauna & flora from industrial development or agricultural conversion during the colonial regime also. So before the independence the conservation process of the wildlife was very much in practice in the third world countries also. India has shown its commitment and grave interests to protect its flora, fauna, wildlife, forest areas, heritage sites, wetlands and biodiversity by becoming a contracting party to the maximum global conventions relating to environment and ecology.

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45 International responsibility and liability under International environmental law; Dr. Krushna Chandra Jena; INDIAN BAR REVIEW; volume- XXVIII (4) 2001
46 Making Conservation Work, edited by Ghazala Shahabuddin & Mahesh Rangarajan, permanent black; Pp 6
4.3. INDIAN LAWS REGARDING WILDLIFE BEFORE INDEPENDENCE

The Conservation of natural resources like forests and wildlife is not new for India. Preservation of wild animals was an integral part of human responsibility during the ancient and medieval periods in the Indian subcontinent. The India has a tradition of wildlife conservation even from the Vedic period also. Many old epics like the Ramayana and the Mahabharata have also emphasized on the importance of animals in society. Wild resources were flourished by both Hindu and Muslim rulers including the Maurya; the Ashoka, the Guptas and also the Mughal. Destruction of wildlife was rampant and devastating after the entry of Europeans especially British in this country. The condition of natural resources further deteriorated during the World War II not only within the national level but throughout the world. Historically, wildlife conservation has been based either on religious belief, or on the fancies of the nobility. As per Madhav Gadgil, the large populations of monkeys through the length and breadth of India, even in densely populated countryside, owe their survival to the Hindu taboo against the killing of monkeys. The princely states also preserved wildlife in their hunting reserves. This tradition continued till independence and a majority of our present day wildlife sanctuaries are the old hunting grounds of princes.47

ANCIENT TIME

The idea of preservation of wildlife is not new to India. It is the integral part of Indian culture. In the ancient times the need to protect wildlife was solely perceived in human and few laws were made specifically for the protection of wild life. The Arians were the mainly nature worshipers and they always praised the each and every elements of the environment in their four Vedas. The sun, ‘eye of God’, gives forth energy and life, fertilizing the earth, ‘who is the mother from whose womb all life, forms are born, Bhumi, Mother Earth, is

47 Ecological Journeys, Madhav Gadgil ; permanent black; Pp 48
conscious of the behavior of human beings and she supplies them with every thing they need, but if she is mistreated she can keep back all these things. The Vedas contain hymns in praise of animals and forest. The way to place her and ensure abundance is through religious activity. Being herself a servant of God, she is pleased when she sees God being worshipped.

The concept of conservation was not new in Indian history. From very early days the necessity of conservation was realized by ancient Indian ruler. During the period of Maurian, the first legal provision relating environment in ancient India was seen as recorded in the ‘Arthashastra’ by Kautilya or Chankya. The first recorded game laws were promulgated by Kautilya in his Arthasastra in ancient India. On that time Chandra Gupta Maurya and his Prime Minister Kautilya dealt with the matter of environmental protection very strictly. He laid down various rules and regulations for protection of environment and up gradation of ecology. The Maurya rulers used to maintain some zoological gardens and also reserve forests where animals would live without any fear and any kind of human interference and grazing were not allowed within that protected areas. Entrapping and killing of any animals were totally prohibited and Superintendent of slaughter house had the power to impose fine for killing, injuring, harming of any kind of wild animals within that areas. If any beast became danger to human beings might be killed outside the protected areas. Hunting was allowed in case of birds, fishes or deer with a certain fees prescribed by laws.

Among the Indian rulers in the ancient period King Ashoka did the maximum betterment for wild animals as well as all living beings and during 3rd century BC, this Maurian ruler issued 5th pillar edict “prohibiting the slaughter of animals” which was first conservation law in India. He prohibited the killing of parrot, myna, duck, swan, crane, stork, vulture, peacock etc. Killing of some mammals like bats, porcupine, squirrel, stag, rhinoceros, primates and carnivores were also prohibited on specific days. So that was the earliest codified law on wildlife conservation in India nearly 252BC when King Ashoka made a law to protect fish game and forest. As per V.R. Krishna Iyer,
The advocacy of wildlife preservation, animal rights, vegetarianism and environmental protection have their roots in a new ethic of Universal compassion inscribed long ago in the rock pillars of Emperor Asoka. The opposition to a host of insensitive operations such as sealing, whaling, wild life hunting, cattle slaughter, fur garments mid luxuries in diet and dress involving cruelty to creatures animal experiment for cosmetics and curative guinea pig methods can be traced to a vibrant humanism and green movements which transcend the coarse, unconscionable hungers of the savage stand in still lingering human personhood.48

In Gupta period forest organizations were greatly improved and also some laws were enacted and enforced. Flora and fauna were protected for the interest of the human being by the ancient rulers in India which can be realized from the Sanchi Stupa, Ajanta and Ellora caves and Khajuraho temples.

AT THE TIME OF SULTANS AND MOGHALS IN INDIA
The conservation and preservation of animals and plants were very much neglected till the Mughals came to power in A.D. 1526. This got accelerated from about the end of the early medieval period in Indian history. Taimur- the lame once killed several rhinoceros with swords in the frontier of Kashmir. In Tariki Mubarak - Shahi it has been stated “in the month of Zi-l-kada of the same year he went to the mountains of Sirmor (west of Yamuna) and spent two months in hunting rhinoceros and the Yak.”49 But the Moghals and few Sultans in the medieval period of Indian history enforced some protective laws for their interest to preserve wild animals with a desire to regulate shooting and maintain a sizeable population for hunting. But the concept of ecology or to control the ecosystem of the area was not their intention. In spite of their intention of hunting, the fact is that many of the best wildlife areas today owe their existence to having been former shooting preserves of Mughals and Indian rulers. Mughal Empires like all other rulers were very famous for

49 A Treatise on Wildlife Conservation in India, Chhanda Das, CLASSIQUE BOOKS, Pp 7
hunting and used to provide a treasure trove of wild animals. In the Mughal period there were also several descriptions of hunting by kings and princes and thousands and thousands of blackbuck were hunted down in a single day. Babur wrote about ‘great masses’ of rhinos and it was found near the Indus valley. There was a flourishing trade in rhino’s horn cups, which were said to useful in detecting poison. Mughal legacy was alive among the other Indian rulers and public in the medieval period and hunting, cheetah coursing, horsemanship, falconry and archery were the main pastime in north and central India for longer period. There was one kind of special sport very popular among the Mughal rulers known as “Gamargha”. Nearly two thousand hunting leopards were killed or hunted in this time which has now almost disappeared from India. Mughal had indulged the hunting of tigers to show their potentiality to rule this country like many other rules afterwards. They introduced several sports like Hawking, Pig-sticking or Bear-hunting which later became very popular. But Tiger-hunting became very influential and symbolic among the British also. Indian Rulers had also a practice to portrait the celebration of victory over tigers and other beasts of the forest.

In spite of lots of hunting, some conservation methods were adopted by Mughal rulers also. Emperors like Akbar and Jahangir advocated protection of animals in sanctuary and enforced forestry laws. Once Akbar’s men located a tiger jungle in Mewat region, now in Haryana, but they were ordered by the emperor to leave the jungle for him to pursue and hunt the tiger inside the jungle. These hunts were turned a form of protection under the name of ‘Sanctuary’ which was followed later by many Indian rulers. Emperor Jahangir, (A.D. 1605-1627) probably the first Mughal, prohibited hunting of tiger and lion and permission was needed for killing or hunting elephants. Permissions

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50 India’s Wildlife History AN INTRODUCTION; Mahesh Rangarajan, permanent black, Pp 14
51 A Treatise on Wildlife Conservation in India, Chhanda Das, CLASSIQUE BOOKS, Pp 8
52 Jim Corbett’s ‘Green’ Imperialism; Prasanta Das; Economic & Political Weekly; VOL XLIV NO 15, Pp 20
53 People, Parks & Wildlife Towards coexistence; Vasant Saberwal, Mahesh Rangaragan, Ashish Kothari, Pp 12
were only given to the professionals to destroy man-eaters and rouges. He took some efforts to breed hunting leopard in captivity.

RULERS OF PRINCILY STATES
The Maharaj of Kotah in Rajasthan introduced a system to award 25 rupees who killed a lion and more than twice for the head of tiger. In the North West provinces, as wolves were a threats to stock and young children so the killers of wolves were paid more than that paid for a panther. The wolf was treated as a pest even after the Independence also. Many rulers of princely states continued their hunting on their sanctuaries and game reserves to maintain their shooting rights as a term of accession. The feudalistic approach of many ex-rulers and land-owners increased feeling of trees in private forests to pre-empt their rights against the take-over by the government. This type of aggression was continued till the abolition of privy-purses and other privileges by government through 26th Constitutional Amendment in 1971.

Though rulers of princely states used to preserve wildlife mainly for hunting reserve or game reserve in spite of that some early initiatives for preservation of wildlife were taken by those states and they use to maintain better records of wildlife than British ruler in India. As per the Statistical Account of Junagadh in 1884 that population even in Gir was not more than a dozen lions. According to the naturalist E.P.Gee (1964), the Nawab of Junagadh wanted to save the lion and he made known publicly that there were ‘only a few’ lions left, because every British Viceroy, Commander in Chief, Governor or Prince wanted to be invited to hunt a lion. It is evident that the Gir lions were almost on the verge of extinction by 1893. The princely states took some initiatives also for preservation and protection of wildlife inside their natural habitat. One noted historian Parimal Rupani mentioned that in 1880 Bechardas Viharidas, the Acting Deewan of Junagadh published an order in state Gazette to ban lion hunting and also any kind of hunting within the forests of Gir. Again Mohabbat Khan took charge of the estate on March 31, 1920 and he also intended to make certain strict laws to give more protection to the
Some British officials took initiatives to control the use of faunal resources with a new view from the experience of contemporary world. Through out the world, there were various strong policies for conservation of wildlife and other natural resources adopted by national governments. Protecting vanishing wildlife became one of the marks of civilized conduct. Many Reserved forests and sanctuaries sheltered different wild animals and birds but mainly for hunting purpose because they were still perceived as game.

BRITISH REGIME

The British period has the mixed history of wildlife depletion as well as conservation of wildlife also. During those period wildlife were killed too large extent by English officials and by Indian ruler also through hunting. But at the same time conservation policies and legislations were adopted by ruler also. During the first half of British period special rewards were there for killing of any tiger. Other legitimate targets were elephants, wild buffalos and rhinoceros. Larger rewards were given out for killing tigresses, and special prizes for finishing off cubs. Rulers who preceded the British had often asked their local officials to eliminate tigers, bandits and thieves. Eastern India suffered a dangerous famine in 1770 where out of three people one was dying. Fewer tigers mean to the British government was more cultivation and much revenue, so for more and more revenues they brutally killed much wildlife. The slaughter of deer and boar by sahibs or villagers for meat reduced the base of prey for wild carnivores. Major prey items like the rhino and wild buffalo almost vanished from the north Bengal plains by the 1850s. Again on the other side Predator species like lions, tigers, leopards, bears and crocodiles were regarded useless for mankind and highly effective efforts were made to eradicate them. Records of Ministry of Environment and Forest shows document as many as 57000 tigers were shot between 1875 and 1925 as part of

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54 The Last Lair, Mayank Vyas & Hitesh Ankleshwaria, The Sunday India, 8 Oct -14 Oct 2007
55 India's Wildlife History AN INTRODUCTION; Mahesh Rangarajan; permanent black, Pp 25
a vermin control program.\textsuperscript{56} Rampant killing and hunting of animals started with the establishment of the East India Company. The days of the British Raj saw many who were wildlife conscious but many who loved hunting. As a result in the early 1900s, plenty of lions and tigers were killed and their numbers fell considerably.

It was only during last decade of the Raj that the ‘permit system’ was introduced, and one could hunt once or twice a year but the British viceroys and Maharajas were licensed to hunt any time. The colonial rule cultivated ruthless extraction of natural resources to exploit environment for their material gain. The ecological history of British India is of special interest in view of the intimate connection between western imperialism and environmental degradation.\textsuperscript{57} The Indian subcontinent got agricultural civilization with European powers and Karl Marx hoped that British conquest would pull India out of its feudal stage and launch it on the path of becoming a modern science-based society.\textsuperscript{58} But the legacy of imperialism and colonialism, concealing a sense of ownership over environment, propagated its consumption for wealth. Growth of industrialization and lack of awareness to handle the development, has brought into focus many environmental issues and in its response environmental legislations.\textsuperscript{59}

But conservation policy was same time adopted with the aim of hunting also. In the late nineteenth century, Some British administrators were very much aware to protect wildlife from human consumption and destruction. Lord Curzon was invited by Nawab of Junagarh for trophy hunting. But considering the small numbers of Asiatic lions i.e. 15 at that time, in Gir forest, Lord Curzon requested the Nawab to protect the park and conserve the lions. But although this was an important step towards conservation, it was not only one and others initiatives were also taken during that period.\textsuperscript{60} In 1904 The Burma

\textsuperscript{56} Concepts in wildlife management, B.B.Hosetti, Daya Publication; Pp 19
\textsuperscript{57} This Fissured Land, Madhav Gadgil & Ramchandra Guha, Oxford; Pp 116
\textsuperscript{58} Ecological Journey, Madhav Gadgil, permanent black; Pp 190
\textsuperscript{59} Environmental Justice: Scope and Access, Hon’ble Justice Sunil Ambwani, Allahabad High Court; AIR 2007 Journal 49
\textsuperscript{60} All the (W) right moves? Belinda Wright; The Sunday Indian, 8 Oct – 14 Oct, 2007
Game Association pointed many loop-holes in the existing Wild Animals and Birds Act, 1887 which mainly restricted the sale of pheasants and other birds only in the breeding season in town bazaars or markets. Curzon too was concerned by the decline of wild life due to extension of cultivation and civilization in hill and forest areas and he also realized the declination of tiger population in rapid race. In response to an appeal, Lord Curzon took major initiatives for enacting a law to protect game animals and birds.

During the 19th century, in spite of limited territorial extent, government made some environmental legislation mainly on water pollution, forests and wildlife issues within India. In British India perhaps first direct enactment on wildlife was the Wild Birds Protection Act in 1887 (Act no. X of 1887) to prohibit the possession or sale of only certain kinds of wild birds during the breeding season. So birds were the first wild species that got legal protection in India under the Wild Birds Protection Act 1887. This Act prohibited the possession or sale of only certain kinds of wild birds during the breeding seasons.

But killing of birds was not restricted by that provision of law. After realizing the needs of prohibition for killing of animals, finally Wild Bird and Animal (Protection) Act 1912 (Act no. VIII of 1912) was passed. Section 3 of the Act empowered the provincial government whole or any particular time of the year as close time and no specified birds or animals would be killed. That statute made unlawful to capture or to kill or sell so buy or possess of any specified birds or animals. It also imposed fine as penalty for contravention of any provision. So The Wild Birds and Animals (Protection) Act 1912 was a more comprehensive legislation in that regard. In the year 1935, again that law was amended allowing the provincial government to declare any area to be a sanctuary for the birds or animal and their killing was a made unlawful. This amendment Act was most important because the concept of Sanctuary was first time introduced in India. In Section 11, it was mentioned that the provisional government can declare any area as sanctuary and killing of animal there was

61 Environmental Law and Policy in India, Shyam Divan and Armin Rosencranz; Pp 30
unlawful. The concept of preservation of biological diversity or ecological protection was not too much developed during British period in India. Though previously there were some legislations containing the term ‘conservation’ or ‘preservation’ like the Elephant Preservation Act, 1879 or the Wild Animals and Birds Preservation Act, 1912 but they were not mainly for conservation of ecology or living elements of environment. They were preserved mostly for hunting purpose or game reserve.

Though forest policy was adopted from very early by Governor General, Lord Dalhousie in 1855 and then a German forester, Sir Dietrich Brandis was appointed as first Inspector General of Indian forests in 1865. In 1865 ‘The Indian Forests Act’ was passed first time in India and again in 1878 ‘The Indian Forests Act’ was enacted another legislation for management of forests as a natural resources in the hand of British government in India. So these forest laws indicate revenue oriented policy of British government or the state ownership over the natural resources not for ecological purpose. Some writers treat this Indian Forest Act, 1878 as draconian law as it was implemented only for use the timbers of Indian forests in rail network and such law generated a protest among the farmers and marginalized people which later during 1960s and 1970s ventilated as social movement in India for ecological degradation. Even in 1927, Indian Forest Act was the impression of exploitation by feudal society of British colonial times. This statute was a consolidated law relating to transit of forest produce and to levy the duty on timber and other forest produce also. The main aim of Indian Forest Act, 1927 was to collect revenue from timber and other forest produce. In spite of all these odds, this forest policy of British government helped a lot to conserve the forests as well as wildlife indirectly and protection of environment very directly. A large number of Protected Areas including Corbet National Park, Kaziranga Sanctuary, Jaldapara Sanctuary were notified by provision of this Indian Forest Act, 1927 which played an important role regarding declaring natural habitat of wildlife

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62 Common shades of green, Raj Chengappa; INDIA TODAY; July 17, 2006; Pp 79
63 Environmental Law, Dr. S.R.Myneni; ASIA LAW HOUSE, HYDERABAD, Pp 304
as ‘reserve’ during British period before Wildlife (Protection) Act, 1972 came into existence. Before Independence environmental elements mainly protected by general principles of common law like nuisance or negligence which were mainly governed by The Indian Penal Code, 1860 or The Criminal Procedure Code, 1898. Apart from those laws, there were some statutes in India like The Indian Fisheries Act, 1897, The Oriental Gas Company Act, 1857, The Explosives Act, 1908 or The Motor Vehicles Act, 1939 which were not sufficient to cope with exploitation of Natural Resources by Industries or other public concern. In fact those laws had no stringent provisions to combat with ecological destruction by human beings.

In spite of that some early legislation of during that period indirectly helped for protection of wild animals in different parts of India. The Indian Forest Act of 1879, 1927 and its adaptations in various States gave basic protections to wildlife and their natural habitats in the form of reserved and protected forests. Prohibition of shooting, fishing and poisoning, setting of traps and snares within reserved forest or protected areas were legally restricted. The Elephant Preservation Act, 1879, imposed Prohibition of killing or capturing of elephants in areas where this law was in force. The Indian Fisheries Act, 1879 and the Cattle Trespass Act, 1871 were some major Central legislations for protection of animals as properties. Certain early legislations were applicable to some places such as the Bengal Rhinoceros Protection Act, 1932, the Tamil Nadu Wild Elephants Preservation Act, 1873, which helped somehow for the conservation of wild animals in that period.

But during the World War I again there were huge attack on all natural resources including wildlife also. Such rampant killing of wild animals and forest destruction was the global phenomenon and India also suffered a lot. But there were some kind hearted people who started campaign to stop blood sports, such as fox and stag hunting, hare coursing and animal baiting in several countries. Some times their protests against these cruel sports lead to fights with resulting bad publicity. The legendary hunter Jim Corbett shot his

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64 Fundamental Rights Liberty and Social Order, R.N. Sharma, Pp 89
first man-eating tiger and panther during 1905 to 1907 and continued to shoot till the end of his days. But in the early 1930s, trophies became less glorious for him. Later he turned his attention to watching creatures of the wild and finally he became a wildlife conservationist in India. Jim Corbett took major initiatives to help the provincial government to establish India’s first National Park carved out of reserve forest in 1935 though the area was already declared as ‘Reserved Forests’ in 1879. So in 1936, the first National Park was set up in the Ramganga-Dhikala forests in the United Provinces during the British period under United Provinces National Parks Act, 1935. There was no human habitation within the park as they had already been relocated in late 19th century. The National Park was named after Governor Malcom Hailey as Hailey National Park. Then it is very much clear that ‘The Hailey National Park Act, 1936’ was the first important legislation for protection of wildlife and management of its habitat in India.

4.4. PRESENT LAWS RELATING TO CONSERVATION OF WILDLIFE IN INDIA

Immediate after the Independence Indian Parliament took some initiatives for enacting legislation relating to environmental Pollution like The Factories Act, 1948, The Industries (Development & Regulation) Act, 1951, The Rivers Board Act, 1956, The Atomic Energy Act, 1952, and The Insecticides Act 1968 which were mainly for protection of public from environmental hazards for social justice. Wildlife population was already deteriorated greatly during the British period. Some states had already exercised further control within their jurisdiction by prescribing additional rules and procedures. As Large mammals had become the focus of newly independent nations in many parts of the world so India has adopted same trend also and protection of wildlife became a major task for state and union government in India as well as many parts of world.

65 India’s Wildlife History AN INTRODUCTION; Mahesh Rangarajan; Pp 72
66 Environmental Law and Policy in India, Shyam Divan and Armin Rosencranz; Pp 31
The Tiger was instituted as national animal of India. The Rhino in the Brahmaputra valley was a symbol of Assamese regional nationalism while the Lion became a symbol of regional pride for Gujarat.\textsuperscript{67} Some laws were framed in the early 1950 i.e. Rhinoceros Preservation Act and the Elephant Preservation Act to check the exploitation of certain threatened species. After the exit of British in 1947 and obtaining the freedom, some steps were taken for conservation of forest and wildlife in different provinces by the Government of India.

But such steps were not very easy. Lots of problems were there to change the attitude of the public at large. Protests in the 1950s were even discussed in Indian Parliament against the export of living animals and their body parts but some members laughed out side Parliament about such kind of proposal. It was very difficult to change attitudes from hunting to wildlife preservation among the middle class Indians, ex-princes and foresters. Immediate after the independence, the wildlife trade was very much in practice by government itself and other private persons also. The large-scale trapping of macaques to export to the United States of American earned Indian much foreign exchange. Over 70,000 monkeys were exported in 1951 and 1952 alone. The export of leopard, tiger and snake skins was very active during the period of 1960s in India for foreign currency. In 1967-1968 more than a thousands tiger skins were sold in the markets of Delhi.\textsuperscript{68} Even more recently during the late 1960s, the minister had also a pet tiger in the housing estate in the posh area of Delhi.\textsuperscript{69} New Government in spite of all evils took few strict measures to control hunting, poaching, skin trades by rural people or forest dwellers and also to control business of wildlife parts.

The thought about modern conservation was initially developed from post-Independence period in India. Immediately after Independence, Jawharlal Nehru, the first Prime Minister of India took some initiatives to protect Indian wild life but those steps did not create any public awareness throughout India.

\textsuperscript{67} Making Conservation Work, edited by Ghazala Shahabuddin & Mahesh Rangarajan; Pp 6
\textsuperscript{68} India’s Wildlife History AN INTRODUCTION, Mahesh Rangarajan;Pp 96
\textsuperscript{69} Ibid, Pp 95
The ‘Indian Board of Wild Life’ was set up in 1952 and a large number of reserve forests, sanctuaries and zoological gardens were established for the protection of flora and fauna by the Government of India. One private property of Gilbert Ricketts was bought by Madras presidency and after independence then governor A.K. John recommended it for sanctuary. Then the area was declared as Guindy Deer Park during 1959 with the initiatives of Pt. Nehru.  

The Keoladeo Ghana of Bharatpur was transferred as Bird Sanctuary at the end of 1960’s by Pt. Nehru with the help of then Union Agriculture Minister Rafi Ahmed Kidwai. Hunting of birds and ducks were ceased in each winter in wetlands created by local prince as a shooting ground.

But even during the period of 1950s and 1960s, the Indian princes continued their shikars or hunting and one district collector in central India shot dead five tigers in one night. Till 1960s in forest service it was mandatory for a Divisional Forest Officer (DFO) to shoot a tiger before getting the charge in India. So it took many years to prohibit the hunting of wild animals in India and Hunting was finally and strictly banned very recent in 1991. Special enactment has also been made on the trade of wild animals and animal products because large numbers of rare specimens were exported even after independence of India. Even in 1986, nearly 330 tones of frog legs were exported from Kolkata to other foreign countries though such practice was banned by law in the same year. An expanding agrarian frontier and business groups used to create pressure on forest areas and encouraged large scale exports of animals for research and also animal’s skin and hide for business and fashions. Tigers, Panthers and other rare animals were poisoned with pesticides to fetch foreign earnings and monkeys and macaques were trapped for exports to the western countries for zoos and scientific research.

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70 The Oxford Anthology of Indian Wildlife, edited by Mahesh Rangarajan, Volume II; Pp 290
71 India’s Wildlife History AN INTRODUCTION; Mahesh Rangarajan; permanent black, Pp 84
72 India’s Wildlife History AN INTRODUCTION, Mahesh Rangarajan, Pp 96
73 The Oxford Anthology of Indian Wildlife, edited by Mahesh Rangarajan, Volume II; Pp 1
4.4.1. **CONSTITUTIONAL MANDATE FOR PROTECTION OF WILDLIFE**

A Constitution is the basic law of the land which defines various organs of State and functions and their limitations. After Independence, the Constituent Assembly drafted the new Constitution for India and adopted the mainly same policy like Government of India Act, 1935 and State legislatures were given more powers to legislate their own laws in matter of natural resources like forests and wildlife. The Constitution of India originally did not contain environmental provision during the framing of Constitution. Perhaps the makers of the Constitution in Constituent Assembly could not anticipate the adverse environmental effects from different spheres of human activity.

So during the framing of Constitution, wildlife and their natural habitat were very important as renewable natural resources for economical purpose but ecological concept was not developed on those times. There was a conflict relating to legal control over the natural resources like forests and fisheries as those were treated an economically important item for State administration. In the State List, major natural resources like Agriculture (Entry 14), Stock and Veterinary (Entry 15), Water (Entry 17), Land (Entry 18), Forest (Entry 19), Wild animals and birds (Entry 20) and Fisheries (Entry 21) were mainly inserted at the time of making of Constitution. Even item like 'Taxes on animals' (Entry 58) was also inserted on State List to provide exclusive control on the hand of states relating to animals. The protection of Wild Birds and Wild Animals from very beginning was entrusted to the provincial legislature in Entry no. 25 of the State List of the Government of India's Act 1935 from very early.75 As subject concerning to protection of 'wild birds and wild animals' was placed in the 'provincial legislative list' of the Government of India Act, 1935, so wildlife laws varied from state to state and no planning was taken at the all India level for the protection of wildlife. As Agriculture and Land were in the subject of exclusive state legislation at the same time legislation relating to taxes and revenues on agriculture, land and building from

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75 *Indian Constitutional Law*, Prof. M.P. Jain; Pp 497
Entries 45 to 49 were also vested to the State Governments. Though natural resources were mainly in the subject of the State List in spite of that some items like Mines and Minerals (Entry 54) or Fishing and Fisheries beyond territorial waters (Entry 57) were included in the Union List.

The Constitution of India introduced in 1950 the title “Forest” at Entry No. 19 and the title “Protection of Wild Animals and Birds” was placed at Entry No. 20 and also “Fisheries” at Entry No. 21 in the State List of the Seventh Schedule due to heavy demand from members of Princely states. The Ecological importance of wildlife and forest was not very much taken into consideration due to unawareness relating to the subject. At the time of debate relating to drafting of Constitution, Pandit Pant opposed to insert “Forest” in the concurrent list as decentralization should be imposed practically. In the question of Jawhar Lal Nehru for union legislation relating to forest as part of national planning Pant replied in favour of the concept of cooperative federalism. On that time wild animals, forests and fisheries were treated as natural resources where States and representatives of princely states wanted to establish their sovereignty. But again subjects like Forests and Wildlife were brought under the Concurrent list after Constitution (42nd Amendment) Act, 1976 by parliament to give more emphasis over those issues for their ecological importance.

FEDERAL STRUCTURE

India has adopted mainly federal form of government and the Parliament and the State legislatures can enact legislations on those subjects as demarcated by constitution in the Union List and the State List. There is also the Concurrent List on those subjects about which either the parliament or the State Legislatures can make laws. According to Simon Commission report till 1917, the entire Government system in India was indivisible and one in theory. The Government of India, 1935 first time brought the concept of federal system in practice and decentralization came into motion. In case of conflict of Laws

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76 Constitutional Law of India (Volume 3), H.M. Seervai, Pp2460
77 The Indian Constitution: Cornerstone of a Nation; Granville Austin, Pp 200
between the Parliament and the State legislature, the Constitution provides for the law of parliament to prevail over the state law. Again in some special situation also Parliament is given preference over subject in state list or residuary power is also vested to Union Parliament also. The division of legislative powers under India’s federal structure has led to tensions between the Centre and the States in matters concerning regional development of environment and the preservation of natural resources. In USA and mainly other western federal countries, states have successfully solved maximum problems relating to environment and natural resources like water, wildlife or pesticides.

In Part XI of Indian constitution, Article 245 to 255, deals with legislative distribute between parliament and states legislative. Article 246 determines parliament will make law on the matters of list I and state on the matters of list II and Union & State both have power to make laws on the subjects of list III (concurrent list). This list system was introduced in India through Government of India Act, 1919 and later developed by Joint Committee and reports of the Union Powers Committees reproduced that system again in Government of India Act, 1935. Environmental legislative powers are available in all three lists. Articles 249 & 250 give power to parliament to legislate with respect to a matter of state list in the National Interest or proclamation of Emergency in operation. So, if state does not make any Environment law then union can make for national interest. Parliament has been vested with the Residuary Power under Article 248 to enact law, with respect to any matter not enumerated in state or concurrent lists.

INTERNATIONAL AGREEMENT
Indian Constitution gives power to parliament to make laws implementing decision taken at an international conference or association under Article 253. After ‘Stockholm Declaration 1972’, Indian parliament has utilized Article 253 has to legislate various provisions in preserving natural resource including wildlife. The preamble of the Air (Prevention & Control) Act, 1981 and the

78 The Indian Constitution: Cornerstone of a Nation; Granville Austin, Pp 195
Environment (Protection) Act, 1986 directly narrate that these laws are enacted to implement the decisions of Stockholm Declaration, 1972. Later Indian Parliament also enacted “National Environment Tribunal Act, 1995” on basis of issues raised on ‘World Summit’ in 1992 held at Rio de Janeiro (Brazil). In Wildlife (Protection) Act, 1972 lots of amendments were made due to solve the international problems as decided in various meetings of ‘Convention on International Trade in Endangered Species of Flora and Fauna’ (CITES). Recently Parliament passed the Biological Diversity Act in 2002 on the basis of decision taken on Convention on Biological Diversity in 1992 as India was a signatory on that convention in Rio de Janeiro.

Also, Article 51 (c) of ‘Directive Principles of State Policy’ in Indian Constitution says that state shall endeavor “to ensure the respect to international law obligation of international treaty”. So one side it gives the power to Parliament to make laws on subject matter where India signed or ratified in any international convention at the same constitution imposes direction to the state to respect the international treaty. Again the legislative power relating to international treaties and agreements has been given to the Union Government in the Seventh Schedule of the Indian Constitution. The Entry 14 of Union list tells about law making power of Union Government relating treaties and agreements with foreign countries and also implementation of those conventions is exclusively jurisdiction of Central Government. Over all the law making power relating to wildlife and ecology from International Conventions totally vested on Central Government through distribution of legislative power as well as direction from Constitution to adopt those policies.

FUNDAMENTAL RIGHTS

Part III of Indian Constitution, a long list of Fundamental Rights from Article 12 to Article 36, has been described as the ‘Magna Carta’ of people’s right in India. Fundamental Rights, an indispensable condition for democracy and free society, are enforceable before the Supreme Court and High Court under Article 32 & 226 respectively. The relaxation of locus standii created new form of legal movement in India with the name of public interest litigation. This
unconventional mode of litigation has developed a new passage in India for environmental right for communities or group of people.

RIGHT TO WHOLESOME ENVIRONMENT

Recently judiciary has recognized ‘the right to a wholesome environment’ as an integral part of basic fundamental right within the meaning of ‘right to life’ as guaranteed under Article 21 of Indian constitution. Within the ambit of Article 21, in *M.K.Sharma* case\(^79\) court directed the Bharat Electronics Company to comply the safety rules to prevent the employees from the X-ray radiation. Again in *Rural Litigation Entitlement Kendra* case\(^80\) the Supreme Court decided that the environmental rights were very implied into the scope of Article 21 of Indian constitution.

42ND CONSTITUTIONAL AMENDMENT

At the time of enforcement, Constitution of India originally had no direct and special provision relating to ecological balance and environmental protection. In 1976, Through Constitution (42\(^{nd}\) Amendment) Act, a new Article 48A was inserted in ‘Directive Principle of State Policy’ (Part IV) and another new Article 51A (g) was incorporated in ‘Fundamental Duties’ (Part IV A) for direct control of ecological degradation. In this regard our constitution as per V.R. Krishna Iyer with conscience and concerned for values of environment so integral to human survival, has amendatorily added Articles 48A and 51A which relate to environmental safeguards.\(^81\) This amendment was inserted by Indian parliament on the basis of recommendation of the Swaran Singh Committee on constitutional reforms which was appointed by congress president as a resolution was passed in All India Congress Committee on 29\(^{th}\) May, 1976 in New Delhi\(^82\). Indian Parliament made such provision to cope with worldwide hue and cry for ecological protection and control on environmental crimes and also inspired by the several international conferences on environment during 70s. The protection of basic air and water supplies was

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\(^{79}\) M.K.Sharma v/s Bharat Electronics Ltd. 1987 (1) SCALE 1049  
\(^{80}\) Rural Litigation Entitlement Kendra, Dehradun v/s State of UP AIR 1985 SC 652  
\(^{81}\) Constitutional Miscellany, V.R. Krishna Iyer, Pp 236  
\(^{82}\) Select Constitutions ; A.C.Kapur & K.K.Misra; S.Chand; pp122
a matter mainly allotted to each state but during the '70s in USA also the responsibility for clean air and water was shifted to the federal government. Extensive legislations like the Clean Air Act (1970), the Resource Conservation and Recovery Act (1976), the Clean Water Act (1977), the Superfund Act (1980) were passed on those period to control the environment and ecology.

In addition to those new provisions 42nd Amendment Act, some changes were also made in Schedule VII relating to distribution of legislative powers between centre and states. On the basis of Government of India Act, 1935, the legislative powers were distributed between the States and Union to regulate environmental elements like, Forests, Fisheries, Birds, Wild animals and maximum scope was given to the Union Government in Schedule VII for strong Centre in India after independence. But at the time of making new Constitution, a meeting was organized with Premiers of the Indian provinces in July of 1949 by Drafting Committee and there was a strong argument regarding division of legislative powers about ‘Forest’ and ‘Fisheries’ in the State list. Through 42nd Amendment of 1976 item, ‘Forest’ was inserted in entry ‘17A’ in list III (Concurrent list) and again ‘Protection of Wild Animals & Birds’ was transferred from List II (State List) to List III (Concurrent list) in entry ‘17B’, to give more power to Union as well as State to make laws for protection of wildlife and birds. Again the legislative powers over items like wild animals including cattle and livestock or forest were decentralized by 73rd and 74th Constitutional Amendment to Municipality, Panchayats and other local governments. Later the provisions of the Panchyats (Extension to the Scheduled Areas) Act 1996 deal with the ownership of minor forest produce within scheduled areas which may be comprised of protected areas including National Parks and Sanctuaries.

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83 Environmental Law and Policy in India, Shyam Divan and Armin Rosencranz; Pp 43
### Changing of legislative power relating to forests and wild animals in Constitution

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### Table 6

Though Tiwari Committee recommended for a new entry i.e. ‘Environmental Protection’ in concurrent list to empower central and state government to legislate law on new environmental issues but it was not considered by parliament. In the case of new international environmental issues, Article 253 is only in the way to legislate law on environment and ecological issues. Afterwards Parliament and State Legislatures have made several environmental laws in their own needs.

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84 Environmental Law and Policy in India, Shyam Divan and Armin Rosencranz; Pp 47
DIRECTIVE PRINCIPLES OF STATE POLICY

The Constitution framer inserted mainly the socio-economic or the second generation rights from various international documents regarding human rights in ‘Directive Principles of State Policy’ under Part IV of the constitution with the aims & objectives to be taken up by the states in the governance of the country. This part was incorporated in constitution for achievement of social, economic and political justice which was objectives of Preamble. The concept of social justice and political freedom developed from the time French revolution in modern society. In 1937, Constitution of Ireland fast time made a difference between directive principles of social policies and fundamental rights. In India ‘Sapru Committee’ had recommended about incorporation about justiciable and non-justiciable rights and later B.N.Rau also recommended such type of rights in constitution during constitutional assembly debates. Mahatma Gandhi stress on political freedom and role of government for socio-economic regeneration. Pandit Nehru also emphasized on those rights as an objective of State.

These directives are not enforceable in any court of law in India but Indian Judiciary has used of these directives in number of cases and these directives have been taken as complementary to Fundamental rights in Som Prakash Rekhi case\(^5\) and again in Minerva Mill case\(^6\), it was decided that “harmony & balance between fundamental rights & Directive principles in an essential feature of basic structure of the constitution”. In, T.Damodar Rao case\(^7\) AP High Court has interpreted that provision of Article 48A imposes “an obligation” in the government including Industry to protect the Environment. In Sachidananda Pandey Case\(^8\), court said “The last that the court may do is to examine whether appropriate considerations are borne in mind and irrelevance excluded. In appropriate Cases, the Court may go further.”

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\(^5\) Som Prakash Rekhi v/s Union of India, A.I.R. 1981 SC 212
\(^6\) Minerva Mills Ltd. v/s Union of India, A.I.R. 1980 SC 1789
\(^7\) T.Damodar Rao v/s Special officer, Municipal Corporation, Hyderabad, A.I.R. 1987 AP 171
\(^8\) Sachidananda Pandey v/s State of West Bengal, AIR 1987 SC 1109
The new provision of Article 48A which was incorporated through section 10 of the Constitution (42nd Amendment) Act, 1976 in part IV under Directive Principles of State Policy is the only concept directly related with environment and ecology. Article 48A obligates the state to endeavor to protect and improve the environment and to safeguard the forests and wild life of this country. To enable effective steps being taken for purpose, wildlife and forests have now been placed in the concurrent list so that the Central Government may play a meaningful role in this increasingly significant area. Lots of legislation has been made in this context including the Wildlife Protection Act, 1972 and the Biological Diversity Act, 2002.

In a famous wildlife case Delhi High Court explained the importance of DPSP on environmental protection. High Court said, “Directive principles are fundamental in governance of the country they must be given primacy. They can be effective only when they are given priority and preeminence over the fundamental rights of a few in order to subserve the common good of the people. If unbridled exercise of fundamental right results to the common detriment of the community at large, it can be restricted, abridged or prohibited in order to promote common good of the people as envisioned by part IV of the constitution relating to the directive principle of the state policy. The directive principles of the state policy have laid down the for the country to follow in order to achieve its goals.”

The Delhi High Court in the same case very lucidly explained the role and utility of Article 48A and it should not be compromised with any other legal rights.

FUNDAMENTAL DUTIES

Originally the part IVA i.e. fundamental duties part was not in the Indian constitution at the time of its inception. Through the section 11of the Constitution (42nd Amendment) Act, 1976 a new part with 10 new clauses (now 11 clauses after 86th Amendment in 2002) under Article 51A was inserted in the constitution. In this part IVA, clause (g) of the new Article 51A of the constitution requires every citizen to protect and improve the natural

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89 M/s Ivory Traders and Manufacturers Association v/s Union of India AIR 1997 Delhi 273 FB
environment including forests, lakes, rivers and wildlife and to have
compassion for living creatures. It was great efforts by parliament directly deal
with the ecological matter and to impose duty upon citizen to take care about
wildlife. If any citizen is not protecting or causing harm to the wildlife then he
is not performing the fundamental duties towards the state. Originally this
amendment was made on the recommendation of the Swaran Singh Committee
which proposed an 8 point code of fundamental duties.\textsuperscript{90} According to V.R.
Krishna Iyer it is the duty of every citizen, be he minister or judge, legislator or
administrator, corporate official or common man, to protect and improve the
natural environment and to have compassion for living creatures.\textsuperscript{91} Though
initially the Fundamental Duties were not in the Constitution of India but the
concept of these duties were very much in practice in international level
especially among the socialist and communist countries like USSR,
Czechoslovakia etc. Though there were nearly 50 countries already enumerated
duties in their constitution and Indian constitution was very much inspired
mainly by Japanese Constitution.\textsuperscript{92} After the 42\textsuperscript{nd} Amendment of Constitution it
is the duty of every citizen to protect and improve the Forests and Wildlife
within the country.

\textbf{73\textsuperscript{RD} AND 74\textsuperscript{TH} AMENDMENT AND LOCAL GOVERMENTS}

Again for the purpose of development in grass root level and decentralization
of power 73\textsuperscript{rd} and 74\textsuperscript{th} Constitutional Amendment were enacted by Narasimha
Rao Government in December 1992 which came into force 24\textsuperscript{th} April 1993.
Before that 1977 Janata Dal Government appointed ‘Asoka Mehta Committee’
to examine Panchayati Raj System in various States. The 73\textsuperscript{rd} Constitutional
Amendment Act was related a powerful opportunity for utilizing local
institutions, like Panchyats and Municipalities for conservation of natural
resources. The extension of this Amendment has given more responsibilities to
local communities’ in natural resource controls and conservations also.

\textsuperscript{90} Select Constitutions; A.C.Kapur&K.K.Misra; S.Chand; Pp 122
\textsuperscript{91} Constitutional Miscellany, V.R. Krishna Iyer, Pp 236
\textsuperscript{92} The Fundamental Duties by Vinod Sethi, Indian Express, New Delhi; September 30, 1976
Through 73\textsuperscript{rd} Amendment Act, almost all States of India adopted new system of Panchyati Raj in administration of rural area.

The 74\textsuperscript{th} Amendment to the Constitution gave more power to the local institution of the State Government like Nagar Panchyat, Municipal Councils and Municipal Corporations to legislate rule as decided by the Schedule XII. Protection of the environment and promotion of ecological aspects is one of the functions enumerated in the Schedule XII apart from urban planning including town planning, planning for economic and social development, public health, sanitation, conservation and solid waste management and slum improvement and up gradation.

These constitutional amendments not only gave the power to the local government to protect their natural resources in the environment but also given power to protect their traditional right against the declaration of protected areas. The Panchyats (Extension to the Scheduled Areas) Act, 1996 was the first step giving primacy to Gram Sabha and Village Panchayats and every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchyats at the Village level. Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution. Its powers and responsibilities included approving plans, programs and projects for social and economic development before they are taken up for implementation by the panchayat at the village level identification or selection of persons as beneficiaries under the poverty alleviation and other programs.\textsuperscript{93} The Salient Features of the Law for Extending Provisions of the Constitution (73\textsuperscript{rd} Amendment Act 1992) to Scheduled Areas is known as the Bhuria Committee Report (after its chairman Dilip Singh Bhuria, MP from Jhabua). The Report is based on the Constitutional provision that panchyati raj (local government) institutions in tribal areas may be formed in ways that accommodate traditional tribal

\textsuperscript{93}YOJANA, September 2008, Pp 40
structures of authority. 94 Through this decentralisation of legislative power conservation may be possible from very grass root level.

RIGHT TO ENVIRONMENTAL INFORMATION

In the field of environmental law the right to information has become a useful machinery to get the justice and get relief from all the pollution. The judiciary played an important role to deliver this justice in the form of precedent. In Raj Narain 95 case Justice Mathew held that the people of this country have the right to know every public act, everything that is done in a public way. 96 But particularly in the matter of environmental cases judiciary established a milestone to in the L.K.Koolwal97 case where Rajasthan high court said the ‘right to know’ entitle a person to get the information about the sanitation program of municipal corporation. The right to get the environmental information from the public authority is now a guaranteed fundamental right.

Though judiciary has given justice for right to information in environmental cases, but in the mode of statutory rights it is also given in some legislation also. Section 43(i) of Air (Prevention and Control of Pollution) Act, 1981 and at the same time Section 49(i) of Water (Prevention and Control of Pollution) Act, 1974 put Pollution Control Board (PCB) under an obligation to disclose information which is in their possession to a citizen who wants to prosecute a polluter unless it is against the public interest. 98 But there was a need for separate legislation for regarding the information rights like other European countries and following the model of western jurisprudence. So finally ‘The Freedom of Information Act, 2002’, was enacted by Indian parliament after the assent of the President of India on 6th January 2003, provides for freedom to every citizen to secure access to information under the control of public

94 Tribal politics and sustainable development, Amita Baviskar, Environmental Movements in India, ed. by S.N.Power, R.B.Patil S.A.Salunkhe, Rawat publication; Pp 62
95 State of U.P. v/s Raj Narain, AIR 1975 SC 865
97 L.K.Koolwal v/s State of Rajasthan, AIR 1988 Raj. 2
authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected there with or incidental there, according to Preamble of the Act.

Again Indian parliament realized the huge demand of information in the modern democracy and to cope with the situation later parliament repealed ‘The Freedom of Information Act, 2002’ and enacted new law ‘The Right to Information Act, 2005’. Indian government also felt for a progressive and meaningful law in order to ensure greater and effective access towards the information which had been proved by judiciary several times as a right. So parliament repealed the act of 2002 and finally legislate the new law to provide an effective frame work for effectuating the right to information in this country and now ‘The Right to Information Act, 2005’ is treated as a milestone in the field of social justice in India to impart information to the citizens regarding working of the state machinery to make them more transparent to check the corruption in greater level.

DEVELOPMENT IN THE DECADE OF 1970s
Modern wildlife laws were developed and got their reorganization in India mainly after the Stockholm Declaration in 1972. Even in 1967-1968 Union and State governments spend many funds for the development of forest departments and protection of trees. The wildlife department had less important status than other environmental and forest matters. But before the 1972 lots of laws were also very much active in different states in India and many policies were adopted by central and state governments. Some major voluntary groups have played important roles for conservation of wildlife in India and World Wildlife Fund (WWF) was one among them. Established in early 1960s, it was a catalyst for governmental action for conservation program in India and also helped over a million dollar for the tiger saving program. The Tenth General Assembly meeting of International Union for the Conservation of Nature (IUCN) was held in New Delhi in 1969. In this historic meeting experts across the world elected to put the Indian tiger on the ‘endangered list’ of the IUCN
against the all protests of a cohesive body of commercial safari operators and old time hunters. India’s intentions were expressed by Indira Gandhi in her inaugural address. She said, “. . . . . We do need foreign exchange but not at the cost of the life and liberty of some of the most beautiful inhabitants of this continent. . . .”

The origins of Indian environmentalism lie in the early 1970s when a number of events generated new awareness which spread on urban India also. In March 1974 women of the Garhwal Himalaya launched the famous Chipko Andolan to save forests from the axe of contractor. Around the same time many Kuki and Mizo villages revived their traditions of protecting the forest encircling their habitations, while villagers in the hills of Karnataka were spontaneously setting up forest protection committees. In 1977, a seasoned administrator B.B. Vohra wrote a seminal paper on ‘Soil and Water conservation’ and a veteran planner Pitambar Pant founded the “National Committee on Environmental Planning”. During the period of 1970s was the time towards preservation of natural resources in India in accordance with the provision of international instruments. Since then India made some tough laws to prevent hunting and trading of tigers but proper implementation and inadequate guards and machinery could not protect animal resources in such level. Then Prime Minister Indira Gandhi was responsible for the beginning of a new era in wildlife conservation in India. After traveling to a Kenyan Wildlife Reserved Forest, she was very much impressed about the importance of wildlife in nature and she was personally associated with several wildlife institutions like, Delhi Bird Watchers’ Society where she served as President also. Chipko movement of 1970s raised the level of environmental awareness in the country and many important people like great ornithologist, Dr Salim Ali, and his cousin Zafar Futehally, were very much a part of the evolving conservation movement of India. Both of them were advisors of then Prime Minister, Indira Gandhi on conservation issues. Salim Ali was the first

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99 India’s Wildlife History AN INTRODUCTION; Mahesh Rangarajan; Pp 95
100 Ecological Journey, Madhav Gadgil, Pp 200
101 India’s Wildlife History AN INTRODUCTION; Mahesh Rangarajan; Pp 98
Indian scientist to give the wealth of India’s natural heritage and also to make pioneering contributions to science, as well as shape the emerging movement to conserve nature. A small committee set up by her first under the chairmanship of Dr. M.S.Swaminathan, and after N.D. Tiwari, to advise the Indian Government of environmental issues.

Apart from the making of Wild Life (Protection) Act in 1972, lots of reserved forests, national parks and sanctuaries were established in the those periods. One active role of Mrs. Gandhi was seen regarding the protection of wildlife in Guindy National Park in Chennai. In an unscheduled visit to Snake Park in Chennai, she was convinced by conservationist Siddhartha C. Buch about threats to wildlife of that particular area which was declared as Deer Park by Jawarlal Nehru in 1959. Finally the area was declared as National Park with her initiatives after receiving a telegram from them. The rights of the rulers of Indian princely states were also abolished during those periods which helped for protection of wildlife and natural resources within their reserve areas and sanctuaries. Another instance is in the case of Namdapha in Arunachal Pradesh for which Dr. Salim Ali appealed it should be left as an index of a vanishing environment. In 1970 it was declared as reserved forest under the Assam Forest Regulation Act, 1891, in 1972 as Wildlife Sanctuary, finally a Tiger Reserve in March 1983 and a National Park in May 1983. It has also been proposed as a biosphere reserve.

Bharatpur which is bird’s paradise and Ranthambore which was open field for tiger shootings and many others were saved from Indian rulers and established as either sanctuary or National Park. So the privy purse with many other rights were extinguished to Indian rulers by The Constitution (26th Amendment) Act, 1971 and Indian national government made their strong sovereignty over natural resources including forests and wildlife. India was a major exporter in international markets of reptile skins, cat skins, ivory, live

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102 Ecological Journey, Madhav Gadgil; Pp 250
103 India’s Wildlife History AN INTRODUCTION; Mahesh Rangarajan;Pp 290
104 Threaten Forests, Forgotten People, Aparajita Dutta; Making Conservation Work, edited by Ghazala Shahabuddin & Mahesh Rangarajan; Pp 175
birds, frog legs and live mammals like rhesus macaques and lesser cats. In the context of snake the trade for skins was rampant. In 1932 about 2, 50,000 snake skins were exported from India and nearly 10 millions of snakes of various species valued at Rs. 107 million were slaughtered even in 1968 for trade. In spite of earning of huge foreign currencies India prevented killing of these natural pest controller for the benefits of ecosystem in the country. Since 1971 the Snake Park at Guindy in Madras is the major project for conservation of snakes and also other reptiles including turtles. In 1976, India legally prohibited snake skin trade to the Europe countries or Japan for fashionable bags and shoes. The process of environmental development continued even after the fall of congress government in the power of New Delhi and several north Indian states. Then the new Prime minister, Morarji Desai, took a strong step to restrict the export of rhesus monkeys in the foreign countries for scientific experiment. In this time nearly three types of species of crocodile was saved from near extinction.

So conservation of ecology with biological diversity is mainly recent development of environmental awareness during the period of 1970's. The Wildlife (Protection) Act, 1972 and The Forest (Conservation) Act, 1980 were the two pioneer conservation statutes in the field of environmental laws with an object of natural resources management in India. But rather than satisfying human needs, wildlife and forest were to be protected and allowed to survive as a matter of right. According to legal experts the Forest (conservation) Act, 1980 was not a protective legislation and required prior approval of central government for carrying out any prohibited activities as mentioned in the statute. Even in British period also some policies and legislations were made but those were not directly for ecological purpose at all. The first forest policy was promulgated by then Governor General, Lord Dalhousie in 1855 and in 1865 Indian Forests Act was enacted and again in 1878 another Indian Forest

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105 The Hunter and The Hunted; Conservation with Marginalized Communities, Bahar Dutt, Rachel Kaleta and Vikram Hoshing; Making Conservation Work, edited by Ghazala Shahabuddin & Mahesh Rangarajan; Pp245
106 India's Wildlife History AN INTRODUCTION; Mahesh Rangarajan; Pp 269
107 Introduction, Supreme Court On Forest Conservation, Ritwick Dutta, Pp xiii
Act was passed relating to management of forests in British India. But the object behind such policy and legal framework was to rule over the natural resources of forest as state property rather than ecological purpose and no individual and community rights were recognized. During the British period, reservation of forests across India only partly aided in their protection and ecological value of rainforests gained popularity for their high levels of timber production. In south India on the Valparai plateau was converted to plantations just to generate more revenue. But protection for particularly for ecological purpose was started very later nearly 100 years after first forest policy by British government and then finally real conservation process started during 1970s in India and in 1988 first forest policy was taken by Indian government purely ecological purpose to conserve the natural resources.

All the major statutes made during 1970 to 1980, The Environmental (Protection) Act, 1986 is the one which is now being implemented and relied upon in an effort to protect the environment. The strict regulation of environmental legislation mostly borrowed from west and the end product of treaties and conventions without local concerns has simultaneously raised many human rights issues. In International level many conventions and multilateral agreements were organized by United Nations as well as various international organizations also which gave the new dimension to the legislative field of environmental laws in India.

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109 Environmental Law and Policy in India, Shyam Divan and Armin Rosencranz; Pp 35
111 Environmental Justice: Scope and Access, Hon'ble Justice Sunil Ambwani, AIR 2007 Journal 49
4.4.2. DIRECT LEGISLATIONS ON WILDLIFE CONSERVATION IN INDIA

After the enforcement of constitution in India, The Wildlife Protection Act, 1972 is the only legislation relating to wild animals and birds in independent India. Due to rapid depletion in wildlife and destruction of natural resources in India there was urgent need of strong in central legislation. But the legislative competence was only in the hand of state legislature as ‘Wild animals and Birds’ was a subject under Entry 20 of ‘State List’ of Schedule VII in Indian Constitution. Finally the legislature of states of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal passed resolutions in pursuance of Article 252 of the constitution empowering Parliament to pass the necessary law for conservation of wild animals in India. After considering the inadequacy of existing laws in various states, Central government realized the requirement of a comprehensive legislation for the protection of birds and wild animals for all matters connected therewith or ancillary and incidental there to. This Act is the first realistic step about a national policy of conservation and has laid provision for creation of sanctuaries and national parks with deferent degrees of protection. Though the concept of core area and buffer areas are commonly used for wildlife management but has no legal entity under this Act. In 1985 a Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region stressed on the concept of buffer areas mentioning that the contracting parties may strengthen the protection of a protected area by establishing, within areas under their jurisdiction, one or more buffer areas in which activities are less severely restricted while remaining compatible with the purposes of the protected area.112 This Act was extended whole India in 1991 except Jammu and Kashmir.

The concept of modern wildlife conservation was non-existent in the country before 1972 and strict measures of conservation laws were introduced with the enactment of the Wildlife Protection Act to reverse rapidly depleting

112 Wildlife and Applicable Laws; V.K. Prabhakar, Pp 147
wildlife in the country. The role of Mrs. Indira Gandhi with some famous conservationists for enactment of this legislation was undoubtedly very important. M.K. Ranjitsingh who was an IAS officer as well as member of the former princely state and Kailash Sankhala who was a forester and also very much against the concept of hunting as well as commercial forestry took the major role for drafting this statute.\textsuperscript{113} So one side various there were international conference relating to wildlife and environment awareness and other side enthusiastic prime Minister with many conservationists created ecological knowledge in the lobby of parliament in national level. All these incidents generated an important platform for making an important wildlife law in India. The main aims of this statute were to

(a) Constitute Wildlife Advisory Board for each state;

(b) Regulate hunting of birds and wildlife;

(c) Establish rules for declaring protected areas like sanctuary, national park or reserve forest;

(d) Restrict, control and regulate the trade in wildlife and any animal articles;

One side with the commitment of an international agreement of CITES for regulating international trade on wildlife and tiger parts and other side the impact about the insertion of environmental provision through constitutional amendment in 1976, India enacted its first and only comprehensive national conservation law for wildlife i.e. The Wildlife (Protection) Act, 1972 after many wildlife and cattle protection legislations in the state levels and followed by The Forest Conservation Act of 1980.

The Wildlife (Protection) Act, 1972 introduce a new dimension of ownership of forest by managing forest resources and conserving the wildlife resources. This law used to save critical areas and endangered wildlife from dams, mines, cities and expanding agricultural land. This statute has an impact of three dimensional necessities i.e. ecological, international and constitutional. Ecological in that sense after independence India was suffering from huge degradation of wildlife and other natural resources. Due to the hunting, heavy

\textsuperscript{113} India's Wildlife History AN INTRODUCTION; Mahesh Rangarajan; Pp 98-99
use and misuse of wildlife by feudal heads of princely states and by English rulers India got an attack of sudden depletion of natural resources and wildlife. So ecologically protection of wildlife was very much needed on that time.

The urgent need of Wildlife (Protection) Act, 1972, was very beautifully interpreted by Supreme Court and it said, "... The rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in the country and others are in the danger of being so. Areas which were once teeming with wild life have become devoid of it and even in sanctuaries and National Parks the protection afforded to wildlife needs to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912), has become completely outmoded. The existing state laws are not only out-dated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in wildlife produce. Further, such laws mainly relate to control of hunting and do not emphasize the other the other factors which are also prime reasons for decline of India's wildlife, namely, taxidermy and trade in wild life and products derived there from. . . ." 114 Some major steps were taken for the first time for conservation of wildlife in India.

The statute introduced some new concepts for protection through its various amendments:-

(a) Restriction on hunting
(b) Protection of flora
(c) Declaration of protected areas
(d) Regulation of trade in wildlife

114 M/s Ivory Traders and Manufacturers Association v/s Union of India AIR 1997 Delhi 273 FB (Para 13)
According to the provision of this statute one Director of Wildlife Preservation with the help of Assistant Directors and other officers are to function at the major cities of India for prevention of illegal trade and smuggling in the country. The Director is a coordinating agency for inter-state trade and transfer of animals and animal products. Again under this Act, Chief Wildlife Warden, Wildlife Wardens honorary Wildlife Wardens and such other officers have been appointed by the state Government in different states under the purview of the Act. Chief Wildlife Warden is responsible to take effective measures for regulating legal hunting trade, poaching and to take penal measures within the state and also the management of wildlife sanctuaries, national park and reserve forest.

RESTRICTION ON HUNTING

Though from beginning prevention of hunting was the one of important aim of this law but under Section 9 only the animals of Schedule I got the protection from hunting and game reserve was also in practice. After the Amendment of 1991 of the Wildlife (Protection Act), 1972, no person shall hunt any wild animal as specified in Schedules I, II, III and IV of the Act. Very wide definition of hunting is given in Section 2(16) where apart from killing and poisoning hunting is also included capturing, coursing, snaring, trapping driving or baiting. These are applicable not only in the case of wild animals but captive animals also. Again injuring and destroying or taking any body parts of animals and damaging or disturbing of eggs and nests of birds and reptiles all are coming under the preview of definition of hunting. However, hunting of wild animals is allowed in Certain Cases as per Section 11 of the Act, when any animal of Schedule I, II, III or IV become dangerous to human life or so disabled or diseased beyond recovery then after the permission of Chief Wildlife Warden. The permission of hunting may be granted by Chief Wildlife Warden for Special Purposes under Section 12 for education, scientific research, scientific management, collection of specimen for zoos or museum and also collection of snake venom for life saving drugs. As per this law wild animals are property of State government and no person shall acquire
or keep in his possession, custody or control or transfer to any person by way of gift, sale or otherwise destroy or damage such government property as mentioned in Section 39 of the Act without the previous permission of the Chief Wildlife Warden in writing. If such animal is hunted in a Sanctuary or National Park declared by the Central Government, such animal or any article, trophy, or vehicle, weapon or tool used in such hunting shall be the property of the Central Government.

Seven animals were listed in Schedule-V as vermin in the original Act where Section 9 is not applicable. Three animals including common Fox, Jackal and Wolves were removed from list of vermin subsequently in 1977 and 1980. Only four species common crow, fruit bats, mice and rats are treated as vermin and being wild animals those are permitted to be hunted. Though this law made some strict provisions for conservation of Wildlife and lots of restrictions were imposed on hunting but right of scheduled tribes relating to hunting was protected by this law. According to Section 65 of Wildlife (Protection) Act, 1972 this law is inapplicable for the tribes within the Territory of Andaman and Nicobar Islands. Those areas will be mainly guided by according to Notification of “Andaman and Nicobar Administration, No. 40/67/F No. G 635, Vol.III” issued on the Andaman and Nicobar Gazette, dated the 28th April, 1967.

Indian judiciary has also strictly prohibited the hunting within the country in interpretation of this provision. In Rajendra Kumar v/s Union of India\textsuperscript{115} case Rajasthan High Court made mandatory for every transporter not to transport wildlife without proper permission and also directed that Central Government and individuals can file complaints in court for offences under the Act in order to check degradation and depletion of wildlife population. The Supreme Court, widen the concept of hunting and in Chief Forest Conservator (Wildlife) v/s Nisar Khan case\textsuperscript{116} decided that trapping and dealing of birds in captivity is amount to hunting and is prohibited by Act. In this statute some

\textsuperscript{115} AIR 1998 Raj 165
\textsuperscript{116} AIR 2003 SC 1867
strict penal provisions were later introduced for preventive actions against all the crimes related to wildlife. Originally this law had several substantive as well as procedural provision in the Chapter-VI as “Preventive and Detection of Offences” from Sections 50 to 58 and again a new Chapter-VIA as “Forfeiture of Property derived from Illegal Hunting and Trade”, was inserted through 2003 Amendment to give some extra teeth in Act for rapid expansion of wildlife crimes.

AMENDMENTS OF 1982

The Amendment Act of 1982 had the main aim to provide approval of Central and State Government for capture and translocation or transportation of wild animals specified in Schedule I for scientific management. Section 12 was amended permitting the capture and translocation of wild animals for scientific management which may be necessary in the case of Elephants for their population management or for introduction alternative suitable habitat of endangered species like the Great Indian Rhinoceros and the Asiatic Lion. The term ‘Scientific management’ was introduced for the betterment of wild animals. This Amendment had also a necessity to make a guideline for granting licenses for carrying on business in trophy and articles on wildlife.

AMENDMENTS OF 1986

Another amendment was made in 24th October, 1986 to give an effect to the international problem. This 1986 amendment totally abolished all internal trade of wild animals and animal articles. If Central Government thinks it is necessary and expedient for public interest, then trade may be allowed on these articles through its agencies which will be substantially funded by Central government. So, one of the main objects of this Amendment was to prohibit trade in certain specified wild animals or their derivatives and also no one will be permitted to trade in wild animals specified in Schedule I or part II of Schedule II within a period of two months from the commencement of this Amendment. The Amendment Act 1986 (Act no. 28 of 1986) made several changes and a new Chapter VA was inserted. As per international norms of CITES, central government transferred Indian Elephant at Entry 12B in
Schedule I of the principal Act. It was the most important step towards protection of Indian Elephants. The killing of elephant came illegal and trade and commerce in Indian Elephant was totally became illegal. The exemption to the declares in Ivory under the Second proviso to Section 44 (1) was also removed to enforce a total ban in dealing in Indian ivory and simultaneously to provide for some regulation over the manufacture and trade of articles made out of imported Ivory. The Stocks declared by the traders at the commencement of the Wild Life (Protection) Act, 1972 are till stocks of skins of some wild species was also treated as illicit trade.

AMENDMENTS OF 1991

This Amendment was very important in many senses and had main object to give legal protection to the inmates of zoos in India and at the same time to bring the specified plants under the ambit of wildlife and again to prohibit the hunting totally in India. India enacted this Amendment Act (Act no. 44 of 1991) mainly to give effect of an international obligation of ‘Convention of International Trade in Endangered Species of Wild Fauna and Flora’ (CITES) where India was party. In 19th January 1990, the African elephant was included in ‘Appendix 1’ of the CITES. So as a member state of the convention and to save the Indian elephant also parliament passed this amendment and prohibited internal and Trans border trade in ivory. This Amendment was made to prohibit import and export of African Ivory for commercial purpose and also regular extraction of snake venom from Cobra and Russell Viper for producing drugs. The 1991 amendment brought radical change relating to Hunting for pleasure or game was prohibited. The terms like special game, small game or big game in the schedules and procedure about declaration of game reserve were deleted. So killing of animals for game is strictly prohibited under present laws. If the wild animal specified in Schedule I of Act becomes dangerous to human beings or is disabled or diseased beyond recovery only then it can be killed with permission from the wildlife warden. Animals specified in other schedules can also be hunted with permission either from the warden or from an authorized officer on similar conditions. This 1991 Amendment provide for appointment
of ‘Honorary Wildlife Wardens’ and also payment of rewards to persons helping in apprehension of offenders.

**Laws for hunting under Wildlife (Protection) Act, 1972**

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*Table 7*

After the amendment of 1991, nearly 890 animals were included under the schedules I to VI to protect legally under the provisions of this Act. Amendment of 1991 made some radical provision to prohibit collection and exploitation of wild plants which were threatened with extinction. This Amendment included the term ‘Specified Plant’ or wild plant within the concept of ‘Wildlife’. A new Chapter-IIIA was inserted as “Protection of Specified Plants” from Sections 17A to 17H where cultivation and trade of specified plants would be permitted under license. The provisions, however, would not affect the collection of traditionally used plants for the bona fide personal use of the tribals
The provisions of National parks and Sanctuaries are proposed to be extended to the territorial waters to protect offshore marine flora and fauna. The new Section 26A also provided that while declaring any part of territorial waters as a sanctuary, due precaution should be taken to safeguard the occupational interests of local fisherman in consultation with the Chief Naval Hydrographer of Central Government. It was proposed to make provisions for compulsory immunization of live-stocks in and around National Parks and Sanctuaries and finally Section 33A was introduced for immunization of livestock by the measure of Chief Wildlife Warden.

This Amendment introduced new Chapter IVA as “Central Zoo Authority and Recognition of Zoos”, containing Sections 38A to 38J, to develop the power of ‘Central Zoo Authority’ for the management and monitoring the functions of zoos throughout the country and also to provide a rule for an application for recognition to the ‘Central Zoo Authority’ in a prescribed form. All those zoos have to fulfill minimum standard of maintenance to be notified by Central Government.
AMENDMENTS OF 1993

An important change through this Amendment was made to ‘Central Zoo Authority’ to control the functioning and development of zoos in the country and also to restrict those activities which were the causing disturbance to animals into zoo punishable offence. It was provided under new Section 38H that the no zoo would be operated without being recognized by the Central Zoo Authority after 1991 Amendment. The prescribed fees will be paid in the prescribed form within a period of six months from the date of such commencement. This provision was brought into force from the 4th February, 1992. Therefore, no existing zoos could make an application for recognition within the period of Six months which expired on the 4th August, 1992. In order to obviate this difficulty, the president promulgated the Wildlife (Protection) Amendment Ordinance, 1992, on the 23rd October, 1992 extending the period of six months under said Section 38H to eighteen months with effect from 4th February 1992.

AMENDMENTS OF 2003

The Central Government constituted an inter-state committee in the year 1995 comprising representatives from the Central and State Governments, non-governmental organizations and various institutions and experts to review the wild life habitats on co-operative and scientific lines as well as effective control of increased poaching and illegal trade of wildlife products. On the recommendation of committee some changes were made in the Act through 2003 Amendment. In the year 2002, an exhaustive amendment [Act No. 16 of 2003] was made to “The Wildlife (Protection) Act, 1972” which came into force in the year 2003 from 1st July. It provides for the constitution of ‘National Wildlife Board’ as an administrative mechanism for management of wildlife instead like an advisory institution in the past. The National Wildlife Board takes measures for the promotion and development of wildlife and forest and shall be responsible for various projects and activities on wildlife and protection of its habitat. No construction of hotels, zoos, and safari parks shall be allowed inside the National Parks and Sanctuaries without prior approval of
National Board in India. Amendment tried to expedite the process of final notification of Protected Areas and alteration of in the National Parks and Sanctuaries shall be made on the recommendation of ‘National Board for Wildlife’ to check the declination of biological diversity during the intervening period between the first and final notification. This Amendment also inserted a new Chapter-VIA as “Forfeiture of Property derived from Illegal Hunting and Trade” to curb the heavy expansion of crime relating to wildlife trade. This Chapter containing Sections 58A to 58Y mainly to prevent the activities of habitual offenders and also to seize property related to animal product of scheduled wildlife. Section 58N in this chapter deals about constitution of Appellate Tribunal and other procedures about trial and fines are also mentioned here.

Two new concepts of Protected Areas i.e. Community Reserves and Conservation Reserves were introduced for sustainable management of natural resources. The declaration such reserves are aimed at improving the socio-economic conditions of the people living in those areas as well as conservation of wild life. Conservation reserve and community reserve would be managed on the principles of sustainable utilization of forest produce. The members of the local communities would be involved in their management through management committees. CONSERVATION RESERVE would be an area owned by the State Governments adjacent to national parks and sanctuaries for protecting the landscape, seascape and habitat of fauna and flora. Further, it is also proposed to empower the State Governments to notify any community land or private land as COMMUNITY RESERVE provided that the members of that community or individuals concerned are agreeable to offer such areas for protecting the fauna and flora, as well as their traditions, cultures and practices.

AMENDMENTS OF 2006

Despite the stringent provisions in the Amendment Act of 2002, there were number of cases relating to the illegal entry into forests and poaching of endangered species mainly tiger. The Wildlife (Protection) Amendment Bill 2006 was passed by parliament after a long debate and conflict with several
groups of environmentalists. This amendment is very much important for ecological as well as sociological standpoint. The amendment of 2006 mainly is aimed for a mechanism to balance the livelihood and the needs of the local people around the forest with the imperatives of tiger conservation. One side this amendment is providing about the establishment of ‘National Tiger Conservation Authority’ the implement the project tiger plan for protecting endangered tiger species and on the other side to facilitate the Project Tiger Plans prepared by the state Governments talking into account the needs and concerns of the local people. Parliament in the same year also passed ‘The Forest Right Act’ for livelihood and habitat of indigenous and traditional forest dweller and schedule castes.

Another important feature of 2006 Amendment of the Act is the enhancement of sentence for wildlife crime mainly related to tiger reserve. A new sub-section i.e. 1-C was added to Section 51 of the Act through this amendment. In the case of 1st conviction the imprisonment shall not be less than 3yrs and may extend to 7 years. In the case of fine, it shall not be less than 50 thousands rupees and extend up to 2 Lac rupees. In the case of 2nd time or subsequent conviction imprisonment will be of not less than 7 years and also with fine which shall not be less than 5 Lac rupees but may extend to 50 Lacs rupees. Amendment Act of 2006 is based on the recommendations of the Tiger Took Force (TTF), appointed by the Prime Minister after a nation wide hue and cry after the Sariska’s tiger vanishing incident and other various reports of tiger and wildlife killing across the country. The new and Act intends to redefine the wildlife legislation by enacting the suggestions made by Tiger Task Force to strengthen the methods of conservation of tigers and other endangered species. NTCA and Wildlife Crime Control Bureau will continue to combat wildlife crimes. This amendment act was also modified in parliament to introduce the category of critical tiger habitat. This inclusion has been used by conservation lobby to bring almost entire land of protected area under critical tiger habitat.
The Amendment Act 2006 had twin objectives of tiger conservation and harmonizing the right of tribal people living in and around tiger reserves. To balance with the protection of wildlife and right of the forest dweller some changes were made in this amendment. Two new chapters were inserted, Chapter IV-B deals with establishment of ‘National Tiger Conservation Authority’ and Chapter IV-C tells about establishment of ‘Crime Control Bureau for Tigers and Others Endangered Species’ in India. While replying to the debate on the bill in the Parliament, then Minister for environment and forest A. Raja said, “The bill envisages setting up a National Tiger Authority for the first time in the country. Also, a separate investigative body would be set up for the first time.” The National Tiger Conservation Authority was constituted by central the government consisting of chairperson, vice-chairperson, members of Parliament, Secretary of environment ministry, chairperson of National Commission for SC and ST, inspector general of forests etc. The crime control bureau for tiger and other endangered species has been established to prevent and control the crime against wildlife. It can also discharge recommendation to government, take own action to prohibit crimes and issue directions in writing to any person for protection of wildlife. In spite of several harmonization, according to some critics ‘The Wildlife (Protection) Amendment Act’ of 2006 is full of conflict between wild animals and tribal communities or traditional forest dwellers i.e. right to environment one side and rights of tribal or forest dwellers other. Even regarding the issue of this bill, the environmentalists were divided into two groups, one pro-tribal and other anti-tribal. Some wildlife conservationists criticize the 2006’s Amendment Act as the impact of the ‘Schedule Tribes and Other Traditional Forest Dwellers (Reorganization of Forest Rights) Act, 2006’ with the main objective to safeguard the interests of forest dwellers and not to safeguard Wildlife within the forests. The objective of both the statues some extent clash with each other and again some tribal rights activists criticize that tribe’s rights are guaranteed

117 Central Legislation, Prof. S.Sivakumar, Annual Survey of Indian Law, ILI, Vol-XLI, 2006
118 The Times of India, (26.8.2006)
under this Forest Rights Act of 2006 only after ensuring the provisions related to the conservation of forests and Wildlife. So according to them among the tribal and tiger, the first preference is given to the tiger than those tribal and forest dweller who are living time immemorial in the same habitat.

SUBORDINATE LEGISLATIONS FOR WILDLIFE PROTECTION

Several delegated legislations including rules and regulations have been made by central government in exercise of powers as per Section 63(1) (b) of Wildlife (Protection) Act, 1972 for protection of wild animals and proper execution of legal provisions within the country. In 1973, the Wildlife (Transaction and Taxidermy) Rules were made to control transport, taxidermy and making animal articles and in the same year Central rules were made relating to stock declaration of captive animals, animal article, trophies etc by manufacturer, dealer or others. In exercise of the legislative power central government legislated the Recognition of Zoo Rules, 1992 for taking proper care and protection of animals inside the zoos and in 1987 notified an order to all forest secretaries and chief wildlife wardens of states and union territories to prohibit and take necessaries actions against zoos for sale of excess animals to circuses. Recently this rule is introduced as Recognition of Zoo Rules, 2009 with modifications. In 1995, the Wildlife (Protection) Rules were issued to specify the authorised persons of central and state government to whom 60 Notice may be given relating to cognizance of offences. Again in 1995, two Rules were passed by central government relating to specified plants for issuance of license for possession and procedures for stock declaration. One guideline was made by executive authority for appointment of honorary Wildlife Wardens for states. After the 2003 Amendment of the statute, another stock declaration rules has been made by central government in reference of Section 40A through which a proper scope of hearing is given before Chief Wildlife Warden or any other authorised officers. The National Board for Wildlife Rules was also published in 2003 about constitution, meetings, removal of members and other relevant matters. In 2006, the National Tiger
Conservation Authority (Qualifications and Experience of Experts or Professional Members) Rules has been legislated to specify qualification and experience of members of National Tiger Conservation Authority which has got legal sanction under Section 38L through 2006 Amendment of Wildlife (Protection) Act, 1972. Again National Tiger Conservation Authority Guidelines, 2007 has been made relating to Tiger Conservation Foundation established under Section 38X of the statute and Tiger Conservation Authority Fund (Regulation) Guidelines, 2007 also has been legislate to regulate the operation of fund constituted under Section 38Q (2) of the main Act after 2006 amendment. So all of those subordinate legislations passed by central government for proper execution of legal provisions for protection of wildlife and betterment of ecology.

POSITION OF PROTECTED AREAS WITH NATIONAL PARK AND SANCTUARY UNDER LAW

The optimal level of green vegetation and palatable species of trees, herbs and shrubs indicate the status of wildlife upon which the herbivores can feed and then all the animals of food chain. Protected areas make a vital contribution to the in-situ conservation of the world's natural and cultural resources. Values range from retention of representative samples of natural regions and the preservation of biological diversity, to the maintenance of environmental stability of surrounding regions. So wildlife and forest have symbiotic relationships and existence of one reinforces the existence of another. It is important that spotting of wild animals depends greatly on their habit and distinct daily and seasonal patterns of activity. The frequency of wildlife sightings in national parks and wildlife sanctuaries varies depending on the time of the year. Protected areas can also provide an opportunity for rural development and rational use of marginal lands, for research and monitoring, for conservation education, and for recreation and tourism. As a result, most countries have developed systems of protected areas. In 2000, nearly 30,000 Protected Areas covering 13,250,000 sq km of the land surface of the world,
smaller proportion of the world's seas (barely 1%), are protected for biodiversity. The term ‘Protected Area’ was defined at the IVth World Congress on National Parks and Protected Areas (Caracas, Venezuela, 1992) as “An area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means.” Again as per Article 2 of Convention on Biological Diversity, 1992, ‘Protected Area’ means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.

There are two methods of conservation policy available in India like rest of the world also. One is an exclusionist policy where total exclusion of forest residents within Protected Areas for wildlife and nature and total restriction on human access and prohibition of customary rights over the forest lands. Another policy is a socialistic approach which considers the interests of local residents and forest dwellers as opposed to the basic norms of conservation. This policy argues for the rights of resident people within the forests and believes total exclusion of indigenous people to be ecologically unsound and socially unjust.

INDIAN POSITION
India is a country having huge diverse flora and fauna, which is hardly found together in any other part of the world. In The National parks and Wildlife Sanctuaries, spread across all parts of India, are thus a living museum of nature's creations with a variety of animals, plants, landscapes and rock formations. The species conservation policy is a western concept which is generally adopted by rich countries as huge financial aids are needed. Whereas projects for protection for total ecosystems are followed by ‘developing’ or ‘underdeveloped’ countries. The Endangered Species Act, 1973 Marine Mammals Protection Act, 1972 of USA is an example of the ‘species approach’

119 IUCN – WCPA [http://www.iucn.org/about/union/commissions/wcpa/wcpa_overview/]
120 Handbook on Environmental Law, Volume-1, Sanjay Upadhyay & Videh Upadhyay, Pp 219
whereas the Wild Life (Protection) Act, 1972 of India is an ‘ecosystem approach’ for conservation of wildlife in the nature. Now there are nearly 100 National Parks, more than 500 Sanctuaries and number of Reserved Forests in India where animals and birds can live in their natural surroundings and also where human being can not go in search of wild animals and untamed nature. In spite of that Biosphere Reserves, Tiger Reserves and Elephant Reserves are also protected areas which have declared through several species conservation programs respectively Man and Biosphere Program (1970), Project Tiger (1973) and Elephant Project (1991) time to time by Central governments. Though those reserves have not been established by separate legislation but administrative procedures have helped some how to solve ecological problems in India.

In international level, IUCN describes a Protected Area as an area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means. Under present Indian laws, various categories of protected areas are available. In India, Section 2(24A) of Wildlife (Protection) Act, 1972 redefines ‘Protected Areas’ after the Amendment of 2003 with some new concepts including Four types of protected areas like:- (1) National Park, (2) Sanctuary, (3) Conservation Reserve, (4) Community Reserve. The old concept of conservation ‘Game Reserve’ was repealed through Amendment Act of 1991 and again the declaration of ‘Closed Area’ and their protection was repealed in 2003 through new Amendment of the Wildlife (Protection) Act. An area could be so declared by State government as closed for hunting under section 37 of the Act. No hunting of any wild animal was permitted in a closed area during the period specified in the notification. Again The Indian Forest Act, 1927 has provision mainly for Reserved Forests, Protected Forests and Village Forests. Though these categories have not emerged from any national scheme for and development of natural biological resources but according to I.A.Khan, the basis of classification of different protected areas were for divergent purposes
that motivate the establishment of protected areas non-consumptive purposes such as wildlife conservation recreation and scientific study on the one hand and consumption purpose aimed at wise use of resources on the other.121

<table>
<thead>
<tr>
<th>Protected Areas under Wildlife (Protection) Act, 1972</th>
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<tbody>
<tr>
<td><strong>After, 1972 Act</strong></td>
</tr>
<tr>
<td>1. NATIONAL PARKS (Sec 18)</td>
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<tr>
<td>2. SANCTUARY (Sec 35)</td>
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<tr>
<td>3. CLOSED AREA (Sec 37)</td>
</tr>
<tr>
<td>4. GAME RESERVE (Sec 36)</td>
</tr>
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**Table 8**

The necessity of national parks and sanctuary is well understood by Supreme Court also. As per one of its judgment setting up a network of effectively managed national parks and sanctuaries is highest priority of wildlife conservation. With this point of view, the with regard to management of parks and sanctuaries are being made more effective and stringent. Realizing the need to protect off shore marine flora and fauna, the legal provisions of national parks and sanctuaries are proposed to be extended to territorial waters as well122 and later Section 26A was inserted through Amendment of the Wildlife (Protection) Act, 1972.

In India presently have 99 National Parks (39,155sq.km), 523 Sanctuaries (1, 18,417sq.km), 43 Conservation Reserves (1155.06sq.km) and 3 Community Reserves (17.76 sq.km) as per report of Wildlife Institute of India (WII). Total land for National Parks and Sanctuaries in India is nearly like 1.19% and 3.60% respectively of the total geographical areas of the country.123 These protected areas were the part of the agenda of the various states in India over a period of hundred years the conservation of wildlife in the state agenda. India’s wildlife conservation program is a network of over 600 Protected Areas

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121 Environmental Law; Dr.I.A.Khan; Central Law Agency, Pp 263
122 M/s Ivory Traders and Manufacturers Association v/s Union of India, AIR 1997 Delhi 275 FB (Para 17)
123 State of Environment Report, India 2009, [www.moef.nic.in]
but does not comprise five percent of India’s total land surface. In spite of several initiatives taken by central and states government in India, the total areas declared by governments are not sufficient in accordance with the total land or human population of the nation.

NATIONAL PARK

National Park had in the imagination of poets, artists and painters which later realised by ecologists and those Parks were formed by process of law with the help of ecologists, politicians and businessmen. The English poet William Worsworth described the “Lake District” in 1810 as a “sort of national property in which every man has a right and interest who has an eye to perceive and a heart to enjoy.” The concept of National Park was first time thought by an American artist George Catlin as he was worried about the impact of America's civilization on wildlife and wilderness. He wrote that there would be some government policy for a nation's park where man and animal both can live in wild and freshness about nature's beauty. In 1864 American Congress being inspired by Catlin’s thought, donated Yosemite Valley to California for preservation as a ‘State Park’. In 1872, American Congress reserved the spectacular Yellowstone country as a National park for the benefit of the people. During the period of 1890 and 1900, Sequoia, Yosemite, Mount Rainier, Crater Lake National Parks were established by American Government. In 1906 again ‘Mesa Verde National Park’ was created. Most of the lands were federally owned and thus subject to park or monument reservation without purchase. ‘Yellowstone’ was the first National Park in the world which developed a model for conservation movement rest of the world. In 1916, US parliament passed ‘National Park Service Organic Act’ to administer National Park Service for protection of National Parks and other old heritage. The founding of Yellowstone National Park began a worldwide national park movement. In 1887 New Zealand established its first National Park and in 1879, Australia made their first National Park as ‘Royal National Park’ in south Sydney, Canada in 1885 ‘Rocky National Park’ and France in
1963 developed ‘Vanoise National Park’ in Alps. Today most of the nations have number of National parks for conservation of wildlife and other natural resources. Later maximum African countries adopted the US model of National Park to preserve their vast natural resources including wildlife. In South Africa, the great ‘Kruger National Park’ was created in 1926 which was developed from the Sabie Game Reserve established by President Paul Kruger in 1892. In Kenya, ‘Nairobi National Park’ was the first national park established in south-central Kenya in 1946 consisting partly of thick woods, partly of rolling plains and valleys and wooded confluence of several rivers. Kenya also created another renowned park ‘Tsavo National Park’ in 1948 which is one of best tourist attraction in the world today. In Tanzania, ‘Serengeti National Park’ was created in 1951 which is an important destination for thousands of tourists. Such national park system was spread in Zimbabwe, Botswana, Nigeria and other countries in Africa during the colonial regime.

According to IUCN (1975) National Park is relatively large area where: - (1) One or several ecosystems are not materially altered by human exploitation and occupation where plant and animal species geomorphologic sites and habitats are pecial scientific, educative and recreative interest or which contain a natural lof sandscape of great beauty, (2) The Highest competent authority of the country has taken steps to prevent or eliminate as soon as possible exploitation or occupation in the whole area and to enforce effectively the respect of ecological geomorphologic or aesthetic features which have let to its establishment, and (3) Where visitors allowed to enter under special conditions for inspirational, cultural and re creative purposes.

In 1993 according to Conference for African Fauna in the London, a ‘National Park’ is an area placed under public control, the boundaries of which shall not be altered except by component legislative authority. The area is declared for the all time preservation and protection for life of wild animal and

124 www.scribd.com
125 www.britannica.com
126 www.ypte.org.uk
127 Concepts in wildlife management, B.B.Hosetti, Daya Publication; Pp 110
vegetation for the benefit, advantage and enjoyment of the general public. In this area hunting of fauna or collection of flora is prohibited except under the direction of park authority.\footnote{Concepts in wildlife management, B.B.Hosetti, Daya Publication; Pp 110}

In 1935 the first national park was established in India as Hailey National Park which is known as ‘Jim Corbet National Park’ after 1970. So in 1936, the first National Park was set up in the Ramganga-Dhikala forests in the United Provinces, now in Uttarakhand, of India during the British period. The concept of national park was totally brought from western practice especially from America. In India, ‘the Hailey National Park Act, 1936’ was the first direct law for conservation of wildlife and their habitat. The statutory definition of national park was inspired by international ‘Convention relative to the Preservation of Fauna and Flora in their Natural State’ in 1933 held in London. Later on 1 June 1955, Kanha National Park was given status of ‘National Park’ under the provisions of ‘Madhya Pradesh National Parks Act, 1955’ immediately after a news of rampant killing of tigers by ex-Maharaja one Princely State Madhya Pradesh\footnote{Ananda Bazar Patrika, (in Bengali), 9th March 2008.} though it was already declared as a ‘Reserved Forest’ in 1879 and ‘Banjar Valley Sanctuary’ in 1935. Then ‘Todoba National Park’ was established in Maharastra in 1955 and in 1959 ‘Madhav National Park’ was also set up in Madhya Pradesh as a part of conservation project after independence under respective state laws.

In most countries a National Park can only be created by National, Central or Federal Government of the country and so parks are known as ‘National’ for their national importance. But in India, a State Government can constitute a National Park in its state legislative preferably subject to certain standards which were laid by the IBWL. A National Park as per Indian Board for Wildlife (IBWL) is an area dedicated by statute for all time to conserve the scenery, natural and historical objects, to conserve wild life there in and to provide for enjoyment of the same in such manner and by such means that will leave them unimpaired for the enjoyment of future generations with such
modification as local conditions may demand. A National Park can be established by State Government under section 35 or by Central Government under section 38(2) and also Existing National Parks already declared by State Government under any law will be treated as valid under section 66(3) of the Wildlife (Protection) Act, 1972. In early 70’s, India only had five National Parks but after the enactment of Wildlife (Protection) in 1972 the number of national parks were increased. Central government initiated project for tigers by safeguarding their habitats.

SANCTUARY

In India, from very beginning of wildlife protection program, the concept of sanctuary was very much in practice. The declaration of Sanctuary is more original than National Park which got the idea from western country mainly USA. But in legal framework both protected areas got the statutory sanctity in more or less same time. The Amendment in 1935 of the Wildlife (Protection) Act, 1912 was land mark in the history of wildlife as it was for the first time that the provincial government, could, by notification, set aside as area to be a Sanctuary for protection and growth of wild animals and birds.130 Wildlife sanctuary according to IBWL is an area constituted by the competent authority in which killing, hunting, shooting or capturing of any species of animal bird is prohibited except by an order. State government may by notification, as per provision of Section 18(1) of Wildlife (Protection) Act, 1972, declare any area comprised with any reserve forest or territorial waters a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment.

Sanctuary may be created to any area other than reserved forest or territorial water by State Government under Section 18 of the Wildlife (Protection) Act, 1972 and after the amendment of 1991, State Government can

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also declare any reserve forest or territorial water as sanctuary under Section 26A of the same statute for protection of marine and coastal wildlife in India. Again Central government can also declare any area as sanctuary under Section 38(2) by same procedure. Any existing sanctuary established by any state legislation will also remain as sanctuary in spite of repealing of State Act under Section 66 of the Wildlife (Protection) Act, 1972. According to Madhav Gadgil, the modern wildlife conservation movement has its roots in the traditional preservation of animals as game in the amusement parks of the nobility. Present day sanctuaries are places where most visitors come to amuse themselves and have little interest in the wildlife around them. A wildlife sanctuary, as defined by IUCN in 1975, is an area dedicated to protect the wildlife but it considers the conservation of species only and also the boundary of it is not limited by state legislation. Further in the sanctuary killing, hunting or capturing of any species of birds and mammals is prohibited except by or under the control of highest authority in the department, responsible for management of the Sanctuary.

NATIONAL PARKS AND SANCTUARIES
The distinction between National Parks and Sanctuaries does not make any watertight compartment for conservation functions under the provision of the Wildlife (Protection) Act, 1972 but deference lies on historical development about the status of protected areas in India. The concept of Sanctuary was mainly developed by former Indian rulers of pre-independence period where as the idea of National Park was borrowed from western concept mainly USA and various international conferences. In America, President Abraham Lincoln signed a law in 1864 ceding the ‘Yosemite Valley’ from State of California as a protected area and in 1872, in true sense the first National Park i.e. ‘Yellowstone National Park’ was established. Yellowstone was a land part of federally governed territory and there was no stewardship of state government

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131 Ecological Journeys, Madhav Gadgil, permanent black; Pp 48
unlike Yosemite. The term ‘national’ within the concept of ‘National Park’ indicates this park is under the possession of Union or Central government of any country mainly federal country. So national park is the part and parcel of government administration and it is a national property with some sense of national heritage. The first authentic National Park in India was established during 1935-1936 under United Provinces National Parks Act, 1935. It was named as ‘Hailey National Park’ after Sir Malcom Hailey then Governor of United Provinces and after independence it was renamed as the ‘Ramganga National Park’ in 1954. Again after the death of Jim Corbett, the park was renamed in 1957 at the honour of his memory. 1 April 1973 this Park became the first Tiger Reserve of India under ‘Project Tiger’. This ‘Corbett National Park’ finally celebrated Diamond Jubilee in 1996. From the decade of 1970s declaration of National Parks and Sanctuaries has increased radically by both State Governments and Central Government and Protected Areas in India now include 99 National Parks, 515 Wildlife Sanctuaries and also including 43 Conservation Reserves and 4 Community Reserves which were developed after the Amendment of Wildlife (Protection) Act in 2003.

### Development of National Parks and Sanctuaries in India

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<th>Years</th>
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<th>Sanctuaries</th>
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<tr>
<td>In 1970</td>
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<td>62</td>
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<td>1971 to 1980</td>
<td>24</td>
<td>165</td>
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<td>1981 to 1990</td>
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<tr>
<td>1991 to 2000</td>
<td>88</td>
<td>481</td>
</tr>
<tr>
<td>2001 to 2009 (March)</td>
<td>95</td>
<td>506</td>
</tr>
</tbody>
</table>

**Table 9**

The classification between two categories of protected areas is to be worked out entirely by the administrative authorities leading to a definite possibility of ad hoc and piecemeal approach to the problem. In India after 1972, The Wildlife (Protection) Act restricted the human interference in both places as

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132 http://en.wikipedia.org/ national parks
those are protected areas for wildlife of the country and destruction of wildlife population and their habitat is strictly prohibited. As per provision of Section 33(d) of that statute gives some relaxation for grazing of live-stock within the Sanctuaries where as inside the National Parks grazing is not allowed at all.135

Only grazing and movement of livestock are permitted within a Sanctuary. Otherwise all activities which are permitted or prohibited within a sanctuary are also similarly permitted or prohibited within a national park. Indian statute has failed to articulate a definite policy on this fundamental aspect betrays a lack of vision about the methods and goals of management of the said protected areas. Different models of protected areas were the impact of international awareness generated by several international convention and treaties and also American National Park movement by conservationists and environmentalists.136 The ideas behind the National Park and Wildlife Sanctuary are same like maximum protection, preservation and conservation of wild animals.

Again in India, Sanctuary is usually created by an order or gazette notification of stage government. So the weakness of sanctuary is that it can be de-notified merely by another order or gazette notification of a state government.137 However, protected area systems vary considerably one country to another, depending on needs and priorities, and on differences in legislative, institutional and financial support. Also, the range of services and values that protected areas provide is such that some management objectives are not compatible with others. This has lead to the emergence of a wide range of protected area designations and definitions.

PROTECTION OF ANIMALS IN ZOOS AND SOCIETIES

Zoo is most important mode of ex-situ conservation for protection of wild animals and also helpful for captive breeding of extinct and endangered species in any country. The importance of zoos was realized mainly during the mid-

135 Environmental Law and Policy in India, Shyam Divan and Armin Rosencranz; Pp 330
136 Environmental Law; Dr. I.A. Khan; Central Law Agency, Pp 265
137 Concepts in wildlife management, B.B. Hosetti, Daya Publication; Pp 112
19th century all over the world. In 1752 Vienna Zoo was the first zoo in the world and then Paris Zoo in 1793 and London zoo in 1826 were opened for public. In USA first zoo was opened in 1874 at Philadelphia and in India, zoo was opened first time at Calcutta’s Marble Palace in 1854 followed by Madras zoo in 1855 and Trivandrum Zoo in 1857. The zoos help in creating awareness among the people and also serve as captive breeding centers to replenish the wild stock. The need for making conservation as one of the main objectives of Management of zoos was realized by Government of India soon after Independence and the Indian board for committee on Management of zoos in X/OV 1972 and its recommendation were accepted in June 1973. Those recommendations were relevant even now for improving the management of zoos. The 1993 Amendment of Wildlife (Protection) Act, 1972 introduced new Chapter IVA as “Central Zoo Authority and Recognition of Zoos” to develop the power of ‘Central Zoo Authority’ for the management and monitoring the functions of zoos through out the country. A ‘Central Zoo Authority’ was to set up to control the functioning and development of zoos in the country through Section 38A of Wildlife (Protection) Act, 1972 and new Amendment also restricted those activities which were the causing disturbance to animals into zoo punishable offence. The Act provides a rule for an application for recognition to the ‘Central Zoo Authority’ in a prescribed form and all those zoos have to fulfill minimum standard of maintenance to be notified by Central Government. The National Wildlife Action Plan of 1982 and 2002 also emphasized about the role of ex-situ conservation efforts for the protection of wildlife in India and in 1998 government of India adopted a National Zoo Policy to make zoos as a popular institution for wildlife conservation.

Previously the Prevention of Cruelty to Animals Act, 1960 was introduced to prevent the infliction of unnecessary pain or suffering to animals and to amend the law relating to the prevention of cruelty to animals. In 1954, the bill was introduced by Rukmlni Devi Arundale in Parliament and a

138 Concepts in wildlife management, B.B.Hosetti, Daya Publication; Pp 132
139 Wildlife laws and its impact on tribes, Mona Purohit, Deep&Deep; Pp 83
committee was appointed to review the old law the Prevention of Cruelty to Animal Act of 1890. Parliament finally passed the law for whole India as in Entry 17 Prevention of cruelty to animals was in the concurrent list of Indian Constitution. This statute defines animals as any living creature other than a human being and also describes about capture and domestic animals. The Act defines wide concept of animals with various kinds also with several types of cruelty to animals. Most important part of this law was to establish ‘Animal Welfare Board’ first time in India for promoting animal welfares in the country. Apart from wild animals, cruelty to all captive or domestic animals is punishable under this law. Keeping birds in a cage is a punishable offence under the Prevention of Cruelty to Animals Act, 1960. The Convention on International Trade in Endangered Species (CITES), dealing with 300 of the country, restricts the selling of foreign birds.

The Forest (Conservation) Act, 1980, a small piece of legislation with five Sections, is deemed to have come into force on the 25th October, 1980 through the Forest (Conservation) Ordinance which later became the Forest (Conservation) Act, 1980 with a pure object for conservations of forest resources against the large scale of deforestation resulting ecological degradation. This statute has an impact about direct control of central government over the forest resources after Constitutional (42nd Amendment) Act, 1976 through which the item ‘Forest’ was transferred from State list to Concurrent list. Any project using forests for non-forest purposes, according to this law needs to obtain a forest clearance from the central government. Supreme Court order in 1997 says that it includes any land that fits the dictionary meaning of the word forest, irrespective of who owns the land.140 The first Forest policy, declared on 12th May in 1952 in independent India, recommended for one-third geographical areas of country as forest areas. So this law provides for stringent measures against violators of the statute. This Act tells about prior approval of Central Government to declare de-reserved for non-forest purpose and if diversion is permitted then compensatory

140 Down to Earth, August 15, 2007; Pp 22
afforestation is to be imposed. So Government is going to pass a ‘Compensatory Afforestation Bill’ in Parliament also.

CRISIS IN THE DECADE OF 1980s
In post-independent India, Conservationists have primarily used idea for the exclusion of humans from protected areas for the interest conservation. Establishment of tiger reserves, biosphere reserves, national parks and sanctuaries during the decade of 1970’s generated other kinds of problem regarding the human interference in the protected areas. Pressures on marginalized people, forest dwellers, wage earners and cultivators often place them in conflict with National parks. Local communities in and around the forests depends on forests and wildlife for various livelihood requirements like grazing, fuel wood, medicinal plants, animals, fruits, honey and many others. Then 1980s was about the complexities of managing those protected areas which were the common habitat for wild animals as well as for forest dwellers also. Between 1979 and 1984 conflicts came out sharply and 51 clashes were reported on national parks and sanctuaries in India. After the notification for protected areas, the forests officials prevented those communities to excess within protected areas for the purpose of conservation of forests and wild animals. Out of five Wildlife Sanctuaries and National Parks there was one reported incident of physical clashes between local residents and forest authorities during 1980s. So such type of restriction created one kind of anger and frustration among the tribal communities and forest dweller in India and also these conservation efforts created one kind of sociological problem in every parts of India. Again administrative crisis was developed in governmental level at the end of the 1980s. So the process of the wildlife protection continued through out the decade of 1970’s by Congress government as well as by non-Congress government also. This period of 1970s or more specifically 1972-1988 were the protectionist in nature to save forest and

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141 This Fissured Land, Madhav Gadgil & Ramchandra Guha; Pp 234
142 India's Wildlife History an Introduction; Mahesh Rangarajan; Pp 114
wildlife of India and to check rampant killing of wild –animals and de-reservation forests. During those periods the rights of people who were living inside the forest automatically became the trespasser of there own land.

The mid-1980s marked a particularly tense phase in conservation politics which effectively developed confrontation between the Forest Department against local communities and their advocates. There were many technical defects also. Due to the instability of the Government in the power lots of problems were created in policy making process as well as for the protection of the wildlife at large. The Indian Board for Wildlife which was the highest monitoring body, did not meet for a long years from 1989 to 1997. At the central level, there was the end of one-party dominance in New Delhi and regional party got their importance in the national policy framing. From 1996 onwards, three successive Union Environment Ministers were from key regional parties. The environmental enforcement was weakened by fragile and coalition government in union.\(^{143}\) So development of 70s made some better condition for conservation of wildlife but decade of 1980s generated a man and wildlife conflict in the conservation process due to lack of expertise government policies and some immature legal mechanism.

The Biological Diversity Act, 2002 tells about establishment of ‘National Biological Diversity Board’ as a watch-dog body which will look after the matter relating to biological diversity in the country. Any person who is conducting any research or transferring the result of any research or applying for any intellectual property right on biological components has to take permission form the Board. Biological diversity is the total of genes, species and ecosystems on earth. India with a wide variety of worldwide fauna and flora is rich country in bio-diversity and natural wealth. As per preamble of this statute main aims of this law are to conserved biological diversity in the country, sustainable use of biological components in the nature and fair and equitable share of benefits from biological resources and knowledge relating to those resources. Biodiversity means as per ‘Convention on Biological

\(^{143}\) India's Wildlife History AN INTRODUCTION; Mahesh Rangarajan; Pp 111
Diversity’ of 1992, the variability among living organisms from all sources including inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of the ecosystems. In the Monsoon 2000 session of the Indian Parliament a Biological Diversity Bill was tabled with several positive features and most important the recognition of institutions of local governance, such as panchayats, in managing biodiversity and organizing benefit-sharing.

Promulgation of The Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was a major step towards protecting the rights of the Adivasis who are living in large number in different forests of India. In this statute the traditional forest dweller and schedule tribes are given right to sustainable use of forest lands, conservation of biodiversity and maintenance of ecological balance and strengthening the conservation of forests assuring the livelihood of the traditional forest dwellers. These rights includes for both individual and community of forest dwellers.\footnote{Central Legislation, Prof. S.Sivakumar, Annual Survey of Indian Law, ILI, VOL-XLI, 2006} Protected Areas legislations generally represent elimination of local human access to the resources where as Forest Rights Act aims to grant land rights to people living in and around forests. A growing recognition of conservation policies and strategies by academicians or city based nature lover have resulted an anger and frustration over the past few decades among the local and tribal people nationally and internationally.

This law has sparked off a debate about the impact of such efforts on the tiger’s habitat. The conflict regarding the position of local people in the conservation program started at very beginning in 1872 after establishing first National Park in USA when private acquisition of hot spring or forest land was prohibited within the area of Yellowstone. The situation became very critical when it was legalized by Amendment Act of 1891 that state had the authority
to create ‘forest reserve’ on any land from public domain in America.\textsuperscript{145} The main conflict lies on the concept of conservation where wild species are given preference than human species and in conservation program forests, animals, birds and fishes are separated and protected from human interference. This is very difficult for human beings to accept such concept from their anthropocentric point of view.\textsuperscript{146} But ‘Yellowstone model’ was adopted profusely by maximum developing countries and African nations. The American model created lots of problems in the developing countries; even it generated public anger within the protected areas of America also. So the traditional forest dwellers or the local people near the protected areas became hostile to the wildlife and forest and treated the conservation policy or the wildlife laws in general as anti-tribal.

India has also faced same problem from very early days of conservation program. When the legal provision of ‘Reserve Forest’ made by British through the Indian Forest Act in 1927, it was a restriction to use the forest lands for traditional purposes. Again during 1970s Congress Government made the Wildlife (protection) Act, 1972 and the Forest (Conservation) Act, 1980 under the leadership of Mrs. Indira Gandhi and those laws were very much against the traditional forest dwellers or tribal peoples near the protected areas of India. The setting aside of Protected Areas from human use is a controversial issue in India and the rest of the developing world also even developed countries like the United States. But there have been significant developments in some countries like Zimbabwe and Nepal for providing tribal communities or forest dwellers a standard of life with coexistence.

Finally after lots of controversies and debates, the most coveted statute was passed parliament to give some relief to the schedule tribes and traditional forest dwellers in India. The two powerful lobbies relating to tiger and tribal were developed on the point of this bill. The Forest Rights Bill has caused a

\textsuperscript{145} Conflict and Coexistence in a National Park; Ananya Mukherjee; Economic & Political Weekly, June 6, 2009; VOL XLIV NO 23; Pp 52
\textsuperscript{146} People’s Participation through Conservation Education, Jyostna Bapat, Environmental Movements in India, Rawat publication, Pp139
vertical fissure among politicians and environmentalists. The Bill was put on hold due to Agitation from the members of indigenous communities, Left parties and people’s groups. Tribals remaining inside forests have no pattas or land deeds and not even the BPL (below poverty line) cards that could help them buy subsidized rice. On the other side were environmentalists and a group of powerful MPs including Karan Singh, Natwar Singh, Rahul Gandhi, Jyotiraditya Scindia and Jay Panda who set up a tiger watch committee. The bill was presented to the parliament in the late 2005 as temporary Patta (land deed) would be given to the relocated people. This Bill also proposed for “grazing and ownership right of forest for the tribals” which was opposed by wildlife activists and this change was blocked by tiger lobby of parliament. Again in late 2006, the tribal lobby tried to change the provision and the statute was finalized by joint parliamentary committee by dropping the clause. On the contrary it inserted another new provision about critical wildlife habitat.

Though wildlife lobby wanted stringent safeguard for national parks and sanctuaries but a new concept i.e. ‘critical wildlife habitat’ was inserted where human interference is prohibited. Law provides for resettlement of traditional dwellers or tribals from as those areas are only for wild animals but environment department must consult with tribal affairs ministry and local experts regarding relocation. However Wildlife and tribal rights activists both warned about other powerful lobbies including the timber mafia who are waiting for bill outside of parliament. According to the provision of the statute, ‘other forest dweller’ means any member or community who has been residing for at least three generations prior to the 13th day of December, 2005 and who depended primarily on the forest or forest land for bona fide livelihood needs. Here in this law ‘Generation’ means a period comprising of twenty-five years. So those who have been living from last 75 years before 13/12/05 in the forest for their livelihood are traditional forest dwellers. Under the Act forcible displacement of people has been made illegal first time in the conservation

147 Law of the jungle; THE TELEGRAPH, 5 June, 2005
148 Tigers and Tribals, Sunita Narain, Down to Earth, November 15, 2007; Pp 7
This law specifies relocation of people can take place only when the co-existence between human and wildlife is not possible at all and if the communities give their informed consent.

Recently, the Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009 was passed by parliament to provide prevention, control and eradication of infectious and contagious diseases affecting animals for prevention of outbreak or spreading of such diseases from one State to another. The Entry 29 in Concurrent List of Schedule VII has mentioned in the Constitution of India both Central or State legislature can make law for prevention of infectious and contagious diseases affecting the animals and Parliament has made this law for animals in the country. Chapter 2 deals with control of scheduled diseases and a Schedule of the statute mentioned several types of infectious and contagious diseases like, (a) Multiple species diseases (b) Cattle diseases (c) Sheep and goat diseases (d) Equine diseases (e) Swine diseases (f) Avian diseases (g) Lagomorph diseases (h) Bee diseases (i) Fish diseases (j) Mollusc diseases (k) Crustacean diseases (l) Other diseases. Economic losses due to infectious and contagious diseases of animals are enormous in the country as well as some of these diseases are serious threat to the public. India is a Member Country of the Office International Des Epizooties, Paris and abides by the International Animal Health Code stipulated by the Organisation to meet the international obligations of India for facilitating import and export of animals and animal products.

The Compensatory Afforestation Fund Bill, 2008 is aimed to establish a statutory Fund and a Management Authority who shall be responsible for the management of the Fund and administer the program of afforestation. The Indian Government intends to articulate the objectives of massive afforestation program as “Green India” by utilising the financial resources available in the Fund and other sources such as mobilization from market, developmental partners associations, carbon credit, etc and this Bill will provide legal support to the “Green India” program throughout the country. The Supreme Court in

149 FRONTLINE, February 29, 2008; Pp 20
T.N. Godavarman Thirumalpad vs. Union of India observed in its order dated 29th October, 2002 that a Fund may be created in which all the monies received from the user agencies shall be deposited and the Court also directed that the Compensatory Afforestation Fund shall be utilized for plantations, protection of forests, wildlife protection and other related activities. The Authority constituted under the Bill shall consist of a Governing Body and be assisted by an Executive Body, Monitoring Group and administrative support mechanism. The Governing Body of the “Compensatory Afforestation Fund Management and Planning Authority” shall consist of number of members and Minister of Environment and Forests will be its Chairperson. Apart from those, official like Director General of Forests, Additional Director General of Forests (Wild Life), Inspector General of Forests (Forest Conservation), Financial Advisor and Special Secretary of Ministry of Environment and Forests under Government of India will be its Member. Again Three Principal Chief Conservator of Forests, one from six regions, to be nominated every year by the Ministry of Environment and Forests on rotation basis as its Member and Three eminent non-government organization experts, one each in the field of forestry, wildlife and ecology, for a period of two years subject to not more than two consecutive term will also be its Member. The Authority will oversee program known as “Green India” for massive afforestation of the degraded forest land of the country, utilising financial resources and also to create transparency for “Green India” and to mobilise citizens support. It may invest its funds in the securities of the Central Government and scheduled banks. The Authority will maintain proper accounts and records and prepare an annual report giving full account of its activities. The Forest (Conservation) Act, 1980 makes provision for conservation of forests and provide for the basic framework for regulating indiscriminate diversion or use of forest for the developmental needs of a State. It intends to harmonize development with that of conservation of forests and forest eco system. The compensatory afforestation envisages additional plantation activities by utilising the money

150 Writ Petition (C) No. 202 of 1995
deposited by the user agency for the purpose. In compliance with the direction of the Supreme Court, all monies collected under the scheme has been placed presently under an ad-hoc CAMPA and deposited in the nationalised banks.

The protection of wildlife and nature is very much necessary for survival of mankind but at the same time those indigenous people and their traditional knowledge and culture should be protected and in this regard government has prepared Traditional Knowledge Bill. Aboriginal people have numerous concepts in their minds regarding utilization of natural resources of any nation which can be protected as their intellectual property. Intellectual Property Rights conferred on local communities in respect of their ethno-biology knowledge over natural resources and Traditional Knowledge (TK) is that ethno-biology knowledge possessed by local communities for their livelihoods and also a means for genetic diversity.

India has developed vast ethno-biology knowledge of local and indigenous people relating to floral and faunal resources by using various indigenous plant and faunal varieties for traditional medicine and food. When the tribes are relocated their accessibility to the medicinal plants is prohibited. Genetic material of threatened species of flora and fauna must be conserved on priority to adopt an internationally recognized system of legally enforceable sui-generis intellectual property rights for local communities to realize significant financial benefits from permitting the use of such traditional knowledge. Government encroaches upon the intellectual property rights of the tribes by declaring any protected area for the purpose of conservation. In India local communities also provided enormous supports for conservation of genetic resources.
4.4.3. INDIRECT STATUTORY PROVISIONS RELATING TO WILDLIFE

In spite of some direct legislation for protection of wildlife and animals, there were some indirect legislation which helped somehow protection of wildlife and conservation of their habitats in India. In the Indian Penal Code, 1860, there are several references of animals from very beginning. The negligent conduct or omission with respect to animals causing harm to human’s life or property is an offence under Section 289 where animals may be domestic or wild. Again theft of any animal as moveable property (Section 378) or mischief by killing or maiming of any cattle or animal (Sections 428 & 429) is also offence and punishable by law. So under common law principle animal did not get separate status and was always treated in IPC as property.

As per provision of Cattle-Trespass Act, 1871 (1 of 1871), Cattle trespassing were closed for grazing shall be deemed to be cattle in a reserved forest or in any portion of a protected forest. Any damage to a public plantation within the meaning of Section 11 of the Cattle-trespass Act, 1871, may be seized and impounded as such by any Forest-officer or Police-Officer. It was another instance of common law principles where strict measures were taken to protect forests in India.

Nothing contained in section 360 of the Criminal Procedure Code, 1973 (2 of 1974) or in the Probation of Offenders Act, 1958 (20 of 1958) shall apply to a person convicted of an offence with respect to hunting in a Sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age.

Films and cinema bear an enormous social responsibility and depicting any cruelty to animals will convey a bad message to society. So, the Cinematograph Act, 1952 prevents the showing of cruelty, and abuse of animals. This law also prohibits the showing of scenes of violence, cruelty and horror for the sole purpose of entertainment. Under this law no animal can be used without a certificate from the Animal Welfare Board and the presence of a Wildlife Inspector on the premises for the entire time that the animal is being
used. An order of Central Government on 14th October, 1998 specifically prevents the training and exhibition of lions, tigers, panthers, bears and monkeys.\textsuperscript{151} Circuses and film studios are already under scrutiny in this regard.

Where any person is convicted of an offence against this act, the court may directed that the license, if any, granted to such person under the Arms Act, 1959 (54 of 1954), for possession of any arm with which an offence against this Act has been committed, shall be cancelled and that such person shall not be eligible for a license under the provisions of Arms Act, 1959 for a period of five years form the date of conviction.

After several deaths due to insecticide contaminated food during April and May of 1958 in the state of Kerala and Madras, an Inquiry Commission was established to inquire food poisoning cases. Finally on the basis of recommendation of Inquiry Commission, Insecticides Act, 1968 was passed to regulate manufacture, sale, transport, import, distribution and use of insecticides with a view to prevent risk to human beings as well as animals also. A strict penal provision of is there for violation provisions of this statute dealing with registration and licensing of any insecticide product. The Insecticides Rules, 1971 prescribe the procedure for licensing, packing, labeling and transporting insecticides apart from the provisions for workers safety during the manufacture and handling of insecticides. This law describes about establishment of a ‘Central Insecticide Board’ and a committee of this Board registers insecticides after thorough examining about their safety and efficacy.

All offences against CITES and the Export-import Policy are punishable under the Custom Act, 1962. Some wild animals including their parts and products are prohibited for import or export. Certain plant species are also prohibited for export or a license needed for export under the provisions of the Foreign Trade (Development & Regulation) Act, 1992. Woods and some specified wood products are also prohibited or regulated under law. The export-import policy of the country has been framed under this Act and prohibited and

\textsuperscript{151} GOI Notification No. G.S.R. 619 (E)
restricted items are listed as per provision of this law. In this policy a wild animal has been defined same like the provision of Wildlife (Protection) Act 1972. The Exim Policy has been notified under Section 5 of the Foreign Trade (Development and Regulation) Act 1992 and the Central Government has reserved the right in public interest to make amendments in the policy. There are two lists, which are described as the Negative List of Imports and the Negative List of Exports.

4.5. ROLE OF JUDICIARY FOR CONSERVATION OF WILDLIFE IN INDIA

The lack of enforcement machinery for environmental laws created an accelerated problem of environmental degradation. These environmental degradations have created an adverse effect to the public health which forced the public to approach to courts for remedy. The orders passed by the Supreme Court have provided healing touch to many even those who are residing in remote place in hills, coastal areas and forests. Very early in Ratlam Municipality v/s. Vardhichand¹⁵², a criminal appeal case, the Supreme Court gave directions for removal of open drains and relied upon Art 47 in the Part IV of the Constitution relating to the Directive Principles which refers to improvement of public health. In B.L. Wadhera v/s. Union of India¹⁵³ directions were issued to the Municipal Corporation of old Delhi and New Delhi for removal of garbage and right to environment was established by apex court.

In wildlife and ecological matter also judiciary establish the right to environment and better ecology. The Supreme Court quoted from a decree issued by Emperor Asoka in the third century BC, in State of Bihar v/s. Murad Ali Khan¹⁵⁴, an appeal concerning protection to wildlife in Kundurugutu Range forest in Bihar, for preservation of wild life and environment. The Supreme

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¹⁵² AIR 1980 SC 1622  
¹⁵³ AIR 1996 SC 2969  
¹⁵⁴ AIR 1989 SC 1
Court also concerned for safety and well-being of wildlife in zoos and in *Navin M. Raheja v. Union of India*\(^{155}\) case provisions of Article 48-A of the Constitution and the Wildlife (Protection) Act, 1972, the Forest Act, 1927 were considered for protection of wild animals. In *Bombay Burmah Trading Corporation v/s Field Director Project Tiger and Conservator of Forests*\(^{156}\) case, Madras High Court restricted to use of road inside the sanctuary and plying vehicles inside the sanctuary. Court also established legal status of protected areas and also decided once sanctuary was declared, the right of private individual subject to permission of Chief Wildlife Warden. Judiciary also think about wildlife administration and in *Centre for Environmental law, WWF v/s Union of India*\(^{157}\) case issued directions to the Central and State Governments to equip the forest guards with modern arms and communication facilities immediately to cope with present wildlife crimes.

The courts are not the forum to solve all environmental related challenges in the country. Judiciary has to be equipped with creation of additional capacities to deal with the whole gamut of environmental related issues. Only the trained and motivated Judges can take correctional measures and help in distributing environmental justice with human element, fairness and compassion. To that extent every court in the country should be turned into environmental court for environmental actions.\(^{158}\) In spite of this, superior judiciary has made tremendous progress in distributing environmental justice in India for socio-economic development of the society.

**BRING THE ECOLOGICAL RIGHTS UNDER ARTICLE 21**

Judicial activism in the field of environmental laws was developed during late 1970’s and it came into full-fledged in 1980s. The higher judiciary in India decided the environmental cases not only on the basis of fundamental rights and directives principles but fundamental duties i.e. Article 51A(g) was also

\(^{155}\) (2001) 9 SCC 762

\(^{156}\) AIR 2000 Mad 163

\(^{157}\) AIR 1999 SC 354

\(^{158}\) Environmental Justice: Scope and Access, Hon’ble Justice Sunil Ambwani, AIR 2007 Journal 49
taken into consideration. The Supreme Court and High Courts of India have entertained many genuine public interest litigation (PIL) cases or class-action cases under Article 32 and Article 226 of the Constitution and have issued huge directions on various matters concerning environment as part of writ jurisdiction and have developed a rich environmental jurisprudence. Article 142 of the constitution has given the power to the Supreme Court to enforce the judgments for sake of complete justice.

The concept locus standi of petitioners was widening by Indian Judiciary in environmental issues for ensuring the rights to life and personal liberty of people in India. Such status was not enjoyed by American people for ecological protection. In the *Sierra Club v/s Morton*\(^{159}\) case, construction of a Ski resort in a valley was challenged by Sierra club on the ground that it would adversely affect the scenery, wild life, natural and historical objects and impair the enjoyment of the valley for the future generations. Justice Douglas held that this did not constitute an injury, suffered by the club and denied Locus Standi to the club. In *Sachidanand Pandey v/s. State of West Bengal*\(^{160}\), first case related to wildlife, Supreme Court very nicely interpreted the wildlife for better ecology. The Supreme Court in *Tarun Bharat Sangh v/s. Union of India*\(^{161}\) restrained mining licenses granted for lime and dolomite stones in the Sariska Tiger Park and also observed the environment, ecology and the wild life should be shared by the Government on the national agenda. The maximum wildlife and environmental cases treated before Supreme Courts and High Courts were in the nature of Public Interest Litigation. The expression public interest was interpreted by the Supreme Court in *Municipal Corporation, Ahmedabad v/s Jan Mohammed Usmanbhai*\(^{162}\) case as ‘in the interest of general public’ including public order, public health, public security, morals, economic welfare of the community and the objects mentioned in the part IV (DPSP) of the constitution. Again referring the Usmanbhai case, Delhi High Court in *Ivory*
Traders and Manufacturers Association case\textsuperscript{163} said that when legislation imposes restriction on the right of a trader for giving effect to any of the provisions of Part IV of the constitution, the restriction will be deemed to be in the interest of general public. The first PIL case was filed by a voluntary organization against State of Kerala challenging a hydroelectric project in silent valley\textsuperscript{164} and environmental PIL was developed after \textit{M.C.Mehta v/s Union of India}\textsuperscript{165} case related to oleum gas leak. Wildlife and forests are part of environment and ecology and at the same time environment was always treated as a part of public domain. The higher judiciary always entertained environmental cases as Public Interest Litigation.

WILDLIFE AND ECOLOGY V/S RIGHT TO LIVELIHOOD
Conservation of wildlife should not be against the rights of tribes and the human rights of forest dwellers and indigenous cannot be ignored in the name of protection of nature. National Parks and Sanctuaries protect the ecological balance and preserve forests and wildlife but this measure adversely affects the rights of the tribesmen to consume the forest produce and wildlife for their life and livelihood. Indian judiciary very amicably pacified this conflict to fulfill the object of both laws. Though earlier Article 21 did not include rights of livelihood as a right but in the case of \textit{Board of Trustee of the Port of Bombay v/s Dilipkumar R. Nandkarni}\textsuperscript{166}, the Supreme Court held that right to livelihood is included within the meaning of ‘life’ which again strongly established in \textit{Olga Tellis vs Bombay Municipal Corporation}\textsuperscript{167} case later. In \textit{Ramsharan Autyanuprasi vs Union of India}\textsuperscript{168} case, the Supreme Court observed that life includes all meaning to a man’s life including his traditions, culture, heritage and protection of that heritage in its full measure. According to Justice

\textsuperscript{163} M/s Ivory Traders and Manufacturers Association v/s Union of India AIR 1997 Delhi 273 FB
\textsuperscript{164} Society for Protection of Silent Valley v/s Union of India (unreported judgment of Kerala High Court)
\textsuperscript{165} AIR 1987 SC 1086
\textsuperscript{166} AIR 1983 SC 109
\textsuperscript{167} AIR 1986 SC 180
\textsuperscript{168} AIR 1989 SC 549
Y.K. Sabharwal in various cases judiciary has to choose between the preservation of environmental resources in state, and the right of communities to extract value out of those resources. To facilitate this choice, the courts have evolved a right to livelihood for communities affected by new state run conservation initiatives. The decisions of courts heavily depend upon the factual matrix of each dispute. Again courts have also observed the environment-development debate and stated that the most desirous position is a harmonious form of coexistence of these ends.\textsuperscript{169}

Right to livelihood received a favorable interpretation within the scope of Article 21 in \textit{Olga Tellis case} where the Supreme Court directed to the municipal corporation to provide alternative sites or accommodation to the slum & pavement dweller who were evicted forcibly by government’s decision as deprivation of livelihood is deprivation of life as provided in Article 21 of Indian Constitution. Thus court construed the right to livelihood as a wide provision of Article 21 of constitution also. Again at the same time Supreme Court also said that no person can claim the right to livelihood under the Constitution by the pursuit of an opprobrious occupation or a nefarious trade or business, like gambling or living on the gains of prostitution.\textsuperscript{170}

Again in \textit{Banwasi Sewa Ashram case}\textsuperscript{171} a ‘public interest Litigation’ made on behalf of local people against reservation of forest products like fruits, vegetables, timber for their daily needs. It was contended that the state action which contemplates eviction of may forest dwellers violates their Fundamental rights and Supreme Court laid down certain safeguards to protect forest clearly. So such clean Environment Right should be the cost of other Fundamental Rights which are very much necessary for life also.

The Indian judiciary has always tried to balance between right to livelihood and right to ecology. But whenever there was any question of

\textsuperscript{169} The Supreme Court’s contribution to environmental law, Justice Y.K. Sabharwal, \textit{NYAYADEEP}
\textsuperscript{170} \textit{Olga Tellis V/s Bombay Municipal Corporation A.I.R. 1986, SC 180}
\textsuperscript{171} \textit{Banwasi Sewa Ashram V/s State of Uttar Pradesh A.I.R. 1987, SC 374}
conservation of ecology and protection of wildlife, judiciary has always preferred the environment. *Chief Forest Conservator (Wild Life) v. Nisar Khan*¹⁷² case, an appeal directed against a judgment by a Division Bench of the Allahabad High Court for issuance of a writ in the nature of mandamus directing the appellants herein to grant a license for carrying on business as a dealer in birds, was allowed. After justifying the refusal to grant license Supreme Court held when hunting of the birds specified is prohibited, so no person can be granted a license to deal in birds in captivity which is procured by hunting. Moreover the appellants served a notice directing the respondent to dispose of all the birds in his possession before 31st December 1991. The term ‘hunting’ includes ‘trapping’ of birds after the Amendment made in S.9 of The Wildlife (Protection) Act, 1972 and no license for dealing in them can be lawfully granted. The Wildlife (Protection) Act, 1972 seeks to protect wild animals and any provision contained in the Act aiming protection of wild animals, must necessarily be strictly complied with.

The tribal livelihood was questioned in *Fatesang Gimba Vasava v State of Gujarat*¹⁷³ case where the Gujarat High Court laid emphasis on the rights of tribals and the court also observed that once bamboo chips were transformed into a commercially new and distinct commodity by human labour then the article was no more a produce of nature. Particularly in this case high court established the strong support to the right to livelihood of the tribals. Again in *Pradeep Krishen v/s Union of India*¹⁷⁴ case Supreme Court also said that the urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in these areas but at the same time the traditional right of forest dweller to collect the leaves for their livelihood was also recognized.

In *State of Kerala v/s Joseph Antony* case¹⁷⁵ the Supreme Court gave the decision in favor of ecology and traditional fishing system and against the

¹⁷² AIR 2003 SWC 1333
¹⁷³ AIR 1987 Guj 9
¹⁷⁴ AIR 1997 SC 2040
¹⁷⁵ AIR 1994 SC 721
modern mechanized fishing system. A writ petition was filed challenging the notification issued by state government which prohibited the mechanized vessels from trawling in territorial water. The notification which also banned the use of certain types of gear by mechanized craft was issued under ‘The Kerala Marine Fishing Regulating Act, 1980’. But the apex Court found the ban was a reasonable restriction on the freedom to trade to save the fragile fish wealth from the total extinction. In this instant case the Court gave more preference to right to life of local community and preserved the traditional livelihood of fishing and also prevented fishing by the mechanized trawler owners backed by powerful fishing lobby. So this was a very good example of balancing the right to livelihood and right to ecology.

An association of lawyers filed a writ petition as Public Interest Litigation (PIL) in Animal and Environment Legal Defence Fund v Union of India176 case, challenging the validity of granting permits for fishing to tribal families in reservoirs within the vicinity of “Pench National Park” in Madhya Pradesh. Here the Supreme Court applying the humanitarian approach did not prevented the poor tribal people to collected fishes from the reservoir but at the same time directed the forest and wildlife authorities to take adequate measures to protect the environment of the area. The villagers were also directed not to enter any areas other than the reservoir within the National Park. It was the clear incident that court was always in favor of wildlife and ecology but not against the life or livelihood of human beings at all. Because better ecology or environment above all for the mankind also.

WILDLIFE V/S RIGHT OF FREEDOM TO TRADE

Indian Constitution has given the fundamental rights to the citizen about freedom of carry on trade, business or profession which is not prohibited by any law or against the interest of public. At the same time constitution has also indirectly given the obligation to the State for protection of ecology and natural

176 AIR 2000 Del 449
resources and also imposes fundamental duties to citizens to maintain ecological balance of nature for protection of forest and wildlife. So, there is a conflict going on regarding the status of wildlife and ecology and right to trade affecting wildlife resources other side. But Indian judiciary has given tremendous preferences to the 'right to environment' and ecological balance over other constitutional and legal rights in maximum number of cases. In various cases Supreme Court had given the judgments for closure down of those industries which were dangerous for the environment and created pollution for society. It is of common knowledge that now a day’s tanneries, dye-factories, acid factories, distilleries and hotels are contributing a lot to environmental pollution. Any trade or business which is offensive to flora and fauna can not be carried on in the ground of fundamental rights as guaranteed in Constitution of India. Before the enactment of the Wildlife (Protection) Act in 1972, India was a major exporter in international markets of reptile skins, cat skins, ivory, live birds, frog legs and live mammals like rhesus macaques and lesser cats. According to Delhi High Court poaching of wild animals and illegal trade of products together with degradation and depletion of habitats had seriously affected wildlife population. In order to check this trend as it was introduced through the Wildlife (Amendment) Act, 1991, to prohibit hunting of all wild animals other than vermin. It was again made mandatory for every transporter not to transport any wildlife product without proper permission. The penalties for various offences were proposed to be suitably enhanced to make deterrent.

In very popular M.C.Mehta v/s Kamalnath case the Supreme Court made it clear that any disturbance in the basic elements of the environment in the name of business could not be permitted. Any kind of occupation could not be allowed to reap profit at the cost of public health. Again in a landmark of

178 M/s Ivory Traders and Manufacturers Association v/s Union of India, AIR 1997 Delhi 273 FB
179 AIR 2002SC 1997
Supreme Court allowed the fishermen to carry on their job of fishing by traditional method but without causing environmental hazards in the ecology.

In *All India Mobile Zoo Owners and Animal Welfare Association v/s Union of India* case, the petitioner prayed for adequate compensation due the closure of the zoo by the Wildlife Warden under the Wildlife Protection Act, 1972 and also to issue a writ of mandamus directing the Wildlife Warden under the Act of 1972. The court held that compensation would be allowed in the case of possession of those animals which were not illegal under the law. But as no such compensation need to be paid for holding of animals which were expressly prohibited under the Wildlife Protection Act, 1972 and the petitioners were holding the animals without the permission of the appropriate authorities. So judiciary have always promoted trade and business but not at the cost of wild animals and ecology.

In *Ivory Traders and Manufacturers Association* case, the petitioners challenged that the 1991 amendment to the Wildlife (Protection) Act 1972 banning import of ivory and ivory articles violates the provisions in Articles 19(1) (g), 14 and 300A of the Indian Constitution. They wanted to sell the stocks already acquired before the amendment and dealers possessing ‘mammoth’ ivory and articles cannot be treated at par with ivory derived from elephants. The Delhi high Court held that any trade which is pernicious can be totally prohibited. Killing elephants to procedure ivory is a pernicious activity. It cannot be taken as business or trade in the sense in which it is used in art 19(1) (g) of the constitution. Hence, no citizen has a fundamental right to trade in ivory or ivory articles, whether indigenous or imported. Regarding the right to trade in Ivory Delhi High Court said, “The trade in ivory as well as imported ivory is dangerous, subversive and pernicious as it has the potential to deplete the elephant population and ultimately to extinguish the same. It is well settled that trade which is pernicious can be totally banned without attracting

180 T.N.Godavarman Thirumulpad v/s Union of India, AIR 2006 SC 1774
181 AIR 2000 Del 449
Article 19 (1) (g) of the constitution. There is a string of authority for the proposition that no citizen has any fundamental right guaranteed under Article 19(1) (g) of the constitution to carry on trade in any noxious and dangerous goods like intoxicating drugs or intoxicating liquors.\(^{182}\)

Even in the same case court also said that if any thing is not dangerous or harmful now might be discovered harmful later. So any thing dangerous can not be granted in the name right to trade. Some thing equally pernicious like gambling, prostitution, dealing in counterfeit coins or currency notes can not be permitted in the India as a fundamental right of freedom to trade in the interest of general public. In Balram Kumawat v/s Union of India\(^{183}\) case in Supreme Court, it was held that a ban on import of mammoth ivory which looks like ivory is also a reasonable restriction on the right of the dealers. Complete prohibition of trade in ivory is a reasonable restriction and so does not also attract the wrath of Article 14 of the Indian Constitution.

In 1977 the Indian elephant was brought within the purview of Schedule I of the Act and export of ivory was also banned in the same year. By the amending Act 28 of 1986, trade or commerce in wild animals, animal articles and trophies were restricted. In Indian Handicraft Emporium v/s Union of India\(^{184}\) case the appellants were engaged in the business of manufacture and sale of articles made of ivory and they had imported ivory from Africa during 1971 to 1986. But the Amendment Act 44 of 1991, Section 49C was inserted imposing a total ban on the trade of imported ivory and six months time was provided for the disposal of all stocks of ivory held. The Supreme Court clarified those traders who imported ivory legally after Amendment Act of 2003 can not possess animal article and should be handed over to competent authority. So the Court held that the appellants have no right to possess the articles on ivory and compensating the appellants would not arise.

\(^{182}\) M/s Ivory Traders and Manufacturers Association v/s Union of India, AIR 1997 Delhi 273 FB
\(^{183}\) AIR 2003 SC 3268
\(^{184}\) AIR 2003 SC 3240
In *Jaydev Kundu v/s State of West Bengal*\textsuperscript{185} case Calcutta High Court presumed on the basis of Section 57 of Wildlife (Protection) Act, 1972 that petitioner had unlawful possession of some rare wildlife in his custody and it was also decided petitioner was operating a zoo but was not entitled to possess wild animals.

The apex court made it also clear that under Article 19(1) (g) of Indian Constitution, a trade dangerous to ecology could be either regulated or totally prohibited. At the same time also said wildlife forms part of our cultural heritage and plays a vital role in maintaining ecological balance.

**WILDLIFE AND PARKS V/S DEVELOPMENT**

Development of any country more or less depends on exploitation of renewable as well as non-renewable Natural Resources. So, there is an eternal conflict between process of development and maintaining of ecological balance in the nature. Everywhere a conflict is raging between environmentalists and the forces of economic expansion. The apex court and various state High Courts of India have always given their views in favor of ecological protection and conservation of wildlife in the nature.

In *Sanghi Cement*\textsuperscript{186} case a cement plant was set up in 1990 within the area of Narayan Sarovar Sanctuary measuring an area of 765 sq. kms. which was declared as Sanctuary in 1981 by Gujarat State Government. To facilitate industry, state government issued a notification in 1993 to cancel the order of 1981 for establishment of Sanctuary and another notification for Chinkara Wildlife Sanctuary of 95 sq. kms only. But finally in 1995 State government by legislation reduced the areas from 765 to 444 sq. kms. Though Supreme Court accepted the legislation about the de-notification of protected areas but did not allow Cement industry to operate business at the cost of ecosystem. In very popular *Tarun Bharat Sangh Alwar v/s Union of India*\textsuperscript{187} case Supreme Court again established the validity of ecological importance rather than a

\textsuperscript{185} 97 CWN 403
\textsuperscript{186} Consumer Education and Research Society v/s Union of India, 2000 (1) SCALE 606
\textsuperscript{187} AIR 1992 SC 514
developmental process. In this case petitioner argued that the area of Sariska where mining was being carried on had been already notified as a Tiger Reserve under the Rajasthan Wild animals and Birds Protection Act, 1951 and also as National Park and Sanctuary under the Wildlife Act, 1972 and as a Reserve Forest under the Rajasthan Forests Act also. Again Central government had issued a notification under Section 3 of Environment (Protection) Act, 1986 prohibiting mining in the Sariska National Park. The Supreme Court appointed an expert committee to assess the environmental damage if mining would carry out and till the Committee submits its report, the granting of license was prohibited. The court further directed the Central Government to examine the proposal of the government to delete the mining area and replace it with other lands.

In very famous *MC Mehta v. Kamalnath* case Supreme Court preferred the protection of ecology and forest over the industry. In this case State Government granted lease to a private company to build a motel at the bank of river Bias in Kullu valley. But the court quashed prior approval for the lease as the bank of the river which was part of protected forest and it should not be leased out for commercial purpose. Court also held that State Government committed a patent breach of public trust by leasing out the ecologically fragile land for a motel to facilitate ecotourism.

In *Nagarahole Buddkattu Hakku Sthpana Samithi v. State of Karnataka* case an area of previous the royal hunting reserve along the river Kaveri was declared a sanctuary in 1955 and again in March of 1983 it was declared Nagarhole National Park under Section 35 of the Wildlife (Protection) Act, 1972. In November, 1994, the hotelier began renovating cottage and a reception centre within the National Park to set up a world class forest lodge. Single judge Bench of the petitioner and directed the respondents to stop all its activities on the forest land and hand over its possession to the State Government. The lease being contrary to the laws relating to wildlife and forest

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188 1997 (1) SCC 388
189 AIR 1997 Kant.288
conservation, the court ordered to hand over the possession of the building to state Government.

But it does not mean courts have always given their blind support to the protection of ecology without considering the needs of human beings. When ever courts felt about the necessity of present generation they applied the concept about sustainable use of natural resources. In *Niyammavedi v. State of Kerala*,\(^\text{190}\) case an environmental group protested the decision of state government to set up a Biological Park within a green forest having rich wildlife apprehending the eviction of Adivasi and destruction of ecology. But the court held that object of a Biological Park would give the full support to watching wildlife. Court further held that the government’s decision to establish a park after proper consultations with expert groups was a policy decision of government which could not to be interfered by judiciary.

The Supreme Court favoured tourism business but disagreed with the argument that the lease for a snack bar and restaurant was necessary for visiting tourists in the reserved forest in *Union of India v Kamth Holiday Resorts Pvt. Ltd.*\(^\text{191}\) case where a Central Government officer of the leased out for the snack bar in the forest. The Supreme Court was not against the business or commercial development but Sanctuaries and national parks are meant for the protection of wildlife and preservation of the ecological is important for that area.

The apex court was categorical about the prior approval grant for lease. Tourism activities within the protected areas should be environmentally, economically, socially and culturally sustainable. To ensure all these aspects the policy as per court in *Forest Friendly Camps Pvt. Ltd.*\(^\text{192}\) case, tourism should be such where the tourists are not put to inconvenience. It should be helpful for the local communities, strengths the local economy, employees also. All such tourism activity which directly or indirectly contributes to the

\(^{190}\text{AIR 1993 Kerala 262 }\)
\(^{191}\text{(1996) 1 SCC 774} \)
\(^{192}\text{Forest Friendly Camps Pvt. Ltd. v/s State of Rajasthan, AIR 2002 Raj 214 }\)
conservation of natural resources, biological diversity and economy for local communities should be promoted.

Judiciary has also taken care for the rights of other land owners and followed all rules of natural justice and equality. The Guahati High Court after going through all the records of the areas in question relating to the National Park and Sanctuary, in M/s Chandmari Tea Co. and another v/ State of Assam and Others\textsuperscript{193} case observed that the government had followed the due process of law by inviting objections and claims and also decided to compensate them in accordance with law. In the Assam High Court seven writ petitions were filled against the various notifications issued by the State government of Assam notifying extension of the territory of Burachapari Reserve Forest and Kaziranga National Park as per the schedule mentioned in those notifications. Though court dismissed the claims of the petitioners but directed the government to proceed and complete the process of determination of rights and acquisition of land or rights as contemplated by the Act.

Indian judiciary also supported the construction of dams also until against the ecology. After rejecting the plea against the height of Dam in Mullaperiyar Environmental Protection Forum v/ Union of India case,\textsuperscript{194} court said that rise in water level would neither alter ecology nor create danger for people and more water released from the dam will make a better habitat for flora and fauna in the surrounding ecological environment. Strengthening of the existing dam is a non-forest activity and no need of prior approval sanction from the National Wildlife Board as per provision of Wildlife (Protection) Act, 1972 or by the Central Government under Forest Conservation Act, 1980. Supporting the concept of dam court also said more water levels will be beneficial for the wildlife in the surrounding area as it will increase the carrying capacity for wildlife like elephants and tigers and also all birds and animals love water spread in nature. Court also applied the development process also in the environment and adopted the concept of large dams for

\textsuperscript{193} AIR 2000 Gau 13
\textsuperscript{194} AIR 2006 SC 1428
benefit of developing countries also. Again in a case\textsuperscript{195} Supreme Court accept
the need of National Housing and Habitat Policy for growing urbanization as
shelter is one of the basic human needs.

In \textit{Narmada Bachao Andolan}\textsuperscript{196} case Supreme Court granted
permission to raise the height of ‘Sardar Sarovar Dam’ without taking into
consideration the effect of high dam over the local people and ecology. Court
did not appreciate the impact of reservoir on the flora and fauna of related area.
But American judgment on Tennessee Valley\textsuperscript{197} case in 1978 was not applied
in Narmada Bachao Andolan case where US Supreme Court restrained further
responding of reservoir on the ground that it would violate the provision of
‘Endangers Species Act, 1973’ by causing the extinct of ‘snail darter’. The US
Endangered Species Act, 1973 requires all government agencies to ensure that
any action they authorize, fund or carry out is not likely to jeopardize the
continued existence of an endangered or threatened wild species. Though
Tennessee Valley Authority had began construction and during this period
‘Endangers Species Act, 1973’ was enacted where ‘Snail darter’ was declared
as an endangered species. Most important part in NBA case there was no
existence of any endangered species in the Area of construction and there was
no such legislation like Endangers Species Act in India.

In \textit{N.D.Jayal v/s Union of India},\textsuperscript{198} case Supreme Court considered
construction of a dam as a symbol of wholesome development of a country but
at the same time the right to sustainable development is also interpretation of
fundamental right and also integral part of life under Art 21. So this concept
cannot be signed out and the sustainable development again established as a
method for reconciliation between development and environment. The
Government should consider the importance of public projects, according to
Supreme Court in a famous case\textsuperscript{199}, for the betterment of the conditions of

\textsuperscript{195} Intellectual Forum, Tirupati v/s State of AP, AIR 2006 SC1364 (Para 74)
\textsuperscript{196} Narmada Bachao Andolan v/s Union of India, AIR 1999 SC 3345
\textsuperscript{197} Tennessee Valley Authority v/s Hiram G Hill, (1978), 437, US153
\textsuperscript{198} AIR 2004 SC1 (Supp) 867
\textsuperscript{199} Dahanu Taluka Environment Protection Group v/s Bombay Suburban Electricity
Supply Co. Ltd. and Others, (1991) 2 SCC 539
people but also avoid deforestations and maintain the purity of atmosphere and preservation of ecological balance.

SUSTAINABLE DEVELOPMENT

Sustainable Development refers to the goals for living in such a way as to ensure long-run stability of environment and conservation of natural resources especially non-renewable natural resources. The Term ‘Sustainable Development’ was coined for the first time by the International Union for the Conservation of Nature (IUCN) in its “World Conservation of Strategy” in the year 1980 although the concept had an existence in Cocoyoc Declaration, Mexico in 1974 which was organized by United Nations Conference on Trade and Development (UNCTAD) and United Nations Environment Program (UNEP). But it was popularized by Gro Harbor Brundtland on her Report known as ‘Our Common Future’ published by the World Commission on Environment and Development in 1987. Sustainable Development means \textit{development that meets the needs of the present without compromising the ability of future generations to meet their own needs}. The Commission’s report also said that \textit{the international economy must speed up world growth while respecting environmental restraints}. Sustainable Development is the Central concept of Agenda 21 taken at Rio in 1992 and a Commission on Sustainable Development (CSD) was set up in 1993 and finally in 2002 Johannesburg Summit was organized on Sustainable Development. The concept of sustainable development revolves round balancing environmental requirements with ecological concerns and society has to grown in such a way that no permanent damage should be done to environment. As per report of FAO in 1989, “Sustainable development is the management and conservation of the natural resource base and the orientation of technological and institutional change in such a manner as to ensure the attainment and continued satisfaction of human needs for present and future generations. Such sustainable development in agro-forestry and fisheries sectors, conserve land, water plant and animal genetic resources and is environmentally non-degrading, technically
appropriate, economically viable and socially acceptable.” 200 As per Alok Kumar, the post independence political debate has centered on two major issues: equity and growth. The environmental concern has added a third dimension i.e. sustainability. India’s biggest challenge today is to identify and implement a development process that will lead to greater equity, growth and sustainability. 201 The sole aim of sustainable development as per Supreme Court is to balance economic and social needs on the one hand with environmental considerations on the other. 202 This means that the needs of the people have to be satisfied and the levels of their living improved without jeopardizing the prospects to future generations. So it is an environmental policy which deals with three important factors like, economy, society and ecology.

INTERGENERATION EQUITY

Modern environmental problems affect most directly on economic development of human society. So there is a need for planned lifestyle such as security of water resources and availability of clean water, conservation of non-renewable resources, disposal of wastes and balanced population growth and the specific locations chosen for industrial projects. These all represented issues of intergeneration environmental equity which need to secure a flow of profits to do better than alternative investment opportunities. Principles 1 and 2 of the 1972 Stockholm Declaration refer about Inter-generational equity. Over-exploitation of earth, water and other natural resources by the present generation must be prevented so as to preserve them for the benefit of future generations. Principle 3 of the Rio Declaration, 1992 also states that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations. The UN General Assembly Resolution No. 37/7 of 1980 also refers to the need for maintaining

200 Study materials of M.A. in ENVIRONMENTAL STUDIES, Part-II, Paper-VII, Directorate of Distance Education, RABINDRA BHARATI UNIVERSITY; Pp 110
201 Tehri Project – An environmental analysis, Alok Kumar, INDIAN BAR REVIEW, Vol XXIII(3&4)1996
202 Essar Oil v/s Halar Utkarsh Samiti (2004) 2 SCC 392 (Para 27)
the balance between development and conservation of nature in the interest of present and future generations. This principle is very new and developed from Stockholm Declaration. The Supreme Court of India in a case decided that man has the right to freedom and adequate conditions of life but natural resources including air, water, flora and fauna must be safeguarded for the benefits of the present and future generations through careful planning.

**DOTRINE OF PUBLIC TRUST**

The Supreme Court also adopted Public Trust doctrine in many Indian cases for protection of natural resources. In *M.C.Mehta v/s Kamal Nath* case this doctrine was applied by Justice Kuldip Singh taking references from American cases. According to Doctrine, State is the trustee of natural resources and those properties are public properties for their enjoyment. The real beneficiary is public and state is mere trustee and state has no right to dispose those resources or convert into private ownership. Same decision was taken in Mono lake case by Supreme Court of California in USA. In Intellectual Forum, *Thirupathi v/s Sate of Andhra Pradesh* case Indian Supreme Court also interpreted the application of this Doctrine more widely. Again, in *M.I.Builders Pvt. Ltd. v/s Radhey Shyam Sahu* case Court was against the construction of an underground shopping complex beneath a park. In *K.M.Chinnappa v/s Union of India* case petitioner challenged mining lease granted to a company in the Kudremukh National Park and Supreme Court said that the aesthetic use and pristine glory cannot be permitted for private or commercial use. As per Prof. Joseph Sax, three types of restrictions are imposed under this principle- firstly, trust property must not be used for a public purpose but available for use of general public, secondly, trust property may not be sold even for fair cash

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203 186th Report of Law Commission of India, Pp 126 [official website of Law Commission of India]
204 AP Pollution Control Board v/s Prof. M.V.Nayudu, (1999) 2 SCC 718 (Para 53)
205 (1997) 1 SCC 388
206 National Auduban Socieity v/s Suprerior Court of Alpine County, 33 cal 3d 419
207 AIR 2006 SC 1350
208 AIR 1999 SC 2468
209 AIR 2003 SC 724
equivalent and thirdly, trust property must be maintained for particular types of uses. Very early this concept was developed in Roman Empire for protection of rivers, seashores, forests and air.

POLLUTER PAY PRINCIPLE
The ‘Polluter Pay Principle’ means that absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is a part of the process of ‘Sustainable Development’ and as such polluter is liable to pay the cost to the individual, sufferers as well as the cost of reversing the damaged ecology. Judiciary has no hesitation in holding the precautionary principle and the polluter pays principle as part of environmental law of the country. Indian legal system having been founded on British Common Law the right of a person to pollution free environment is a part of the basic jurisprudence of the land.

Industry is the world’s major polluter as it generates toxic waste which pollutes the eco-system. Its emissions cause much more causalities. Industrial growth not guided by the sustainable philosophy adversely affects the interest of the individuals. Profit oriented industries in disregard to the environmental values are bane to the society. The radical change in emphasis from the traditional principle of criminal liability to the remedial change in emphasis from the traditional principle of criminal liability to the remedial pollution control measures lead to the incorporation of the polluter-pay-principle. This principle is an instrument to create financial deterrence in the minds of industrialists. This Polluter-pay-principle finds place in various international instruments. Principle 16 of Rio Declaration of Environment and Development 1992 reiterated this principle. According to the principle the responsibility for repairing the damage is on the industry that is causing pollution. This principle requires that the pollution abatement costs should be bear by the polluter.

Whose manufacturing process generates pollution may be justified on both economic and environmental grounds.

PRECAUTIONARY PRINCIPLE
The Precautionary Principle is borrowed by the Court from Brundtland report on Sustainable Development as per report of “The World Commission on Environment and Development, 1987”. The precautionary principle had its origin in the mid-1980s from the German Vorsorgeprinzip adopted by States within the North Sea Ministerial Conference mark the first use of this principle in international law. This principle in the context of municipal law means.

(i) Environmental measures — by State Government and statutory authorities-must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The ‘Onus of proof’ is on the actor or the developer, industrialist to show that his action is environmentally benign.

Principle 15 of Rio Declaration articulated this principle in the following lines, “In order to protect the environment, the precautionary approach shall be widely applied by the states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. Environment laws in India more insisted on preventive measures. Consent system introduced by the Air Act, Water Act and the Environment Act is based on the precautionary principle. The State and the Union Governments prescribed the emission standards. If the controlling agencies satisfied that the industry requiring consent is having sufficient pollution control equipment then the State Board will grant the consent. This

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211 186th Report of Law Commission of India, Pp 126
[official website of Law Commission of India]
preventive measure is precautionary in nature. There are some inconsistencies between the precautionary principles and protection of species in ecology and this principle did not elaborate the scope of its application in wildlife conservation. The precautionary principle made its international appearance in the field of environmental law in Rio conference in 1992. The major intergovernmental agreements for future conservation in international level are the Ramsar convention; 1971, the convention on Biological Diversity; 1992, the convention on Migratory Species of Wild Animals; 1979 and finally in 1973 CITES. According to some writers this principle is referred in such away that it suggests scientific certainty which is often discussed as part of an adoptive ecosystem management approach, to be applied at the operational level by scientists and on the ground policy makers. This principle primarily perceived as a stop gap measure to be applied at the operational level when it is clearly absent.\textsuperscript{212} India judiciary applied this principle extensively. If the industry is not having sufficient pollution control equipment, before initiating the project itself, the court ordered not to start such project. The judiciary in India took precautionary steps to protect the environment.

ENVIRONMENT COURTS AND GREEN BENCH
In spite of the National Environmental Appellate Authority Act, 1997 and the National Environmental Tribunal Act, 1995, the environmental court or tribunal has not been opened and properly implemented in India. In Australia, ‘Land and Environmental Court’ was established by legislation in 1980 under the Land and Environment Court Act 1979. In New Zealand, Environment Court was established under new amendment of 1996 of the Resource Management Act, 1991 Act. U.K. is also processing for establishment of Environment Courts or Tribunals soon for environmental issues. The Green Bench or The Environment and Pollution Bench was formed in India in 1996 mainly to adjudicate all cases related to the environment and ecology. It was established keeping in mind about the number of increasing writ cases in higher

\textsuperscript{212} www.jiwlp.com [as referred in Ifcai journal on environmental law]
courts regarding environmental administration and natural elements of ecology. The *Howrah Ganatantrik Nagarik Samiti*, who filed a petition\(^{213}\) before the Supreme Court of India regarding various environmental and pollution problems in and around Howrah, which was making life difficult and hazardous for the residents. Finally, a divisional bench of the Supreme Court directed the Chief Justice of the Calcutta High Court to form a bench to deal with cases related to the environment and pollution, particularly for preventing the reckless destruction of greeneries in urban areas, the filling up of wetlands and water bodies, sound pollution, odor pollution, and the like. Thus the first in India, Green Bench was set up in the Calcutta High Court in June, 1996.

In the *Vellore Citizens Welfare Forum* Case\(^{214}\) the Supreme Court directed the High Court to set up a Green Bench. In several states the Green Bench has been already set up in high courts of Calcutta, Bombay, Madras and Gujarat.\(^{215}\) In a famous case of Maharashtra, Supreme Court returned the petition to Bombay High Court and requested the chief justice of Bombay High Court to constitute a Green Bench to deal with public interest litigations relating to environment.\(^{216}\) As result of this, great interest has been generated as citizens are actively participating in efforts to protect the environment. Due to public awareness and efforts, the High Court of Calcutta has ruled that the use of microphones be moderated within the city limits, and the bursting of crackers be banned, even during festivals. While the move is a welcome one, very often such rules are broken which often go undetected, and hence the culprits go unpunished. However, at least a beginning has been made towards the protection of the physical environment of the country.

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\(^{213}\) Howrah Ganatantrik Nagarik Samiti v/s State of West Bengal 1995(5) SCALE 224

\(^{214}\) Vellore Citizen's Welfare Forum v/s Union of India, AIR 1996,SC 2715

\(^{215}\) Environmental Law and Policy in India; Shyam Divan & Armin Rosengranz, Oxford; Pp 4

\(^{216}\) Dahanu Taluka Environment Group V/s Bombay Suburban Electricity Supply Company Ltd.1991(2)SCC 539
The 186th Report of Law Commission of India has recommended for establishment of environmental courts in regional level with an Appeal provision to Supreme Court of India. In *A.P. Pollution Control Board v/s M.V. Nayudu*\(^{217}\), the Supreme Court of India referred the need for establishing Environmental Courts with expert advice from environmental scientists and qualified persons. Early in *Indian Council for Enviro-Legal Action v/s Union of India*\(^{218}\), Supreme Court observed that Environmental Courts must be established to deal with the environmental issues in a speedy manner and it was also decided in *M.C. Mehta vs. Union of India*\(^{219}\) to set up environment courts on a regional basis with a professional Judge and experts.

### 4.6. GOVERNMENT POLICIES FOR CONSERVATION OF WILDLIFE IN INDIA

A good government ran on the basis of good policies and planning. Apart from law, policy is also important for smooth functioning of any welfare state. So each and every government has to adopt necessary policies for betterment of legal system. Indian government has been taking various policies and projects for ecological balance as well as for wildlife protection also. India being a developing country, the government has played a very important role for promoting environmental awareness and education among the masses. In order to provide ecological knowledge government has set educational institutions, specialized agencies and several departments also. It has taken all the possible efforts to formulate eco-development programs, seminars, workshops and other necessary measures for environmental awareness.

Forests were protected to preserve the climatic and physical conditions of the country. On the Basis of the report of German expert Dr. Voelcker, the Government of India issued a resolution on 19th October, 1894, declaring its first forest policy. In the year 1950, however, a Central Board of Forestry

\(^{217}\) 1999(2) SCC 718  
\(^{218}\) 1996(3) SCC 212  
\(^{219}\) 1986(2) SCC 176
was constituted to provide guidance to the State Governments in the formulation of programs, integration of plans for land use and to review the National Forest Policy. On May 12, 1952, after independence the Government of India proclaimed a new National Forest Policy which was based on National needs particularly in the field of economics, politics and environment and to meet the new challenges again in 1988 a new Forest Policy was declared.

In the decade of 1970s was very powerful in India in policy framing as well as legalizing wildlife ethos by Parliament and executives of Congress government. The rapid conservation program was possible due to active efforts by Mrs. Indira Gandhi with enormous power of Congress party in New Delhi as well as its ruling in most of states. The export of tiger and leopard skin was banned and age old shikar or hunting was restricted by the provision of new the Wildlife (protection) Act with a long list of protected species was enacted in 1972. The Project Tiger in 1973 was not only to protect the species but provided federal funding for the establishment of nine reserves in different habitats. Project in the Gir Forest with similar measures was also adopted. With the government initiatives some international and national wildlife organization took major policies for wildlife. The World Wildlife Fund (WWF) raised a million dollars for Projected Tiger and The Bombay Natural History Society (BNHS) of India provided vital scientific inputs on the Gir Project. But such type of policies and law framing were continued after the congress government through several policies and public initiatives. In 1983, the National Wildlife Action Plan was adopted and proved to be as important landmark as it give the awareness about the sharp decline of wildlife in India. The euphoria about environmental awareness of the seventies was not lasted for a long period and in spite of the indication of declination of wildlife population no major steps were taken during those years. But in 1995, a committee was appointed for making recommendation for the preservation and protection of wildlife by the Ministry of Environment and Forests as per direction from the High Court of Delhi.
PLANNING COMMISSION

After independence Pt. Nehru played a pivotal role for setting of Planning Commission for chalk out the future program for developmental purpose and it got support from maximum political parties as a socialistic approach. Though Subhas Chandra Bose also proposed the concept of National Planning Committee (NPC) in congress meeting during his tenure as its President in 1937 but the commission was established after independence in 1951 by the initiatives of Prime Minister J.L. Nehru for planning at Soviet model.

The planning commission of India has been consistently taking many measures for prevention of degradation of wildlife and also protection of environment. There were, of course, attempts to set things right, and in 1977 the Planning Commission made it mandatory for all major development projects to be subjected to an environmental impact assessment.\footnote{Ecological Journey, Madhav Gadgil, permanent black; Pp 40} It has funded and allotted money for several projects and policies relating to conservation of natural resources including wildlife in India. Environmental problems are given very importance by commission and it has also become crucial guiding dimension for other plans and programs.

In the 6\textsuperscript{th} FIVE YEAR PLAN (1980-1985) first time the environmental problems in India were understood in its proper context and classified into two categories,

(a) Those arising from conditions of poverty and underdevelopment,

(b) Those arising as negative effects of the very process of development.

According to the Planning Commission the first category has to do with the impact on the health and integrity of our natural resources like, land, water, forest, wildlife, etc as a result of poverty and the inadequate availability of the measures to fulfill basic human needs for large section of population. The second category has the side effect of rapid economic growth and development. This type of unplanned developments has affected the natural resources. So awareness for environment is essentially desire for national development on sustainable lines. Environmental conservation is the very basis of all
development. During 6th plan there was an allocation of only Rs 99 Lakh for the development of national parks which was raised to Rs 260 lakhs in 7th FIVE YEAR PLAN (1985-1990) period. The central scheme of assistance to states for development of national parks was given to states after scrutiny of their proposal. During 6th and 7th Five Year Plans, Government of India launched a number of centrally sponsored schemes to supplement the state governments programs for wildlife conservation under Project Tiger Scheme in 1973, covering nearly 28,017 square kilometers in late 1980s. The continuous poaching of the Indian one-horned rhino was increased at alarming rate specifically in Assam. The Government of India launched an Rs.50 millions centrally sponsored scheme during 1986-87 for conservation of Rhinos in Assam. The budget provision for the development of 32 national parks in 1987-88 was Rs 199 lakh and during 1988-89 it is Rs 192 lakh.

MINISTRY OF ENVIRONMENT & FOREST
The new ministry was created in 1985 as ‘Ministry of Environment and Forest’ on the recommendation of N.D.Tewari committee. Many important agencies are under the control and supervision of this ministry like, Central and State Pollution Control Boards, Zoological Survey of India, Botanical Survey of India, Forest Survey of India, National Museum for Natural History, Wildlife Institute of India, National River Conservation Authority and others for environmental protection and creating awareness among the citizens. Ministry of Environment and Forests has played an important role to promote environmental education and environmental awareness among various age groups and to disseminate information through ‘Environmental Information system (ENVIS) network among all concerned. This Ministry has also initiated to include environment education as a separate and compulsory subject in education curricula at all levels of formal education. National council for Educational Research and Training (NCERT) for school level, the University Grants Commissions (UGC) for college and university level and the All India Council for Technical Education (AICTE) for the Professional level have been
assigned the task of preparing a syllabus on Environmental Education. Now almost in every education in India environment as a subject are taught. Non formal environmental awareness is being provided by seminars, workshops, training programs eco-clubs, audio-visual shows etc. A National Environment Awareness Campaign (NEAC) is organized every year. Seminars and symposia are held on 5th June every year to mark the “World Environment Day”. The National Museum of Natural History (NMNH) set up in New Delhi in 1978, is concerned with the promotion of non-formal education in the area of environment and conservation.

India has many excellent research and training centers in priority areas of Environmental Science and Management. These are:

Centre for Ecological Sciences, Bangalore.
Centre for Mining Environment, Dhanbad.
Centre for Environmental Education, Ahmedabad.
C.P.R. Environmental Education Centre, Chennai.
Salim Ali Centre for Ornithology and Natural History, Coimbatore.
The Centre for Environmental Management of Degraded Ecosystems, Delhi.
The Tropical Botanical Garden and Research Institute, Thiruvananthapuram. Etc.

The Directorate of Wildlife under the Ministry of Environment and Forest was set up in pursuance of guidelines were given by the National Wild Life Action Plan to assist the State government in the proper management of the national parks and sanctuaries. The Directorate was also responsible for assigning the assistance to states. The Wildlife Wing in the Ministry has two Divisions, namely, Project Elephant Division and Wildlife Division. In addition, there are three autonomous bodies, i.e., National Tiger Conservation Authority (NTCA), Central Zoo Authority (CZA) and Wildlife Institute of India (WII). The Ministry of Environment and Forest (MOEF) of India established the National Coordination Committee (NCC) consists of representatives of different enforcement agencies on 28 August 1995 to

221 Wildlife and Applicable Laws, edited by V.K.Prabhakar, Pp 36
promote effective inter-departmental coordination for the control of illegal trade in wildlife and wildlife products in the country. The National Zoological Park is also a part of the Wildlife Wing of the Ministry.

In July 2002 ‘The Animal Welfare Division’ became a part of the Ministry of Environment of Forests. Earlier, the Division was under the ‘Ministry of Statistics and Programme Implementation’. The mandate of the Animal Welfare Division is to prevent the infliction of unnecessary pain or suffering on animals. The main task of the Division is to implement effectively the various provisions of ‘the Prevention of Cruelty to Animals Act, 1960’. Under this Act, a number of Rules have been framed for various purposes.

### 4.7. PROJECTS ON CONSERVATION OF WILDLIFE IN INDIA

The Government of India has implemented certain administrative measures for conservation and development of wildlife in India. Apart from several constitutional bodies and governmental agencies, many administrative measures have been taken by government time to for the protection particular species of wildlife and wildlife in general either funded by international organizations or by ministry of environment itself. During 1970s the conservation process was not only limited within governmental efforts but many organizations and private institution participated in various conservation projects. Non-governmental participation in sea turtle conservation continued as the Worldwide Fund for Nature (WWF) conducted turtle walks where eggs were collected by volunteers for relocation in Forest Department hatcheries. It was in 1973 turtle conservation efforts began simultaneously mainly in Gahirmatha in Orissa and Chennai, Tamil Nadu. The Madras Snake Park Trust (MSPT) and Tamil Nadu Forest Department maintained hatcheries in Chennai over the next ten years.222

222 Making Conservation Work, edited by Ghazala Shahabuddin & Mahesh Rangarajan, permanent black; Pp 86 - 87
GIR ECOLOGICAL PROJECT, 1968

The Gir forest in the Saurashtra peninsula of Gujarat with continuous tracts of forest land is the last strong hold of the Asian lion. Just 20 Asiatic lion were left out within the park boundary during 1972 and probably came closest to extinction. Gir ecosystem was also disturbed by the nomadic cattle grazers called Maldharis. This conservation program was a successful one, as per, Wildlife Conservation Trust the lion population in India has increased to over 304 by the end of 2000 and 359 in the year of 2006.\(^{223}\) In 1972 the Government of Gujarat started a lion protection scheme after lion’s critical status was recognized at an IUCN meeting in 1969.

The main object was to establish a stable ecosystem where lions and other animals could move freely and supply an adequate natural prey for them. Initiatives also were also taken to protect lions from poaching, poisoning and infectious diseases. At the same time steps were taken for betterment about Socio-economic condition of Maldhari nomads who are dependent on the same ecosystem. In 1972, nearly Rs.45.07 lakhs was sanctioned by the Government of Gujarat for lion project. One work plan was made under this scheme for construction of barricades at the periphery of the sanctuary to prevent entry of cattle, fencing the periphery of the sanctuary by constructing a dry rubble wall to prevent any illegal entry of outside cattle, check posts across all the public roads passing through the sanctuary.

\(^{223}\) Concepts in wildlife management, B.B.Hosetti, Daya Publication; Pp 69
HANGUL PROJECT, 1970

Hangul Project was taken up with the expertise of World Life Fund (WWF) and 171 square kilometer Dachigam National Park was declared as the protected homeland for this animal. Hangul derives its name from 'Han' which is the local name for the horse chestnut tree, the fruit of which the deer feed on. The Hangul maintains its gene-bank as a unique deer species Cervus Elaphus, only found in Himalayan belt of Kashmir. Once Hangul was widespread across the valley of Kashmir and also extended range across Himachal Pradesh. International Union for the Conservation of Nature (IUCN) has declared this wild species as a critically endangered species. Large stags were protected as Royal game by the former Maharaja of Jammu and Kashmir for their impressive rack of antlers. Since independence the deer has become rare due to indiscriminate sheep grazing in India. Hangul must be protected from leopard which is their main natural predator and continuous political turmoil in the Kashmir Valley is the major threat for Hangul. Anti-poaching measures need constant improvement and though poaching has been kept under control, constant vigil needs to be maintained. Hangul is being poached mainly for meat. Human activity is a main problem for Hangul habitat and need to stop grazing by domestic livestock within the Park. Extending available habitat would be the best measure to insure their long-term survival of the Hangul. For this, remaining forest outside of Dachigam needs to be brought under protection and strong measures taken to stop tree cutting and further degradation of habitat by overgrazing by domestic stock. The Hangul was given Schedule I status and afforded protection after the enactment of the Wildlife Protection Act of 1972. The Dachigam National Park has been raised mainly to protect endangered species like Hangul. But again as per latest census conducted by Jammu and Kashmir Wildlife Department in collaboration with Wildlife Institute of India (WII) and some non-governmental organizations has revealed that very few Hanguls are alive in Dachigam Park and this endangered species is on the verge of extinction. Hangul population
have increased by the project of J.K. Government with efforts of the experts especially Dr. Fredkurt in the Kashmir valley.

PROJECT TIGER, 1973

In 1973, Project Tiger was launched with a mandate to conserve tigers in a holistic manner. Its mandate was to be fulfilled by facilitating focused, concerted management of ecotypical reserves in various states, constituted on a core-buffer strategy through funding the technical support including site-specific inputs to elicit local community support for conservation. This project played a very major role in broadening ecological awareness throughout the country. The concept of preservation extended beyond the area of tiger toward other species also. The lions of the Gir forest as well as habitat of prey level also got the better protection by the Gujarat State government. This project also helped to establish a Desert National Park in the Thar, Rajhsatan.

Initially when Project Tiger was launched in the country on 1st April, 1973, then 9 Tiger Reserves were covered under this project for conserving that endangered species. The project tiger was launched across the India from mangrove jungles of the Sunderbans in the Ganga Delta to the thorn forests of the Ranthambhore in the western India. Now it has been increased to 28 Tiger Reserves and it has been successfully implemented in India spreading in 17 states. The implementation of the project over the years has highlighted the need for a statutory Authority with legal sanction for conservation of tigers in the country. Since then, the project Tiger is a Centrally Sponsored scheme where Central Government provides fund for this project prepared by the states. After the 2006 amendment of the Wildlife (Protection) Act, 1972, National Tiger Conservation Authority has now been set up.
The Indian government through the state Forest & Wildlife Departments, the Indian Board for Wildlife and encouraged by the World Wildlife Fund (WWF), conducted a careful census in 1972 which revealed that only about 1826 Tigers survived in India. In reaction of this official census that found fewer than 2,000 tigers in India's disappearing forests, Indira Gandhi founded project tiger in 1973. Initially nine Tiger Reserves were created but today the project oversees 25 Tiger Reserves in 14 States, covering an area of 37,761 sq km (5 per cent of forest area).

Source: - [http://projecttiger.nic.in](http://projecttiger.nic.in) (June 5, 2005)
about 33,000 sq km. additionally. In early 70’s British conservationist raised money for ‘Operation Tiger’ through a world wide campaign. This British project promised to then Prime Minister Mrs. Indira Gandhi to pay half of their money to start such Project in India. ‘Project Tiger’ with cooperation of World Wide Fund for nature (WWF), and the International Union for Conservation of Nature and Natural Resources (IUCN) got its success not only in the preservation and protection of the tigers, but also of other wild animals and maintaining the ecosystem in the total area. The project tiger was launched with a 40 million rupees scheme which was on that time largest wildlife conservation project in the world. Now India has nearly 28 tiger reserves with other protected areas, some of which also contain tiger populations.

The report of the “Project Tiger: a planning proposal for preservation of tiger (Panthera tigris tigris) in India” headed by KARAN SINGH, inaugurated the tiger conservation program and official conservation during 1972 in India. It was a remarkable blueprint which gave the program a promising start. This Project earmarked reserves with a core area free from human interference and cattle grazing. Though ‘Project Tiger’ was launched in 1973 but till there is a continuing debate on the problem of people versus tiger and pose a threat to the people and the cattle into neighboring territory. So the main challenge of the project was to make separate tiger habitat.

PROJECT CROCODILE, 1975
The project was taken by Government of India on Crocodile Breeding and Management and crocodile farming industry in India with UNDP and FAO. The populations of all three Indian crocodilian species like Freshwater crocodile (Crocodile palustris), saltwater crocodile (Crocodile porosus) and Gangetic gharial (Gavialis gangeticus) have declined heavily at low levels in mid 70’s. Dr. H.R. Bustard an FAO expert on crocodile breeding and management was invited as a consultant in May, 1974 and he conducted a survey in May-July, 1974 to study all the three Indian crocodiles and stated that
Gharials are on the verge of extinction and could be saved by active management. The project was undertaken from 1\textsuperscript{st} April, 1975 in Orissa with Dr. H.R. Bustard as the chief Technical Advisor. The eggs were collected, hatched and reared till they attain the size of 1.2 m long and then released back into ideal areas of natural habitat. Under this project nearly 11 wildlife Sanctuaries separated only for protection of crocodiles and their naturally development Krishna sanctuary in Andhra Pradesh and Chambal sanctuary, a three state sanctuary in Uttar Pradesh, Madhya Pradesh and Rajasthan are the two largest sanctuaries for crocodile conservation in the country. Since 1980, five more reserves have been set up with crocodile as the main species to be protected, and the number of rearing centers is now 8 for Gharials, 18 for freshwater crocodile and 5 for saltwater crocodiles. In December, 1978 a Central Crocodile Breeding and Management Institute was set up at Hyderabad.

A project was also adopted by government of India to protect Gharial from extinction. When Project Crocodile was launched, there had been an estimated 200 Gharials left in the world. Gharial rehabilitation started 1977 with the release of 26 individuals in river Mahanadi of Orissa. The first salt water crocodile release was in Bhitar kanika wildlife sanctuary, on 27\textsuperscript{th} April, 1977. The first release of the Indian mugger took place on the February, 1977, with 4 individuals being released at Ethipothalla, Andhra Pradesh.\textsuperscript{225} But the Project Gharial was one of the successful projects which re-introduced the wild adult population up to around 400 in 1997 and finally this project was stopped. Again massive fall was seen in crocodile conservation and within thirty years Gharial number has been reduced to just 182 in 2006. The World Conservation Union (IUCN) has transformed the Gharial from “endangered” to “critically endangered” In its annual Red List following the discovery that there are less than 200 breeding adults left in the wild.\textsuperscript{226}

\textsuperscript{225} Concepts in wildlife management, B.B.Hosetti, Daya Publication; Pp 70
\textsuperscript{226} At 200, Gharials now critically-endangered list, THE TIMES OF INDIA; September 17, 2007
This is the lowest for this species since the early 1970s and almost half the population wiped out in a decade. Chambal is loosing maximum gharials day by day in very own Sanctuary in the Yamuna. The release of the toxin in Yamuna which reached Chambal during monsoons with the backwaters takes time for any foreign substance to get incorporated in the food chain or in the water river.

HIMALAYAN MUSK DEER PROJECT, 1979

In order to protect the musk deer from becoming extinct, the International Union for the Conservation of Nature and National Resources (IUCN) and World Wildlife Fund (WWF) with Government of India launched the Project of the Himalayan musk deer for better conservation in ecology. In India, the Himalayan musk deer species is legally protected under the Wildlife (protection) Act, 1972 in many national parks and sanctuaries. The Himalayan musk deer with musk gland particularly the male species was formerly widespread within alpine and sub-alpine forests throughout the Himalayas.

The poaching and killing of this species were started for musk which is generally used for medicine and cosmetic in high price. Poaching is the main cause for the destruction of this species. Three to five musk deer are killed indiscriminately for every male with a musk pod. The small size of the musk is very easy to hide and transport and detection during smuggling is extremely difficult.

The largest numbers of musk deer are found in China, Russia and Mongolia. The Musk deer populations are declining nearly in all countries particularly dramatic in Russia and China. However the European Union has imposed an import ban in 1999 for musk from China and Russia as a precautionary measure for species conservation. Apart from poaching Habitat destruction due to deforestation for timber and fuel is another reason for removal of musk deer in India. The 12th meeting of the Conference of the Parties to CITES, Santiago, held during 3-15th November, 2002 reviewed the international status of musk deer. CITES is encouraging all its member
countries to improve the control mechanism of international trade relating to raw musk and musk products.

LESSER CAT PROJECT, 1981
Lesser Cat is one of endangered and rare species which has their original habitat in the eastern part of India. There are mainly four species of Lesser Cat living in India like Leopard cat, Marbled Cat, Fishing Cat and Golden Cat. Government of India took a project as ‘Status Survey of Lesser Cats in Eastern India’ to protect all these species with help of World Wildlife Fund (WWF) and Zoological Survey of India. This Project was introduced with the help of WWF for the protection of lesser cats and their habitat specifically in Sikkim and other northern part of India and the project later started their work in various eastern part of India including West Bengal, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Nagaland, Manipur, Tripura and Mijoram. This project mainly examined the habitat, number of species and their main threat in the ecology. Regarding the conservation the project mainly focused on some major causes like Deforestation, Man and Lesser cat conflict and above all the human activity also reducing the number of lesser cat. Apart from those, the hide of lesser cat is also used by human being as fashionable goods. So according to report of this project human being is the main threat to the existence of lesser cat through there various developmental activities and interference on their natural habitat. 227

PROJECT ELEPHANT, 1991
Project Elephant was introduced by the Centre following considerable alarm about declining numbers mainly habitat loss and poaching. The major cause of threat to elephant populations in India is degradation habitat. Several human populations have also interfered in the elephant habitats which are susceptible to genetic degradation. Historical evidence points to vast numbers of elephants

roaming India’s once abundant forests, even from Moghul times, and their numbers may have been in excess of 1,00,000 in the British period. The Task Force, appointed by the Government of India, recommended the objectives to ensure elephant population remains healthy and viable within ecosystem, to improve the deterioration of viability and integrity of necessary habitats, to open up existing traditional corridors linking the parts of the habitats being used by elephants for their migration and mainly to mitigate man-elephants conflicts through eco-development and to restore the traditional compassion and tolerance of the people living in and around elephant habitats.

During 1991-92, the Government of India launched the project elephant with the objective of saving the Asiatic elephant in India and also to minimize the man-elephant conflict. The project covers major elephant populations extending over 12 states and inhabiting an area over 60,000 Sq. Kms. The project was implemented with the collaboration of the State governments with the aim to provide corridors of protected areas for free movement of elephant herds. There were many incidents of conflict between elephants and man relating to same food and habitat. Then to conserve the elephant population and also to protect human life and property the project was launched with the object to protect human settlements from these animals as elephants usually roam in big group in search of their food and shelter. So ‘Project Elephant’ has done lots of duties like, strengthening anti-poaching infrastructure in the states, restoration of migration corridors for elephants, erecting of electric fences along forest borders to safeguard against human-elephant conflicts and relocation of the population outside the National Park and sanctuaries. ‘Project Elephant’ had the aim of protecting dwindling Indian species of elephants to cope with international demand for elephant conservation in the world.

In 1992, the Project Elephant was launched in India and States that have a free-ranging population of wild elephants are being given financial as well as technical and scientific assistance to ensure long-term survival of identified viable populations of elephants in their natural habitats. Project
Elephant was specially tailored to extend financial and technical support to 18 'elephant states' and 26 elephant reserves have been notified, providing protection to viable elephant populations over their entire range. Project Elephant assists state governments in mitigating human-elephant conflicts and payment of ex-grants relief for loss of life and crop damage apart from protecting habitats and securing corridors.\textsuperscript{228} A Steering Committee on the project elephant was constituted under the Ministry of environment and forests in October 1992 to keep a watch on the implementation of the project.

NATIONAL ZOO POLICY, 1998

The National Wildlife Action Plan, also emphasized about the role of exist conservation and ex-situ conservation process in national conservation efforts for the protection of wildlife in India. Finally to make zoos as a popular institution for wildlife conservation government of India adopted this policy. This policy aimed to give proper direction and thrust to the management of zoos through proper management and participation of all concerned.

On 4\textsuperscript{th} August 1992 Government of India again already published 'the Recognition of Zoo Rules, 1992' in the Gazette of India, in exercise of the power conferred by clause (f) and (g) of sub-section (1) of Section 63 of the Wild Life (protection) Act, 1972. The main objective behind all of these projects was to strengthen the national efforts in conservation of the rich biodiversity including wild fauna of the country. Some strategies were taken by government like Rural Policy about zoos, Acquisition of Animals, housing or health care of animals for upkeep of animal collection proper diet and water, health care, research and Training on Biological behavior of animals, educational activities for conservation of wildlife in the nature.

\textsuperscript{228} Live and let live, P.K.Ghosh; THE TIMES OF INDIA, June 20, 2009
BIOSPHERE RESERVE PROGRAM

An initiative was taken by UNESCO under its Man and Biosphere Programme for conservation of nature and incorporation of human beings also. In 1970’s those reserves were set up for conserving the biodiversity of a region with human interference and with a philosophy that local people should be involved in this program. These reserves are complementary to sanctuaries and national parks but these are under the charge of forest department based on conventional concept of protected area. These biosphere reserves have no statutory reorganization under Indian law but for their smooth functioning uniformed laws are needed. The purpose of the formation of the biosphere reserve is to conserve ‘in situ’ all forms of life, along with its support system, in its totality, so that it could serve as a referral system for monitoring and evaluating changes in natural ecosystems. The first biosphere reserve of the world was established in 1979, since then the network of biosphere reserves has increased to 531 in 105 countries across the world. Presently, there are nearly 14 biosphere reserves in India. Up to 2005, total 14 Biosphere Reserves have been set up in the country covering an area of nearly 55761 sq. km to protect representative ecosystems and several laboratories to evolve alternate models of development, in tune with the Man and Biosphere program of UNESCO. Also as a result of the amendments in 1991 to the Wildlife (Protection) Act, hunting of all species of wildlife for commerce or for pleasure has been banned.

NATIONAL WETLAND CONSERVATION AND MANAGEMENT PROGRAM

The Government of India initiated wetland conservation program in 1985-86 in close collaboration with the concerned State Governments for protecting wetlands and presently 24 states have been covered by this program. The

scheme on conservation and management of wetlands was initiated in 1987 with the following objectives:

- to lay down policy guidelines for implementing program of conservation and management of wetlands in the country,
- to undertake priority wetlands for intensive conservation measures,
- to monitor implementation of the Program of conservation, management and research,
- to prepare an inventory of Indian wetlands and also to implement Ramsar Convention related matter for International Cooperation.

National Wetland Conservation & Management Programme (NWCMP) identified 104 wetlands which are eligible for financial assistance on a 100 per cent grant basis from the concerned State Governments for undertaking activities like survey and demarcation, weed control, catchment area treatment, de-siltation, conservation of biodiversity, pollution abatement, livelihood support, creation of minor infrastructure, educational awareness, capacity building of various stakeholders and community development. Several other steps are taken to arrest further degradation and shrinkages of water bodies due to encroachments, siltation, weed infestation, catchment erosion, surface runoff carrying pesticides and fertilizers from agriculture fields, and discharge of domestic sewage and effluents.

THE NATIONAL WILDLIFE ACTION PLAN

The National Wildlife Action Plan provides the framework of the strategy as well as the programme for conservation of wildlife. The first National Wildlife Action Plan (1983-1984) was adopted and the new Wildlife Action Plan (2002-2016) has been revised. The conditions of parks, wildlife reserves previously were not very healthy and in 1983 the historic ‘National Wildlife Action Plan’ was adopted with the full backing of all the States and Union Territories to implement the resolutions passed at the World Parks Congress in Bali during 1982 and at ‘World Charter for Nature’ on the UN General Assembly.
India started the formulation of a ‘National Conservation Strategy’ in 1983-84 through which a plan for conservation of Wildlife was adopted at national level. This Action Plan was endorsed by the Indian Board for Wildlife has the following 10 main components:

1) Establishments of Protected Areas and Habitat Protected areas.
2) Management of Protected Areas and Habitat Restoration.
3) Wild Life Protection in Multiple Use areas.
4) Rehabilitation of Endangered and Threatened species,
5) Captive Breeding Program.
6) Wildlife education and Interpretation.
7) Research and Monitoring.
8) Domestic Legislation and International Conventions.
9) National Conservation strategy, and
10) Collaboration with Voluntary Bodies.

The Action Plan (2002-2016) has taken scheme to provide grant to research institutes, universities, NGOs and other organizations of repute engaged in wildlife research both at the field and laboratory levels. Many projects in various disciplines of wildlife management are under various stages of implementation. Before 2003, the Indian Board of Wildlife, headed by the Prime Minister, was the apex advisory body overseeing and guiding the implementation of various schemes for wildlife conservation. Ministry of Environment and Forests under Government of India has drawn new policy imperatives to strengthen wildlife conservation through ecological security, priority to ‘in-situ conservation’ and people’s support for wildlife. It was a scheme for endangered wildlife and to point out the strategy for the conservation of wild flora and fauna within the country. The main objectives of this program to identify and integrate wildlife, environment and community interests on landscapes and use informed decision about possible trade-offs for well being and harmony. Other objective is to implement National and

International legal frameworks on forests, wildlife, environment for necessary simplification and efficacy. To carry out investigation on land and natural resource tenure issues for suggesting necessary reforms. Also to organize thematic training workshops on the legal and policy issues related to forests, wildlife and environment. And to disseminate research findings to the public, practitioners, academics and decision makers through publication, conferences and seminar and analyzing precedent setting legal cases on environment issues. It strengthens Protected Area Network, control of poaching, taxidermy, illegal trade of wild animals and enhancing the financial allocation for wild animals.

NATIONAL LAKE CONSERVATION PLAN
The Ministry of Environment and Forests, Government of India, has taken a program National Lake Conservation Plan (NLCP) under which 21 urban lakes have been identified for conservation program. Total 11 lakes are proposed to be studied in the first phase of the NLCP. A seminar on the National Lake Conservation Plan was held in New Delhi on 20th April, 1995, where it was decided that regional workshops would be held at site to formulate site-specific management action plans. At first a preliminary meeting was organized at the BMC HQ, Bombay, where representatives from various government departments and NGOs including BNHS were present.

Lakes constitute an important component of freshwater resources and also constitute habitats for a variety of birds, fishes and other aquatic life. But now encroachments, deforestation and flow of pesticides from the agricultural wastes with municipal sewage and industrial effluents are the major problems for lakes. The result is that the lakes are becoming increasingly unfit as a source of drinking water, recreational activities and habitats for aquatic life. They are distributed in different geographical regions in the country.

On the recommendation of the Government of Maharashtra, Powai Lake has been included in the first phase of the plan. As a preliminary step, the Government of Maharashtra nominated the Bombay Municipal Corporation (BMC) as the nodal agency for Powai Lake Conservation under the National
Lake Conservation Plan. The NLCP is proposed to be handled on the same lines as the National River Action Plan (NRAP). Like the NRAP, it is proposed to implement the National Lake Conservation Plan (NLCP) as a centrally sponsored scheme with equal sharing of cost by the Central and State governments.231

TIGER TASK FORCE
The rampant killing of tigers in inhuman manner in has triggered alarm bells in the corridors of the Ministry of Forests & Wildlife and among the conservationists, environmentalists and nature lovers. These majestic animals are roaming helpless in Zoos or in the cages of circus in captivity. Once a ferocious animal, today fears about the very presence of man, as man hunts these animals either for his pleasure or to make some quick money or for their livelihood in case of tribal and forest dweller or their defense or protection. According to the 1999 report, the Indian tiger population is being heavily poached by international organized wildlife crime networks. Because India still has the world's largest tiger population. The Earth's wild tiger populations used to exist from India and Russia to China and Southeast Asia but now several sub-species are already extinct.

To take these issues, the PMO appointed a Tiger Task Force (TTF) which affirmed that the provisions of the Wildlife (Protection) Act, 1972, were not adequate in safeguarding conserving the Tigers. In July 2005, Tiger Task Force (TTF) headed by Sunita Narain with biologists, social scientists, activists and forest officers across the country suggested an approach to the crisis of conservation that was more effective than earlier policies and based on scientific studies on extractive activities. The Task Force called for transparent decision for human settlements around the Protected Areas and also advocated for more economic incentives in larger to villagers with a reason to protect

231 National Lake Conservation Plan; Compiled by S. Asad Akhtar, Conservation Officer, BOMBAY NATURAL HISTORY SOCIETY [http://mumbainet.com/traveVbhns.htm.]
wildlife. The working of the Task Force represented a significant step forward in India’s conservation history. The report was against the manner of decision making process on management of Protected Areas that has historically been dictated solely by the foresters.

But the report of Tiger Task Force was strongly criticized by Valmik Thapar, a wildlife expert and also member of Task Force, for not giving enough importance to tiger conservation needs. He was dead against about human interference within the Protected Areas and to him the report of Task Force was ‘the final nail in the coffin’ for the tiger. He is the strong supporter of Preservationist approach and according to him the co-existence of people and Tigers is not possible in India whereas Sunita Narayan and other members were the supporters of people based participatory conservation.

After the recommendation of TTF, the central government proposed for an amendment of Wildlife (Protection) Act, 1972, by introducing several agencies and restricting provisions (1) A National Tiger Conservation Authority to work in consultation with state government. (2) The Act would cover and include provisions relating to hunting in tiger reserves and altering the boundaries of tiger reserves. (3) Hunting in tiger reserves and altering their boundaries are made punishable with heavy fine or higher imprisonment.

TIGER CONSERVATION PLAN
The Wildlife (Protection) Amendment Act, 2006 also inserted new provision for state government to conserve the tigers. According to Section 38V of this Amendment Act, the State Government shall prepare a Tiger Conservation Plan including staff development and deployment plan for the proper management of each area referred to in Sub-Section (1), so as to ensure –

(a) protection of tiger reserve and providing site specific habitat inputs for a viable population of tigers, co-predators and prey animals without distorting the natural prey-predator ecological cycle in the habitat;

(b) ecologically compatible land uses in the tiger reserves and areas linking one protected area or tiger reserve with another for addressing the
livelihood concerns of local people, so as to provide dispersal habitats and corridor for spill over population of wild animals from the designated core areas of tiger reserves or from tiger breeding habitats within other protected areas;

(c) the forestry operations of regular forest divisions and those adjoining tiger reserves are not incompatible with the needs of tiger conservation.

On the recommendation of the ‘Tiger Conservation Authority’, the State Government shall notify an area as a tiger reserve. The Provisions of Sub-Section (2) of Section 18, Sub-Sections (2), (3) and (4) of Section 27, Section 30 with 32 and clauses (b) and (c) of Section 33 of Wildlife (Protection) Act shall, as far as may be, apply in relation to a tiger reserve as they apply in relation to a Sanctuary. The State Government shall, while preparing a Tiger Conservation Plan, also ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve.

MANIPUR BROW-ANTLERED OR SHANGI PROJECT

In India, Manipur brow-antlered or Manipur deer was previously regarded as extinct but a small population of Manipur brow-antlered was discovered in 1950 at a place called Keibul Lamjao on Logtak Lake in Manipur. The area was declared as a sanctuary in 1954 for the preservation of this deer. An aerial census carried out in 1977 by Zoological Survey of India showed 18 dears and in 1979 there were 30. In March 1986, as many as 95 were sighted, but in another aerial survey of April, 1987 only 35 were spotted. In March 1999, the annual Sangai census recorded around 149 heads in the Keibul Lamjao National Park. This last natural habitat of the deer, covering a core area of nearly 15 sq km, is mostly made up of the floating biomass. This park is within the water body area of the Loktak Lake and known as the ‘only floating national park in the world’.

232 Concepts in wildlife management, B.B.Hosetti, Daya Publication; Pp 79
This Manipur brow-antlered or Manipur deer has for a long time been the most endangered deer subspecies in the world. Again in India the Sangai population is now facing several threats for future and the most dangerous was the construction of the Loktak Dam. The repeated flood by artificial reservoir of the Loktak hydroelectric power project is steadily destroying its habitat. The grass cutting, grazing are other threats to these deer. Fishing and poaching were in practice until the area was declared as National Park in 1977. Another attack to the Sangai population was in 1999 when large chunk of the biomass had broken from the park area.

VULTURE PLAN

The decline of vultures has been the fastest of any wild bird species anywhere in the world in conservation history. 3 species of vulture like, the White-backed vulture, Long-billed vulture and Slender-billed are critically endangered out of 9 species of vultures are found in the Indian subcontinent. The BNHS estimates that 95 to 99 per cent of the Gyps species in India, Pakistan and Nepal are dead. In 2000, IUCN included the three most serous cases on its ‘Critically Endangered’ List. In 2002, these 3 species came under Scheduled I of the Wildlife (Protection) Act, 1972 in India as a same status with the Tiger and the Rhino. Government has also formulated an Action Plan for Vulture Conservation and has also supported Vulture Breeding Centres in different parts of the country. One international workshop was organized at Kathmandu, Nepal one national workshop at New Delhi was also organized in 2004 and later International Conference on Vulture Conservation held at New Delhi at 2006.

On March 17, 2005, the Prime Minister, Dr, Manmohan Singh, at a meeting of the National Board for Wildlife, directed the phasing out and banning of ‘Diclofenac’ within six months. But resistance from the Animal Husbandry Commissioner, the Ministry of Agriculture and the Drug Controller

General of India (DCGI) ensured that the drug stayed in circulation for longer. After the Amendment of 1982, two new provisions i.e. Section 10A and Sec. 26-A were inserted in the Drugs & Cosmetics Act 1940. Section 10A empowers Central Government to prohibit import of drugs and cosmetics in public interest and Section 26A empowers Central Government to prohibit manufacture of drugs and cosmetics in public interest. Then with the provision of those laws Central Government imposed the ban on use of drug like Diclofenac on cattle and other animals. Finally on May 11, 2006, the Drug Controller General of India wrote to its state level offices all over the country saying Diclofenac was banned for veterinary use from August 2006. A safety trial of Meloxicam, an alternative drug, started in India. Conservationists appreciate the ban on manufacturing Diclofenac will help conservation efforts unlike the slow response by the U.S Government to pleas from conservationists to ban DDT that was killing condors and peregrines. In-situ conservation of vultures started in India and one Vulture Conservation Breeding Centre started at Pinjore in Haryana.

MARKHOR CONSERVATION PLAN
Markhor are one of the most endangered ungulates in central Asia, listed as Appendix I in CITES due to overhunting and habitat loss. Markhor is found only in the Pir Panjal Range of Kashmir in India and extends into the Greater Himalayan range in Pakistan near Nanga Parbat. on the basis of shape of their horns, markhor are mainly three types (i) the straight-horn shape, e.g the Sulaiman markhor (Capra falconeri jerdoni) and the Kabul markhor (Capra falconeri megaceros), (ii) the open-spiral shape of the Pir Panjal markhor (Capra falconeri cashmiriensis) and the western Hindu Kush, Hunza, Kafer khan, Chitral, and Chilas markhor, and (iii) the out-flaring shape, represented the Astor markhor (Capra falconeri falconeri). Markhor is Endangered

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234 THE HINDU SURVEY OF THE ENVIRONMENT 2007; Pp 128
235 www.ncf-india.org/projectoverview

Poaching and trophy hunting were the main threat to the markhor from historical times. There was a practice of winter hunting of the markhor by the local population where numerous animals were trapped in the deep snow and killed for both meat and trophy. Recently Jammu and Kashmir Wildlife protection Department has taken a plan to preserve endangered Markhor from extinction. To save this endangered species the Public Works Department (PWD) has funded Rupees 10.72 Crore to wildlife department to launch “Markhor Recovery Plan”. The Ministry of Environment and Forests has also given approval of this Plan by supporting state’s demand for utilization of funds under ‘Compensatory Afforestation Funds Management and Planning Authority’ (CAMPA). Wildlife department will use the fund for fencing, habitat development, fire protection, check posts, survey of Markhor and other related activities. This project will go to conserve this rare species of Markhor from near extinction and also to protect their habitat in the Pir Panjal range of mountains in the Kashmir valley. Various Military activities of India and Pakistan are causing harm for their population heavily and the fencing at Line of Control (LOC) has fragmented the already narrow habitat of the species in the country. Continuous poaching by locals and officials and at the same time poor infrastructure are also affecting adversely for population recovery of this endangered species.

236 www.ncf-india.org/projectoverview
237 YOJANA, June 2009; Pp 44
OTHER POLICIES

WWF-India supported various field projects in the period of 1970s and 1980s for protecting endangered species of flora and fauna. The protest led by WWF-India to the Government reversing permission for the hunting expedition. It provided the grant for establishing the Madras Snake Park in 1971 and again in 1975, helped to establish the country’s first Crocodile Bank in collaboration with the Snake Park Trust. In 1976 WWF-India send an expedition to Ladakh, led by Dr. Salim Ali, to establish the Status of the rare Black necked Crane. In 1980 the Sea Turtle Conservation Project was also launched.

Great Indian bustard is one of the rarest bustards of the world. Once this species was fairly common in short grass plains all over India but by 1980 it survived only in 6 states of India. Surveys conducted by BNHS in the mid 1980’s put the estimated population between 500-1500 with ½ the population surviving in Rajasthan alone. BNHS had undertaken a project on the ecology of the grass lands of the plains which monitor the populations of grass land fauna including great Indian Bustard and though BNHS proposed for a conservation project relating to great Indian Bustard but still it is not executed by government of India.²³⁸

The Ministry of Environment and Forests has proposed a ‘Recovery Plan’ several endangered species, including the Snow Leopard, the Great Indian Bustard (a key grassland bird) and the Hangul or the Kashmir stag. The government has listed several other species like Gangetic Dolphin and Wild Buffalo for special projects to prevent them from local extinction. It has now pushed for immediate action on the Great Indian Bustard, Lion and the Hangul.²³⁹ National Wastelands Development Board (NWDB) under the Ministry of Environment and Forest and an autonomous agency, the Society for promotion of Wastelands Development (SPWD) have been set up for promoting social forestry with public participation.

²³⁸ Concepts in wildlife management, B.B.Hosetti, Daya Publication; Pp 94
²³⁹ Rescue plan for more endangered species, THE TIMES OF INDIA; April 9, 2007
4.8. ESTABLISHMENT OF ADMINISTRATIVE AUTHORITIES

Laws cannot be implemented or policies cannot run without proper management and regulatory authorities. So for smooth administration of legislative procedures and other plans, projects, policies there is an urgent need of competent administrative officers and strong authorities.

The Wildlife (Protection) Act, 1972 already constituted various authorities in central and state levels. In the original statute, there were three authorities like Director of Wildlife Preservation, Asst. Director of Wildlife Preservation and Wildlife Advisory Board in central level and two authorities like Chief Wildlife Warden and Wildlife Wardens in state levels all over India. Again different other authorities were constituted through 1991, 2003 and 2006 Amendments of the Act.
## Authorities under Wildlife (Protection) Act, 1972

<table>
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<td>2. TIGER AND OTHER ENDANGERED SPECIES CRIME CONTROL BUREAU [Section 38Y ]</td>
<td>2. TIGER CONSERVATION PLAN [Section 38V]</td>
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<td>3. TIGER CONSERVATION FOUNDATION [Section 38 X]</td>
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**Table 10**
INDIAN BOARD FOR WILDLIFE

The Indian Board for Wildlife was the apex statutory advisory body for formulating policies on wildlife. In 1950 Government of India had initiated survey of the wildlife in some states and a committee was formed to take proper steps for wildlife conservation. In 1952, on the basis of recommendation of that committee a ‘Central Board for Wildlife’ was formed which was later renamed as the ‘Indian Board for Wildlife’. The IBWL organized various programs, functions, seminars and workshops for conservation of wildlife during wildlife week which is celebrated in the first week of October every year. Though the ‘Indian Board of Wild Life’ was set up in 1952 but in 1950s neither Centre nor States were aware about need of wildlife conservation and during the period of 1950s and 1960s, the Indian princes continued their Shikars or Hunting. In 1968, the needs for prohibiting hunting were also recommended in the Board and it was finally and strictly banned very recent in 1991. In 1952 through the establishment of The Indian Board for Wildlife, some members of the princely states were included as naturalists and early photographers for a new role in public life. So purpose was to change the attitude of public at large towards hunting or Shikar and to lead them for wildlife conservation.

Various sessions of ‘Indian Board for Wildlife’ held in 1952, 1956 and 1957, control on the export of endangered species and animal products were elaborately discussed. At the first meeting in 1952 many famous wildlife experts like, E.P.Gee, M.Krishnan and Salim Ali became the non member of Board. In 1958 some steps were taken to control the export of peafowl plumes and in 1959 a ban was imposed on export of the skins of some reptile species including pythons. Again in 1961, Ban was imposed also on the export of 15 rare and endangered species of Indians wildlife on the recommendation of the Board. In November 1972 the Indian Wildlife Board chose the tiger as the national animal of India. The Indian Board for Wildlife was set up followed

240 India’s Wildlife History AN INTRODUCTION, Mahesh Rangarajan, Pp 86
241 A Treatise on Wildlife Conservation in India, Chhanda Das, CLASSIQUE BOOKS, Pp 11
by the creation of state wildlife boards. But development schemes continued without taking into consideration conservation issues and as a result habitats and animals were destroyed without any future consideration.

ANIMAL WELFARE BOARD OF INDIA

In 1962 the Animal Welfare Board of India was established under Ministry of Environment and Forests as per provisions of the Prevention of Cruelty to Animals Act, 1960 with its headquarters at Chennai. Animal Welfare Board of India (AWBI) is a statutory body in accordance with the Section 4 of the Prevention of Cruelty to Animals Act, 1960. As per to the provisions of this Act, The Board shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and may by its name sue and be sued.

The Board Shall consists of the following persons, namely:-

(a) The inspector General of Forests, Government of India, ex-officio:

(b) The Animal Husbandry Commissioner to the Government of India, ex-officio:

(c) Two persons to be appointed by the Central Government representing respectively the Ministries of the Home Affairs and Education,

(d) One person to represent the Indian Board for Wild Life, to be appointed by the Central Government.

(e) Three persons who, in the opinion of the Central Government, are or have been actively engaged in animal welfare work and are, well-known humanitarians, to be nominated by the Central Government.

(f) One person to represent such association of veterinary practitioners as in the opinion of the central Government ought to be represented on the Board, to be elected by the association in the prescribed manner.

(g) Two persons to represent practitioners of modern and indigenous systems of medicine, to be nominated by the Central Government.
(f) One person to represent each of such two municipal corporations as in the opinion of the Central Government ought to be represented on the Board, to be elected by each of the said corporations in the prescribed manner.

(i) One person to represent each such three organizations actively interested in animal welfare as in the opinion of the Central Government ought to be represented on the Board, to be chosen by each of the said organizations in the prescribed manner.

(j) One person to represent each of such three societies dealing with prevention of cruelty to animal as in the opinion of the Central Government ought to be represented on the Board, to be chosen by each of the said organizations in the prescribed manner.

(k) Three persons to be nominated by the central Government.

(l) Six members of parliament, four to be elected by the Lok Sabha and two by the Rajya Sabha.

The Central Government shall nominate one of the members of the board to be its Chairman another member of the Board to be its Vice-Chairman. Its basic mandate is to advise the Government on animal welfare issues, and create awareness regarding animal welfare to the eligible Animal Welfare Organisations for Shelter Houses, Model Gaushalas etc. It is an autonomous organization of the working for animal welfare and protects them from human atrocities. The sterilization of stray dogs in six metropolitan cities was carried out under the Animal Birth Control scheme of the Board. The Board also celebrates Animal Welfare Fortnight from 14 January every year.

NATIONAL BOARD FOR WILDLIFE
One of most important role of Wildlife (Protection) Act, 1972 is about establishment “National Board for Wildlife”of all India wildlife controlling mechanism. As per provision of Section 5A there shall be a National Board for Wildlife in India which was inserted by Section 6 of the Wildlife (Protection) Amendment Act, 2002 (Act No.16 of 2003). The Central Government shall, as per statute, within three months from the date of commencement of the
Wildlife (protection) Amendment Act, 2002, constitute one “National Board of Wildlife” accordingly and finally the Central Government has established this national board with effect from 22nd November, 2003 through an ordinance. As per provision of the law the following persons are the members of the Board:-

1. The Prime Minister as Chairperson;
2. The Minister in Charge of Forest and Wildlife as Vice-Chairperson;
3. Three Members of parliament of whom two shall be from the House of the people and one from the council of States;
4. Member, Planning Commission in charge of forests and wildlife;
5. Five person top represent non-governmental organizations to be nominated by the Central government;
6. Ten persons to be nominated by the Central government from amongst eminent conservationists, ecologists and environmentalists;
7. The Secretary to the Government of India in Charge of the Minister or department of the Central Government dealing with forests and wildlife;
8. The Chief of the Army Staff;
9. The Secretary to the Government of India in Charge of the Ministry of defense;
10. The Secretary to the Government of India in charge of the Ministry of information and Broadcasting;
11. The Secretary to the Government of India in charge of the Department of Expenditure Ministry of Finance;
12. The Secretary to the Government of India, Ministry of Tribal welfare;
13. The Director General of Forests in the Ministry or Department of the Central Government dealing with forests and wildlife;
14. The Director General of Tourism, Government of India;
15. The Director general, Indian Council for Forestry Research and Education, Dehradun;
16. The Director, Wildlife Institute of India, Dehradun;
17. The Director, Zoological Survey of India;
18. The Director, Botanical Survey of India;
19. The Director, Indian Veterinary Research Institute;
20. The Member-Secretary, Central Zoo Authority;
21. The Director, National Institute of oceanography;
22. One representative each from ten states and Union Territories by rotation, to be nominated by the Central Government; and
23. The Director of Wildlife Preservation who shall be the Member Secretary of the National Board.

So with the help of such a large number of members and representatives National board will function which are mainly monitoring in nature, like it shall be the National Board to promote the conservation and development of Wildlife and forests by such measures as it thinks fit and Without prejudice to the generality of the forgoing provisions, the measures referred to therein may provide for Framing policies and advising the Central Government and the State Governments on the ways and means of promoting wildlife conservation and effectively controlling poaching and illegal trade of wildlife and its products.

The 3rd meeting of the National Board for Wildlife was held on June 19, 2006 under the Chairmanship of Hon'ble Prime Minister. The important decisions taken during the meeting include an alternate home for lions; survey for assessing the current status of peacocks in the country; preparation of an action plan for conservation of the red jungle fowl; identification of wetlands outside the Protected Area system for conservation etc. The 4th meeting of the National Board for Wildlife was held on 1st November 2007 under the Chairmanship of Hon'ble Prime Minister. The important decisions taken include the formation of two committees (1) Recovery of Terrestrial Species; and (2) Conservation of Marine bio-diversity. Section 5B of the Act also tells about set up of a Standing Committee by the members of the National Board for Wildlife for performing functions for conservation and betterment of wild

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animals. The National Board may, in its discretion, constitute a “Standing Committee” for the purpose of exercising such powers and performing such duties as may be delegated to the Committee by the National Board. The standing Committee shall consist of the Vice Chairperson, the Member-Secretary and not more than Ten members to be nominated by the Vice-Chairperson from amongst the members of the Board. The Standing Committee was re-constituted vide order dated 9th July 2007 and recently several meetings of the Standing Committee were held on 10th September 2007, 19th February 2008, 22nd May 2008, 18th August 2008 and 12th December 2008, under the Chairmanship of Hon'ble Minister for State for Forests & Wildlife. The Board may also constitute Committees, Sub-Committees or Study Groups as may be necessary from time to time proper discharge of the functions assigned to it.

STATE BOARD FOR WILDLIFE
After the Amendment of 2002, the new concept of State Board in each state for protection of wildlife was inserted in Section 6 of the Wildlife (Protection) Act, 1972. The State Government shall, within a period of six months from the date of commencement of the Wildlife (protection) Amendment Act, 2002 constitute a “State Board for Wildlife”. The State Board shall consist with following members:-

a) Chief Minister of the State and in case of the Union Territory, either Chief Minister or Administrator will be the Chairperson;
b) The Minister in charge of Forests and Wildlife Vice-Chairperson;
c) Three members of the State Legislature or in the case of a Union Territory with legislature, two members of the Legislative Assembly of that Union territory;
d) Three Persons to represent non-governmental organizations dealing with wildlife to be nominated by the State Government;

e) Ten persons to be nominated by the State Government from eminent conservationists, ecologists and environmentalists including at least two representatives of the Scheduled Tribes;

f) The Secretary to the State Government or the Government of the Union territories as the case may be in-charge of Forests and Wildlife;

g) The Officer in charge of the State Forest Department;

h) The Secretary to the State Government, Department of Tribal Welfare;

i) The Managing Director, State Tourism Department Corporation;

k) A representative of the Armed forces not below the rank of a Brigadier to be nominated by the Central Government;

l) The director, Department of animal Husbandry of the State;

m) The Director, Department of fisheries of the State

n) An Officer to be nominated by the Director, Wildlife Preservation;

o) A representative of the Wildlife Institute of India, Dehradun;

p) A representative of the Botanical Survey of India

q) A representative of the Zoological Survey of India;

r) The Chief Wildlife Warden, who shall be the Member-Secretary.

The term of office of the members other than those who are members ex-officio and the manner of filling vacancies referred to in clauses (d) and (e) of sub-section (1) and procedure to be followed shall be such, as may be prescribed. The member (except members’ ex-officio) shall be entitled to receive such allowances in respect of expenses incurred in the performance of their deities as may be prescribed.

THE CENTRAL ZOO AUTHORITY

The provision for Central Zoo Authority was inserted through the amendment of 1991 of the Wildlife (Protection) Act, 1972 by Parliament to enforce minimum standards and norms for the upkeep and healthcare of animals in Indian Zoos and to restrain mushrooming of unplanned and ill conceived zoos to the adjuncts of public parks, industrial complexes and other wrong areas. Finally, Central Zoo Authority (CZA) was constituted by the Central
Government vide S.O. 113(3), dated 3rd February, 1992 in Part-II sub-section (ii) of Section 3 in the Extra-ordinary Gazettes of India. A national policy on zoos prepared by the Authority provides appropriate directions to the Government and zoo owner for ex-situ conservation of wild animals.

The CZA, an autonomous body under the ministry of environment and forests, is supposed to oversee conservation of endangered species by providing them with a chance of survival though breeding under ex-situ conditions. It had recently taken up three species for conservation Red Panda, Lion-Tailed Macaque and Western Tragopan. Due to inadequate funds and non-availability of expertise as reasons behind the lack of conservation efforts, an additional Rs 9.5 crore was made available 2007-08 of which CZA spent only 21% Rs 1.97 crore during the 10th plan period.\(^{244}\) The CZA has undertaken major activities relating to Prescribing standard norms for zoos, Evaluation of zoos, Recognition or Derecognition of zoos, Conservation Breeding Programme, Exchange or transfer of animals by zoos, Maintenance of National Stud books, Theme Planning in Human Resource Development, Research, Improvement of zoos, etc.

**THE NATIONAL AFFORESTATION AND ECO-DEVELOPMENT BOARD**

'The National Afforestation and Eco-Development Board' (NAEB) was set up in 1992 under Ministry of Environment & Forests for promoting afforestation, tree plantation, ecological restoration and eco-development activities.\(^{245}\) Again special attention will be provided to the degraded forest areas and lands adjoining the forest areas, national parks, sanctuaries and other protected areas as well as the ecologically fragile areas. Restoration process will be taken through natural regeneration for fuel wood, fodder, timber and other forest produce on the degraded forest and adjoining lands in order to meet the demands for these items. Board will also take initiatives to create general awareness and help foster people's movement for promoting afforestation and

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\(^{244}\) In Centre's care, yet red pandas not out of woods, THE TIMES OF INDIA, July 13, 2009

\(^{245}\) Website of MoEF, GOI
eco-development with the assistance of voluntary agencies, non-government organizations, Panchayati Raj institutions and others and promote participatory and sustainable management of degraded forest areas and adjoining lands.

THE COMPENSATORY AFFORESTATION FUND MANAGEMENT AND PLANNING AUTHORITY

‘The Compensatory Afforestation Fund Management and Planning Authority’ (CAMPA) was constituted by a notification issued by the Ministry of Environment and Forest on 23rd April 2004 as per provision of section 3 of The Environment (Protection) Act, 1986. The fund was set up to manage money received towards compensatory forestation and net present value (NPV) and other money recoverable in pursuance of the orders of courts in cases of use of forest for non-forestry purposes. In T.N.Godavarman\textsuperscript{246} case Supreme Court told that ecology belongs to all and the damage to the environment is damage to the county’s assets as a whole. The object of the fund is to conserve ecology without in any manner affecting proprietary rights of the state government over land, timber and minerals. The court directed the Union Ministry of environment and forest to gather all the fun and place them in a central fun which would be monitored and disbursed by a central body i.e. ‘The Compensatory Afforestation Fund Management and Planning Authority’. Revenues collected from agencies that divert forests or protected areas for non-forest use will be pooled into this corpus. It has remained an ad hoc body. Imposition of NPV is a ‘Fee’ as per Entry 47 of list III (Concurrent List) of the Schedule VII in the Indian Constitution. The fund was set up according to provision of entry 20 of the same list about the subject of social and economic planning. Net present value (NPV) has been adopted as an economic tool to calculate the compensatory fiscal value of diverted forests.

\textsuperscript{246} (2006) 1 SCC1
The Union government has drafted the Compensatory Afforestations Bill, 2008 to establish a 'compensatory afforestation fund' and on March 13, 2008 this bill received the union cabinet’s approval to increase the country’s green cover. Supreme Court’s directions, will finally be used if the bill receives the parliament’s approval.\textsuperscript{247} As per the provision of ‘The Compensatory Afforestation Fund Bill’ state government sick the money from ‘The Compensatory Afforestation Fund Management and Planning Authority’ which is under the control of Central Government. This new bill proposed that CAMPA Fund will be used for union Government’s Green India program for the Afforestation of the degraded forest land. The parliamentary standing committee on Science & Technology and Environment & forest is also scrutinizing this bill to utilize the Fund properly.\textsuperscript{248} Compensatory Afforestation Management and Planning Authority (CAMPA), a body appointed by the Union Ministry of Environment and Forests, has collected Rs. 6000 Crore as compensation money from projects that divert forestland for non-forests use.\textsuperscript{249} But The Central Empowered Committee (CEC), the seven-member body, which advises the Supreme Court on forests related matters, had suggested that compensatory afforestation funds collected from states be channeled back to them through state-level societies.\textsuperscript{250}

THE NATIONAL BIODIVERSITY AUTHORITY

'The National Biodiversity Authority' is established by the Central Government through the provision of ‘The Biological Diversity Act, 2002’ to regulate, transfer and use of diversified biological resources at the national level. The head office of the Authority shall be located at Chennai. The Authority shall consist of a Chairperson, three ex officio members from ministry of Tribal Affairs and Environment & Forest and another eight ex

\textsuperscript{247} Down to Earth, April 30, 2008; Pp 31
\textsuperscript{248} Down to Earth, Oct 16-31, 2008; Pp 35
\textsuperscript{249} Down to Earth, April 30, 2008; Pp 31
\textsuperscript{250} Ibid
officio members from other important ministries of central government and
five non-official members with expertise knowledge.
As per various provision of Section 8 of ‘The Biological Diversity Act, 2002’,
the National Biodiversity Authority shall consist of:

(1.) The Chairperson shall be an eminent person in the field of conservation
and sustainable use of biological diversity and in matters relating to equitable
sharing of benefits.

(2.) Three ex officio members to be appointed by central government out of
one from Ministry of Tribal Affairs and other two from Ministry of
Environment & Forests.

(3.) Seven ex-officio members include representatives of the Ministries dealing
with Agricultural Research and Education, Biotechnology, Ocean
Development, Agricultural &Co-operation, Indian Systems of Medicine &
Homoeopathy, Science & Technology and Scientific & Industrial Research.

(4.) Five non-official members include specialists and scientists in the field of
biological diversity, representatives of industry and knowledge holders of
conservation biological resources.

As per provision of section 13 of the said statute, National
Biodiversity Authority may constitute a committee to deal with “agro-
biodiversity”. National Authority is competent to grant permission to person to
obtain biological resources for the purpose of research or for commercial
utilization or bio-survey and bio-utilization. This authority may take necessary
actions to oppose the grant of intellectual property rights in any country outside
India on biological item obtained from India or associated knowledge derived
from India. This law also says about the provisions of ‘State Biodiversity
Board’ in each and every state.
THE COASTAL AQUACULTURE AUTHORITY

The Coastal Aquaculture Authorities Act, 2005 has been enacted to provide for the activities connected with coastal aquaculture in the coastal areas and for matters connected therewith or incidental thereto. The statute mainly says about establishment and formation of a body to control and maintain the condition of water bodies for living creatures. According to Section 4(3) of the said Act, the Coastal Aquaculture Authority, appointed by the central Government for a term of three years consists of:

(a) The Chairperson who is, or has been, a judge of a High Court;
(b) One member who is an expert in the field of coastal aquaculture;
(c) One member who is an expert in the field of coastal ecology nominated by the Department of Ocean Development of the Central Government;
(d) One member who is an expert in the field of environment protection or pollution control nominated by the Ministry of Environment and Forests of the Central Government;
(e) One member to represent the Ministry of Agriculture of the Central Government;
(f) One member to represent the Ministry of commerce of the Central government;
(g) Four members to represent the coastal States on rotation basis; and
(h) One member-secretary.

'Coastal aquaculture' means culturing under controlled conditions in ponds, pens, enclosures or otherwise, in coastal areas, of shrimp, pawn, fish or any other aquatic life in saline or brackish water, but does not include fresh water aquaculture; [Sec.2 (c)] and 'coastal areas' means the area declared as the Coastal Regulation Zone, for the time being in the notification of the Government of India in the Ministry of environment and forests (Department of environment, Forests and wildlife) No. S.O 114 (E) dated 19th February, 1991 and includes such other area as the Central Government may, by notification in the Official Gazette, specify [Sec.2(d)].
TIGER CONSERVATION FOUNDATION

The central government has taken lots of initiatives for the protection of tigers in India as per proposal of Tiger Task Force which was established after a hue and cry due to the news of tiger vanishing case in Sariska in Rajasthan. The new provision of Section 38X of Wildlife (Protection) Act, 1972 after the Amendment of 2006 directs that each state Government shall establish a ‘Tiger Conservation Foundation’ for tiger reserves within the state in order to facilitate and support their management for conservation of tiger and biodiversity and, to take initiatives in eco-development by involvement of people in such development process. As per new provision of clause (2) of section 38X of the said statute, the Tiger Conservation Foundation shall, inter alia, have the following objectives:

(a) to facilitate ecological, economic, social and cultural development in the tiger reserves;
(b) to promote eco-tourism with the involvement of local stake-holder communities and provide support to safeguard the natural environment in the tiger reserves;
(c) to facilitate the creation of, and or maintenance of, such assets as may be necessary for fulfilling the above said objectives;
(d) to solicit technical, financial, social, legal and other support required for the activities of the Foundation for achieving the above said objectives;
(e) to augment and mobilize financial resources including recycling of entry and such other fees received in a tiger reeve, to foster stake-holder development and eco-tourism;
(f) to support research, environmental education and training in the above related fields.

The proposal for establishment of Tiger Conservation Foundation in the state level is very good concept with a powerful legislative measure. The Central Government has already framed “The National Tiger Conservation Authority (Tiger Conservation Foundation) Guidelines, 2007” for the purpose of regulation of ‘Tiger Conservation Foundation’ in each state.
TIGER AND OTHER ENDANGERED SPECIES CRIMES CONTROL BUREAU

Another major step was taken in 2006 by the new amendment of Wildlife (Protection) Act about the constitution of ‘Tiger and other Endangered Species Crimes Control Bureau’ in national level. The Central Government may, for the purposes section of this Act, by order published in the Official Gazette, constitute a Tiger and other Endangered Species Crime Control Bureau to be known as the Wild Life Crime Control Bureau consisting of –

the Director of Wild Life Preservation – Director ex-officio;
the Inspector-General of police-Additional Director;
the Deputy Inspector-General of Police –Joint Director;
the Deputy Inspector-General of Forests-Joint Director;
the Additional Commissioner (Customs and Central Excise)- Joint Director;
and such other officers as may be appointed from amongst the officers covered under Sections 3 and 4 this act.

The establishment of separate crime control bureau for restricting as well as monitoring the atrocities and crime against wildlife is no doubt a very good effort in India. As per inserted new provisions of section 38Z of Wildlife (protection) Act, the powers and functions of the said ‘Wild Life Crime Control Bureau’ are likely coordinating, assisting and developmental in nature.

As per the provisions of the Wildlife (Protection) Act, the Wild Life Crime Control Bureau shall take measures with respect to-

(i) collect and collate intelligence related to organized Wild Life Crime activities and to disseminate the same to state and other enforcement agencies for immediate action so as to apprehend the criminals and to establish a centralized wild life crime data bank;
(ii) co-ordination of actions by various officers, State Governments and other authorities in connections with the enforcement of the provisions of this Act, either directly or through regional and border units set up by the Bureau;
(iii) Implementation of obligations under the various international Conventions and protocols that are in force at present or which may be ratified or acceded to by India in future;
(iv) assistance to concerned authorities in foreign countries and concerned international organizations to facilitate co-ordination and universal action for wild life crime control;
(v) develop infrastructure and capacity building for scientific and professional investigation into wild life crimes and assist State Government to ensure success in prosecutions related to wild life crimes;
(vi) advice the Government of India on issues relating to Wild life Crimes having national and international ramifications.

The all types of representatives from Police, Forest Officials, Customs and Central Excise officials and Director of Wildlife Preservation will make a tight organizational structure for prevention of crime against wild animals and birds. The Ministry of Environment & Forests is close to financing new amendments that will strengthen criminal provisions of the Wildlife protection Act. The advisory board, constituted recently, is chaired by the Director General (Forests) and also has DIG level or above officers from the Narcotics Control Bureau (NCB) and the Central Bureau of Investigation (CBI). The board, set up by the ministry, has also brought in expertise from outside the government by co-opting people from non-government institutions in the field. They include Sameer Sinha from ‘Traffic India’, Ashok Kumar from ‘Wildlife Trust of India’, Sanjay Upadhyay of ‘Enviro-Legal Defence Firm’ and Ashok Desai of ‘Wildlife Protection Society of India’ besides others.251 The Wildlife Crime Control Bureau (WCCB), as a central agency, has come into existence on June 6, 2007 as per provision of the Wildlife (Protection) Act, 1972.252 The Bureau is assisting the state agencies through intelligence inputs, analysis of information and providing expertise and is also performing its role at the exit points under CITES.

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251 Wildlife Act to be made stringent; THE TIMES OF INDIA; September 6, 2007
NATIONAL TIGER CONSERVATION AUTHORITY

According to new provision of Section 38L under Chapter-IVB of the Amendment of 2006, The Central Government shall constitute a body to be known as the ‘National Tiger Conservation Authority’ also referred to as the Tiger Conservation Authority, to exercise the powers conferred on, and to perform the function assigned to it under this Act. Clause (2) of Section 38L describes about the proposed membership of the National Tiger Conservation Authority. It is the very unique association of legislative members including Ministers-in-charge and experts in wildlife conservation and also in tribal affairs. The Tiger Conservation Authority shall consist of the following members, namely:-

(a) The Minister in charge of the Ministry of Environment and Forests-Chairperson;

(b) The Minister of state in the Ministry of Environment and Forests-Vice-Chairperson:

(c) Three members of parliament of whom two shall be elected by the House of the People and one by the Council of States;

(d) Eight experts of professionals having prescribed qualifications and experience in conservation of wild life and welfare of people living in tiger reserve out of which at least two shall be from the field of tribal development;

(e) Secretary, Ministry of Environment and Forests;

(f) Director General of Forests and Special Secretary, Minister of Environment and Forests;

(h) Six Chief Wild Life Wardens from the tiger reserves States in rotation for three years;

(i) An officer not below the rank of Joint Secretary and Legislative Counsel from the Ministry Law and Justice;

(j) Secretary, Ministry of Tribal Affairs;

(k) Secretary, Ministry of Social Justice and Empowerment;

(l) Chairperson, National Commission for the Scheduled Tribes;

(m) Chairperson, National Commission for the Scheduled Castes;
(n) Secretary, Ministry of Panchyati Raj;
(o) Inspector-General of Forests or an officer of the equivalent rank having at least ten years experience in a tiger reserve or wild life management, who shall be the Member-Secretary, to be notified by the central government, in the official gazette.

Clause (3) of Section 38L is a restricting provision about excess membership from parliament which separates legislatives from executive in the policy making process. It is very categorically declared that the office of member of the Tiger Conservation Authority shall not disqualify its holder for being chosen as, or for being a member of either House of Parliament.

Again this Section 38O of the Act also provides about a thorough power and functions of this ‘Tiger Conservation Authority’ in the new amendment. According to new provision there shall have the following powers and perform the following functions of the authority. This power include:-

(a) To approve the Tiger Conservation Plan Prepared by the State Government under Sub-Section (3) of Section 38V of this Act:

(b) Evaluate and assess various aspects of sustainable ecology and disallow any ecologically unsustainable land use such as, mining, industry and other projects within the tiger reserves;

(c) Lay down normative standards for tourism activities and guidelines for Project Tiger from time to time for tiger conservation in the buffer and core area of tiger reserves and ensure their due compliance;

(d) Provide for management focus and measures for addressing conflicts of men and wild animals and to emphasize on co-existence in the working plan code;

(e) Provide information on protection measures including future conservation plan, estimation of population of tiger and its natural prey species, status of habitats, disease surveillance, mortality survey, patrolling, reports on untoward happenings and such other management aspects as it may deem fit including future plan conservation;
(f) Approve, co-ordinate research and monitoring on tiger, co predators, prey, habitat, related ecological and socio-economic parameters and their evaluation;

(g) Ensure that the tiger reserves and areas linking one protected area or tiger reserve with another protected area or tiger reserve with another protected area of tiger reserve are not diverted for ecologically unsustainable uses, except in public interest and with the approval of the National Board for Wild Life and on the advice of the Tiger Conservation Authority;

(h) Facilitate and support the tiger reserve management in the state for biodiversity conservation initiatives through eco-development and people’s participation as per approved management plans and to support similar initiatives in adjoining areas consistent with the Central and State laws;

(i) Ensure critical support including scientific, information technology and legal support for better implementation of the ‘Tiger Conservation Plan’;

(j) Facilitate ongoing capacity building program for skill development of officers and staff of tiger reserves; and

(k) Perform such other functions as may be necessary to carry out the purposes of this Act with regard to conservation of tigers and their habitat.

The Wildlife (Protection) Act, 1972 was amended in 2006 to incorporate the creation of the National Tiger Conservation Authority and this amendment was notified on September 4, 2006. The first meeting of the National Tiger Conservation Authority was held on November 6, 2006. The finance minister in his Budget speech in 2008 had announced a one-time grant of Rs 50 crore to the National Tiger Conservation Authority (NTCA) for raising, arming and deploying a Special Tiger Protection Force.  

253 THE TIMES OF INDIA; November 20, 2008
STEERING COMMITTEE AT STATE LEVEL

The Amendment of 2006 of the Wildlife (Protection) Act 1972 imposes another optional provision on state government for a new committee to provide support in tiger conservation program within the state. The state Government may constitute as per provision of section 38U, a ‘Steering Committee’ for ensuring co-ordination, monitoring protection and conservation of tiger, co-predators and prey animals within the tiger range States.

The Steering Committee shall consist of –

(a) the Chief Minister –Chairperson;
(b) the Minister in-charge of Wild Life- Vice-Chairperson;
(c) Such number of official members not exceeding five including at least two Field Directors of tiger reserve or Director of National park and one from the State Government’s Departments dealing with tribal affairs;
(d) Three experts of professionals having qualifications and experience in conservation of wild life of which at least one shall be from the field of tribal development.
(e) Two members from the State’s Tribal Advisory Council;
(f) One representative each from State Government’s Departments dealing with Panchyati Raj and Social Justice and Empowerment;
(g) Chief Wild Life Warden of the State shall be the Member-Secretary, ex-officio, to be notified by the State Government, in the Official Gazette.

All of these authorities were established for direct and indirect protection of wild animals from tigers to fishes and from wild plants to inmates of zoos. Many measures are till adopting by government of Union or Sates for conservation of wildlife. But creation of statutory provision or establishments of authorities are not main objectives. The prime purposes of those efforts are to protect the life and habitats of wildlife for greater interest of mankind. So smooth functioning of those authorities to fulfill their objectives is main challenge before the nation.
4.9. CONCLUSION

After independence, originally in the Constitution did not have any provision to control the degradation of environment and ecology. Only those constitutions which were mainly passed after 1972, have inserted provisions relating to environment and ecology in their original form and the Sri Lankan Constitution\textsuperscript{254} of 1978, Chinese Constitution\textsuperscript{255} of 1982, Philippines Constitution\textsuperscript{256} of 1987, Constitution of Russian Federation\textsuperscript{257} of 1993 and Afghan Constitution\textsuperscript{258} of 2004 ratification, all have particular provision to deal with natural resources including forests, wildlife in the environment. The Stockholm Declaration in 1972 and all other international conventions and treaties generated an awareness and common consensus on the matter of environment, ecology and natural resources at international level. At the same time, Indian environmental jurisprudence got its new revival after constitutional mandate through 42\textsuperscript{nd} Amendment in 1972. The 1970s was also golden era for Indian environment and wildlife laws also. Numbers of legal provisions were made by Parliament and many projects and scheme were also adopted by government throughout the country. The protection and conservation of wildlife, sanctuaries, national parks and other protected areas are declared by governments under the provisions of wildlife protection law and forest law. Zoos and other ex situ conservations measures are controlled by wildlife laws in India also. But those laws are not sufficient to conserve and protect wildlife for better ecology and beautiful nature and some laws are very much rigid in nature which is adverse to the public policy. So laws should be made more widely to give the absolute protection to wildlife as well as human also in the nature.

\textsuperscript{254} Article 27 (14)
\textsuperscript{255} Article 26
\textsuperscript{256} Article 11 (16)
\textsuperscript{257} Article 42
\textsuperscript{258} Article 15