PROTECTION OF WILD LIFE IN INDIA: LEGAL ASPECT

GENESIS OF THE WILD LIFE (PROTECTION) ACT, 1972

A. General Introduction of the Wild Life Protection Act

Background of the Act

The rapid decline of wild animals and birds in India has been a cause of grave concern. Some wild animals and birds have already become extinct in the country and others are in danger of being so. Areas which were once terming with wild life have become devoid of it and even in Sancturies and National Parks the protection afforded to wild life needed to be improved. The Wild Birds and Animal Protection Act, 1912 had become completely outmoded. The existing state laws were not only outdated but provided punishments which were not commensurate with the offence. An urgent need for introducing comprehensive legislation, which would provide protection to wild animals and birds, was felt. But the Central Government had no power to make a law in this regard as the subject matter related to entry – 20 of the state list in the Seventh Schedule. The legislatures of the states of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal Passed resolutions empowering parliament to pass the necessary legislation on the subject. Accordingly Wild Life (Protection) Bill was introduced in the Parliament, having been passed by both the Houses of Parliament, received the assent of the President on 9th September 1972.

After the introduction of Entries 17 – A and 17 – B in the List – III of the constitution by the constitution (Forty – second Amendment) Act, 1976 the Parliament was empowered to enact laws relating to the Wild Life, without recourse to Article 252 of the constitution. By the 1991 Amendment to the wild
CHAPTER II
life Act, the Parliament has extended the Act to the whole of India except Jammu and Kashmir, which has its own Wild Life Protection Act similar to the national law.

**Objects of the Act**

The Wild Life (Protection) Act, 1972 passed by the Parliament under article 252 of the constitution of the request of eleven states, was intended to provide a comprehensive national legal framework for Wild Life Protection.

The Act adopts a two pronged conservation strategy—

(i) Specified endangered species are protected regardless of location,

(ii) All species are protected in specified areas.


**Scope of the Act**

The most significant legislation on Wildlife protection which is based on the ecosystem approach and a regulatory regime of command and control is the Wild Life Protection Act, 1972. The objectives of this enactment were three fold, *i.e.*, to have a uniform legislation on wildlife throughout the country to establish a network of protected areas, *i.e.*, National Parks and Sanctuaries and to regulate illicit trade in wildlife and its products.

The Wild Life (Protection) Amendment Act, 2002 has made substantial changes in the Wild Life Protection Act, 1972. The long title of the 1972 Act has also been amended and now from the amended title of the 1972 Act it is clear that said act has been enacted for the following two purposes:
(i) To provide for protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto.

(ii) To ensure the ecological and environmental security of the country.

**Amendments in the Wildlife (Protection) Act, 1972**

Wildlife (Protection) Amendment Act, 1982,

Wildlife (Protection) Amendment Act, 1986,

Wildlife (Protection) Amendment Act, 1991,

Wildlife (Protection) Amendment Act, 1993,

Wildlife (Protection) Amendment Act, 2002,

Wildlife (Protection) Amendment Act, 2006,

Wildlife (Protection) Amendment Bill, 2010,

**The Wild Life (Protection) Amendment Act, 1982**

*The Wild Life (Protection) Amendment Act, 1982* amends section 12 of the Act with the stipulation that in the case of any wild animal specified in Schedule I, the prior approval or the Central Government, and in the case of other wild animals, the prior approval for the State Government, would be necessary.

Under the old scheme of the Act, wild animals specified in schedule I of the Act cannot be hunted by any person except as provided in sections 11 and 12 for specific purposes. There was no provision, for permitting capture and translocations of wild animals for scientific management or for introduction in alternative suitable habitat of endangered species like the Great Indian Rhinoceros and the Asiatic Lion. To achieve this purpose it was necessary to suitably amend the Act.

Section 44 of the Act relates to grant of licensees for carrying on business in trophy and animal articles, and the time within which applications for such
licensees may be made has been specified in sub-section (3) of this section as 15 days from the commencement of the principal Act. As a result, no one can now apply for licenses for carrying on business in trophy and animal articles. As such, persons who get in possession of trophy, and animal articles are constrained to carry on business with respect thereto in a clandestine manner. It is, therefore, proposed to omit the time limit of 15 days provided in sub-section (3) of section 44. At the same time, it is also proposed to spell out expressly the more important guidelines which should be followed in granting licenses under the section and confer power on the Central Government to specify by rules other guidelines.

Wildlif (Protection) Amendment Act, 1986

Wildlif (Protection) Amendment Act, 1986 proposed to provide that no one will be permitted to trade in wild animals specified in Schedule I or Part II of Schedule II of the Act or in any derivatives there from after a period of two months from the commencement of the amending Act or two months from the date on which a wild animal is included in Schedule I or Part II of Schedule II by notification issued under the provisions of the Act. Under the scheme of the Act, trade or commerce in wild animals articles and trophies within the country is permissible and is regulated under Chapter V. Since there hardly any market within the country for wild animals or articles and derivatives thereof, the stocks acquired for trade within the country are smuggled out to meet the demand in foreign markets. This clandestine trade is abetted by illegal practices of poaching which have taken a heavy toll of our wild animals and birds. The stocks declared by the traders at the commencement of The Wild Life (Protection) Act, 1972 are still used as a cover for such illicit trade. Attempts to acquire the declared stocks of skins of some wild species have also not met with the desired success, mainly because most traders are not inclined to part with theft stocks and thereby lose the ploy for illegal activities. It is, therefore, necessary to suitably amend the Act to prohibit trade in certain specified wild animals or theft derivatives. It is, therefore, proposed to provide that no one
will be permitted to trade in wild animals specified in Schedule I or Part II of Schedule II of the Act or in any derivatives there from after a period of two months from the commencement of the amending Act or two months from the date on which a wild animal is included in Schedule I or Part II of Schedule II by notification issued under the provisions of the Act. All existing licences for internal trade would be invalid thereafter. Further, no fresh licences would be granted for internal trade on such wild animals or their derivatives in future. An exemption is being given to notified Government of India undertakings who can purchase stocks from licenses during the specified period of two months for manufacturing articles from them exclusively for export. The exemption at present available to dealers in ivory under the second proviso to section 44(1) is also being removed so as 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.

Wildlife (Protection) Amendment Act, 1991

*Wildlife (Protection) Amendment Act, 1991* proposed to prohibit hunting of all wild animals (other than vermin). The Wild Life Protection Act provides for the protection of wild animals and birds. In the implementation of the Act over 18 years, the need for amendment of certain provisions of the Act to bring them in line with the requirements of the present times has been felt. The Indian Board for Wild Life also endorsed the need for these amendments. Ministry of environment and forest has worked out the proposals for amendment of the Act on the basis of recommendations of the Standing Committee of Indian Board for Wild Life and various ministries of the government.

Poaching of wild animals and illegal trade of products derived there from, together with degradation and depletion of habitats have seriously affected wild life population. In order to check this trend, it is proposed to prohibit hunting of all wild animals (other than vermin). However, hunting of wild animals in exceptional circumstances, particularly for the purpose of protection of life and property and for education research, scientific management and captive
breeding, would continue. It is being made mandatory for every transporter not to transport any wild life product without proper permission. The penalties for various offences are proposed to be suitably enhanced to make them deterrent. The Central Government officers as well as individuals now can also file complaints in the Courts for offences under the Act. It is also proposed to provide for appointment of Honorary Wild Life Wardens and payment of rewards to persons helping in apprehension of offenders.

To curb large scale mortalities in wild animals due to communicable diseases, it is proposed to make provisions for compulsory immunization of live-stocks in and around National Parks and Sanctuaries.

Realizing the need to protect offshore marine flora and fauna, the provisions of National Parks and Sanctuaries and proposed to be extended to the territorial waters. It is also being provided that while declaring any part of territorial water as a sanctuary, due precaution shall be taken to safeguard the occupational interests of local fishermen.

While making the provisions of the Act more effective and stringent, due regard has also been given to the rights of the local people, particularly the tribals. It is being provided that accept for the areas under reserve forest, (where the rights of the people have already been settled) and the territorial water, no area can be declared a sanctuary unless the rights of the people have been settled. State Wild Life Advisory Boards are also being made responsible for suggesting ways and means to harmonize the needs of tribals and the protection of wild life.

In the recent times, there has been a mushroom growth of zoos in India. Zoos, if managed properly, serve a useful role in the preservation of wild animals. So far there is no legislation dealing with zoos. Provisions are now being made for setting up of a Central Zoo Authority responsible for overseeing the functioning and development of zoos in the country. Only such zoos would be allowed to operate as are recognized and maintain animals in accordance with
the norms and standards prescribed by the Zoo Authority. Activities causing disturbance to animals in a zoo are being made a punishable offence.

Over-exploitation has endangered the survival of certain species of plants. Although the export of these plants and their derivatives is restricted under the provisions of the export policy and the “Convention on International Trade in Endangered Species of Wild Fauna and Flora” to which India is a Party, yet there is no restriction on collection of these species for the wild. Provision to prohibit collection and exploitation of wild plants which are threatened with extinction, is being made. Cultivation and trade of such plants would however, be permitted under license. The provisions, however, would not affect the collection of traditionally used plants for the bona fide personal use of the tribal.

It also be recalled that the Parties to the “Convention on International Trade in Endangered Species of Wild Fauna and Flora” (CITES), being greatly concerned by the declining in population of African elephants due to illegal trade in ivory, have included this animal in Appendix-I of the convention in October, 1989. Due to this change, the import and export of African ivory for commercial purposes has been prohibited. As a result, import of ivory would no longer be possible to meet the requirements of the domestic ivory trade. If the ivory trade is allowed to continue, it will lead to large scale poaching of Indian elephants. With this point in view the trade in imported ivory within the country is proposed to be banned after giving the opportunity to ivory traders to dispose of their existing stock.

The existing legal provisions do not permit the collection of snake venom for producing life saving drugs from snakes like Cobra and Russel’s Viper. This is causing hardship. It is, therefore, proposed to amend the Act to provide for extraction of and dealing in snake venom in a regulated manner.
The Wild Life (Protection) Amendment Act, 1993

The Wild Life (Protection) Amendment Act, 1993 provided for several amendments in The Wild Life (Protection) Act, 1972, to make it more comprehensive and effective. Section 26 of the Amendment Act provide for insertion of a new Chapter IV-A in the Act enabling the Central Government to set up a Central Zoo Authority for overseeing the functioning and management of the zoos in the country. Under new section 38-H, it was provided that no zoo would be operated without being recognized by the Central Zoo Authority. The zoos that were being operated immediately before the commencement of the Amendment Act were allowed to operate, provided they made an application for recognition to the Central zoo Authority in the prescribed form on payment of prescribed fees within a period of six months from the date of such commencement. The aforesaid provisions were brought into force from the 4th February, 1992.

The recognition by the Central Zoo Authority could be granted only to such zoos which fulfilled minimum norms and standards of upkeep and maintenance to be notified by the Central Government. These norms and standards could not be notified before 4th August, 1992 because of extensive consultations required to be undertaken with the State Governments and the Managements of zoos in the country.

The Wild Life (Protection) Amendment Act, 2002

The Wild Life (Protection) Amendment Act, 2002 provides—

- To highlight the ecological and environmental objective in the long title of the Wild Life Act;

- To add new definitions in view of the amendments proposed in the Wild Life Act;
• To give statutory status to the National Board for Wild Life and restructuring of State Wild Life Advisory Boards giving wider representation to all concerned;

• To provide certain safeguards to stop killing of animals on the pretext of being dangerous to human life and property; to rationalize and expedite the process of final notification of sanctuaries and national parks and safeguard the decline of bio-diversity during the intervening period between the first and final notification;

• To provide that any alteration in the boundaries of national parks and sanctuaries shall be made only on the basis of the recommendations of the National Board for Wild Life;

• To ban commercial sale of forest produce removed from national parks and sanctuaries for better management of Wild Life;

• To provide that no construction of commercial tourist lodges, hotels, zoos and safari parks shall be allowed inside the national parks and sanctuaries except with the prior approval of the National Board for Wild Life;

• To empower the officers to evict encroachment from the national parks and sanctuaries;

• To provide for the creation and management of community reserves as well as conservation reserves;

• That zoos shall not acquire, or dispose of any wild or captive animals to any organization other than a recognized zoo;

• To provide that captive animals and wild animals included in Schedule I and part II of Schedule it of the Wild Life Act and their parts and products can be acquired only by way of inheritance;

• To enhance and rationalize penalties prescribed under the Act including the making of suitable provisions on the lines of the provisions of Chapter VA of the Narcotic Drugs and Psychotropic Substances Act, 1985 in cases of
offences pertaining to wild animals included in Schedule I and Part II of Schedule II of the Act;

- To enhance the amount of rewards payable to persons rendering assistance in detection of offences and apprehension of offenders;

- To increase the amount that can be realized as compensation from Rs.2,000 to Rs.25,000.

- To provide that the vehicles, weapons and tools, etc., used in committing compoundable offences are not to be returned to the offenders.

**The Wild Life (Protection) Amendment Act, 2006**


The implementation over the years has highlighted the need for a statutory authority with legal backing to ensure tiger conservation. On the basis of the recommendations of National Board for Wild Life, a Task Force was set up to look into the problems of tiger conservation in the country. The recommendations of the Task Force, inter alia include strengthening of Project Tiger by giving it statutory and administrative powers, apart from creating the Wildlife Crime Control Bureau. It has also recommended that an annual report should be submitted to the Central Government for laying in Parliament, so that commitment to Project Tiger is reviewed from time to time, in addition to addressing the concerns of local people.

The National Tiger Conservation Authority would facilitate MoU with States within our federal set up for tiger conservation. It will provide for an oversight by Parliament as well. Further, it will address livelihood interests of local people in areas surrounding Tiger Reserves, apart from ensuring that the rights
of Scheduled Tribes and such other people living nearby are not interfered or adversely affected. The core (critical) and buffer (peripheral) areas have been defined, while safeguarding the interests of Scheduled Tribes and such other forest dwellers.

The functions and powers of the Authority, inter alia include: approval of Tiger Conservation Plan prepared by States, laying down normative standards for tiger conservation, providing information on several aspects which include protection, tiger estimation, patrolling, etc., ensuring measures for addressing man-wild animal conflicts and fostering co-existence with local people, preparing annual report for laying before Parliament, constitution of Steering Committee by States, preparation of tiger protection and conservation plans by States, ensuring agricultural, livelihood interests of people living in and around Tiger Reserves, establishing the tiger conservation foundation by States for supporting their development.

The Notification of the National Tiger Conservation Authority has been issued on 4 September 2006, for a period of three years, with the Minister for Environment and Forests as its Chairperson and the Minister of State for Environment and Forests as the Vice-chairperson. The official members include Secretary, Ministry of Environment and Forests, Director General of Forests and Special Secretary, Ministry of Environment and Forests, Secretary, Ministry of Tribal Affairs, Secretary, Ministry of Social Justice and Empowerment, Chairperson, National Commission for the Scheduled Tribes, Chairperson National Commission for the Scheduled Castes, Secretary, Ministry of Panchayati Raj, Director, Wildlife Preservation, Ministry of Environment and Forests and six Chief Wildlife Wardens (in rotation from Tiger Reserve States) (Arunachal Pradesh, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and Uttaranchal). Three Members of Parliament would be nominated by the Parliament. The Ministry of Law and Justice would also be nominating an officer. The Ministry of Environment and Forests is in the process of selecting the eight non-official experts or professionals having...
prescribed qualifications and experience, of which at least two shall be from the field of tribal development. The Inspector General of Forests in charge of Project Tiger shall be the Member Secretary of the Authority.

The Ministry is in the process of creating the Wildlife Crime Control Bureau, invoking the provisions created after the recent amendment. The Bureau would collate intelligence relating to wildlife crime, ensure coordination with State Governments and other Authorities through its set up, apart from developing infrastructure and capacity building for scientific and professional investigation into wildlife crimes and assist the State Governments in successful prosecution of such crimes.

The penalty for an offence relating to the core area of a tiger reserve or hunting in the reserve has been increased. The first conviction in such offence shall be punishable with imprisonment not less than three years but may extend to seven years, and also with fine not less than fifty thousand rupees but may extend to two lakh rupees. The second or subsequent conviction would lead to imprisonment not less than seven years, and also with fine not less than five lakh rupees, which may extend to fifty lakh rupees.

The Draft Wild Life (Protection) Amendment Bill, 2010

*The Wildlife (Protection) Amendment Bill 2010* prepared by the Ministry of Environment and Forests. This is to further amend the Wild Life (Protection) Act, 1972 and strengthen the existing provisions for penalties, traps, criminal procedure etc.

This Bill may be called the Wildlife (Protection) Amendment Act, 2010. It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.

The Wild Life (Protection) Act 1972 establishes the legal framework for the protection and conservation of various species of plants and animals and the proper management of their habitats. The Wild Life Act includes but is not
limited to, the regulation and control of trade in parts and products derived from such species. Despite the penalties already provided for, there seems to be no reduction in the instances of wildlife crime that continue to be reported across the country. Many of these are perpetrated by organized, international gangs of criminals who have sophisticated networks spread across the country and abroad. The current penalties have failed to act as deterrents with few convictions having taken place since the Act came into force. Furthermore, there is no strong financial disincentive that prevents poachers and smugglers from engaging in illicit wildlife trade, which, in terms of value, ranks only behind the illegal trade in arms and narcotics. To address these and other issues, the Wild life (Protection) Amendment Bill 2010 seeks to make the following broad changes:

[a] **Enhance Penalties and Strengthen Officials**

The present legislation aims to further strengthen the deterrent powers of the said Act by increasing the penalties for offences, especially those involving unlawful trade in wildlife products. It also seeks to increase the efficiency of the procedure governing the prosecution of offences and empower officers who are crucial to the enforcement of the said Act.

[b] **Greater Harmony with CITES provisions**

The Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) aims to regulate the international trade in endangered species of animals and plants. India became a party to the said Convention in July, 1976. The Amendment Act aims to fully implement India’s international obligations under the said convention. This includes the establishment of a Management Authority to regulate the trade in exotic species of animals and plants that are alien to India, which may negatively affect the eco-systems of India if introduced.
[c] Ban on Trade in Peacock Feathers

So far, the said Act has allowed the possession and domestic trade in naturally shed peacock feathers. However, the demand within India for peacock tail feathers outstrips the supply. This problem has led to the rampant poaching of the national bird not only for its tail feathers but also for its meat. The present legislation bans the trade in peacock tail feathers and articles made from them allowing reasonable exceptions for their use in religious ceremonies.

[d] Wildlife Research

Good science is essential for the proper conservation and management of India’s wildlife. Encouraging wildlife research is a crucial part of the endeavor to save the nation’s dwindling wildlife. The present legislation aims to promote independent scientific research and imposes obligations upon the Central Government to frame comprehensive rules and procedures governing the same.

[e] Provisions for Leg Hold Traps

Leg hold-Traps are the main method used by organized poachers to bring down animals like the tiger and the leopard. These specific traps are dangerous devices that can cause grave damage to even human beings, and are not regulated by any law at present. The use of these traps, in general, is already a violation of the Prevention of Cruelty (Capture of Animals) Rules, 1979. The present legislation bans the sale, manufacture and use of these traps and regulates their possession as well.

Pros and Cons of the Wild Life (Protection) Amendment Bill, 2010

This Bill has some advantages as well as disadvantages. For instance, the provision under section 18(A) of the Act, that ensures that the government has to provide alternatives to the people to be affected by a proposed sanctuary, is now applicable to the people of proposed National Park areas. However, the
earlier provision that grazing might be permitted within the sanctuary, is now
deleted with a new provision that gives some more facilities to the local
communities but without any assurance on grazing.

Landowners can now be a part of the management committee if the community
reserve is located on private lands and detail provisions have been incorporated
for scientific research, regulation of leg traps, trade in peacock tail feather, and
regulation of trade in scheduled (restricted) species. However, there is still lack
of clarity on a synergy between the Forest Rights Act, 2006 and the Wildlife
Protection Act, 1972. Yes, the guidelines issued on critical wildlife habitats do
provide ample scope for involvement of Gram Sabhas, but there should be
corresponding provisions in the Wildlife Act and Rules. Although it is an
appreciable initiative in the proposed bill to recognise evidence provided by the
Gram Sabha during the enquiry for settlement of rights, the present provisions
seem quite inadequate to address issues related to critical wildlife habitat and
community-based wildlife conservation. Whereas it was expected that there
would be a post-FRA amendment to the Act so as to bring it in conformity with
the provisions of Forest Rights Act, the present Bill seems to be rather keen on
quite different issues which are of course important. The Sariska exposure and
several other field realities have clearly pointed out that the stereotype
conservation approach of forest department can’t be so reliable, despite high
investments. On the other hand, people have been protecting wildlife on their
own even at the cost of their livelihood. The present bill is still inadequate to
ensure proper enabling mechanisms to encourage such community/private
initiatives. There are EDCs in sanctuaries, but field realities confirm that the
present provisions under EDCs can’t resolve issues related to the life and
livelihood of the affected community, nor can it facilitate a true and sustainable
community involvement.
RCDC, a voluntary organization facilitated a civil society consultation on this proposed amendment, at Hotel Presidency, Bhubaneswar, where participants from various NGOs, community-based organisations, and representative from WWF along with some wildlife experts discussed the matter. Former Chief Wildlife Warden of Orissa Sri Bijay Ketan Pattanaik chaired the session and the House recommended that the deadline for submission of feedback on this Bill should be extended, and that the proposed amendment should first incorporate provisions to ensure adequate and immediate compensation for the victims of wildlife attacks, and for early declaration of vermin to the wildlife that threaten human life because of their large numbers, for giving priority on a modified role of forest inhabitants so as to involve them in wildlife conservation instead of their displacement, to provide a helpline to address the issues of victims of wildlife attacks, to make attractive enabling mechanisms for community involvement in wildlife protection, restriction of chemical farming in and around protected areas and use of traditional skills on wildlife capturing/handling, etc. The Wildlife law should be brought in conformity with the Forest Rights Act.
B. Salient Features of the Wild Life Protection Act

Important Definitions under the Act

Wildlife

‘Section 2 (37) defines wildlife to include’ any animal, bees, butterflies, crustacean, fish and moths; and aquatic or land vegetation which forms part of any habitat.

Apart from the common understanding of wildlife as any animal, bees, butterfly etc, the WLPA includes within the definition of wildlife both the aquatic and land vegetation which forms part of any habitat. The import of such a definition is significant as destruction of a habitat would amount to destruction of wildlife itself. This becomes further clear where the Chief Wildlife Warden has been empowered under s 29 in case of sanctuaries and s 35 (6) in case of national parks to issue permits, provided the state government is satisfied to destroy any habitat which is necessary for the improvement and better management of wildlife.

Wild Animal

The WLPA goes beyond the common understanding of wild animal while defining it in two parts. One, where a wild animal is defined to be any animal found wild in nature. Second, where any animal specified in the various schedules, (Schs I, II, III, IV, V) that have been appended in the WLPA, wherever found. The reason for this broad definition is perhaps aimed to cover wild species more comprehensively, in order to prevent illegal trade or poaching outside the wild.

Hunting

The definition of hunting under the WLPA is quite comprehensive. It not only covers capturing, killing, poisoning, snaring and trapping of a wild animal but also includes ‘driving’ any wild animal for the above said purposes. Injuring or

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15 See s 2 (37) of WLPA.
16 See s 2 (36) of WLPA
derivatives is also prohibited under the said chapter. Notwithstanding the above restriction, the members of scheduled tribes have been allowed to collect or possess such specified plants for their bona fide personal use. However, this allowance is subject to the provision of Chapter IV ie the restrictions and regulations relating to national parks and sanctuaries.

**Vermin**

Section 9 which prohibit hunting, excludes the wild animals listed in Sch V relating to vermins. Only four species of wild animals i.e common crow, fruit bats, mice and rats are permitted to be hunted. It is pertinent to mention that when the WLPA was enacted, the common fox, jackal and wolves were also included as vermins. However, these were removed subsequently in 1977 and 1980.\(^\text{17}\)

**Authorities**

According to Section 3 of WLPA under the Central Government, the highest officer for wildlife preservation is the Director, Wildlife Preservation. He is assisted by the Assistant Directors and such other officers and employees as may be necessary.\(^\text{18}\) Under the State Government, the Chief Wildlife Warden usually of the rank of Chief Conservator of Forest is assisted by Wildlife Wardens and other officers and employees as may be necessary. The state government is also required to appoint in each district one Honorary Wildlife Warden who is normally not a government servant.\(^\text{19}\) The apex body which opines on wildlife matters in the state is the State Wildlife Advisory Board headed by the minister in charge of forests in the state. Although the constitution of this board is heavily biased with the representation of the government, it also provides for inclusion of ‘such other persons, not exceeding ten, who, in the opinion of the state government are interested in the protection

\(^{17}\) Common fox and Jackal were removed vide notification No. FJ 11012/31/76 FRY (WL), dated 5 October 1977 published in the Gazette of India, Extra, Pt II, s 3 (i), p. 385, dated 5 October 1977 and wolves were removed vide Notification No. F1-28/78 FRY (WI), dated 9 September 1980, published in the Gazette of India, Extra, Pt II, is 3 (iO, p. 431, dated 2 October 1980.

\(^{18}\) Section 3, WLPA

\(^{19}\) Section 4, WLPA
destroying or taking any part of the body of any such wild animal or in the case of a wild bird or reptile, damaging the egg of such birds or reptiles or even disturbing the eggs or nests of such birds or reptiles would also amount to hunting as per the Act (s 2 (16)). Section 9 of the WLPA now bans hunting of wild animals specified in Schs I, II, III and IV. The only exception to the above said clause where hunting is allowed is provided under s 11 of the WLPA.

Schedule Animal

The concept of ‘scheduled animal’ was introduced in 1986 vide Amendment Act 28 of 1986. There is a need to clarify this definition because the concept of scheduled animal and wild animals listed under the various schedules in the WLPA, are often interchanged and misinterpreted.

A scheduled animal is defined to include any animal listed in Sch I and Pt II of Sch II whereas, a wild animal is listed in different schedules ie Schs, I, II, III and IV in accordance with the degree of protection accorded to it. Scheduled animal has been accorded the highest protection. Trade in any such scheduled animal is completely banned.

Scheduled Animal Article

According to sec.49-A(b) ‘Schedule Animal Article’ means an article made from any scheduled animal and includes an article or object in which the whole or any part of such animal has been used but does not include tail feather of peacock, an article or trophy made therefrom and sneak venom or its derivative.

Specified Plant

‘Specified Plants’ are those which are specified in Sch VI of the WLPA. Only six species of plant have been included in this schedule. Chapter IIIA inserted by Act 44 in 1991 prohibits willful picking, uprooting damaging, destroying, acquiring or collecting any specified plant from any forest land or any area specified by notification by the Central Government. The possession, sale gift or transport of any specified plant whether alive or dead or even its parts or
of wildlife, including the representatives of tribals not exceeding three. The primary duties of the board include advising on selection of national park and sanctuaries formulating policy on protection of wildlife and plants, advising on any matter relating to schedules and taking suitable measures for harmonizing needs of tribals and other forest dwellers with wildlife protection and conservation.

As per the Sec. 3 of the Act, the Central Government may appoint a Director of Wildlife Preservation, Assistant Directors of Wildlife Preservation and such other officers and employees as may be necessary. As per the Sec. 4, the State Government may, for the purpose of this Act, appoint Chief Wildlife Warden, Wildlife Warden, Honorary Wildlife Wardens and other officers and employees as may be necessary. As per Sec. 6, the State Governments and the Administrators in Union Territories shall constitute a Wildlife Advisory Board.

Protected Areas

The term 'protected area' is not defined under the WLPA. However, the Supreme Court as clarified in Tarun Bharat Sangh, Alwar case that the expression protected area was intended to and does refer to all the areas which have had legal protection against non-forest activities that devastated the environment including poaching, mining, felling of trees etc. The WLPA as amended, provides for three categories of protected areas which are described below.

Sanctuary

A sanctuary is an area that is established under the three provisions of the WLPA: ie s 26A, s 38 (1) and s 66 (3). For an area of land or water, of any legal status except reserved forests and territorial waters around India’s coast to be notified a sanctuary under s 26 A there are three conditions to be fulfilled:

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20 Section 6, WLPA
21 Section 8, WLPA
Firstly, a notification under s 18 must be issued declaring the intention and the boundaries of a particular area that is required to be declared a sanctuary. Secondly, the period (two months) after proclamation made by the collector for preferring claims and with regard to peoples' rights must elapse and thirdly, all the claims\textsuperscript{23} made in relation to any land must be disputed of by the state government. After these three conditions are fulfilled, the state government is required to issue a notification specifying the limits of the area that would finally be notified as a sanctuary. In case of Reserved Forests (RFs) and territorial waters, this notification can be directly issued. The sanctuary exists from the date of such notification. Thus, two separate notifications are required for all areas other than RFs and territorial waters, one as an intention notification and the other the final notification.

Under s 38 (1), the Central Government can also declare a sanctuary anywhere in India. However, there are two conditions that need to be fulfilled: first, the state government must either lease or transfer any areas under its control to the Central Government, which is not already a sanctuary and second, the Central Government must be content by the fact that the particular area satisfied the conditions under s 18 ie, it is of geological, geomorphological, faunal or floral significance. The provisions and restrictions that apply to a sanctuary are applicable to such areas declared as above including the power of compounding offences, seizure and arrest without warrant.

The provision under sec.66 (3), concern sanctuaries that existed prior to the commencement of the WLPA. A sanctuary that is declared under any previous Act would be deemed to be sanctuary under the WLPA.

**National Park**

A national park can be established under three provisions of the WLPA ie s 35, a 38 (2) and s 66 (3). For an area to be declared under s 35, an intention is

\textsuperscript{23} A claim is a means by which a person in possession or enjoyment of some privilege or an object.
declared by notification for an area, which is of ecological, faunal, floral and geomorphological importance. This area may be an existing sanctuary too.

A national park is notified under the following three conditions. First, when the period of preferring claims has elapsed; second when all claims in relation to any land in the area intended to be a national park are disposed of by the state government and lastly, when all rights in respect of land which is proposed to be included in the national park are vested in the government. After the above conditions have been fulfilled, the state government shall issue a notification specifying the limits of the area that is being declared as a national park.

Under s 38 (2) the Central Government can declare a certain area as a national park. However, there are two conditions that need to be fulfilled: Firstly, the state government either leases or transfers any area under its control to the Central Government, whether it is a sanctuary or not; and secondly, the Central Government is satisfied that the particular area satisfied the conditions under s 35 ie, it is of geological, geomorphological, faunal and floral significance. It is pertinent to mention that the provision and restrictions that apply to a national park are applicable to such area declared as above, including the power of compounding offences, seizure and arrest without warrant.

Under S 66 (3), the provisions are with regard to the National Parks that existed prior to the commencement of the present Act. National Parks that existed prior to this Act, eg Hailey or Corbett National Park in Uttar Pradesh, notified under a special law enacted for this purpose, would be deemed to be national parks under this Act. Also, if the rights in or over any land are not extinguished under the previous Act for any national park then the extinguishment of such rights would be done in accordance with the present Act.

Closed Area

According to S. 37 of the Act closed Area is the area which is closed to hunting for a specified period is called ‘closed area’. There are, however, very few examples of such areas in India (eg a few in Jammu and Kashmir).
The Wildlife Advisory Board

The Sec. 6 of this Act enforces and enables the state governments and the administrators of the Union Territories to constitute a Wildlife Advisory Board in each states and union territories. In WWF v. Union of India, Supreme Court directed the states which did not constitute the Wildlife Advisory Board, to constitute within 2 months.

The members of the Wildlife Advisory Board-It shall consist of the Minister in charge of Forests in the State or Union territory as the Chairman. If there is no such minister, then the Chief Secretary will be the Chairman of the Board. The other members are, two members of the State Legislature or Legislature of Union Territory; Secretary to the state government or the government of the union territory, in charge of forests; the Forest Officer in charge of the State Forest Department; an officer nominated by the Director of Wildlife Preservation; Chief wildlife warden; officers of the state government not exceeding five; and such other persons, not exceeding ten, who in the opinion of the state government, are interested in the protection of wildlife, including the representatives of tribals not exceeding three.

Duties of Wildlife Advisory Board—

According to the Wildlife Advisory Board mainly constituted to advise the state government in the following matters—

a) In the selection of areas to be declared as Sanctuaries, National Parks and Closed areas and the administration thereof;

b) In formulation of the policy for protection and conservation of wildlife and specified plants;

c) In any matter relating to the amendment of any schedule;

d) In relation to the measure to be taken for harmonizing the needs of the tribals and other dwellers of the forests with the protection and conservation of wildlife;

e) In any other matter connected with the protection of wildlife which may be referred to it by the state government.
Restriction on Hunting

Section 2(16) of the Act defines the term “hunting” to include capturing, killing, etc. of any wild animal; driving any wild animal for any of the purposes specified in sub-clause (a) and injuring or destroying or taking any part of the body of any such animal. The question arises whether destruction of wildlife due to other man made causes comes within the definition of “hunting”. The Act does not seek to prohibit the hunting of all animals, but only their unlicensed poaching. Except in preserves, many animals can be hunted on license. There are six Schedules appended to the Act. Till 1991, hunting of animals specified in Schedule I was absolutely prohibited. However, by virtue of the 1991 Amendment, the prohibition on hunting was extended to all animals mentioned in Schedule I to IV.

Section 11 and 12 empower the Chief Wild Life Warden to sanction the hunting of any animal in Schedule I, II, III and IV, when it becomes a “rogue” animal and a threat to life and limb, or a crop raider, or when it has become diseased or disabled beyond recovery. The statutory prohibition against hunting and trapping of specified species will only partially help in conserving our wildlife. Other forms of activities that have the effect of depleting wildlife like the deprivation of habitat, competition for fodder from domestic animals being allowed to graze in the sanctuary etc. must be eliminated before the word protection can have any meaning.

In *Wild Life Protection Society, Hyderabad v. State of A.P.*, the petitioner took cognizance of the report pertaining to the killing of 13 months old tigress in the Nehru Zoological Park and Killing of other wild animals and extraction of the their body parts like nail, skin, eyes, tail etc and sought directions from the court for constitution of special vigilance and enforcement cell under the administration of C.B.I. and to place a detailed report about the alleged incident. The State Government filed a detailed counter affidavit showing that

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24 A.I.R. 2002 A.P. 221
adequate steps had already been taken for the protection of wild animal and the Central Government had already released sufficient finance to the State Government for effective enforcement of provisions of Wild Life (Protection) Act, 1972 under the scheme of development of National Parks and Sanctuaries. In view of the circumstances the Court declined to issue any further direction.

In the case of Tilak Bahadur Rai v. State of Arunanchal Pradesh,25 it was held that to decide whether in killing an animal the accused acted in self defence or not, the nature and ferocity of animal shall be relevant. Thus, in this case of killing the tiger in good faith and in defence of oneself it cannot be said that the accused was committing any offence prior to shooting the tiger that charged at him and thus the killing was held to be justified.

In Chief Forest Conservator (Wildlife) v. Nisar Khan,26 the appellant had been granted a license for carrying on business as a dealer in birds which were bred in captivity. His application for renewal of the license for the next year was rejected by the licensing authority on the ground that it would not be possible for him to carry on the business of breeding of captive birds without hunting which includes trapping of birds. The Supreme Court held that licensing authority rightly refused to renew the license as business of breeding of birds in captivity by procuring them by trapping is prohibited under section 9 read with section 2 (16) of the Wild Life (Protection) Act, 1972.

Protection of Flora

It was only by the Wild Life Protection Amendment Act 1991, that the definition of wildlife in Section 2(37) was broadened to include flora as well as fauna. As far as flora is concerned, section 17H of the Act declares certain endangered species of plants as the property of the Central Government. The use of plants without a license is prohibited.

25 1979 Cr. L.J. 1404
26 (2003) 4 SCC 595
Protection of Specified Plants

No person shall—

(a) Wilfully pick, uproot, damage, destroy, acquire or collect any specified plant from any forest land and any area specified, by notification, by the Central Government;

(b) Posses, sell, offer for sale, or transfer by way of gift or otherwise, or transport any specified plant, whether alive or dead, or part, or derivative thereof.

However, according to section 17-A nothing in this section shall prevent a member of Scheduled Tribe from picking, collecting or possessing in the district he resides any specified plant or part or derivative thereof for his bonafide personal use. The Chief Wild Life Warden may with the previous permission of the State Government grant to any person a permit to pick, uproot, acquire or collect from a forest land or transport any specified plant for the purposes of education, scientific research, collection, preservation and display in herbarium of any specified institution, or propagation by a person or an institution approved by the Central Government in this regard. Cultivation of specified plants without licence from Chief Wild Life Warden or any other officer authorized by the State Government in this behalf is prohibited.

Similarly, commencing or carrying on business or occupation as a dealer in a specified plant or part or derivative thereof without a licence granted by the Chief Wild Life Warden is prohibited. Every such licence shall specify the premises in which and the conditions, if any, subject to which the license shall carry on his business. Every person cultivating or dealing, a specified plant or part or derivative thereof is required to declare to the Chief Wild Life Warden.

27 Section 17-A
28 Section 17-B
29 Section 17-C
30 Section 17-D
or any other officer authorized by the State Government in this behalf, stock of such plants and part or derivative thereof, as the case may be, within 30 days from the date of commencement of the Wild Life (Protection) (Amendment) Act, 1991.31

No licensee shall acquire or receive or keep in his control, custody or possession any specified plant or part or derivative thereof in respect of which the above said declaration has not been made32 or which has not been lawfully acquired under the provision of this Act. Further, no person shall purchase, receive or acquire any specified plant, or part or derivative otherwise than from a licensed dealer.33

Declaration of Protected Areas

The State government may constitute any area, other than an area comprised within any reserve forest or the territorial waters, as 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. Similarly, Section 35 gives the power to the state government to constitute any area as a national park. The total area currently for preserves is well under 4.5% of the total land area. Though, in terms of ecological significance, there is hardly any distinction between national Parks and sanctuaries, national parks enjoy more protection than sanctuaries. Public entry is restricted in both. Based on this restriction, a recent decision of the Madras High Court upheld restrictions on plying vehicles in the sanctuaries. Likewise, the destruction of any wildlife or habitat is prohibited in both sanctuaries and national parks. Only registered persons can hold arms even under the Arms Act, 1959, if he/she resides within ten kilometers of a sanctuary or a national park. However, the grazing of livestock is prohibited within a national park, but permitted with a sanctuary.

31 Section 17-E, i.e., within 30 days w.e.f., 2-10-1991
33 Section 17-G
The role of zoos in wildlife protection has also been recognized by the 1991 Amendment. By virtue of Section 38A, a Central Zoo Authority has been created to regulate zoos and ensure that the activities therein do not result in destruction of wildlife. One of the primary functions of the Authority is to encourage captive breeding of endangered species in zoos. However, it should be remembered that the conservation of species in their natural habitat, i.e., *in situ* conservation, is far better than caged conservation and captive breeding. This is essential for maintaining the ecological balance. The Government has formulated various schemes for saving particular species. Section 38J prohibits teasing, molesting, etc. in zoos, so that the animals are protected. Furthermore, a person operating a zoo should prove that he had obtained the animals from authorized persons or another zoo. If he fails to do so, the presumption under Section 57 of unlawful possession applies and the person can be convicted.

**Declaration of Sanctuary**

Chapter IV of the Act deals with protected areas such as Sanctuaries, National Parks and Closed areas. Section 18 of the Act provides that the State Government may, by notification, declare its intention to constitute any area other than an areas comprised within any reserved forest or the territorial Waters as a Sanctuary if it considers that such areas is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing Wild Life or its environment. Such a notification shall specify, as nearly as possible, the situation and limits of such area.\(^{34}\) It would be sufficient if the area is described by roads, rivers, ridges or other well-known or readily intelligible boundaries.

**Protection to Sanctuaries**— Section 18 A, which was inserted by Amendment Act of 2002, provides that when the State Government declares its intention under section 18 (1) to constitute any area as a sanctuary and if the said area is

not within the reserved forest or territorial waters, then the provision of sections 27 to 33 – A (both inclusive) shall come into effect.

It is further provided that till such time as the rights of affected persons are finally settled under sections 19 to 24 (both inclusive), the State Government shall make alternative arrangements required for making available fuel, fodder and other forests produce to the affected persons.

**Appointment of Collectors**— Section 18-B, which was added by Amendment Act of 2002, provides that the State Government shall appoint a Collector within ninety days of coming into force of the Amendment Act of 2002 or within thirty days of the issue of notification under section 18, to inquire into and determine the existence, nature and extent of rights of any person over the land within the limits of sanctuary.

**Collector to Determine Right**— When a notification has been issued under section 18 of the Act declaring any area as a sanctuary, then the Collector shall enquire into and determining, the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary. The State Government may, by general or special order, delegate the powers and the functions of the Collector to any other officer as may be specified in the order.

After the issue of notification, declaring any area as sanctuary under section 18, no right shall be acquired in, on or over the land comprised within the limits of the area specified in such notification, except by succession, testamentary or intestate.

In the Case of *Magarahel Budabath Hakku Sthapana Samithi & Others v. State of Karnataka,* the State Government had assigned a portion of the forest land

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35 Section 19  
36 Section 26  
37 Section 20  
38 A.I.R. 1997 Kant. 288
by way of lease and thereby creating a right in the properties in question which formed a part of national park-cum-reserve forest in favour of a private company, without seeking prior approval of the Central Government. The Karnataka High Court held that section 20 of the Act puts a bar on the accrual of the rights and therefore as such the grant of lease in question in the present case was not valid.

After declaring a particular area as sanctuary under section 18 of the Act, the Collector is required, within a period of sixty days, to publish in the regional language in every town and village in or in the neighbourhood of such area, a proclamation—

(a) specifying, as nearly as possible, the situation and the limits of the sanctuary; and

(b) requiring any person to lodge a claim in respect of his rights, in the prescribed form, within two months from the date of proclamation specifying the nature and extent of such right with necessary details and the amount and particulars of compensation claimed in respect thereof.\(^\text{39}\)

The collector shall after service of the prescribed notice upon the claimant enquire into the claim preferred before him and the existence of any right, if any.\(^\text{40}\) The Collector shall pass an order admitting or rejecting the claim to a right in or over any land in whole or in part. If such a claim is admitted in whole or in part, the Collector may either—

(a) exclude such land from the limits of the proposed sanctuary; or

(b) proceed to acquire such land or rights on payment of such compensation, as is provided in the Land Acquisition Act except where by an agreement between the owner of the land or holder of right and


\(^{40}\) Section 22
the Government, the owner or the holder of such rights has agreed to surrender his rights to the Government in or over such land; or

(c) allow, in consultation with Chief Wild Life Warden, the continuation of any right of any person in or over any land within the limits of the sanctuary; or

(d) the Collector, with the consent of the claimant, or the court, with the consent of both the parties, may award compensation in land or money or partly in land and partly in money.\(^{41}\)

**Time Limit of Completion of Acquisition Proceedings**—Section 25-A, which was added by the Amendment Act of 2002, provides that the Collector should, as far as possible, complete the acquisition proceedings under sections 19 to 25 (both inclusive), within a period of two years from the date of notification of declaration of a sanctuary under section 18. However, notification shall not lapse if, for any reasons the proceedings are not completed within the period of two years.

In the case of *Nagarpalika Parishad Mussoorie v. State of U.P.*,\(^ {42}\) the petitioner lodged its claim against the declaration of an area as sanctuary by the State Government alleging that the petitioner is the owner of the property and as such entitled to manage the same. The Court held that the claim of the petitioner is dependent upon the decision of the Collector while exercising powers under section 24 of the Act.

When period for preferring claim has elapsed and all claims have been disposed of by the State Government or when any area comprised within the reserve forest or any part of the territorial waters which is considered by the State Government to be of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purposes of

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\(^{41}\) Section 24.

\(^{42}\) A.I.R 1998 All. 232
protecting, propagating or developing Wild Life or its environment, it is to be included in the sanctuary, the State Government shall issue notification specifying the limits of the area which shall be comprised within the sanctuary and shall declare that such area shall be a sanctuary from the specified date. If the territorial waters are included in the sanctuary then the State Government shall obtain prior concurrence of the Central Government. The limits of the area of the territorial waters to be included in the sanctuary shall be determined in consultation with the Chief Naval Hydrographer of the Central Government and after taking adequate measures to protect the occupational interest of the local fishermen.\footnote{Section 26 – A (3) as substituted by the Amendment Act of 2002} No alternation of the boundaries of a sanctuary shall be made by the State Government except on the recommendation of the National Board.\footnote{Section 26 – A}

In the case of Consumer Education & Research Society, Ahmedabad v. Union of India,\footnote{Consumer Education and Research Society, Ahmedabad v. Union of India, A.I.R., 1995 Guj. 13. Consumer Education and Research Society v. Union of India, (2005) 10 SCC 185.} the Supreme Court has considered in detail the procedure for denotification of the sanctuary. The brief facts of this case were that the Government of Gujarat in exercise of powers conferred under section 18 (1) of the Wild Life Protection Act, 1972 declared a part of the forest area in Lakhapat Taluka of Kutch as a “Wild Life Sanctuary” which was named as “Narayan Sarover Chinkara Sanctuary”. The total area of the sanctuary was 765.79 sq.km. Subsequently, it cancelled that notification and issued another notification whereby only a part of the said reserve forest was declared as “Chinkara Wild Life Sanctuary”. The area so declared was 94.87 sq. km.

The petitioner before the Gujarat High Court, which quashed both the notifications, challenged the said two notifications.\footnote{2000) 2 SCC 599} Thereafter, the state Government made certain enquiries and decided to delimit the area of that sanctuary as it was found to be more than required and the delimitation was
likely to be helpful in systematically developing that area economically by making use of its mineral wealth.

The State Government then moved the State Legislature for passing an appropriate resolution in that behalf. The State Legislature passed a resolution to reduce the sanctuary limit to 444.23 sq. km. and make the area of 321.56 sq. km. rich with minerals available for developing of the said backward area of Kutch District. The said resolution was passed by the legislature in exercise of the powers conferred by Section 26 – A (3) of the Wild Life (Protection) Act, 1972. Pursuant to this resolution, the Government issued notification to that effect, which was again challenged by the petitioner before the High Court on the ground that the reduced area was not sufficient for the protection of Wild Life of the area. The High Court dismissed the petition and stated that the State Legislature was quite aware about the Wild Life and for about 1200 Chinkaras the area of 444.23 sq. km. was quite sufficient. It was further held that economic development of the area was likely to benefit the people of the area at large and help in protection, preservation and development of the flora and fauna of that area.

The petitioner went in appeal before the Supreme Court against the above order of the High Court and pleaded (i) that the State government had wrongly assumed or believed that the purpose of the impugned notification was just to protect the Chinkaras in that area (ii) that it was issued with a view to protect the eco-system also (iii) that the State Government did not apply its mind to all relevant aspects and did not all for any further information and thus mainly relied upon the opinion of the State Government while passing the impugned resolution (iv) that the fact that there were a large number of trees on the land which was given on lease for the purpose of setting up the cement plant was not brought to the notice of the Legislature. The Court did not think it proper to quash the notification and observed.
It will not be proper to invalidate the resolution of the State Legislature on such a ground when we find that it took the decision after duly deliberating upon the material which was available with it and did not think it necessary to call for further information. The power to take a decision for reduction of the notified area is not given to the State Government but to the State Legislature. The State Legislature consists of representatives of the people and it can be presumed that those representatives know the local areas well and are also well aware of the requirements of that area. It will not be proper to question the decision of the State Legislature in a matter of this type unless there are substantial and compelling to do so.

The court also emphasized the need to balance the protection of environment including Wild Life and the need for economic development of an impoverished backward area. In this regard the Court observed—

> Even when it is found by the Court that the decision was taken by the State Legislature hastily and without considering all the relevant aspects it will not be prudent to invalidate its decision unless there is material to show that it will have irreversible adverse effect on the Wild Life and the environment.

The court also emphasized the need to balance the protection of environment including Wild Life and the need for economic development of an impoverished backward area. In this regard the Court observed—

That the forest in notified area is an edaphicthorn forest. It is a desert forest but with a large number of trees. It has been identified as a potential site for designation as a bio-sphere reserve by an Expert Committee constituted by the Ministry of Environment and Forest. It is also at the same time true, as pointed out by the Government that this part of Kutch district is a backward area. There is no other possibility of industrial development in that area, though it contains rich mineral deposits. Therefore, if an attempt is
made by the State Legislature and the State Government to balance the need of the environment and the need of economic development it would not be proper to apply the principle of prohibition in such a case....It would, therefore, be proper and safer to apply the "principle of protection" and the "principle of polluter pays" keeping in mind the "principle of sustainable development" and the "principle of intergenerational equity".

From the above observations of the Supreme Court it is clear that the Supreme Court has shown its deep concern for the protection of the environment including Wild Life and at the same time it has also kept in mind the developmental aspect of an area and interest of the people residing in that area.

In Chandmari Tea Co. v. State of Assam the petitioner challenged the notification of the Government of Assam notifying the extension of the territory of Burachapari Reserve Forest and Kaziranga National Park. Some of the petitioners also challenged the cancellation of the grazing permits and prayed for direction to provide for alternative pasture ground for grazing their cattles. In this case, area of certain villages was sought to be annexed with the National Park. The petitioner had the knowledge of inclusion/addition of the disputed land to National Park/Sanctuary by various notifications. The Court held that non-mentioning of the names of the villages in the notification cannot be a ground for quashing the notification as these mistakes were corrected and boundaries were specifically given the subsequent notices and further orders were passed after examining claims and objections of the interested persons/villagers.

In T.N. Godavarman Thirutnalpad (99) v. Union of India the recommendations made by Central Empowered Committee (CEC) containing directions for demolition of all fish tanks constructed illegally by encroachment inside the Kolleru Wildlife Sanctuary and prohibiting use or transportation of inputs for

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pisciculture in the said sanctuary were in question. The court applied the principle of sustainable development and upheld the recommendations of CEC.

**Restriction on Entry in Sanctuary**— Only following persons can enter or reside in a sanctuary:

(a) public servant on duty,

(b) person who has been permitted by the Chief Wild Life Warden or other authorised officer to reside within the limits of the sanctuary. The Chief Wild Life Warden may, on application, grant to any person a permit to enter or reside in a sanctuary for all or any of the following purposes namely: (i) investigation or study of Wild Life and purposes ancillary or incidental thereto; (ii) photography; (iii) scientific research; (iv) tourism; (v) transaction of lawful business with any person residing in the sanctuary or. The permit to enter or reside in a sanctuary shall be issued subject in such conditions and or payment of such fee as may be prescribed.

In the case of *Forest Friendly Camps Pvt. Ltd. v. State of Rajasthan*, the Rajasthan High Court held that in view of section 28(2) of the Wild Life (Protection) Act, 1972, the right of entry in the sanctuary is not absolute. In this case imposition of roster system for tourist vehicles for entry into sanctuary or national park was held to be not arbitrary and the Court stressed that the tourism should be eco-friendly and environmentally sustainable and accordingly the authorities are well within the rights to regulate the entry and impose the terms and conditions or the entry in the sanctuary.

(c) A person who has any right or immovable property within the limits of sanctuary,

(d) A person passing through the sanctuary along a public highway and

(e) The dependents of the above mentioned persons.

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49 Section 27
50 A.I.R. 2002 Raj. 214
Every person shall, so long as he resides in the sanctuary, be bound—

(a) to prevent the commission, in the sanctuary, of an offence against this Act;

(b) where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;

(c) to report the death of any wild animal and to safeguard its remains until the Chief Wild Life Warden or the authorised officer takes charge thereof;

(d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and

(e) to assist any Forest Officer, chief Wild Life Warden, Wild Life Warden or Police Officer demanding his aid for preventing the commission of any offence against this Act or in the investigation of any such offence.

Destruction, etc. in a Sanctuary Prohibited Without Permit— Causing damage to any boundary mark of a sanctuary or teasing or molesting any wild animal or littering the grounds of sanctuary is prohibited. \(^{51}\) Section 29 of the Act as substituted by Amendment Act of 2002, provides that no person except under and in accordance with the permit granted by the Chief Wild Life Warden shall

(a) destroy, exploit or remove any wild life including forest produce from a sanctuary; or

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\(^{51}\) Section 27(3) and (4).
(b) destroy or damage or divert the habitat of any wild animal by any act whatsoever; or

(c) divert, stop or enhance the flow of water into or outside the sanctuary.

However, no such permit shall be granted unless the State Government, in consultation with the Board, is satisfied that such removal of wild life from a sanctuary or the change in the flow of the water is necessary for the Improvement and better management of the wild life. It is further provided that where the forest produce is removed from a sanctuary the same may be used for meeting the personal bonafide needs of the people living in and around the sanctuary. But this cannot be used for any commercial purpose. For the purposes of section 29, grazing or movement of livestock permitted under section 33 (d) shall not be deemed to be a prohibited act.

In *Tarun Bharat Sangh v. Union of India*, the petitioner, a social action group, concerned with the protection of environment and preservation of wild life, filed a public interest litigation for the enforcement of certain statutory notifications issued by the government in the area popularly known as “Sariska Tiger Park”, which had been declared as a Sanctuary under section 35 of the Wild Life (Protection) Act, 1972. It was alleged that mining operation was being carried on under the licences granted by the State Government, which was impairing the environment and the wild life within the park. Thus, the State Government while professing to protect the environment by means of the notifications and declarations was itself permitting the degradation of the environment by authorizing mining operation in the area. The Supreme Court directed for the appointment of a Committee headed by a retired Judge to ensure the enforcement of the State notifications and other orders of the Supreme Court and to protect environment and wild life within the protected area. It was further directed that no mining operation should be carried on within the protected area.

In *Essar Oil Ltd. v. Halar Utkarsh Samiti* the three appellant oil companies sought to lay pipelines to pump crude oil in the marine National Park and marine sanctuary to their oil refineries in Jamnagar district of Gujarat State. The State Government had granted permission to one company but no such permission had been granted to other companies and accordingly the High Court of Gujarat restrained the State Govt. from granting permission to other companies. Various appeals were filed before the Supreme Court. Partly allowing the appeals of the oil companies, the Supreme Court remanded the case to the High Court for determining the factual controversies, if any. However, the Supreme Court observed that the objective of all the laws on environment should be to create harmony between development on the one hand and environment on the other. While granting permission, the State Govt. must invariably see that the habitat is at least sustained and the damage thereto does not result in destruction of wildlife.

Causing fire to sanctuary entry into sanctuary with weapon and the use of injurious substances, which may cause injury to or endanger any Wild Life animal in the sanctuary is also prohibited.

**Control of Sanctuaries**— The Chief Wild Life Warden shall be the authority who shall control, manage and maintain all sanctuaries and for that purpose he may take any of the following actions—

(a) may construct such roads, bridges, buildings, fences or barrier gates, and carry-out such other works as he may consider necessary for the purposes of such sanctuary but no construction of commercial tourist lodges, hotels, zoos and safari parks shall be undertaken inside a sanctuary except with the prior approval of the National Board;

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54 Section 30
55 Section 31
56 Section 32
(b) Shall take such steps as will ensure the security of wild animals in the sanctuary and the preservation of the sanctuary and wild animals therein;

(c) May take such measures, in the interests of wild life, as he may consider necessary for the improvement of any habitat:

(d) May regulate, control or prohibit, in keeping with the interests of wild life, the grazing or movement of live-stock.\(^{57}\)

The Chief Wild Life Warden shall also take such measures in such manner as may be prescribed for immunization against communicable diseases of the livestock kept in or within five kilometers of a sanctuary. No person shall take or cause to be taken or grazed, any livestock in a sanctuary without getting it immunized.\(^{58}\)

In *Centre for Environmental Law, WWF-I v. Union of India*,\(^{59}\) the Supreme Court took cognizance of the fact that no concrete steps had been taken in most of the States/Union territories regarding the compliance with the requirement of sec. 33-A dealing with immunization of live-stock. The Court observed that what is required is that in the immediate vicinity of each National Park/Sanctuary there should be veterinary center of Animal Husbandry Department which would undertake the immunization of livestock that were being taken into the National Park/Sanctuary for the purpose of grazing *etc.* Accordingly, the Court directed the States/Union Territories to take concrete steps for the establishment of such a center in the immediate vicinity of the National Park/Sanctuary within their territory within the period of two months so that the requirement of immunization in accordance with section 33-A could be fulfilled.

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\(^{57}\) Section 33.

\(^{58}\) Section 33-A

\(^{59}\) A.I.R., 1999 S.C. 354
Advisory Committee—Section 33-B, which was inserted by the Amendment Act of 2002, provides that the State Government shall constitute an Advisory Committee which shall consist of—

(a) The Chief Wild Life Warden or his nominee not below the rank of Conservator of Forests as its head;

(b) A member of the State Legislature within whose constituency the sanctuary is situated;

(c) Three representatives of Panchayati Raj Institutions;

(d) Two representatives of non-governmental organization;

(e) Three individuals active in the field of wild life conservation;

(f) One representative each from department dealing with Home and Veterinary matters;

(g) Honorary Wild Life Warden, if any; and

(h) The officer in charge of the sanctuary as Member Secretary.

The Advisory Committee shall render advice on measures to be taken for better conservation and management of sanctuary. The Committee shall regulate its own procedure including quorum.

Section 34 of the Wild Life (Protection) Act; 1972 deals with registration of certain persons in possession of arms and it further provides that no new licences under the Arms Act, 1959, shall be granted within a radius of ten kilometers of a sanctuary without the prior concurrence of the Chief Wild Life Warden. In Centre for Environmental Law, WWF-I v. Union of India, the Supreme Court also noticed that most of the States and the Union Territories had taken no concrete steps regarding the registration of persons possessing the

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60 A.I.R. 1999 S.C. 354
arms as required under section 34. Accordingly, the Court directed the State Governments/Union Territories to frame the necessary rules for the purposes of registration of the persons in possession of arms within a period of two months and the whole process of registration should be completed within four months thereafter.61

In Uma Paliwal v. Union of India,62 the Rajasthan High Court held that where after the notification under section 18 of the Wild Life Act for declaring an area as a Sanctuary, proceedings or procedure under sections 19 to 25 of the Wild Life Act have neither commenced nor were pending, it cannot be said that the area would be the “deemed sanctuary” by virtue of section 66 (4) of the Wild Life Act, 1972, because of the fact that no final notification to that effect under section 26-A or section 35 of the Wild Life Act, 1972 has at all been issued.

**Power to Remove Encroachment**— Section 34-A, inserted by Amendment Act of 2002, provides that any officer not below the rank of an Assistant Conservator of Forests may—

(a) Evict any person from a sanctuary or a national park, who unauthorisedly occupies Government land in contravention of the provision of this Act;

(b) Remove any authorized structures, buildings or constructions on the Government land within any sanctuary or national park.

All the tools and effects belonging to such persons shall be confiscated by an order of an officer not below the rank of Deputy Conservator of Forests. The affected persons must be given opportunity of hearing before taking action against them. It may be noted that provisions of this section shall apply notwithstanding any other penalty which may be inflicted for violation of any other provision of this Act.

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61 Id., at 355
62 A.I.R., 2002 Raj. 348
Declaration of National Parks

Whenever it appears to the State Government that an area, whether within a sanctuary or not, is, by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park. Such notification should define the limits of the area, which is intended to be declared as a National Park. The Collector shall exercise the same powers and functions with regard to the investigation and determination of claims, and extinguishments of rights, in relation to any land in such area, as in case of a Sanctuary provided in sections 19 to 26-A. However, the Collector shall not pass any order allowing, in consultation with the Chief Wild Life Warden, the continuation of any right of any person in or over any land within the limits of a Sanctuary as is permissible under section 24 (2) (c) relating, to Sanctuaries. Whenever, (a) the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as National Park, have been disposed of by the State Government, and (b) all rights in respect of land proposed to be included in the National Park have become vested in the State Government, it shall publish the limits of the area which shall be comprised within the National Park and shall declare it as a National Park.

No alteration of boundaries of a National Park shall be made except on a recommendation of the National Board. No person shall destroy, exploit or remove any wild life including forest produce from a National Park or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into the National Park except with the permission of Chief Wild Life Warden. No such permission shall be granted unless the State Government, in consultation with the National Board, is

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63 Section 35(1). In K.M Chinnappa v. Union of India, AIR 2003 SC 724, it was held that mining activities cannot be carried out in the National Park.
satisfied that such permission is necessary for the improvement and better management of the wild life.

Where the forest produce is removed from a National Park, the same may be used for meeting the personal *bonafide* needs of the people living in and around the National Park. But it cannot be used for any commercial purpose. By doing so the needs of the local people have been kept in mind.

It is further provided that in case of an area, whether within a sanctuary or not, where the rights have been extinguished and the land is vested in the State Government, such area may be notified as a National Park.

No grazing of any livestock shall be permitted in a National Park and no livestock shall be allowed to enter the National Park except such livestock, which is used as a vehicle by a person authorised to enter the National Park.

In *TN. Godavarman Thirumalpad v. Union of India*, the Supreme Court held that a notification which excluded part of forest land from being declared as “national park” is improper.

**Declaration and Management of a Conservation Reserve**

Section 36-A, inserted by Amendment Act of 2002, provides that the State Government may, after consultation with the local communities, declare any area owned by the Government, particularly the area adjacent to National Parks and sanctuaries and those areas which link one protected area with another as a conservation reserve for protecting landscapes, seascapes, flora and fauna and their habitat. If the conservation reserve includes any land owned by the Central Government, then its prior concurrence is necessary before such declaration.

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64 (2002) 10 SCC 606
Conservation Reserve Management Committee—Section 36-B, inserted by Amendment Act of 2002, provides that the State Government shall constitute a Conservation Reserve Management Committee to advise the Chief Wild Life Warden to conserve manage and maintain the conservation reserve. The Committee shall consist of:

(a) The representative of the forest or Wild Life Department as Member Secretary;

(b) One representative of each village Panchayat in whose jurisdiction the reserve is located;

(c) Three representatives of non-governmental organizations working in the field of wild life conservation; and

(d) One representative each from the department of Agriculture and Animal Husbandry.

Declaration and Management of Community Reserve

Section 36-C, inserted by Amendment Act of 2002, provides that the State Government may, where the community or an individual has volunteered to conserve wild life and its habitat, declare any private or community land as a community reserve for protecting fauna, flora and traditional or cultural conservation values and practices. However, no change in the land use pattern shall be made within the community reserve except in accordance with a resolution passed by the Management Committee and approved by the State Government.

Community Reserve Management Committee—Section 36-D, inserted by Amendment Act of 2002, provides that the State Government shall constitute a Community Reserve Management Committee for conserving, maintaining and managing the community reserve. It shall consist of
(a) Five representatives nominated by the Village Panchayat/Gram Sabha;
(b) One representative of the State Forests or Wild Life Department under whose jurisdiction the community reserve is located.

The committee shall be competent authority to prepare and implement the management plan for the community reserve and to take steps to ensure the protection of wild life and its habitat.

The purposes of declaring any area as a Sanctuary or National Park are almost the same. The Wild Life (Protection) Act, 1972, as such does not differentiate between a Sanctuary and a National Park, except that

(i) A National Park may be within a Sanctuary itself or elsewhere; and
(ii) Grazing of cattle is prohibited in a National Park whereas same can be permitted within a Sanctuary.\(^\text{65}\)

In \textit{Pradeep Kishan v. Union of India,}\(^\text{66}\) the petitioner, an environmentalist actuated by public interest, filed petition under article 32 of the Constitution of India challenging the legality and constitutional validity of an order passed by the State of Madhya Pradesh permitting collection of \textit{tendu} leaves from Sanctuaries and National Parks by villagers living around the boundaries thereof with the avowed object of maintenance of their traditional rights. The petitioner contended that this act of the State Government is \textit{ultra vires} the provisions of the Wild Life Protection Act, 1972, as well as the petitioner’s fundamental rights guaranteed under articles 14 and 21 of the constitution and is even otherwise inconsistent with articles 48-A and 51-A (g) of the Constitution.

The Court in this case noticed that the procedure for acquisition of rights of villagers/tribals living in the vicinity of the proposed Sanctuaries and National Parks under sections 26-A and 35 of the Wild Life (Protection) Act, 1972 had not yet been undertaken by the Government and the State Government was not

\(^{65}\) Section 33 (d) read with section 29, explanation.
\(^{66}\) (1996) 3 SCC 599
in a position to bar the entry of the villagers/tribals into the proposed area. In these circumstances the Court did not quash the order the State Government permitting the collection of *tendu* leaves from Sanctuaries and National Parks by villagers/tribals. However, the Supreme Court directed (a) to issue the final notification before barring the entry of villagers in the National Park and (b) to institute an enquiry for those who claim a right in or over any land proposed to be included in the Sanctuary/National Park. The Court further noticed that till such procedure is complete, the State Government cannot bar the entry of villagers/tribals into the proposed area, unless such entry was likely to result in destruction or damage to the environment, flora and fauna and the Wild Life of the area.

In this case the court has shown its concern for the protection of the forest cover in our country, which is of immense importance for protecting the Wild Life. In this regard the Court observed—

*In our country, the total forest cover is far less than the ideal minimum of one-third of the total land. We cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the Sanctuaries and the National Parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and Wild Life in those areas. If the only reason which compels the State Government to permit entry and collection of tendu leaves is it not having acquired the rights of villagers/tribals and having failed to locate any area for their rehabilitation, we think that inertia in this behalf cannot be tolerated.*

This case was relied on by the Supreme Court in *Animal and Environment Legal Defence Fund v. Union of India*. In this case the petitioner was an Association of Lawyers and other persons who were concerned with the protection of environment. They filed the petition in public interest challenging

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^67 Id., at 609.

^68 (1997) 3 SCC 549
the order of the Chief Wild Life Warden, Forest Department, Government of Madhya Pradesh granting 305 fishing permits to the tribals formerly residing within the Pench National Park area for fishing in the reservoir situated in the heart of the Pench National Park Tiger Reserve. The Supreme Court observed that the State Government must always consider the right of the tribals before an action is taken to acquire an area and declare it as a National Park area. Every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. In the instant case, though the tribal villagers were residing in the villages failing within the area notified as National Park under section 35 of the Wild Life Protection Act, 1972 but they had not made any claim pursuant to proclamation that their traditional right of fishing was their only source of livelihood. The tribals were neither provided with other suitable fishing areas nor given any land for cultivation. The Court held that issuance of fishing permits did not fall under section 33 of the Act as they were issued before the final notification declaring an area as National Park. Accordingly, the State Government was directed to issue the final notification under section 35 (4) with the sense of urgency in the matter in view of the Constitutional mandate contained in articles 48-A and 51-A (g). The Supreme Court, while balancing the need to protect the fragile ecology of the forest area and the rights of the tribals to earn their livelihood, rightly observed as under—

Every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. In the present case it would have been far more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been given land for cultivation.69

In *T.N. Godavarinan Thirumalpad (87) v. Union of India*, the Supreme Court has once again emphasized on the principle of sustainable development.

The court held that the Forest Policy, 1998, which has a statutory flavour, dictates that deprivation of economic benefit must be subordinated to ensuring environmental stability and maintenance of ecological balance. Non-fulfillment of this principle would be violative of Articles 14 and 21 of the Constitution.

The point in issue in this case was whether before diversion of forest land for non-forest purposes and consequential loss of benefits accruing from the forests, should not the user agency of such land be required to compensate for the diversion? Answering affirmatively, the court suggested the levying of appropriate Net Present Value (NPV) of such diverted forest land as the price of such forest use on the user agency. The NPV is a method by which future expenditures (costs) and benefits are liberalized in order to account for the time value of money. The object behind NPV is to levialise costs. The court further directed that whatever be the NPV to be charged as determined by the expert committee in terms of this judgment, the amount shall be updated every three years. The court also took note of the role of Central Empowered (CEC) and Compensatory Afforestation Fund Management and Planning Authority (CAMPA) constituted by the Ministry of Environment and Forests (MOEF) in exercise of the powers conferred by section 3(3) of the Environment (Protection) Act, 1986.

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70 (2006) 1 SCC 1. T.N. Godavarinan Thirumalpad (86) v. Union of India, (2006) 5 SCC 25. In this case power company was permitted to lay transmission line through the national park subject to the deposit of Rs. 1 crore in Compensatory Afforestation Fund. The Company was further directed to pay additional NPV for the use of forest land as and when determined by the Supreme Court.
In *T.N. Godavarman Thirumalpad (91) v. Union of India*,\(^{71}\) the mining was permitted to carry on operation of mine in the national parks and sanctuaries, subject to deposit of Rs. 50 crores towards NPV with CEC and an undertaking to deposit the remaining amount of NPV when determined. In this case the court also permitted the Railways to use about 13 hectares of forest land in national Sanctuary subject to deposit of such amount of NPV which may be directed. An undertaking was given to deposit Rs. 7.57 crores in this case.

**Power of Central Government to Declare Areas as Sanctuaries or National Parks**

Where the State Government leases or otherwise transfers any area under its control, not being an area within a sanctuary, to the Central Government, the Central Government may, if it is satisfied that an area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment, declare such area by notification to be a Sanctuary.\(^{72}\)

Where the State Government leases or otherwise transfers any area under its control to the Central Government and the Central Government is satisfied that such an area by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment, it may, declare such area by notification to be a National Park. It does not matter whether or not such area has been declared, to be a sanctuary by the Central Government or the State Government.\(^{73}\)


\(^{72}\) Section 38(1)

\(^{73}\) Section 38(2)
In relation to Sanctuary or National Park declared by the Central Government, the powers and the duties of the Chief Wild Life Warden shall be exercised and discharged by the Director or by such other officer as may be authorized by the Director.  

**Central Zoo Authority and Recognition of Zoos**

Chapter IV-A was added by amendment act 1991 to the Wild Life (Protection) Act, 1972. It contains sections 38-A to 38-J, which deal with Central Zoo Authority and recognition of zoos.

**Constitution of Central Zoo Authority**— Section 38-A provides that the Central Government shall constitute a body to be known as the Central Zoo Authority, to exercise the powers conferred on, and to perform the functions assigned to it under this Act. The Authority shall consist of

(a) Chairperson;
(b) Such number of members not exceeding ten; and
(c) member-secretary, to be appointed by the Central Government.

**Term of Office and Conditions of Service of Chairperson and Members, etc.—**

The Chairperson and every member, other than the Member Secretary, shall hold office for such period, not exceeding three years, as may be specified by the Central Government in this behalf. The Chairperson or a member may resign by writing to the Central Government. The Central Government can remove a person from the office of Chairperson or member on the following grounds—

(a) becomes an un-discharged insolvent;
(b) gets convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude;

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*Section 38(3)*

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(c) becomes of unsound mind and stands so declared by a competent court;
(d) refuses to act or becomes incapable of acting,
(e) is, without obtaining leave of absence from the authority, absent from three consecutive meetings of the Authority; or
(f) in the opinion of the Central Government has so abused the position of Chairperson or member as to render that person’s continuance in office detrimental to the public interest.

However, no person shall be removed unless that person has been given a reasonable opportunity of hearing. A vacancy caused by resignation or otherwise shall be filled by fresh appointment. No act or proceeding of the Authority shall be questioned or shall be invalid on the ground merely of the existence of any vacancies or defect in the constitution of the Authority.75

**Functions of the Authority**— Section 38-C of the Act deals with the functions of the Authority. This section provides that the Authority shall perform the following functions—

(a) Specify the minimum standards for housing, upkeep and veterinary care of the animals kept in a zoo;
(b) Evaluate and assess the functioning of zoos with respect to the standards or the norms as may be prescribed;
(c) Recognize or derecognize zoos;
(d) Identify endangered species of wild animals for purposes of captive breeding and assigning responsibility in this regard to a zoo;
(e) Co-ordinate the acquisition, exchange and loaning of animals for breeding purposes;
(f) Ensure maintenance of stud-books of endangered species of wild animals bred in captivity;

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75 Section 38-B
(g) Identify priorities and themes with regard to display of captive animals in a zoo;

(h) Co-ordinate training of zoo personnel in India and outside India;

(i) Co-ordinate research in captive breeding and educational programmes for the purposes of zoos;

(j) Provide technical and other assistance to zoos for their, proper management and development on scientific lines;

(k) Perform such other functions as may be necessary to carry out the purposes of this Act with regard to zoos.

In *Nitin Waha v Union of India*, the Delhi High Court held that it was the bounden duty of the zoo authorities to ensure that wild animals are kept and confined in such a manner that they are incapable of causing damage or injuries to the visitors. In this case the tigress in the zoo grabbed the hand of the child watching it through the railings. The Court after applying the Common Law principle held that the compensation of Rs. 5 Lakhs as claimed by me appellant in the suit was not unreasonable.

The authority shall regulate its own procedure. No zoo shall operate in India without prior recognition of the Authority under the Act. After the commencement of Amendment Act of 2002, a zoo shall not be established without obtaining the prior approval of the authority. Every recognition shall specify the conditions, if any, subject to which the zoo shall operate. No recognition to zoo shall be granted unless the authority, having due regard to the interest or protection and conservation of Wild Life, is satisfied that a recognition should be granted. No application for recognition of zoo should be rejected unless reasonable opportunity of hearing is given to the applicant. The authority should also record reasons if it suspends or cancels any recognition already granted under this Act. An appeal from an order refusing to recognize

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76 AIR. 2001 Del. 140
77 Section 38.D
zoo shall lie to the Central Government within thirty days from the date of communication to the applicant of the order appealed against. The Central Government may admit an appeal after the expiry of said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.  

No zoo shall acquire, sell or transfer any wild animal or captive animal specified in Schedule I and Schedule II except with the previous permission of the authority. No zoo shall acquire, sell or transfer any wild or captive animal except from or to a recognized zoo.  

In *A.I. Mobile Zoo Owners & A.W. Assocn. v. Union of India,* the request of petitioners for recognition of mobile zoo was rejected and they submitted that after rejection of their application for the recognition of their mobile zoo under section 38-H of the Wild Life Act, the petitioners were left with no other alternative but to surrender the animals. They prayed the Court for compensation in respect of animals surrendered by them. The Court held that no compensation can be claimed in respect of animals, the holding and possession of which was illegal. However, as regard to those animals which were possessed legally and were surrendered, the petitioners were directed to submit their claims to Chief Warden of the respective States for grant of compensation.

No person shall tease, molest, injure or feed any animal or cause disturbance to animals by noise or otherwise or litter the grounds in a zoo. In *Navin M. Raheja v Union of India and others,* the Supreme Court voiced its concern about the distressing state of affair insofar as welfare of animals, both in the reserved forests and in the zoos, is concerned. The Court took judicial note in a report about a tiger skinned alive in a zoo in Andhra Pradesh. The Court felt distressed that a tiger in captivity should have received no protection from those who had undertaken to keep them in captivity and look after their

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78 Section 38 – H
79 Section 38 – I, This section has been substituted by the Amendment Act of 2002
80 (2001) 9 SCC 762
81 Section 38 – J
82 (2001) 9 SCC 762
welfare. Poor voiceless animals cannot be allowed to be treated in such a cruel manner. The Court directed that the State is obliged to take all such steps so that no such incident ever re-occurs in any of the zoos or reserved forests. The Court also asked the Chairperson/Director the Central Zoo Authority to appear before the Supreme Court in person on the next date of hearing to explain what steps had been taken to preserve tiger population in reserved forests and zoos.

**Regulation of Trade in Wildlife**

The Act regulates trade in wild animals, animal articles and trophies and subject to the provisions of Chapter VA, prohibits dealings therein without a license. The Act presupposes that wild animals and animal articles for the purpose of trade would be available from hunting or otherwise, and attempts a programmed of regulation through control mechanisms such as permission, certificate of ownership, affixing of identification marks, licensing, and penalties for violation. However, the existence of a parallel trade in animal articles and trophies provides ample scope for destruction of wildlife. Chapter VA contains an absolute prohibition on dealing in certain animal articles irrespective of license granted by the Wild Life Warden.

The validity of the prohibition was challenged in *Ivory Traders and Manufacturers Association v Union of India*, where the petitioners alleged that the ban on ivory violated their fundamental right to trade guaranteed under Article 19(1)(g) of the Constitution. Upholding the provision, the Court held that trade and business at the cost of disrupting life forms and linkages necessary for the protection of biodiversity cannot be permitted. The Court compared trade in ivory to inherently harmful activity like business in intoxicant. In a similar case, the Court upheld the provisions that banned trade in animal skins and prohibited their stocking. The Court held that wildlife formed a part of India’s heritage, and that amendments had been inserted on their commendation of the Indian Board of Wild Life. The provisions were necessary to prevent accumulated stocks being used as a cover for smuggling.

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83 A.I.R. 1997, Del. 267
articles. However, in both these cases, the Court passed orders allowing the traders to continue their business for several years.

Therefore, it is apparent that the Wildlife Act is ambiguous on many crucial issues. As noted earlier, the Act was intended to fulfill India’s obligations under various international conventions. Consequently, there is a need to examine the Act from this perspective.

**National Tiger Conservation Authority**

With the objective of tiger conservation and harmonizing the rights of the tribal people living in and around tiger reserves, the Wild Life (Protection) Act, 1972 was amended in 2006, to provide for the *National Tiger Conservation Authority*, which will be responsible for implementation of Project Tiger plan for protecting endangered tigers; and to harmonize and facilitate the implementation of the Tiger Conservation Plans prepared by the State Governments taking into account the needs and concern of the local people. The Amendment Act of 2006 was aimed at putting in place, a mechanism which would balance and manage, the livelihood needs of the local people with the imperatives of tiger conservation. The Amendment Act of 2006, was made to achieve, *inter alia*, the following objects—

(i) Constitution of the National Tiger Conservation Authority;

(ii) Powers and functions of the Tiger Conservation Authority, so as to include—

(a) Approval of Tiger Conservation Plan prepared by the State Governments;

(b) Lay down normative standards, guidelines for tiger conservation in the buffer and core areas of tiger reserve, apart from ensuring their due compliance;

(c) Providing information on protection measures including future conservation plan, tiger estimation, disease, surveillance morality
survey, patrolling, reports on untoward happenings and such other management aspects as it may deem fit, including future plan for conservation;

(d) Approve and co-ordinate research on tiger, its habitat and related ecological and socio-economic parameters;

(e) Ensure that identified tiger bearing forests are not diverted for ecologically unsustainable uses, except in public interest, and with the approval of the National Board for Wild Life on the advice of the Tiger Conservation Authority;

(f) facilitate and support tiger reserve management in the State through eco-development and people’s participation as per approved management plans, arid to support similar initiatives in adjoining areas consistent with the Central and State Laws;

(iii) Preparing the Annual Report of the Tiger Conservation Authority and submission of the audited report to the Central Government for laying before Parliament;

(iii) Constitution of Steering Committee by States;

(iv) Preparation of the Tiger Protection arid Conservation Plans by the State Governments including staff development and deployment, protection, habitat inputs, addressing the livelihood concerns of local people and compatibility of forestry operations in the adjoining Forest Divisions;

(v) Ensuring the agricultural, livelihood, developmental and other interests of people living inside forests or in tiger bearing forest areas in and around a Tiger Reserve;

(vi) Establishing a Tiger Conservation Foundation by the States for supporting their development.\(^{84}\)

\(^{84}\) Statement of Objects and Reasons of Wild Life (Protection) Amendment Act, 2006 hereinafter referred to as Amendment Act of 2006. This amendment came into force wet 0409.2006.
By the Amendment Act of 2006 two new chapters IV-B and IV-C have been added to the principal Act. Chapter IV-B deals with National Tiger Conservation Authority and Chapter IV-C deals with Tiger and other Endangered Species Crime Control Bureau.

**Constitution of National Tiger Conservation Authority**— Section 38-L of the Amendment Act of 2006 provides that the Central Government shall constitute a body to be known as the National Tiger Conservation Authority (hereinafter referred to as the Tiger Conservation Authority), to exercise the powers and perform the functions assigned to it under this Act.

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 or 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, Ministry of Environment and Forests;

(g) Director, Wild Life Preservation, Ministry of Environment and Forests;
(h) Six Chief Wild Life Wardens from the tiger reserve States in rotation for three years;

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

(o) Inspector-General of Forests or an officer of the equivalent rank having at least ten years experience in a tiger reserve or wildlife management, who shall be the Member-Secretary.

It is clarified 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.85

Term of office and conditions of service of member—Eight experts or professionals nominated under clause (d) above shall hold office for such period not exceeding three years. However, the Central Government shall remove such a member from office if he—

(a) is, or at any time has been, adjudicated as insolvent;

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude;

(c) is of unsound mind and stands so declared by a competent Court;

(d) refuses to act or becomes incapable of acting;

85 See Section 38-L
is, without obtaining leave of absence from the Tiger Conservation Authority, absent from three consecutive meetings of the said Authority; or

has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest.

But no member shall be removed unless he has been given a reasonable opportunity of being heard in the matter. Any vacancy in the office of a member shall be filled by fresh appointment and such member shall continue for the remainder of the term of the member in whose place he is appointed.

The salaries and allowances and other conditions of appointment of the members of the Tiger Conservation Authority shall be such as may be prescribed. It may be noted that no act or proceeding of the Tiger Conservation Authority shall be questioned or shall be invalid on the round merely of the existence of any vacancy or defect in the constitution of the Tiger Conservation Authority.

**Officer; and Employees of Tiger Conservation Authority**— The Tiger Conservation Authority may, with the previous sanction of the Central Government, appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act;

Provided that the officers and employees holding office under the Directorate of Project Tiger and dealing with Project Tiger immediately before the date of constitution of Tiger Conservation Authority shall continue to hold office in the said Authority by the same tenure and upon the same terms and conditions of service until the expiry of the period of six months from that date if such employee opts not to be in the employee of that Authority. The terms and conditions of service of the officers and other employees of the Tiger Conservation Authority shall be such as may be prescribed.

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86 Section 38-M.
87 See Section 38-N
Powers and Functions of Tiger Conservation Authority— The Tiger Conservation Authority shall have the following powers and perform the following functions, namely—

(a) To approve the Tiger Conservation Plan prepared by the State Government and under sub-section (3) of Section 38-V 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 ensures their due compliance;

(d) Provide for management focus and measures for addressing conflicts of men and wild animal and to emphasize on co-existence in forest outside the National Parks, sanctuaries or tiger reserve, 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 aria area linking one protected area or tiger reserve with another protected area or tiger reserve are not diverted for ecologically unsustainable ases, 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 participation as per approved management plans and to support similar initiatives in adjoining areas consistent with the Central arid 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 programme 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 Tiger Conservation Authority may, in the exercise of its powers and performance of its functions, issue directions in writing to any person, officer or authority for the protection of tiger, tiger reserves and such person, officer or authority shall be bound to comply with the directions. However, no such direction shall interfere with or affect the rights of local people particularly the Scheduled Tribes.  

Procedure to be Regulated by Tiger Conservation Authority— The Tiger Conservation Authority shall regulate its own procedure. The Tiger Conservation Authority shall meet at such time and at such place as the chairperson may think fit. The Chairperson or in his absence the Vice-Chairperson shall preside over the meetings of the Tiger Conservation Authority. All orders and decisions of the Tiger Conservation Authority shall

88 See Section 38-0
be authenticated by the Member Secretary or any other officer of the said authority duly authorized by the Member Secretary in this behalf.89

Grants and Loans to Tiger Conservation Authority and Constitution of Fund— The Central Government may make to the Tiger Conservation Authority grants and loans of such sums of money as that Government may consider necessary. There shall be constituted a Fund to be called the Tiger Conservation Authority Fund and to this fund following shall be credited—

(i) any grants and loans made to the Tiger Conservation Authority by the Central Government;

(ii) all fees and charges received by the Tiger Conservation Authority under this Act; and

(iii) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

The Tiger Conservation Authority Fund shall be applied for meeting salary, allowances and other remuneration of the members, officers and other employees of the Tiger Conservation Authority and the expenses of the Tiger Conservation Authority incurred in the discharge of its functions under this Chapter.90

Accounts and Audit of Tiger Conservation Authority— The Tiger Conservation Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the comptroller and Auditor General of India. These accounts shall be audited by the Comptroller and Auditor-General of India and the audit report thereon, shall be forwarded annually to the Central Government by the Tiger Conservation Authority.91

89 See Section 38-P
90 Section 38-Q.
91 Section 38-R.
The Tiger Conservation Authority shall also prepare for each financial year its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government. The Annual report and audit report are also required to be laid before each House of the Parliament.

**Alteration and De-notification of Tiger Reserves**— No alteration in the boundaries of a tiger reserve shall be made except on a recommendation of the Tiger Conservation Authority and the approval of the National Board for Wild Life. No State Government shall de-notify a tiger reserve, except in public interest with the approval of the Tiger Conservation Authority and the National Board for Wild Life.

**Steering Committee**

Section 38-U of the Act provides that the State Government may constitute 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) Minister in charge of Wild Life—Vice Chairperson;

(c) Such member 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 or professionals having qualifications and experience in conservation of wildlife of which at least one shall be from the field of tribal development;

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92 Section 38-S.
93 Section 38-T
94 Section 38-W
(e) Two members from the State’s Tribal Advisory Council;

(f) One representative each from State Government’s Departments dealing with Panchayati Raj and Social Justice Empowerment;

(g) Chief Wild Life Warden of the State shall be Member Secretary, ex officio.

**Tiger Conservation Plan**

Section 38-V of the Act provides that the State Government shall, on the recommendations of the Tiger Conservation Authority, 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, Sections 30, 32 and clauses (b) and (c) of Section 33 of this 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 be required to prepare Tiger Conservation Plan including staff development and development plan for the proper management of tiger reserve area, 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.
While preparing a Tiger Conservation Plan, the State Government shall ensure the agricultural, livelihood, development and other interests of the people living in tiger bearing forests or a tiger reserve.

For the purposes of Section 38-V, the expression “tiger reserve” includes—

(i) Core or critical tiger habitat areas of National Parks and sanctuaries, where it has been established, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of tiger conservation, without affecting the right of the Scheduled Tribes or such other forest dwellers, and notified as such by the State Government in consultation with an Expert Committee constituted for the purpose;

(ii) buffer or peripheral area consisting of the area peripheral to critical tiger habitat or core area, identified and established in accordance with the provisions contained in Explanation (i) above, where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species, and which aim at promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of the areas are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the purpose.  

Except for voluntary relocation on mutually agreed terms arid conditions, no Scheduled Tribes or other forest dwellers shall be resettled or have their rights adversely affected for the purpose of creating inviolate areas for tiger conservation unless—

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95 Explanation to Section 38-V
(i) The process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and such other forest dwelling persons in complete;

(ii) The concerned agencies of the State Government, in exercise of their powers under this Act establishes with the consent of the Scheduled Tribes and such other forest dwellers in the area, and in consultation with an ecological and social scientist familiar with the area, that the activities the Scheduled Tribes and other forest dwellers or the impact of their presence upon wild animals is sufficient to cause irreversible damage and shall threaten the existence of tigers and their habitat;

(iii) The State Government, after obtaining the consent of the Scheduled Tribes and other forest dwellers inhabiting the area, and in consultation with an independent ecological and social scientist familiar with the area, has come to a conclusion that other reasonable options of coexistence, are not available;

(iv) Resettlement or alternative package has been prepared providing for livelihood for the affected individuals and communities and fulfils the requirements given in the National Relief and Rehabilitation Policy;

(v) The informed consent of the Gram Sabhas concerned, and of the persons affected, to the resettlement programme has been obtained;

(vi) The facilities and land allocation at the resettlement location are provided under the said programme otherwise their existing rights shall not be interfered with.\(^\text{96}\)

\(^\text{96}\) Clause (5) of Section 38-V.
Tiger Conservation Foundation

Section 38-X provides that the 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. 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 objective;

(e) To augment and mobilize financial resources including recycling of entry and such other fees received in a tiger reserve, to foster stake holder development and eco-tourism;

(f) To support research, environmental education and training in the above related fields.

The Central Government in pursuance of Section 38-X of the Wild Life (Protection) Act, 1972, has made the “National Tiger Conservation Authority (Tiger Conservation Foundation) Guidelines, 2007” for the purpose of Regulation of Tiger Conservation Foundation.  

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*97 Ministry of Environment and Forests Notification No. 50 1008(E) dated 22.06.2007*
Tiger and Other Endangered Species Crime Control Bureau

Chapter IV-C of the Act deals with Tiger and Other Endangered Species Crime Control Bureau. This chapter was also added by the Amendment Act of 2006. It deals with constitution, powers and functions of the Bureau.

Constitution of Tiger and other Endangered Species Crime Control Bureau—Section 38-Y provides that the Central Government may constitute a Tiger and Other Endangered Species Crime Control Bureau to be known as the Wildlife Crime Control Bureau. It shall consist of—

(a) The Director of Wildlife Preservation—Director ex officio;
(b) The Inspector General of Police—Additional Director;
(c) The Deputy Inspector General of Police—Joint Director;
(d) The Deputy Inspector General of Forests—Joint Director;
(e) The Additional Commissioner (Customs and Central Excise)—Joint Director; and
(f) Such other officers as may be appointed from amongst the officers covered under Sections 3 and 4 of this Act.

Powers and Functions of the Wildlife Crime Control Bureau—Section 38-Z provides that subject to the provisions of this Act, the Wildlife Crime Control Bureau shall take measures with respect to—

(i) collect and collate intelligence related to organized wildlife crime activities and to disseminate the same to the State and other enforcement agencies for immediate action so as to apprehend the criminals and to establish a centralized wildlife crime data bank;
(ii) co-ordination of actions by various officers, State Governments and other authorities in connection 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 the concerned authorities in foreign countries and
concerned international organizations to facilitate co-ordination and
universal action for wildlife crime control;

(v) Develop infrastructure and capacity building for scientific and
professional investigation into wildlife crimes and assist State
Governments to ensure success in prosecutions related to wildlife crimes

(vi) Advise the Government of India on issues relating to wildlife crimes
having national and international ramifications, and suggest changes
required in relevant policy and laws from time to time.

Wild Animals to be Government Property

Section 39 of the Act provides that every—

(a) Wild animal, other than vermin, which is hunted with the permission of
Wild Life Warden or
(b) Kept or bred in captivity, or
(c) Hunted in contravention of any provision of this Act, or
(d) Found dead or killed by mistake, and
(e) Animal artisile, trophy or uncured trophy, or
(f) Meat derived from any wild animal, or
(g) Ivory imported into India and any article made from such ivory, or
(h) Vehicle, vessel, weapon, trap or tool used for committing an offence
under the provisions of this at and which has been seized,
shall be the property of the State Government and where such animal is hunted in a Sanctuary or National Park declared by the Central Government, it shall be the property of the Central Government. Any person who obtains the possession of the Government property by any means, he must inform the nearest police station within a period of forty-eight hours of obtaining such possession. No person can acquire or keep in possession, custody or control, or transfer to any person, whether by way of gift, sale or otherwise, or destroy or damage such Government property without the prior permission of the Chief Wild Life Warden or the authorized officer.98

In the case of B. Natwall Vaid v. State of Tamil Nadu99 the Madras High Court held that the wild animals, which are found dead in a private land, the owner of the land is entitled to claim the ownership of such dead animal. The body of the wild animal becomes the absolute property of the owner of the soil even if killed by a trespasser, unless the trespasser chased the animal on the land of one person and killed it on the land of another. In the present case the forest authorities had not chased the elephant but some unknown persons had shot it and it voluntarily quite the reserved forest and entered the private land where it died.

In the case of State of M.P. v. Madhukar Rao,100 it was held that Section 39 (1) (d) would come into play only after a court of competent jurisdiction found that accusation and allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence.

Immunity in Certain Cases-Section 40–A, which was inserted by Amendment Act of 2002, provides that the Centre Government may require any person to declare to the Chief Wild Life Warden or the authorized officer, any captive animal, animal article, trophy or uncured trophy derived from animals specified

98 Section 39.
99 A.I.R.. 1979 Mad. 218
100 (2008) 14 SCC 624
in Schedule I or Part II of Schedule II in his control, custody or possession, in respect of which no declaration has been made under section 40.

**Regulation of Transfer of Animal**

No person having a certificate of ownership and in his possession captive animal, animal article, trophy or uncured trophy shall transfer them by way of sale or offer of sale or by any other mode of consideration of commercial nature.

Where a person having a certificate of ownership transfers or transports from the State in which he resides to another State or acquires by transfer from outside the State, any such animal, animal article, trophy or uncured trophy, he shall report about such transfer or transport to the Chief Wild Life Warden within 90 days of such transfer or transport. However, this shall not apply—

(a) to tail feather of peacock and the animal article or trophies made there from;

(b) to transfer of captive animals between recognized zoos subject to the provisions of section 38-1, and transfer amongst zoos and public museums.\(^1\)

**Dealing in Trophy and Animal Articles without Licence Prohibited**

No person shall except under a licence by the Chief Wild Life Warden or other designated officer—

(a) Commence or carry on the business as—

(i) a manufacturer of or dealer in, any animal article; or

(ii) a taxidermist; or

(iii) a dealer in trophy or uncured trophy; or

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\(^{101}\) Section 43 This Section has been substituted by the Amendment Act of 2002.
(iv) a dealer in captive animals; or

(v) a dealer in meat; or

(c) Cook or serve meat in any eating-house;

(d) Derive, collect or prepare, or deal in snake venom.

However, this shall not apply to the dealer in tail feathers of peacock and articles made therefrom. Every person who intends to obtain a licence shall make an application to the Chief Wild Life Warden or the authorised officer for the grant of a licence. Every licence granted should specify conditions subject to which the licensee shall carry on his business. Every licence granted shall be valid for one year from the date of its grant and would be non-transferable. It can be renewed for a period not exceeding one year at a time. No application for the renewal of a licence shall be rejected without giving a reasonable opportunity of hearing to the concerned person.\(^\text{102}\)

In the case of *Pyarelal v. State (Delhi Admn.)*,\(^\text{103}\) the Wild Life Inspector on information conducted a search of the premises of the appellant and found lion shape trophies of Chinkara skin meant for sale. The prosecution established that the appellant was found in possession of the trophies without a licence. The appellant was accordingly convicted and was sentenced for two months' imprisonment under the Wild Life (Protection) Act, 1972.

**Rights of Local Communities**

Sections 18 to 26A indicate the procedure whereby the Collector enquires into the rights of the local people, and acquires of permits the continuance of the same in the sanctuary. There is a re-definition of the relationship between the people and wildlife in the initial stage of creation of protected areas. Section 19 provides that when a notification has been issued under Section 18, the

\(^{102}\) Section 44. See also *Chief Forest Conservation (Wild Life) v. Nisar Khan*, (2003) 4 SCC 595

\(^{103}\) *All India Reporter, 1995 S.C 1159*
Collector should inquire into, and determine the existence, nature and extent of the rights of any person in, or over, the land comprised within the limits of the sanctuary. It is clear that after the issue of a notification under Section 18, no right shall be acquired in, or over, the land comprised within the limits of the area specified in such notification, except by succession, testamentary or intestate.

The settlement of rights within protected areas is a mandatory requirement for both sanctuaries and national parks to be finally notified.

**Intention Notification**— For both national parks and sanctuaries firstly, there is an intention notification which describes any area which may be of ecological, faunal, floral, geomorphological or geological importance and is proposed to be a national park or a sanctuary. In case of sanctuaries, any such proposed area does not include Reserve Forests (RFs) and territorial waters. There is a separate procedure for declaring RFs and territorial waters as sanctuaries (this is explained later). In case of national parks, all the rights need to be necessarily extinguished prior to its final notification. The intention notification is required to describe the situation and limit of the proposed protected area by roads, rivers, ridges etc (Section 18, s 35 of WLPA).

**Determination of Rights**— Unders-19 of the WLPA, the collector or any officer authorised by the state government is required to determine the existence, nature and extent of right of any person who may be a claimant in the process of settlement.

Section 20 specifically bars the accrual of any right after the intention notification. The determination of rights under the section is quite comprehensive as it includes the rights of any person. This could mean that such persons may not only be those who live within and around the protected area but also those outside it.
**Proclamation Notification**— The collector or any officer so authorised is required to issue a proclamation notification under s 21 of the WLPA. Such proclamation is required to be published in regional language in every town or village or in the neighbourhood of the area specifying the boundaries of such a proposed protected area. Under the said notification, any claim under s 19 is required to be submitted within two months from the date of such proclamation. The ‘claim’ includes the nature and extent of such rights in a written form and in a prescribed manner. Interestingly, no time limit is prescribed between the intention and proclamation notification.

**Inquiry**— Section 22 of the WLPA describes the process of inquiry by the collector or his authorised officer. This inquiry includes the claims under s 21 as well as claims under s 19 which may exist as per the collector but no claimed. Here again the inquiry is to be done ‘expeditiously’ but no time frame is given. The primary bases of the claims under this section are records of the government and evidence of any person acquainted with the same. For the purpose of the inquiry, the collector is vested with the same powers as are vested in civil courts for the trial of suits.

**Acquisition of Rights**— The claims under s 19 is dealt with in a manner described under s 24 of the WLPA. Under the said section, the collector is empowered to pass an order which may admit or reject a claim in whole or part. If such a claim is admitted wholly or partly, then such land may either be excluded from the limits of the protected area or acquired by the state. Such acquisition may either be under an agreement between the right-holder and the government or where such right-holder has agreed to surrender his right to the government in lieu of compensation as per the Land Acquisition Act 1894. In case of sanctuaries the collector has been given special powers under 24 (2) (C) to allow any right over any land in consultation with the Chief Wildlife Warden of the state. This special power is the most significant provision that

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104 Section 23 (b) of the WLPA
distinguishes sanctuaries from national parks. No such right is allowed in National Parks. A close look of s 24 reveals that no guidelines have been enumerated for acceptance or rejection of such claim. Further, the role of the Child Wildlife Warden is unclear in case of allowance of any right in a sanctuary. The Act is silent on the question as to whether his views are binding or not. Consultation in this case need not connote concurrence.

**Final Notification**— A sanctuary or a national park may be finally notified under s 26A or 35 (4) of the WLPA only after the period of claim has elapsed and all other claim have been disposed of. In case of Reserve Forests and territorial waters, which may be proposed to be included in a sanctuary, the state government may directly notify such reserve forest as sanctuary and in case of territorial waters; the limits of the area so included in a sanctuary, shall be determined in consultation with the Chief Naval Hydrographer and after prior concurrence of the Central Government. Such inclusions of territorial waters need to take adequate measures to protect the occupational interest of the local fishermen. Further, the right of ‘innocent passage’ of any vessel or boat through the territorial waters shall not be affected.

After the final notification of the protected area, no alteration of boundaries shall take place except on a resolution passed by the state legislature. This provision is further strengthened by a Supreme Court order where any alteration of a boundary of a notified sanctuary or a national park can only be done after seeking the considered opinion of the Indian Board of Wildlife, the apex advisory, body of wildlife conservation in the country.

The settlement of rights of local people under Section 24(2)(c) has not been done in most sanctuaries. This has created a major problem in determining the occupancy or resource rights of local communities. Furthermore, problems arise because the process in Sections 19-35 is not complied with. There are

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105 Section 26 A (3)
106 Centre for Environmental Law, WWF – India v. Union of India Civil Writ No. 337 of 1995
provisions in the Act that seem to protect the rights of tribal communities. For instance, the Explanation to Section 29 provides that grazing or movement of livestock permitted under clause Section 33(d) is not an act prohibited by Section 29, and is permissible in a sanctuary. The Proviso to Section 17A provides that a member of a Scheduled Tribe may, subject to the provisions of Chapter IV, pick, collect, or possess, in the district he/she resides, any specified plant or part or derivative thereof for his bonafide personal use. Furthermore, the traditional hunting rights of scheduled tribes in the Andaman and Nicobar Islands are also protected. The rights of fisher folk are also protected. Sections 15-18 of the Easements Act recognize the Customary right over land and resources. The Indian Forest Act grants some concessions over forest produce. The counter argument is that the rights granted are illusory in nature. The rights mentioned under Section 24 of the WLPA do not include traditional customary rights or the right to livelihood. Hence, Section 24, even if properly implemented, would not protect the rights of local communities. Further, the grant of the right under Section 24(2)(c) depends on the pleasure of the state and cannot be demanded. Furthermore, Section 24(2)(c) is applicable only to sanctuaries and not to national parks. That the rights granted are illusory is also evident from the fact that no consultation is required for identifying an area as a sanctuary. The proclamation under Section 21 is often not made, and if made, serves limited purposes as the tribal are illiterate. Further, as per Section 35(7), no grazing of livestock is permitted in a national park. States cannot deal with the issue due to lack of legislative competence. For instance, Kerala Hillmen Rules, which attempted to provide protective measures for tribals in Kerala Forests, was struck down by the Kerala High Court for want of legislative competence.

**Joint Protected Area Management**

Joint Protected Area Management (JPAM) is understood as the management of protected areas and their surroundings with the objective of conserving natural ecosystems and their wildlife, as well as ensuring the livelihood
security of local traditional communities, through legal and institutional mechanisms that ensure an equal partnership between these communities and governmental agencies. Joint Forest Management is an experience to learn from. There is a crucial difference in the objectives of Joint Forest Management (JFM) and Joint Protected Area Management (JPAM), Joint Forest Management (JFM) is explicit oriented towards use and exploitation of forests, whereas Joint Protected Area Management (JPAM) is geared towards biodiversity conservation.

**Participatory Management**

It is the view of some scholars that proper use of the provisions of the WLPA would result in participatory management. However, others disagree and state that the Act allows little scope for people's participation in conservation and for them to meet their needs from protected areas. The proponents of the first view refer to Section 24(2) (c), which permits continuation of rights within sanctuaries at the discretion of the Collector and the Wild Life Warden. Furthermore, Section 29 allows for activities that are not destructive of wildlife. The argument runs as follows: The current potential of the Act for allowing participation and benefit sharing has not been fully used because the wildlife authorities have assumed that human use of protected areas is necessarily destructive. Therefore, Section 29 comes into play. By virtue of Section 29, there has been a move by many state governments to ban the collection of non-timber forest produce from protected areas. Section 29 has also been used to allow destructive activity.

At the state level, Section 6 provides for the appointment of a Wildlife Advisory Board. The State Government is vested with the discretion to appoint persons (not exceeding ten), who, in its opinion, are interested in the protection of wildlife, including the representatives of tribal (not exceeding three). It is
clear that the representation of three tribal in the Boards can hardly be said to be adequate.

The other view is that if JPM is to be implemented in full form, then the Act will have to be amended. Section 29, which issued to prevent local communities from having access to the resources, may by contradictory to Section 24 (c), which allows continuation of such rights. The Act gives full control of protected areas of the Chief Wild Life Warden and at present offers no scope for JPAM. One of the keys to successful participatory conservation strategies would be to return traditional land and the forest rights of local communities in and around wildlife protected areas. Such re-allocation is necessary for ensuring justice and the areas long-term security. In addition, sharing the benefits of conservation and other measures, which could provide stakes in the protected areas need to be considered. Simultaneously, checks and balance must be instituted.

**Prevention and Detection of Offences**

Section 50 of the Act deals with power of entry, search, arrest and detention etc. It provides that notwithstanding any other law for the time being in force, (i) the Director or any other officer authorised by him, or (ii) chief Wild Life Warden, or the authorised officer, or (iii) any forest officer, or (iv) any police officer not below the rank of Sub-Inspector, may, if he has reasonable grounds for believing that any person has committed an offence against the Act—

(a) Require any such person to produce for inspection any captive animal, wild animal, animal article, meat, trophy, unsecured trophy-specified plant or part or derivative thereof in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;

(b) Stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation
of such person, and open and search any baggage or other things in his possession;

(c) Seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him.

Provided that where a fisherman residing within ten kilometers of a Sanctuary or a National Park, inadvertently enters on a boat not used for commercial fishing, in the territorial waters in that Sanctuary or National Park or net on such boat shall not be seized.

The Director, Wild Life Preservation, with the previous approval of the Central Government, may delegate the power to all officers of the Wild Life Crime Control Bureau not below the rank of Assistant Director, within the area of their respective jurisdiction. He may revoke such a delegation of power if such a course of action is necessary in the public interest. 107

It shall be lawful for any of the above-mentioned officers to stop and detain any person, whom they see doing any act for which a licence or permit is required under the provisions of this Act. Such officer may require the person to produce or show the licence or permit and if such person fails to produce the licence or permit, he may be arrested without warrant, unless he furnishes his name and address, and otherwise satisfies the officer arresting him that he will duly answer any summons or other proceedings which may be taken against him.

Any person detained or things seized shall be taken before the Magistrate to be dealt with according to law under intimation to the Chief Wild Life Warden or the officer authorised by him in this regard. But where any meat, uncured trophy, specified plant or part or derivative thereof is seized under the provisions of this Act, the Assistant Director of Wild Life Preservation or any officer of the gazetted rank authorised by him or the Chief Wild Life Warden may arrange for the disposal of the same. If the seized articles are not Government property, the proceeds of the sale shall be returned to the owner.

Any officer, not below the rank of Assistant Director of Wild Life Preservation or an officer not below the rank of an Assistant Conservator of Forests authorised by the State Government in this behalf shall have the following powers for the purpose of making investigations—

(a) To issue a search warrant;

(b) To enforce the attendance of a witness;

(c) To compel the production of documents and material objects, and

(d) To receive and record evidence.

Any evidence recorded, as mentioned above, shall be admissible in any subsequent trial before a Magistrate, provided it has been recorded in the presence of the accused.\textsuperscript{108}

In the case of Moti Lal v. CBI,\textsuperscript{109} the Supreme Court has clarified that offences punishable under the Wild Life (Protection) Act, 1972 can be investigated by CBI on being empowered by the Central Govt. by issuing notification. Section 50 of the Act does not exclude a police officer from investigating the offences under the Act. Special procedure provided under the Act is contrary to the provisions contained in Cr. P.C. and as such the same would prevail in view of section 4(2) of Cr. P.C. But that does not mean that rests of the provisions of

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{108}] Section 50(8) and (9)
\item[\textsuperscript{109}] (2002) 4 SCC 713.
\end{enumerate}
\end{footnotesize}
Cr. P.C. are excluded. Thus, it cannot be d that section 50 of the Wild Life (Protection) Act, 1972 is a complete cods.

**Penalties**

Section 51 of the Act deals with penalties for contravening provisions of the Act. This section does not mention ‘mens rea’ as one of the essential requirements for punishing a person under the Act. This section further provides in some cases maximum punishment, which can be imposed, and for other offences minimum as well as maximum punishment has been provided. Section 51 provides as under any person who contravenes any provision of this Act (except Chapter V-A dealing with prohibition of trade or commerce in trophies, animal articles, etc. derived from certain animals and section 38-J dealing with prohibition of teasing, etc., in a zoo) or any rule or order made there under or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to three years or with fine which may extend to twenty-five thousand rupees or with both.

Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in, a Sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees.

Provided further that in the case of a second or subsequent offence of the nature mentioned above, the term of imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty five thousand rupees.
Any person who contravenes any provisions of Chapter V-A, (dealing with prohibition of trade or commerce in trophies, animal articles, etc. derived from certain animals), shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and also with fine which shall not be less than ten thousand rupees.

Any person who contravenes the provisions of section 38-J, (dealing with prohibition of teasing, etc., in a zoo) shall be punishable with imprisonment for a term, which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Provided that in the case of a second or subsequent offence the term of imprisonment may extend to one year, or with fine which may extend to five thousand rupees. The Amendment Act, 2006 provided that any person, who commits an offence in relation to the core area of a tiger reserve or where the offence relates to hunting in the tiger reserve or altering the boundaries of the tiger reserve, such offence shall be punishable on first conviction with imprisonment for a term which shall not be less than three years but may extend to seven years, and also with fine which shall not be less than fifty thousand rupees but may extend to two lakh rupees. In the event of a second or subsequent conviction the imprisonment shall be for a term of not less than seven years and also with fine which shall not be less than five lakh rupees but may extend to fifty lakh rupees. If any offence is committed as a consequence of any abetment, the person abetting the offence shall also be punished with the same punishment as provided for that offence.

In addition to the above the animal, animal article, trophy or meat, etc. and the tool, trap, vehicle, vessel or weapon used in the commission of the offence shall be forfeited by the State Government; and licence or permit for hunting, etc. and Arms Licence shall also be cancelled. Further, section 360 of the Code of Criminal Procedure, 1973 or the Probation of Offenders Act, 1958 shall not be made applicable to a person convicted in respect of hunting in a sanctuary or National Park, unless such a person is less than eighteen years of age.
Cognizance of Offences

The Court shall take cognizance of an offence under this Act only when a complaint is made by any of the following—

(a) The Director of Wild Life Preservation or any other officer authorized in this behalf by the Central Government; or

(ab) Member Secretary, Tiger Conservation Authority; or

(b) The Member-Secretary, Central Zoo Authority in matters relating to violation of the provisions of Chapter IV-A; or

(c) the Chief Wild Life Warden, or any other officer authorised in this behalf by the State Government subject to such conditions as may be prescribed by that Government; or

(ac) Director of the concerned tiger reserve; or

(d) The officer-in-charge of the zoo in respect of violation of provisions of section 38-J; or

(e) Any person who has given, a notice of not less than sixty days of the alleged offence and of his intention to make a complaint to the Central Government or the State Government or the officer authorised as aforesaid.\textsuperscript{110}

(f) All the officers of the Wild Life Crime Control Bureau, not below the rank of Assistant Director, within the areas of their jurisdiction. However, the Central Government may revoke such authorization or may itself exercise the powers if in its opinion such a course of action is necessary in the public interest.\textsuperscript{111}

\textsuperscript{110} Section 55. This section has been substituted by the Amendment Act of 2002. Regarding the form of notice is given in Rule 3 and Form 'A' of The Wild Life (Protection) Rules, 1995

\textsuperscript{111} Ministry of Environment and Forests (Wild Division), Notification No. 5.0. 1875 (E), dated 29th July, 2008
**Operation of other laws not barred**— Section 56 of the Act has introduced the principle of *double jeopardy* and *res judicata*. But if a person is prosecuted and found guilty under any other law for the time being in force for his any act or omission which constitute an offence under this Act, he may be punished under the other law which may prescribe higher punishment or penalty than what is provided under this Act.

In *State of Bihar v. Murad Ali Khan*, the Supreme Court held that cognizance under this Act can be taken only on complaint of a particular statutory functionary mentioned in section 55 of the Act. In these circumstances even if the jurisdictional police purported to register a case for an alleged offence against the Act, section 210(1) of the Code of Criminal Procedure, 1973 would not be attracted having regard to, the position that cognizance of such an offence can only be taken on the complaint of the officer mentioned therein. Even where a Magistrate takes cognizance of an offence instituted otherwise than on a police report and an investigation by the police is in progress in relation to same offence, the two cases do not lose their separate identity. The section seeks to obviate the anomalies that might arise from taking cognizance of the same offence more than once.

**Presumption to be made in Certain Cases**— If during the prosecution, it is established that a person is in possession, custody or control of any captive animal, animal article, meat, trophy, uncured trophy, specified plant or part or derivative thereof it shall be presumed, unless the contrary is proved, that such person is in unlawful possession of such thing. The burden of proof to contradict it shall lie on the accused person.

**Offences by Companies**— Where an offence against this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the

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112 AIR. 1989 S.C. I at 5.
113 Section 57
conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

But there shall be no liability of any such person if he proves—

(i) That the offence was committed without his knowledge; or

(ii) That he exercised all due diligence to prevent the commission of such offence.

Where an offence against this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributed to any neglect on the part of, any director, manager, secretary or other officer of the company then such officers shall be deemed to be guilty of that offence and shall be proceeded against and punished accordingly.\(^{114}\)

**Forfeiture of property derived from illegal hunting and trade**

The Amendment Act of 2002 has added a new chapter VI-A consisting of section 58-A to 58-Y, which deals with various aspects of forfeiture of property derived from illegal hunting and trade.

**Application of Chapter VI-A**— The provisions of this chapter shall apply only to the following persons, namely—

(a) Every person and his associate who has been convicted of an offence punishable under this Act with imprisonment for a term of three years or more;

(b) Any holder of any property which was at any time previously held by a person referred to above unless he was a transferee in good faith for adequate consideration.

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\(^{114}\) Section 58
Prohibition of Holding Illegally Acquired Property—Section 58-C provides that from the date of commencement of this Chapter VI-A, it shall not be lawful for any person to whom this chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf. In case of contravention of this provision, such property shall be liable to be forfeited to the State Government.

However, no such property shall be forfeited if such property was acquired by a person before a period of six years from the date on which he was charged for an offence relating to illegal hunting and trade of wild life and its products.

Competent Authority—Section 58-D provides that the State Government may authorise any officer not below the rank of Chief Conservator of Forests to perform the functions of the competent authority under this Chapter VI-A.

Identifying Illegally Acquired Property—Section 58-E provides that on receipt of a complaint from the competent authority about any person having illegally acquired property, an officer not below the L Deputy Inspector General of Police duly authorised by the Central Government or the State Government shall proceed to take all steps necessary for tracing and identifying any property illegally acquired by such person. Such steps may include any enquiry, investigation or survey in respect of any person, place, property, assets, documents, books of accounts in any Bank or financial institution or any other relevant steps as may be necessary.

Seizure or Freezing of Illegally Acquired Property—Section 58-F provides that where any officer conducting an enquiry investigation has reasons to believe that any property is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to forfeiture of such property he may make an order for seizing such property or he may make an order that such property shall not be transferred or otherwise dealt with, except with the
prior permission of the officer making such order, or of the competent authority. Any such order shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days from its being made.

**Constitution of Appellate Tribunal**— Section 58-N provides that the State Government may constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property. It shall consist of a Chairman, and such number of other members (being officers of the State Government not below the rank of Principal Secretary to the Government), as the State Government thinks fit. The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a judge of a High Court. The Tribunal shall hear appeals against the orders of seizure, forfeiture or fine as the case may be.

**Appeals**— According to section 58-0, any person aggrieved by an order of the competent authority may prefer an appeal to the Appellate Tribunal within forty five days. However, the Appellate Tribunal may entertain an appeal after the said period of forty five days, but, not after sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The Appellate Tribunal may, after giving an opportunity of being heard to the appellant, confirm, modify or set aside the order appealed against. On payment of the prescribed fee, the Appellate Tribunal may allow a party to any appeal or any person authorised in this behalf by such party to inspect at any time during office hours, any relevant records and registers of the Appellate Tribunal and obtain a certified copy of the same.

**Bar of Jurisdiction**— Section 58-Q provides that no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under Chapter VI-A to determine, and no injunction shall be granted by any court or any authority in respect of any action taken or to be taken in pursuance of any power conferred under Chapter VI-A.
Competent Authority and Appellate Tribunal to have Powers of Civil Court— According to Section 58-R, the competent authority and the Appellate Tribunal shall have all the powers of Civil Court while trying a suit under the code of Civil Procedure in respect of the following matters, namely—

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of documents;

(c) Receiving evidence on affidavits;

(d) Requisitioning any public record or copy thereof from any court or office;

(e) Issuing commissions for examination of witnesses or documents;

(f) Any other matter which may be prescribed.

Information to competent Authority— Section 58-S provides that notwithstanding anything contained in any other law for the time being in force, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority to furnish information in relation to such persons, on points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of Chapter VI-A of the Act. Officers of Police, State Forests Departments, Central Economic Intelligence Bureau, Directorate of Revenue Intelligence and such other officers as the State Government may specify, may furnish *suo moto* any information available with them to the competent authority if in their opinion such information would be useful to the competent authority.

Power to Take Possession— Section 58-U provides that where any property has been declared to be forfeited to the State Government or where the person affected has failed to pay the fine due, the competent authority may order the
person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the Administrator or to any person duly authorised by him within thirty days of the service of the order. If any person refuses or fails to comply with an order, the Administrator may use such force as may be necessary for taking the possession of the property and he may requisition the services of any police officer to assist him and it shall be the duty of such police officer to comply with such requisition.

**Punishment for acquiring property in relation to which proceedings have been taken under chapter VI-A**— Section 58-Y provides that any person who knowingly acquires, by any mode whatsoever, any property in relation to which proceedings are pending under Chapter VI-A of the Act, shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to fifty thousand rupees.

**Rights of the Scheduled Tribes to be Protected.**

Section 65 protects the hunting rights conferred on the Scheduled Tribes of the Nicobar Island in the Union Territory of Andaman & Nicobar Island by notification.\(^{115}\)

**Power of Central Government to Make Rules**

The Central Government may, by notification, make rules for all or any of the matters mentioned under Section 63 of WLP. Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

**Power of State Government to Make Rules**

The State Government may, by notification, make rules for carrying out the provisions of this Act in respect of matters, which do not fall within the

\(^{115}\) Section 65
purview of section 63, i.e., for which the Central government has the power to make rules.

In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of matters prescribed under section 64.

CONCLUDING REMARKS: The statutory framework on wildlife protection is governed by the Wild Life Protection Act. It has been seen that it is the difference in the basic conflicts. The fact that the definitions under the Act, which has resulted in several conflicts. The fact that the definition of ‘wildlife’ includes its habitat, or ‘wild animal’ also includes any animal specified in the schedules wherever found ‘hunting’ includes every attempt to do so, and what are ‘specified plants’, ‘vermins’ or who are the nodal authorities to enforce the Wild Life Act is still unclear to many minds including the wildlife managers. What constitutes a ‘sanctuary’ or ‘national park’, what are the guidelines for ‘settlement of rights’ within a protected area and how other laws such as the Foreign Trade act or the Panchayat Extension Act impact wildlife areas is not very clear to many people who manage these areas. The prosecution of criminals and inadequacy of the law itself is dealt with the detail in the chapter.