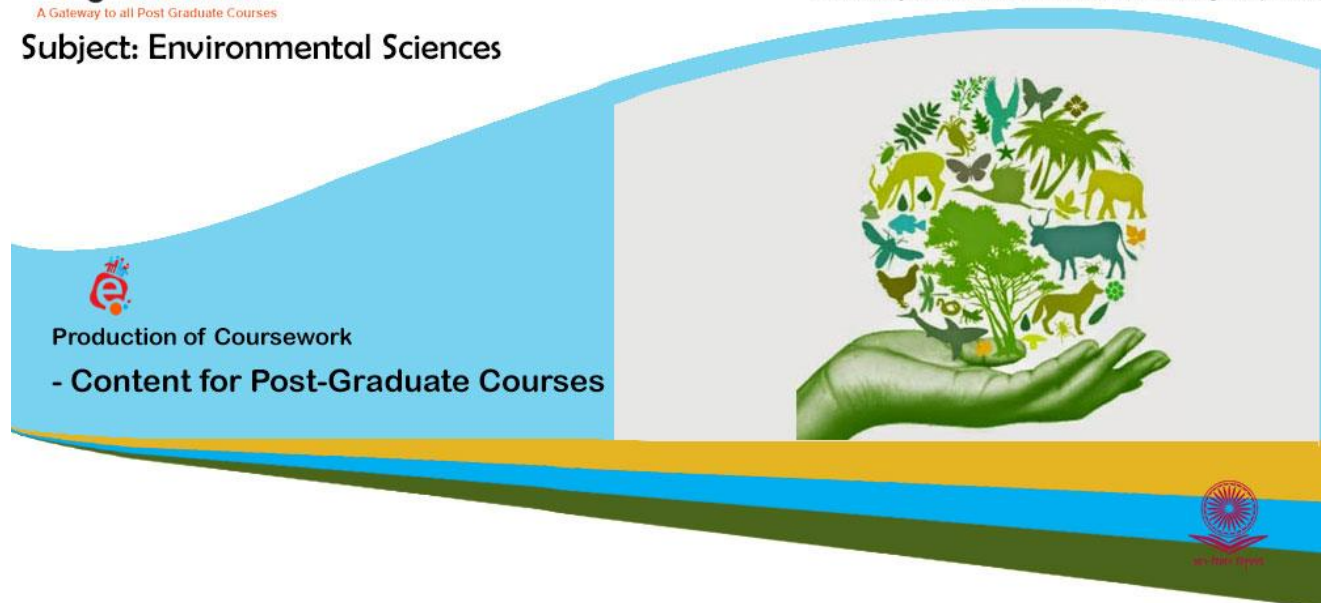


Subject: Environmental Sciences



Production of Coursework
- Content for Post-Graduate Courses

Paper No: 13 Environmental Law and Policies

Module: 05 The Wild Life (Protection) Act, 1972



Development Team

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Description of Module	
Subject Name	Environmental Sciences
Paper Name	Environmental Law and Policies
Module Name/Title	The Wild Life (Protection) Act, 1972
Module Id	EVS/ELP-XIII/05
Pre-requisites	Understanding of the wildlife inclusions and the food chain concept
Objectives	To clearly understand the various provisions in the Act and the various Amendments.
Keywords	Wildlife, protection, Sanctuary, National Park, conservation

The Wild Life (Protection) Act, 1972

LEARNING OUTCOME:

- 1) Understanding the importance of Wildlife.
- 2) In-depth study of the need for Wildlife Protection and the Laws for the same
- 3) An insight of the Wildlife Protection Act, 1972.

Introduction

Conservation of living natural resources – plants, animals, and microorganisms and the nonliving elements of the environment on which they depend is crucial for development and progress. Wildlife resources constitute a vital link in the survival of the human species, because every one of us depends on plants and animals for all vital components of our welfare. The whole environment runs in the form of a food chain and survival and dependence of all the species is vital and interdependent.

Hon'ble Markandey Katju J, has also stated that :

Preservation of wildlife is important for maintaining the ecological balance in the environment and sustaining the ecological chain. It must be understood that there is interlinking in nature

In the present society, the challenge that the world faces is not the idea of conservation but can conservation be implemented in national interest and within the means available to each country.

The general impression about the term “wildlife” is that it includes ferocious, terrestrial or aquatic animals living in jungle such as lions, tigers etc. But actually the term includes all living organisms i.e. all plants, animals and micro-organisms living in their natural habitat in wild state other than the cultivated plants and domesticated animals.

The Conservation of wildlife is of immense importance to mankind, the extinction of wildlife would ultimately lead to the extinction of the human species itself. The ecological balance of the nature is disrupted if any harm is caused to the wildlife.

Legislative History

In India, the Wildlife laws have a long history.

- a. The earliest concern for wildlife could be traced to 3rd Century BC when King Ashoka enacted the law of preservation of wildlife and environment.
- b. Under the Indian Penal Code, 1860 the term “animal” is defined and it declares maiming and killing of animals as an offence punishable under various sections.
- c. The British Government passed the Elephants Preservation Act, 1879 which prohibited killing, injuring, capturing or any attempt of the same to elephants.
- d. The first direct codified law for wildlife protection was enacted by the British Government – The Wild Birds Protection Act, 1887 which prohibited possession or sale of any kind of specified wild birds.
- e. In 1912, the Wild Birds and Animal Protection Act was passed to fulfill the inadequacies of the Wild Birds Protection Act 1887.
- f. The Indian Forest Act, 1927, thereafter consolidated the law relating to forests and the transit of forest produce.
- g. The Forest (Conservation) Act, 1980 was enacted to further check deforestation.
- h. The Cruelty to Animals Act, 1960 and The Wildlife Protection act, 1972 were passed to protect, preserve and improve Wild Life.

The Wildlife (Protection) Act, 1972 was passed by the Parliament under Article 252 of the Constitution at the request of eleven states and was intended to provide a comprehensive National framework for wildlife protection and to adopt a conservation strategy for specified endangered species and provide for protection of all species in specified areas.

The Preamble of the Act Lays down, "An Act to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country."

The Act serves the Constitutional purpose mentioned under Article 48 A and Article 51 A(g) as it prohibits hunting of wild animals except in certain limited circumstances. The court has declared that the provision of the wildlife Act are salutary and are necessary to be implemented to maintain ecological chain and balance.

Important Definitions (Section 2)

Section 2 of the Act deals with definitions .Some of the important definitions as they exist after the Amendment Act of 2002 are:

1. "Animal" includes mammals, birds, reptiles, amphibians, fish, other chordates and invertebrates and also includes their young and eggs.
2. "animal article" means an article made from any captive animal or wild animal, other than vermin, and includes an article or object in which the whole or any part of such animal has been used, and ivory imported into India and an article made therefrom.
3. "Captive animal" means any animal, specified in Schedule I, Schedule II, Schedule III or Schedule IV, which is captured or kept or bred in captivity.
4. "Forest officer" means the Forest officer appointed under clause (2) of section 2 of the Indian Forest Act, 1927 (16 of 1927) or under any other Act for the time being in force in a State "forest produce" shall have the same meaning as in sub-clause (b) of clause (4) of section 2 of the Indian Forest Act, 1927 (16 of 1927)
5. "habitat" includes land, water or vegetation which is the natural home of any wild animal;
6. "hunting", with its grammatical variations and cognate expressions, includes,—
 - a. killing or poisoning of any wild animal or captive animal and every attempt to do so;
 - b. capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;

- c. injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;
7. “National Board” means the National Board for Wild Life constituted under section 5A
8. “National Park” means an area declared, whether under section 35 or section 38, or deemed, under sub-section (3) of section 66, to be declared, as a National Park;
9. “protected area” means a National Park, a sanctuary, a conservation reserve or a community reserve notified under sections 18, 35, 36A and 36C of the Act;
10. “Reserve forest” means the forest declared to be reserved by the State Government under section 20 of the Indian Forest Act, 1927 (16 of 1927), or declared as such under any other State Act.
11. “sanctuary” means an area declared as a sanctuary by notification under the provisions of Chapter IV of this Act and shall also include a deemed sanctuary under sub-section (4) of section 66
12. “weapon” includes ammunition, bows and arrows, explosives, firearms, hooks, knives, nets, poison, snares and traps and any instrument or apparatus capable of anaesthetizing, decoying, destroying, injuring or killing an animal;
13. “wild animal” means any animal specified in Schedules I to IV and found wild in nature;
14. “wild life” includes any animal, aquatic or land vegetation which forms part of any habitat;

Authorities to be appointed under the Act (Section 3 and Section 4)

- A Director of Wildlife Preservation and such other officers as necessary are appointed by Central government.
- A Chief Wildlife Warden, Wildlife Wardens, honorary wild life Wardens and such other officers as necessary are appointed by State Government.

Power to Delegate (Section 5)

- 1) The Director may, with the previous approval of the Central Government, by order in writing, delegate all or any of his powers and duties under this Act to any officer subordinate to him subject to such conditions, if any, as may be specified in the order.
- 2) The Chief Wild Life Warden may, with the previous approval of the State Government by order in writing, delegate all or any of his powers and duties under this Act, except few to any officer subordinate to him subject to such conditions, if any, as may be specified in the order.
- 3) Subject to any general or special direction given or condition imposed by the Director or the Chief Wild Life Warden, any person, authorized by the Director or the Chief Wild Life Warden to exercise any powers, may exercise those powers in the same manner and to the same effect as if they had conferred on that person directly by this Act and not by way of delegation.

Constitution of the Board (Section 5 A)

Section 5 A of the Amendment Act of 2002 provides that the Central Government shall within three months for National Board and within a period of six months for State Boards from the date of commencement of the Amendment Act of 2002 constitute the National and State Board for Wild Life.

National Board for Wild Life consists of the following members, namely:-

- a) the Prime Minister as Chairperson;
- b) the Minister in-charge of Forests and Wild Life as Vice-Chairperson;
- c) three members of Parliament of whom two shall be from the House of the People and one from the Council of States;
- d) Member, Planning Commission in-charge of Forests and Wild Life;

- e) five persons to represent non-governmental organizations to be nominated by the Central Government;
- f) ten persons to be nominated by the Central Government from amongst eminent conservationists, ecologists and environmentalists;
- g) the Secretary to the Government of India in-charge of the Ministry or Department of the Central Government dealing with Forests and Wild Life;
- h) the Chief of the Army Staff;
- i) the Secretary to the Government of India in-charge of the Ministry of Defence;
- j) the Secretary to the Government of India in-charge of the Ministry of Information and Broadcasting;
- k) the Secretary to the Government of India in-charge of the Department of Expenditure, Ministry of Finance;
- l) the Secretary to the Government of India, Ministry of Tribal Welfare;
- m) the Director-General of Forests in the Ministry or Department of the Central Government dealing with Forests and Wild Life;
- n) the Director-General of Tourism, Government of India;
- o) the Director-General, Indian Council for Forestry Research and Education, Dehradun;
- p) the Director, Wild Life Institute of India, Dehradun;
- q) the Director, Zoological Survey of India;
- r) the Director, Botanical Survey of India;
- s) the Director, Indian Veterinary Research Institute;

- t) the Member-Secretary, Central Zoo Authority;
- u) the Director, National Institute of Oceanography;
- v) one representative each from ten States and Union territories by rotation, to be nominated by the Central Government;
- w) the Director of Wild Life Preservation who shall be the Member-Secretary of the National Board.

Functions of the National Board (Section 5 C)

- 1) It shall be the duty of the National Board to promote the conservation and development of wild life and forests by such measures as it thinks fit.
- 2) Without prejudice to the generality of the foregoing provision, the measures referred to therein may provide for-
 - a) framing policies and advising the Central Government and the State Governments on the ways and means of promoting wild life conservation and effectively controlling poaching and illegal trade of wild life and its products;
 - b) making recommendations on the setting up of and management of national parks, sanctuaries and other protected areas and on matters relating to restriction of activities in those areas;
 - c) carrying out or causing to be carried out impact assessment of various projects and activities on wild life or its habitat;
 - d) reviewing from time to time, the progress in the field of wild life conservation in the country and suggesting measures for improvement thereto; and
 - e) preparing and publishing a status report at least once in two years on wild life in the country.

Constitution of State Board for Wild Life (Section 6)

The State Government shall, within a period of six months from the date of commencement of the Wild Life (Protection) Amendment Act, 2002 constitute a State Board for Wild Life consisting of the following members, namely:-

- a) the Chief Minister of the State and in case of the Union territory, either Chief Minister or Administrator, as the case may be - Chairperson;
- b) the Minister in-charge of Forests and Wild Life - Vice-Chairperson
- c) three members of the State Legislature or in the case of a Union territory with Legislature, two members of the Legislative Assembly of that Union territory;
- d) three persons to represent non-governmental organisations dealing with wild life to be nominated by the State Government;
- e) ten persons to be nominated by the State Government from amongst eminent conservationists, ecologists and environmentalists including at least two representatives of the Scheduled Tribes;
- f) the Secretary to the State Government or the Government of the Union territory, as the case may be, in-charge of Forests and Wild Life;
- g) the Officer in-charge of the State Forest Department;
- h) the Secretary to the State Government, Department of Tribal Welfare;
- i) the Managing Director, State Tourism Development Corporation;
- j) an officer of the State Police Department not below the rank of Inspector-General;
- k) a representative of the Armed Forces not below the rank of a Brigadier to be nominated by the Central Government;
- l) the Director, Department of Animal Husbandry of the State;
- m) the Director, Department of Fisheries of the State;
- n) an officer to be nominated by the Director, Wild Life Preservation;
- o) a representative of the Wild Life Institute of India, Dehradun;
- p) a representative of the Botanical Survey of India;
- q) a representative of the Zoological Survey of India;

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

Duties of State Board for Wild Life (Section 8)

It shall be the duty of the State Board for Wild Life to advise the State Government

- a) in the selection and management of areas to be declared as protected areas;
- b) in formulation of the policy for protection and conservation of the wild life and specified plants;
- c) in any matter relating to the amendment of any Schedule;
- d) in relation to the measures to be taken for harmonizing the needs of the tribal and other dwellers of the forest with the protection and conservation of wild life; and]
- e) in any other matter connected with the protection of wild life which may be referred to it by the State Government.

Hunting of Wild Animals to be permitted in certain cases (Section 11)

The Chief Wildlife Warden may, if he/she is satisfied that any wild animal specified in Sch. 1 has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefore, permit any person to hunt such animal or cause animal to be hunted;

Provided that no wild animal shall be ordered to be killed unless the Chief Wild Life Warden is satisfied that such animal cannot be captured, tranquilized or translocate: Provided further that no such captured animal shall be kept in captivity unless the Chief Wild Life Warden is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same are recorded in writing

(b) the Chief Wildlife Warden or the authorized officer may, if he is satisfied that any wild animal specified in Sch. II and Sch. III has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating

the reasons therefore, permit any person to hunt "such animal or group of animals in a specified area or cause such animal or group of animals in that specified area to be hunted

Protected Areas

Chapter IV of the Act deals with protected areas such as Sanctuaries, National Parks and Closed Areas

Sanctuaries (Section 18)

The State Government may, by notification, declare its intention to constitute any area other than area comprised with 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.

Acc to **Section 18-B**, the state government shall appoint a Collector within 90 days of coming into force of the Wild Life (Protection) Amendment Act, 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 in or over the land comprised within the limits of the sanctuary.

Acc to **Section 26 A**,

1. When

- a) a notification has been issued under Sec 18 and the period for preferring claim has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary, have been disposed of by the State Government; or
- b) any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological, faunal geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wildlife or its environment, is to be included in a sanctuary, the State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be sanctuary on and from such date as may be specified in the

notification. Provided that where any part of the territorial waters is to be so included, prior concurrence of the Central Government shall be obtained by the State Government. Provided further that 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 interests of the local fishermen.

2. Notwithstanding anything contained in sub-section (1), the right of innocent passage of any vessel or boat through the territorial waters shall not be affected by the notification issued under sub-section (1). No alteration of the boundaries of a sanctuary shall be made by the State Government except on a recommendation of the National Board.

Acc to Section 27: No person other than,

- (a) a public servant on duty;
- (b) a person who has been permitted by the Chief Wildlife Warden or the authorized officer to reside within the limits of the sanctuary;
- (c) a person who has any right over immovable property within the limits of the sanctuary;
- (d) a person passing through the sanctuary along a public highway, and
- (e) the dependents of the person referred above shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under Section 28 (Grant of a permit by the Chief Warden on Application)

Declaration of National Parks

Section 35 (1) states that : 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 and propagating or developing wildlife therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park.

According to **Section 35(5) and (6)**, no alteration of the boundaries of a National Park by the State Government 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 or outside the National Park, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the National Board that such removal of wild life from the National Park or the change in the flow of water into or outside the National Park is necessary for the improvement and better management of wild life therein, authorizes the issue of such permit:

Acc to **Section 35 (8)**, The provisions of sections 27 and 28, shall, as far as may be, apply in relation to a National Park as they apply in relation to a sanctuary.

Declaration and management of a Conservation Reserve (section 36 A)

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.

Declaration and Management of Community Reserve (Section 36 C)

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.

Central Zoo Authority and Recognition of Zoos

Chapter IV A was added in 1991 by way of amendment to the 1972, Act. It contains Sections 38-A to 38- J which deal with Central Zoo Authority and recognition of Zoos. Further Section 38 A provides that the Central Government shall constitute the Central Zoo Authority consisting of a Chairperson, Members not exceeding ten in number for a term of three years and a member secretary.

National Tiger Conservation Authority

The Project Tiger was launched in the country on 14.04.1973 for conserving the endangered tiger. Initially, 9 Tiger Reserves were covered under the Project which has now increased to 28 reserves falling in 17 states.

With the twin objective of tiger conservation and harmonizing the rights of the tribal people living in and around tiger reserves, the Act was amended in 2006 to provide for a statutory authority with a legal backing with well-defined functions, for conservation of tigers, known as the National Tiger Conservation Authority, which will be responsible for implementation of Tiger conservation plans prepared by the state governments keeping in mind the needs of local people.

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.

Penalties

Section 51 of the Act deals with penalties for contravening provisions of the Act.

(1) Any person who contravenes any provisions of this Act [except Chapter VA dealing with prohibition of trade or commerce in trophies, animal articles etc derived from certain animals and section 38J dealing with prohibition of teasing etc in 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 Scheduled I or Part II of Sch.II**, or meat of any such animal, animal article, trophy, or uncurled trophy derived from such animal or where offence relates to hunting in, 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 in this sub-section, 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 VA,(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 38J (dealing with prohibition of teasing etc in 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 case of **second or subsequent offence** the term of imprisonment may extend to **one year or with fine may extend to five thousand rupees.**

The Amendment Act of 2006 further provides that any person Any person, who commits an offence in relation to the core area of a tiger reserve or where the offence relate 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;** and in the event of a **second or subsequent conviction with imprisonment 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 .

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.