

## THE LACUNAE IN WILDLIFE PROTECTION LAWS IN INDIA

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The principal legislation for protection of wildlife in is the Wildlife Protection Act of 2006 (amended from the original Act of 1972 and hereinafter referred to as the Wildlife Protection Act ) supplemented by United Nations' Convention of International Trade in Endangered Species of Wild Fauna and Flora , Indian Penal Code, (1860), Code of Criminal Procedure (Cr.P.C), (1973), Customs Act,( 1962), Indian Forest Act,(1927), Forest Conservation Act, (1981), Prevention of Cruelty to Animals Act, (1960), Indian Forest Act, (1927), Forest Conservation Act, (1980) and Biological Diversity Act, (2002)

This paper examines the loopholes in the Wildlife Protection Act and the lack of an integrated approach to wildlife trade and trafficking across India. With China being the largest importer of wildlife and wildlife products<sup>1</sup> including ivory and tigers derivatives, India has a serious cause for concern about its wildlife protection laws and porous borders. The concern about international trade in species however, is not reflected in the Wildlife Protection Act, which is mainly aimed at protection of indigenous species and has no provisions dealing with foreign species that may be trafficked through India. Coincidentally India is the preferred hunting grounds for wildlife trade given that according to one study, India along with 17 other mega-diverse countries is home to about 60-70% of the world's biodiversity.<sup>2</sup>

Coupled with the poor enforcement of legislations and corruption of official machinery, the wildlife trade in India continues to flourish unabated. Consequently, the international wildlife trade has evolved into a serious conservation menace and has been a concern that was addressed by the United Nations' Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>3</sup>. The CITES lists various Appendix I of species starting from the most endangered in Appendix I moving into the species of lesser concern in Appendix III.<sup>4</sup>

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<sup>1</sup> Hance, J. (2009) Wildlife trade creating 'empty forest syndrome' across the globe., January 19, 2009

<sup>2</sup> Explorations in Applied Geography By Dutt Misra & Chatterjee (eds.) , L R Singh, Ashok K Dutt, H N Misra, Meera Chatterjee

<sup>3</sup> CITES objectives, [cites.org: http://www.cites.org/eng/disc/what.php](http://www.cites.org/eng/disc/what.php)

<sup>4</sup> Appendices I, II and III, [cites.org: http://www.cites.org/eng/app/appendices.php](http://www.cites.org/eng/app/appendices.php)

These are exhaustive taxonomical lists of species that cannot be traded internationally. The Wildlife Protection Act however, makes no accommodation to impose punitive measures for trade in these species domestically. Thus, though there exists an obligation to prevent trafficking of these species internationally and the onus of this lies on checkpoints and customs officials, there exists no domestic legislation that imposes punitive measures for the trade in these species domestically or specifically lists these species.

India contains 172, or 2.9%, of IUCN-designated threatened species.<sup>5</sup> However, the Indian Wildlife Protection Act grants no special status to species that fall within the IUCN lists. A series of Regional Red Lists are produced by countries or organizations, which assess the risk of extinction to species.<sup>6</sup> The Wildlife Protection Act does not take any special cognizance of these lists. With the Wildlife Protection Act adopting this myopic approach to conservation of species that are migratory or trafficked animals in transit, India has become a global hotspot for the trade in wildlife.<sup>7</sup>

Along with the CITES Appendices, there is the International Union for the Conservation of Nature (IUCN) which is arguably the world's most comprehensive inventory of the global conservation status of biological species and the Red List of Threatened Species which lists the species that are faced with the highest threat of extinction.<sup>8</sup>

India is a party to five major international conventions related to wildlife conservation, viz. Convention of International Trade in Endangered Species of wild fauna and flora (CITES). International Union for Conservation of Nature and Natural Resources (IUCN). International Whaling Commission (IWC), United Nations Educational, Scientific & Cultural Organization- World Heritage Committee (UNESCO-WHC) and the Convention on Migratory Species (CMS).<sup>9</sup>

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<sup>5</sup> Groombridge, B. (1993 Edition) The 1994 IUCN Red List of Threatened Animals. IUCN, Gland, Switzerland and Cambridge, UK. Pg.286.

<sup>6</sup> IUCN (2003) Guidelines for Application of IUCN Red List Criteria at Regional Levels: IUCN Species Survival Commission. IUCN, Gland, Switzerland and Cambridge, UK:  
[http://intranet.iucn.org/webfiles/doc/SSC/SSCwebsite/Red\\_List/regionalguidelinesEn.pdf](http://intranet.iucn.org/webfiles/doc/SSC/SSCwebsite/Red_List/regionalguidelinesEn.pdf)

<sup>7</sup> India Environment Portal, <http://www.indiaenvironmentportal.org.in/reports-documents/disappearing-act-illicit-trade-wildlife-Asia>

<sup>8</sup> IUCN Red List Overview [2] <http://www.iucnredlist.org/about/red-list-overview#introduction>

<sup>9</sup> Forest Conservation: Wildlife - Environment & Forests <http://india.gov.in/sectors/environment/index.php?id=19>

India has also nominated as member of CITES Working Group on livelihoods, but the implementation of contemplated by the said convention has been dismal, due to the inadequate punitive measures and lack of deterrent punishments envisaged in the Wildlife protection Act. The CITES management authority of India, which is the Director of Wildlife Preservation, Government of India, does not have a dedicated CITES Cell in his office to follow up the submissions made by the country in CITES Conferences of the Parties (CoP's) and the Standing Committee and to properly attend to various communications that comes from CITES Secretariat to this Ministry.<sup>10</sup>

The most prolific wildlife trade is in captive animals for the pet trade, and the trade in tiger parts which is often gets trafficked through India's porous borders with Nepal into China and vice versa<sup>11</sup>. Passing off these as foreign non indigenous animals with corrupt and ignorant law enforcement officials often allows this trade to flourish. The other major cause of wildlife depletion being the consumption of wildlife for food. In most cases, wild life can be passed off as a captive bred species or as in the case of tigers, their bones are often mislabelled and sold under various labels to evade law enforcement officials.

This concoction of poor legislative protection and uninformed enforcement officials often results in endangered species and indigenous wildlife being passed off as foreign species which are not regulated by any formal legislation. Although India is a party to the IUCN<sup>12</sup> and the CITES convention<sup>13</sup>, the obligations therein are not binding and the enforcement of which has been left to domestic bodies. The Ministry of Environment and Forests, Govt. of India has recently constituted a special CITES Cell within the Ministry to help strengthen the enforcement of the CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora)

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<sup>10</sup> CITES Report S.C. Dey, Global Tiger Forum, New Delhi (Chapter 10)  
<http://www.mse.ac.in/Trade/pdf/Compendium%20Part%20B/3.%20SCDey-CITES.pdf>

<sup>11</sup> Traffic Article: Meeting to plug gaps in porous Indo-Nepal border:  
<http://www.bbc.co.uk/news/world-asia-india-19754587>  
World Wildlife Fund Article: [http://www.wwf.org.uk/wwf\\_articles.cfm?unewsid=6222](http://www.wwf.org.uk/wwf_articles.cfm?unewsid=6222)  
BBC News Article: <http://www.bbc.co.uk/news/world-asia-india-19754587>

<sup>12</sup> Forest Conservation: Wildlife - Environment & Forests <http://india.gov.in/sectors/environment/index.php?id=19>

<sup>13</sup> India's Fourth National Report - Ministry of Environment and Forests:  
[envfor.nic.in/downloads/public-information/in-nr-04.pdf](http://envfor.nic.in/downloads/public-information/in-nr-04.pdf)

regulations in the country.<sup>14</sup> This is a bold move to ensure that trafficked species that are not indigenous or are outside the ambit of the Wildlife Protection act are also intercepted if found in India.

Migratory species are another concern, since some of these species are not protected by the Wildlife Protection Act although they migrate to India for considerable periods of time. Due to low taxonomical data many migratory species had earlier not been included into the Wildlife Protection Act which covered primarily indigenous species and some migratory species. Although the Wildlife Protection Act makes adequate provisions for the conservation of indigenous species, many species that are endemic to a region have not been documented due to the lack of scientific data<sup>15</sup>, such as the Himalayan Black Bear<sup>16</sup>. The result of this insufficiency in incorporating migratory species is that although their hunting is prohibited and this can be enforced, once caught, they can be transported un- accosted since they can be labelled as foreign species that fall outside the ambit of the Wildlife Protection Act.

Similarly the conservation of fishes has never been adequately addressed in India which has been mainly due to lack of scientific data and perception about the criterion to be used for the characterisation and designating conservation status of threatened fishes.<sup>17</sup> This exacerbates the problem of unregulated fishing of species such as the *Golden Mahseer* which is hunted within sanctuaries and parks and the meat is sold under a different name.<sup>18</sup> The lack of taxonomical expertise results in illegal fishing continuing unabated both in internal waters and along the coast.

Due to the lack of congruency between India's obligations and domestic legislation such as the Wildlife Protection Act, there exist many lacunae that are exploited by those engaged in wildlife trade.

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<sup>14</sup> WWF India CITES Report:

[http://www.wwfindia.org/about\\_wwf/enablers/traffic/cites\\_update/cites\\_update\\_26122011.cfm](http://www.wwfindia.org/about_wwf/enablers/traffic/cites_update/cites_update_26122011.cfm)

<sup>15</sup> Report of the Western Ghats Ecology Expert Panel - Ministry of Environment and Forests  
[moef.nic.in/downloads/public-information/wg-23052012.pdf](http://moef.nic.in/downloads/public-information/wg-23052012.pdf)

<sup>16</sup> IUCN Red List- Himalayan Black Bear, <http://www.iucnredlist.org/details/22824/0>

<sup>17</sup> Threatened Freshwater Fishes of India: Indian Council of Agricultural Research  
<http://www.nbfg.res.in/pdf/ThreatenedFreshwaterFishes.pdf>

<sup>18</sup> CBD Strategy and Action Plan - India - [www.cbd.int/doc/world/in/in-nbsap-v2-p2-en.pdf](http://www.cbd.int/doc/world/in/in-nbsap-v2-p2-en.pdf)

The inadequacy of border control mechanism to check wildlife trafficking has also provided impetus to poachers to use the Indo-Chinese border to directly supply tiger parts from the source country to the consumers in China. Earlier trade in tiger parts was legalized in China which led to the market being flooded with tiger products from both captive bred tigers as well as wild tigers. CITES Resolution Conf. 12.5 asks Parties to prohibit trade in tiger parts and derivatives, both internationally and domestically, even from captive-bred specimens<sup>19</sup>. This resolution was adopted by consensus after which the demand for tiger products from China has been substantially reduced. If China legalizes tiger trade again, it will bear significant responsibility for loss of wild tigers due to poaching.

With regard to the rampant cross border trade in wildlife, the Wildlife Protecting Act has yet another glaring loophole; the extent of enforcement of the Wildlife Protection Act doesn't include Jammu and Kashmir. Jammu and Kashmir are host to a diverse range of endemic species, however these are not covered by the state Act.<sup>20</sup>

As a response to ever increasing incidents of wildlife crime and trafficking the Wildlife Crime Control Bureau (WCCB) was setup by the Government India (GOI). The mandate of WCCB includes facilitation of coordinated universal action against wildlife crime and fulfilment of relevant international obligations of GOI and coordination with national and regional agencies in controlling wildlife crime.<sup>21</sup>

With the growing global attention on ending the ivory trade and the reluctance of China and Japan to ban all ivory, the Indian Elephant has also become a target for poachers who exploit the lack of taxonomical data and often palm off Indian ivory as legal African ivory across check posts. Most of the ivory smuggling containers leave the African continent through Indian Ocean seaports in East African countries, primarily Kenya and the United Republic of Tanzania.<sup>22</sup> China

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<sup>19</sup>International Fund for Animal Welfare Report

<http://www.ifaw.org/sites/default/files/Fact%20Sheet%20Tiger%20Trade%20Fact%20&%20Fallacies.pdf>

<sup>20</sup> Perspectives In Environmental Studies By Anubha Kaushik Pg. 204

<sup>21</sup> Ministry of Environment and Forests has proposed the project "Strengthening Regional Cooperation in Wildlife Protection in Asia" April, 2012 Pg.40 :Snake capture and venom extraction in Tamil Nadu, India  
Romulus Whitaker and Harry V. Andrews

<sup>22</sup> TRAFFIC Report 21<sup>st</sup> June 2012, Experts report highest elephant poaching and ivory smuggling rates in a decade  
<http://www.traffic.org/home/2012/6/21/experts-report-highest-elephant-poaching-and-ivory-smuggling.html>

and Japan bought 108 tonnes of ivory in November 2008 from Botswana, South Africa, Namibia and Zimbabwe.<sup>23</sup> The lack of implementation of the provisions of the Wildlife Protection Act along with transnational trade regulations and the collective incongruence with international conventions has led to India becoming a preferred trade route for illegal ivory. The CITES Secretary-General, Mr John E. Scanlon, has commented on this issue stating “We need to enhance our collective efforts across range, transit and consumer states to reverse the current disturbing trends in elephant poaching and ivory smuggling. While being essential, enforcement efforts to stop wildlife crime must not just result in seizures, they must result in prosecutions, convictions and strong penalties to stop the flow of contraband. The whole ‘enforcement chain’ must work together.”<sup>24</sup> The drawback that needs urgent remedying is the information exchange between domestic enforcement authorities and international organisations so that such authorities share information on significant cases at the international level through appropriate channels, such as those provided by ICPO-INTERPOL and the World Customs Organization.<sup>25</sup> This would help apprehend wildlife traffickers who are dealing with species that are not covered by Wildlife Protection Act and ensure that they are not let off easily.

The Wildlife Protection Act also fails to comprehensively cover practices that are for scientific purposes such as venom extraction from snakes. Most institutions produce venom by extracting it repeatedly from each snake until the animal dies<sup>26</sup>, thereby depleting the wild population of these venomous snakes, some of which are endangered. The Wildlife Protection Act is silent on the procedure for ethical capture, handling and release of these snakes, although an amendment in 1982 has allowed for collection of snakes for extraction of venom for manufacture of anti-venom and life saving drugs under Section 12(d).

Another plaguing issue is the abuse of wildlife collection permits by zoo’s that were initially meant to be a tool for *ex-situ* conservation but have become centres where wildlife specimens

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<sup>23</sup> Campaigners fear for elephants and their own credibility", The Economist, July 2008

<sup>24</sup> TRAFFIC Report 21<sup>st</sup> June 2012 <http://www.traffic.org/home/2012/6/21/experts-report-highest-ivory-smuggling.html>

<sup>25</sup> CITES Report on Elephant Conservation, Illegal Killing And Ivory Trade SC62 Doc. 46.1 (Rev. 1) <http://www.cites.org/eng/com/SC/62/E62-46-01.pdf>

<sup>26</sup> The IUCN Species Survival Commission Assessing the Sustainability of Uses of Wild Species Case Studies and Initial Assessment Procedure Edited by Robert and Christine Prescott-Allen Pg.12

are collected unscientifically and kept in appalling conditions. This lethal combination of unscientific conservation efforts and myopic planning from the Central Zoo Authority often leads to the failure of most captive breeding programs in zoos due to the high mortality of the animals. It was in this background that the Central Zoo Authority (CZA) was created in February, 1992 under an Act of Parliament (Section 38A of Wild Life (Protection) Act, 1972 as amended in 1991) to control mushrooming of ill conceived/ ill planned zoos, to monitor and evaluate the existing zoos and to suggest ways and means for the improvement of zoos in the country, so that they can be transformed into potent centres for the ex-situ conservation of endangered wild fauna. However, the success so far has been quite limited due to varied ownership pattern of zoos in India and lack of proper guidelines & standards.<sup>27</sup> There is a clear incongruence between the practices that zoos employ and their purpose as is envisaged in the Wildlife Protection Act. This has been poorly reconciled by efforts at capacity building of zoo personnel and awareness as proposed in the Ministry of Environment & Forests, Government of India Report of Working Group on Wildlife, Biodiversity, Traditional Knowledge and Animal Welfare for the Eleventh Five Year Plan 2007-2012.(infra)

A commonly exploited loophole in the Wildlife Protection Act is the provision for self defence, which is often abused and can easily be claimed whilst hunting wildlife.<sup>28</sup> Section 11(2) of the Wildlife Protection Act states that “The killing or wounding in good faith of any wild animal in defence of oneself or any other person shall not be an offence” This allows many forest dwellers who hunt animals with rudimentary weapons to merely claim self defence when caught and get away with it, simply because the burden of proof does not lie on them to prove that they were not hunting the animal. Thus the efforts of vigilant forest guards are often defeated in court when the plea of self defence is sustained simply because of the obvious lack of insurmountable evidence that they were hunting the animal. The incentive for killing an animal needs to be completely eliminated in the cases of killing wildlife for self defence so that the cases where animals are hunted and self defence is claimed can be curbed.

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<sup>27</sup> Ministry of Environment & Forests, Government of India Report of Working Group on Wildlife, Biodiversity, Traditional Knowledge and Animal Welfare for the Eleventh Five Year Plan 2007-2012 Pg.31

<sup>28</sup> Outlook India Article: <http://www.outlookindia.com/article.aspx?227749>

Lastly there is a conflict between the legislative intent of the Wildlife Protection Act and The Forest Rights Act 2006 which grants some of India's most impoverished communities the right to own and live in the forests, which likely brings them into conflict with wildlife and under-resourced, under-trained, ill-equipped forest department staff. In the past, evidence showed that humans and tigers cannot co-exist<sup>29</sup>, giving rise to further conflicts and claims of self defence in tiger killings.

For an effective approach to combat the illegal trade in wildlife, the legislation for the protection of wildlife need joint enforcement and transnational congruency for a uniform implementation. For this purpose the National Wildlife Crime Bureau was set up as per the provisions of the amendments made in 2006. The constitution of National Wildlife Crime Bureau is also now included in the wildlife (Protection) Act, 1972, through this amendment. National Wildlife Crime Bureau (NWCB) The Bureau is envisaged as a multi-disciplinary approach to combat the organized crime against wildlife and trade in wildlife and its derivatives.<sup>30</sup>

Taking cognizance of the aforementioned lacunae in the Wildlife Protection Act, the government has laid down the following objectives of the NWCB:

- 1) To act as a multi agency unit with full time officer from Forest and Wildlife Departments and various para military forces ( Police, DRI, CBI, IB, ITBP, BSF), Customs.
- 2) To develop a National Level Policy for containing the trade, enforcement and capacity building of the State Forest Departments to carry out enforcement and investigation in a professional manner.
- 3) To implement the resolutions and decisions taken under the Convention on International Trade in Endangered Species of Flora and Fauna (CITES).

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<sup>29</sup> Buncombe, A. (2007) *The face of a doomed species*. The Independent, 31 October 2007

<sup>30</sup> Legal Provisions For Protection And Conservation Of Wildlife In India - Smt. Kalpana Palkhiwala  
[http://pib.nic.in/release/rel\\_print\\_page.asp?relid=40223](http://pib.nic.in/release/rel_print_page.asp?relid=40223)



- 4) To co-operate with the Interpol Wildlife Crime Working Group, the World Customs Organisation, the CITES Tiger Enforcement Task Force and various other Law Enforcement Agencies inside the country.
- 5) To gather and analyze intelligence related to organized wildlife crime activities and to disseminate the same to State and Regional Enforcement Agencies for swift action to apprehend the criminals.
- 6) To undertake joint operations with counterpart agencies in other countries.
- 7) To maintain a data bank related to wildlife crimes.
- 8) To monitor trade and advise the on changes required in policy and legislation from time to time.
- 9) To develop infrastructure and capacity for scientific and professional investigation into wildlife crimes and assist State Governments to ensure better success of cases related to wildlife crimes.

In addition to the NWCB, a Special Co-ordination Committee with the Secretary (Environment & Forests), as Chairman and Special Secretary (Home), Director, CBI and representative of the Chairman, Central Board of Excise & Customs has been created to ensure better co-ordination in the efforts to curb smuggling of wildlife products.<sup>31</sup> This Co-ordination Committee will hopefully integrate the various enforcement departments to ensure that wildlife trade can be curbed across various frontiers without impediments due to legislative or jurisdictional overlap of various governmental departments.

At the same time, the overall conservation of the ecology cannot be undermined and the government has adopted very schizophrenic approaches to the economy over ecology debate. The Prime Minister, Mr. Manmohan Singh and Finance Minister P. Chidambaram have proposed the idea of a National Investment Board (NIB), an authority that will ease clearances

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<sup>31</sup> Legal Provisions For Protection And Conservation Of Wildlife In India - Smt. Kalpana Palkhiwala (supra)

for large infrastructure projects<sup>32</sup> without any environmental impact assessments. This new authority would have the power to overrule any decision of the Ministry of Environment and Forests (MoEF) and allow large parts of India's forests to be wiped-out. This would obviously benefit primarily large, powerful corporations at the cost of India's forests. This idea shows an absolute disregard for the environment and seems ludicrous in the backdrop of the recent spate of legislations purportedly for the preservation of India's ecological heritage.

With the government having taken a myopic approach to environment conservation repeatedly, there is justifiable scepticism about the newly implemented measures for an integrated implementation. However, with the paradigm shift in the attitude of the government and specifically the Ministry of Environment and Forests (MoEF) from choosing economic development over ecological sustainability to a more holistic approach, there is optimism about the future of wildlife conservation, contingent on the appropriate implementation and monitoring of the measures envisaged for wildlife protection.

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<sup>32</sup> Economic Times, Online Article: <http://economictimes.indiatimes.com/news/politics/nation/national-investment-board-issue-to-be-raised-with-pm-manmohan-singh-jayanti-natarajan/articleshow/16914849.cms>  
The Hindu, Online Article: <http://www.thehindu.com/business/Economy/article3900808.ece>