LAW AND POLICY FRAMEWORK RELATED TO WILDLIFE

UNIT 6
The Wildlife (Protection) Act, 1972 – Part I

UNIT 7
The Wildlife (Protection) Act, 1972 – Part II
The term ‘Wild Life’ was coined by William Hornady in 1913 in his book “Our vanishing Wild Life”. Wild Life implies to all the biotic elements on the Earth including all species of plants, animals, birds and microbes of the world excluding man, domestic animals and cultivated plants. Therefore the wild life means the total natural biodiversity ranging from tiny microbes to mighty mammals. Wild life is considered as a renewable resource. The term Biodiversity refers to the variety of life forms, from genes to species to broader scale of ecosystems. Conservation means protection that is maintained from outside the natural habitat. Conservation of wildlife not only includes the preservation of all species but also the enhancement of wildlife habitat and the control of wildlife problems. Certain issues like consumption and exploitation of wildlife and wildlife products for commercial purposes in also tackled with in its conservation.

Following Units will be dealt in Block 3

Unit 6 – The Wildlife (Protection) Act, 1972 – Part I

The Wildlife Protection Act is the umbrella legislation for wildlife conservation in India. Awareness on such issues has been growing since late and there is a growing body of judicial pronouncements which have highlighted the significance of such issues for society. This unit will discuss a brief historical perspective of wildlife conservation in India and some important provisions of the Wildlife Protection Act 1972.

Unit 7 – The Wildlife (Protection) Act, 1972 – Part II

Continuation of Unit 6, further this unit also elaborates on National Tiger Conservation Authority Wildlife Crime Control Bureau and Wildlife Trade.
Law and Policy Framework
Related to Wildlife
UNIT 6 THE WILDLIFE (PROTECTION) ACT, 1972 – PART I

Structure

6.1 Introduction
6.2 Objectives
6.3 Background
6.4 Introduction and Objectives of the Wildlife (Protection) Act, 1972
6.5 The Scope and Extent of the Wildlife (Protection) Act, 1972
6.6 Key Definitions
6.7 A Discussion on Defining Hunting
6.8 Authorities to be Appointed or Constituted under the Act
   6.8.1 Appointment of Director and other Officers
   6.8.2 Appointment of Chief Wildlife Warden and other Officers
6.9 Hunting of Wild Animals
6.10 Specified Plants and the Act
6.11 Protected Areas
   6.11.1 Declaration of Sanctuary
   6.11.2 Restrictions Inside a Sanctuary
   6.11.3 Chief Wildlife Warden to Manage and Control Sanctuaries
   6.11.4 Advisory Committee
   6.11.5 Removal of Encroachments
   6.11.6 National Parks
   6.11.7 Community Reserves and Conservation Reserves
      6.11.7.1 Conservation Reserve
      6.11.7.2 Community Reserve
6.12 Control and Regulation of Zoos
6.13 Summary
6.14 Terminal Questions
6.15 Answers and Hints
6.16 Glossary
6.17 References and Suggested Readings

6.1 INTRODUCTION

The Wildlife Protection Act is the umbrella legislation for wildlife conservation in India. Awareness on such issues has been growing since late and there is a growing body of judicial pronouncements which have highlighted the significance of such issues for society. This unit will discuss a brief historical perspective of wildlife conservation in India and some important provisions of the Wildlife Protection Act, 1972.
6.2 OBJECTIVES

After reading this unit, you should be able to:

• discuss the historical perspective of wildlife legislation in India;
• describe various key terms and their context as they are used in the Wildlife (Protection) Act, 1972;
• explain the provisions related to “hunting” in the Wildlife (Protection) Act, 1972;
• describe key provisions related to conservation of specified plants;
• analyse the various categories of Protected Areas in India and the process of their establishment;
• describe various key attributes of each Protected area and their management; and
• explain the role of the Chief Wildlife Warden and other officials/ bodies in management of Protected Areas.

6.3 BACKGROUND

India has a historical tradition of protection of wildlife. Reverence to nature and to wild animals and plants is an integral part of our culture. India, in every sense is as incomplete without its tigers, elephants, birds and other forms of wild plants and animals as without its very people!

Perhaps the first historically recorded reference to wildlife conservation is from the edicts on the 5th Pillar edicts inscribed by King Asoka in about 3rd century B.C.

“Twenty-six years after my coronation various animals were declared to be protected — parrots, mainas, //arunā//, ruddy geese, wild ducks, //nandimukhas, gelatas//, bats, queen ants, terrapins, boneless fish, //vedareyaka//, // gangapputaka//, //sankiya// fish, tortoises, porcupines, squirrels, deer, bulls, // okapinda//, wild asses, wild pigeons, domestic pigeons and all four-footed creatures that are neither useful nor edible. Those nanny goats, ewes and sows which are with young or giving milk to their young are protected, and so are young ones less than six months old. Cocks are not to be caponized, husks hiding living beings are not to be burnt and forests are not to be burnt either without reason or to kill creatures. One animal is not to be fed to another”.

Kautilya’s “Arthashastra” also has references to the duty of the king to establish a forest for elephants, guarded by Foresters.

In modern India, the first steps towards regulating exploitation of wildlife came with the enactment of the Madras Wild Elephant Preservation Act, 1873 (The Madras Act No.1 of 1872).. This followed by legislations such as the Indian Forest Act, 1878 (Act VII of 1878), the Elephant Preservation Act, 1879 (Act VI of 1879), the Bengal Act 5 of 1898, the Mysore Games and Fish Preservation Regulations, 1901, the Wild Birds and Animals Protection Act, 1912 (Act VIII of 1912), the Indian Forest Act, 1927 (Act XIV of 1927) and the Bengal Rhinoceros Preservation Act of 1932 laid the foundations of some legislative control to the exploitation of wildlife in modern India.
In 1936, India’s first national park, Hailey National Park, later to be renamed as Corbett National Park was created under the provisions of the recently enacted United Provinces National Parks Act.

With the enactment of the Wildlife (Protection) Act in 1972, the legislation relating to protection and conservation of our wildlife were consolidated under one special legislation.

By an amendment brought in 1976, the Indian Constitution also included specific references to the conservation of forests and wildlife of the country. Article 48-A says: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”

Article 51-A (g) states: “It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.”

### 6.4 INTRODUCTION AND OBJECTIVES OF THE WILDLIFE (PROTECTION) ACT, 1972

The Wildlife (Protection) Act, enacted in 1972 continues to be the umbrella legislation for wildlife conservation in India today. As enacted in September 1972, this was “An act to provide for the protection of wild animals and birds and for matters connected therewith or ancillary and incidental thereto.” It is significant here to note that as originally enacted, the WLPA 1972 bore no reference to “plants”!

It is also important to note here that in its original form, the WLPA 1972 had provisions of hunting of “wild animals” specified in schedule II, III and IV as per a license granted under relevant provisions. Hunting licenses included Special game hunting licenses, big game hunting licenses, small game hunting license and wild animal trapping license.

However, there was a complete prohibition on hunting of any species in Schedule I.

In accordance with changing norms of society, the Wildlife (Protection) Act has also been amended several times since its original enactment. Accordingly, the objectives of the WLPA have also been since amended.

By an amendment in 1991, the objectives of the WLPA were amended to include plants also and now read, “An act to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary and incidental thereto.”

By another amendment in 2003, another radical shift was made in the objective of the WLPA, to now include a reference to the ecological security of the country! In its present form it reads as follows, “An act to provide for the protection of wild animals, birds, plants and for matters connected therewith or ancillary and incidental thereto with a view to ensuring the ecological and environmental security of the country.”

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1. As amended by Act 44 of 1991 w.e.f. 2.10.1991
2. As amended by Act 16 of 2003, w.e.f. 1.4.2001
While appearing semantic, this change in the objectives of the WLPA 1972 resemble a major shift in that wildlife conservation being acknowledges as integral to ecological and environmental security of our country rather than just being about conservation of species of plants, animals and birds.

The changing concerns of society about depredation of forests and wildlife also found shared concern from the highest court of the land. The Hon. Supreme Court of India, in a landmark judgment made the following comments,

“The policy and object of the Wildlife laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological-imbalances introduced by the depredations inflicted on nature by man. The State to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate has been a great and urgent necessity for the survival of humanity and these laws reflect a last-ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilised man is that “Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he can not repair and cannot foresee”.

6.5 THE SCOPE AND EXTENT OF THE WILDLIFE (PROTECTION) ACT, 1972

This act is called the Wildlife (Protection) Act, 1972. (See Sec. 1(1). For the purposes of simplicity, it will be referred to as the “Act” elsewhere in the text, unless otherwise specified.

It extends to the whole of India except the state of Jammu and Kashmir.

It is important to point out here that the state of Jammu & Kashmir, given its special constitutional provisions, has its own legislation on this subject. This is the Jammu & Kashmir Wildlife (Protection) Act, 1978 which has been enacted to afford protection to the diverse flora & fauna of the State.

6.6 KEY DEFINITIONS

Section 2 of the Act has listed definitions of several key terms as used in it. It is crucial to understand these clearly as they are important to the correct implementation of the Act.

Some of these key terms and phrases are discussed here:

a) “Animal” includes mammals, birds, reptiles, amphibians, fish, other chordates and invertebrates and also includes their young and eggs; Sec 2(1).

b) It is important to note here that the young and eggs of animals are also treated equally as animal in their own right. This has significant implications with respect to “hunting” of such species. It is also important to note the use of the word “includes” here. This will be explained subsequently.

c) “Captive animal” means any animal, specified in Schedule I, Schedule II, Schedule II or Schedule IV, which is captured or kept or bred in captivity; Sec. 2 (5)

Thus, the Act places a clear distinction between Captive animals, livestock or cattle, which may have an overlap. For example, even though captive elephants may find a mention as livestock under any other legislation, for the purposes of the Act, they remain “captive animal”.

d) In the scheme of the Act, the six schedules under which various species and families are listed are of immense significance. Several provisions of this Act, in as much as they are applied, apply in degrees which vary from across schedules. Thus in the above, for an animal to qualify as a “captive animal”, it is important that the same be listed in any of the Schedules I, II III & IV AND which is captured or kept or bred in captivity.

Means and Includes: An understanding

It is also important to note the use of the word “means” in the definition as against “includes” as flagged above for the definition of Animal. The word “means” implies that the explanation is comprehensive and complete by itself and cannot be interpreted to understand beyond what is specifically mentioned. The word “includes” by contrast suggests that the explanation of the term is merely suggestive in nature and the same can be open to interpretation subsequently. A simplistic explanation would be that the word “includes” represents an open box whereas the word “means” represents a closed box.

e) “Wild animal” means any animal specified in Schedule I, II, III or IV and found in wild in nature; Sec. 2(36)

Thus the Act makes it very clear that only those animals specified in any of the Schedules I to IV AND found in nature are “Wild animals” for the provisions of the same. These two conditions must be met concurrently, whenever the question arises whether a species is “wild animal” or not.

In State of Bihar v. Murad Ali Khan 7 others, the Hon. Supreme Court has held that “There is no vagueness in any of the provisions of the Wildlife (Protection) Act, 1972, including the definition of “wild animal”. It is clear and unambiguous, hence not ultra vires of Article 14 of the Constitution of India”.

f) “Wild life” includes any animal, aquatic or land vegetation which forms part of any habitat; Sec. 2(37)

Clearly, any living species can be “wildlife” irrespective of whether it finds a mention in the Schedules I to IV of the Act.

g) “Specified plant” means any plant specified in Schedule VI; Sec. 2(27)
Law and Policy Framework Related to Wildlife

h) “Vermin” means any wild animal specified in Schedule V; Sec. 2(34)

i) “Habitat” includes land, water or vegetation which is the natural home of any wild animal; Sec 2 (15)

j) “Hunting”, with its grammatical variations and cognate expressions, includes; killing or poisoning of any wild animal or captive animal and every attempt to do so; capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so; 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; Sec 2(16)

“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; Sec 2 (35)

6.7 A DISCUSSION ON DEFINING HUNTING

One of the most commonly listed offences under the Act refers to hunting. It is thus essential to spend some time understanding the provisions related to hunting in some detail.

Under the Act, hunting is defined in an open manner, which includes any or several acts that may lead to killing or poisoning, baiting snaring, trapping or any similar acts to a “wild or captive animal”. It also includes injuring such animals or taking away the body part of such animal.

Thus, plucking of feathers of a wild bird listed under Schedule I, II, III or IV of the Act and taking them away is an act of hunting.

If a person comes across a Spotted Deer (listed in Schedule III) killed by a tiger or leopard and decides to remove a part of the already dead wild animal for his personal consumption, this is also an act of “hunting”.

Any ATTEMPT to do so is also an equal offence. This is a clear distinction from provisions in IPC where any criminal act and an attempt to do so are usually seen as two independent offences where the “attempt” generally carries a lesser penal provision. This is clearly not the case with the Act.

Thus, mere putting of a leg trap inside a forest would constitute an act of “hunting”, irrespective of whether some animal was actually caught in that trap or not.

In the case of wild birds and reptiles, damaging the eggs of such birds or reptiles or disturbing the eggs or nests of such birds or reptiles is also an offence of “hunting”.

Clearly, for an offence of hunting to be established, the first test is to confirm that the species so believed to be hunted must be listed in Schedule I, II, III or IV of the Act. Alternatively, the species must qualify as a “Captive Animal” which again means that it should be listed in Schedules I, II, III or IV of the Act. In the absence of such a confirmation or even a reasonable suspicion that such species is indeed listed in Schedule I, II, III or IV of the Act, an offence of hunting will not be made out.
6.8 AUTHORITIES TO BE APPOINTED OR CONSTITUTED UNDER THE ACT

6.8.1 Appointment of Director and other Officers

1) The Central Government may, for the purposes of this Act, appoint,-
   a) A Director of Wild Life Preservation;
   b) such other officers and employees as may be necessary.

2) In the performance of his duties and exercise of his powers by or under this Act, the Director shall be subject to such general or special directions, as the Central Government may, from time to time, give.

3) The officers and other employees appointed under this section shall be required to assist the Director.

Accordingly, under this provision, the Central Government has declared the Additional Director General (Wildlife) in the Ministry of Environment and Forests as the ex-officio Director, Wildlife Preservation

6.8.2 Appointment of Chief Wild Life Warden and other Officers

1) The State Government may, for the purposes of this Act, appoint,-
   a) a Chief Wild Life Warden;
   b) Wild Life Wardens;
   c) Honorary Wild Life Wardens
   d) such other officers and employees as may be necessary.

2) In the performance of his duties and exercise of his powers by or under this Act, the Chief Wild Life Warden shall be subject to such general or special directions, as the State Government may, from time to time, give.

3) The Wild Life Warden, the Honorary Wild Life Warden and other officers and employees appointed under this Section shall be subordinate to the Chief Wild Life Warden.

The implications of this Section are as follows:

There can be ONLY ONE Chief Wildlife Warden in a state.

In the state, all officials and employees appointed under the provisions of this section of the Act shall be subordinate to the Chief Wildlife Warden.

The Director Wildlife Preservation, Govt. of India or the Chief Wildlife Warden may delegate any of their powers and duties under this Act to any officer subordinate to him subject to any conditions as may be specified in this order.

However, there is ONE specific power of the Chief Wildlife Warden that cannot be delegated to anyone else under any circumstances. We will come back to that reference later. (See discussion on Sec. 11 & 12 of the Act)

There is also a provision for the establishment of a National Board for Wildlife under the chairmanship of the Prime Minister. (Sec. 5A)
The duty of the NBWL is to promote the conservation and development of Wildlife and forests by appropriate measures.

There is similarly, a provision for a State Board for Wildlife, to be chaired by the Chief Minister of the state or, in the case of a Union Territory, its Chief Minister or Administrator.

The State Board for Wildlife is required to advise the State Government primarily on formulation of policies for the protection and conservation of wildlife and in the selection and management of Protected Areas.

**Self Assessment Question**

1) What is implication of the Section which speaks about the appointment of chief wildlife warden and other officers?

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6.9 HUNTING OF WILD ANIMALS

Chapter III of the Act has specific provisions related to hunting of Wild Animals. Hunting, as understood under the Act has been dealt with in some detail in a previous section.

Perhaps the most quoted Section of the Act, Sec. 9 prohibits the hunting of any wild animal in Schedule I, II, III and IV except as provided under Sec. 11 & 12. This effectively means that there is no complete BAN on the hunting of wild animals of schedule I, II, III or IV but such animals can only be hunted as per the provisions laid in Sec. 11 & 12.

Sec. 11 & 12 not only lay down the provisions under which such hunting is permitted but also clearly bring out the distinction between species listed in Schedule I and those on Schedules II, III or IV.

A schedule I animal can be permitted to be hunted only if any or several of these conditions are met

1) it has become dangerous to human life or
2) is so diseased or disabled so as to be beyond recovery

The CWLW can issue such orders only in writing and stating the reasons therefore for permitting any person to hunt such animal or cause such animal to be hunted;

However, before such hunting can be permitted, the Chief Wildlife Warden has to satisfy himself that such animal cannot be captured, tranquilised or translocated.

Also, once captured, the animal must not be kept in captivity unless it cannot be rehabilitated in the wild.

The Chief Wildlife Warden or the Authorised Officer may permit any wild animal specified in Schedule II, III or IV or groups of animals in a specified area, to be hunted under the following circumstances:
• The wild animal or group of animals has become dangerous to **human life or property including standing crops**

• Or is so diseased or disabled so as to be beyond recovery.

All such orders for hunting must be in writing and must state the reasons for issuing such an order.

The following key observations are important:

i) Only the Chief Wildlife Warden can permit the hunting of wild animals in Schedule I. This power cannot be delegated under any circumstances.

   The CWLW can issue such orders only in writing and stating the reasons therefore for permitting any person to hunt such animal or cause such animal to be hunted;

ii) The Chief Wildlife Warden OR the Authorised Officer can permit the hunting of wild animals listed in Schedule II, III or IV.

iii) Wild animals in Schedule I can be hunted only if they are a threat to human life while those in Schedule II, III and IV can be permitted to be hunted if they are a threat to human life or property.

iv) Wild animals in Schedule I can be hunted only as individuals while those in Schedule II, III or I may be permitted to be hunted in groups.

v) Such orders can be issued only in writing and stating the reasons therefore for permitting any person to hunt such animal or cause such animal to be hunted.

There is also a provision that the killing or wounding of any wild animal in self defence will not be an offence. However, the person must not be committing an offence when this act became necessary.

Thus, if a person is walking on a public road that goes through a forest and is attacked by a leopard, he may be within the law to injure or kill it in self defence.

However, if a person illegally enters a forest or a Protected Area and then has a chance encounter with a leopard, the fact that such person had illegally entered the said area without any valid authorisation would mean that a plea of self defence will not apply.

Any wild animal killed or injured in self defence shall be government property. This means that once an animal is killed by someone in self defence, that person does not have any right to take away the said animal or any part or derivative. If a person claims to have killed a Himalayan black bear (Schedule II) in self defence and is later found to have removed the gall bladder of such bear, he will not have exemption under right to self defence and is liable to be booked for “hunting”.

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<td>2) Specify some important observations related to hunting of wild animals.</td>
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6.10 SPECIFIED PLANTS AND THE ACT

Chapter III A

This chapter was introduced in 1991, when plant species were included for the first time in a schedule of the Act.

Sec. 17 A to 17H provide protection to specified plants which are listed under Schedule VI of the Act. This protection includes prohibition on picking, uprooting, damaging or collecting etc. of any specified plant from any forest land and area specified by the Central Govt.

It also prohibits trade, transfer possession or offer for sale etc. of any specified plants except as under license issued under the provisions of the Act.

No specific punishments have been prescribed for such violations and this is treated as a general violation of the Act. (See Sec 51 for more details)

6.11 PROTECTED AREAS

The term “Protected Areas” has been in use in conservation writings for quite some time. However, this was seen only as a Management term. The term has been introduced in the Act as the heading to Chapter IV only since April, 2003.

It is also defined as follows, “Protected Area means a national park, a sanctuary, a conservation reserve or a community reserve notified under Sections 18, 35, 36A and 36 C of the Act.”

6.11.1 Declaration of Sanctuary

The declaration of sanctuaries is one of several key steps:

Declaration of intent by issue of a notification to constitute any area “other than within a reserve forest or the territorial waters”.

Appointment of an officer within 30 days of issue of such notification of intent as Collector to enquire into and determine the existence, nature and extent of any rights of any person over any land within the limits of the proposed sanctuary.

Collector to issue proclamation within sixty days in the regional language in every town and village in the neighbourhood, which is to specify:

1) Situation and extent of sanctuary

2) Requiring any person claiming any right within the proposed sanctuary to submit a written claim with all details, within two months of such proclamation before the Collector

Collector to enquire into such claims and pass an order admitting or rejecting such a claim in whole or part.

For claims which are admitted, collector may either

a) Exclude such land from the sanctuary limits

b) Acquire such land, except where by mutual agreement, the land owner agrees to surrender his rights to the Government on payment of such compensation as provided in the Land Acquisition Act, 1894 (1 of 1894)
c) Allow, in consultation with the Chief Wildlife Warden, the continuation of any rights of a person over any land within the sanctuary.

Please note that there is no time limit for the collector to complete these proceedings even though Sec. 25 A states that the collector, as far as possible, will complete the proceedings under Sec. 19-25 within a period of two years from the date of notification of the sanctuary.

**When**

a) such notification of intent has been issued by the state government

b) the period for preferring any claims has passed

c) all claims have been disposed of

the state government shall issue a notification declaring the said area, specifying its limits, to be sanctuary from a date as may be specified.

For areas declared to be Reserve forests or lying within territorial waters of India, a single notification declaring the same as sanctuary will be issued. This is because the underlying presumption is that such areas already have their rights settled and do not need to undergo the same process again.

For example, when an area is to be declared as a Reserve Forest under the Indian Forest Act, 1927 or a similar state act, rights on such land need to be extinguished or admitted in part or full before the final notification declaring this as Reserve Forest can be issued.

Thus, to declare such an area as a Sanctuary, it is considered that the same process need not be repeated.

This presumption can lead to situations where the rights accepted within Reserved Forests may be adverse to the objectives of management of the area when it becomes a Sanctuary or a National Park in future!

It is also to be noted that most Sanctuaries and National Parks in India continue to lack a final notification and only have the first notification of intent! The matter was taken up by the Hon. Supreme Court of India.

Also, no alteration of the boundaries of a sanctuary can be done without the recommendation of the National Board.

### 6.11.2 Restrictions Inside a Sanctuary

Except for the following:

a) A public servant on duty or his/her dependents

b) A person permitted by the CWLW or Authorised Officer to live within the sanctuary limits or his/her dependents

c) Any person who has rights over immovable property within the sanctuary limits or his/her dependents

d) A person travelling through the Sanctuary on a public highway

Every person will enter or reside within a sanctuary only as per a permit issued by the Chief Wildlife Warden under the provisions of Sec. 28.

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4 Inserted vide Act 16 of 2003, w.e.f. 1.4.03
Every person who resides within a sanctuary has the legal obligation to prevent any offence under the Act and when there is reason to believe that such an offence has been committed, to help in finding out and arresting the offender.

Such person is also required to extinguish any forest fires, to report the death of any wild animal and to protect its carcass till any official takes charge of the same and to assist any forest or police officer to prevent any offence under this act and in its investigation.

The grant of permit by the CWLW can be for the following purposes:

a) Study of wildlife  
b) Photography  
c) Scientific research  
d) Tourism and  
e) any lawful business with any person residing lawfully within a sanctuary.

Activities specifically prohibited within a sanctuary:

To

a) Destroy, exploit or remove any wildlife including forest produce  
b) Destroy, or damage or divert the habitat of any wild animal  
c) Divert, stop or enhance the flow of water into or outside the sanctuary except as per a permit by the CWLW.

No such permit to be issued by the CWLW unless the State Government, in consultation with the state board, is satisfied that such an act will contribute to the betterment of the sanctuary.

If any forest produce is removed from a sanctuary as per any such activity, it shall not be used commercially but only for meeting bonafide requirements of communities living in or around the sanctuary.

This is specifically to prohibit any commercial activity under the guise of improving the management of a given Protected Area. Thus, extraction and auction of a grass like, *Eulaliopsis binata* used for manufacture of paper and rope cannot be permitted from a sanctuary as an activity for better fire protection of the area.

Other activities prohibited within a sanctuary

i) Causing fire

ii) Carrying a weapon without permission of the Chief Wildlife Warden

iii) Use of injurious substances including chemicals and explosives

**Self Assessment Question**

3) What are the restrictions inside sanctuary?

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6.11.3 Chief Wildlife Warden to Manage and Control Sanctuaries

The Chief Wildlife Warden is the authority who is responsible for control, management and maintenance of all sanctuaries.

For this purpose, he is authorised to construct roads, bridges, buildings etc. and carry out any such steps for the security of wild animals in the sanctuary and for the preservation of the sanctuary.

**However, no commercial tourist lodges, hotels etc. can be constructed in a sanctuary except with prior approval of the National Board of Wildlife.**

The Chief Wildlife Warden may also regulate, control or prohibit grazing or movement of livestock within the sanctuary, keeping in view the interest of wildlife.

The Chief Wildlife Warden is also expected to take steps to immunise all cattle living with a 5 km radius of the sanctuary.

Similarly, any person who grazes cattle within the sanctuary must necessarily have them immunised.

All persons who reside within 10 km of a sanctuary and hold a valid license under the Arms Act, 1959 or are exempted from having a license and hold any such arms shall apply to the Chief Wildlife Warden or the authorised officer for registration of such arms. (Sec. 34)

6.11.4 Advisory Committee

The state Government is required to create an Advisory Committee headed by the CWLW or his nominee not below the rank of Conservator of Forests. This will include as members, the local M.L.A., three representatives of local Panchayati Raj institutions, two representatives of NGOs, three individuals active in the field of wildlife conservation, one representative each from the Home and Veterinary departments and the Honorary Wildlife Warden, with the officer in charge of the sanctuary as Member Secretary.

This committee is mandated to provide advise on better management of the Sanctuary.

6.11.5 Removal of Encroachments

Notwithstanding any other regulation under any other law, any officer not below the rank of an Asst. Conservator of Forests is authorised to evict any person who is in unlawful occupation of Government land from a National Park or Sanctuary and to remove any unauthorised buildings etc. from such land, provided the affected person has been given an opportunity to be heard.

All such tools and effects of such person may also be confiscated by order of an officer not below the rank of a DCF.

This is in addition to any other penalty that may be imposed by law.

6.11.6 National Parks

The process of establishment of National Parks is similar to that for Sanctuaries with **one** notable difference.
Law and Policy Framework Related to Wildlife

No rights can be allowed within a National Park. As such, all rights over lands proposed to be included within a National Park must be vested with the state government OR such lands must be excluded from the National Park.

Any alteration of boundaries or destruction, exploitation or removal of wildlife from a National Park shall be carried out without consultation with the National Board for Wildlife.

Grazing of livestock is prohibited within a National Park.

6.11.7 Community Reserves and Conservation Reserves

With passage of time, due to several amendments in the Act, the difference in the law between National Parks and Sanctuaries is minimal today, barring some provisions such as prohibitions on holding rights within a National Park and grazing of livestock.

This can sometimes lead to situations where other areas (such as wildlife corridors or areas adjacent to National Parks or Sanctuaries which themselves are not National Parks or Sanctuaries) cannot get even a limited legal cover for conservation related activities. Also, there is limited opportunity for lands not owned by Government to be utilised for wildlife conservation unless the rights on the above are vested with Government. This also limits the role of individuals and communities holding lands to directly work for biodiversity conservation.

To address these limitations, the Act, as amended in 2002 has provided for two new categories of protected Areas, Community Reserves and Conservation Reserves.

6.11.7.1 Conservation Reserve

- Declared by state government after consultation with local communities, on land owned by Government.
- Management Committee which advises the CWLW in management of the Conservation Reserve.
- A certain limited number of activities are prohibited in a Conservation Reserve. These include that all persons, while they are in such Conservation Reserve are legally required to prevent damage to wildlife or stop any lighting of fire or extinguish any such fire or prevent any damage to any boundary pillar or prevent teasing or molestation of any wild animal or littering within such Reserve.

6.11.7.2 Community Reserve

- Declared by state government, where any individual or community has volunteered to conserve wildlife and its habitat, on land owned privately or by communities.
- Management Committee which advises the CWLW in management of the Community Reserve. This will include five members nominated by the village Panchayat or where no such Panchayat exists, by the Gram Sabha and one representative from the State Forest or Wildlife Department.
• Chairperson of Management Committee also to be Honorary Wildlife Warden.

• A certain limited number of activities are prohibited in a Conservation Reserve. These include that all persons, while they are in such Conservation Reserve are legally required to prevent damage to wildlife or stop any lighting of fire or extinguish any such fire or prevent any damage to any boundary pillar or prevent teasing or molestation of any wild animal or littering within such Reserve.

6.12 CONTROL AND REGULATION OF ZOOS

The Act has introduced a special chapter, IV-A on the management of Zoos. It has provisions for the establishment of a Central Zoo Authority (CZA). The CZA is responsible for various functions related to management of zoos including prescribing standards for housing, upkeep and veterinary care of animals in a zoo, evaluation of zoos, recognising or derecognising zoos, managing breeding and maintenance of stud books, coordinating training etc..

The CZA is required to submit an Annual report to the Central Government, which will lay it before Parliament.

All zoos need to be recognised by the CZA.

This chapter also prohibits the teasing or molestation or feeding or disturbance of animals in a zoo or littering the zoo grounds.

6.13 SUMMARY

• In this unit we have discussed the historical background of wildlife conservation legislation in India. We have also discussed the scope and extent of the Act and the key definitions of important terms in the Act.

• We have discussed the role of various authorities appointed under this Act.

• We have seen the important provisions related to hunting as prescribed under the Act.

• We have discussed in brief, the specific provisions related to specified plant species.

• We have discussed in details the various categories of Protected Areas established under the Act.

6.14 TERMINAL QUESTIONS

1) Describe the conditions under which a species listed in Schedule I to IV of the WLPA can be permitted to be hunted.

2) What are the various categories of Protected Areas in India? Describe in brief the various acts that are specifically permitted and prohibited in such areas.

3) Describe the role of the Chief Wildlife Warden in the management of various Protected Areas.
6.15 ANSWERS AND HINTS

Self Assessment Questions
1) Refer to Sub-section 6.8.2
2) Refer to Section 6.9
3) Refer to Sub-section 6.11.2

Terminal Question
1) Please refer to the Sections of WPA above for answers of Terminal Question 1 to 3.

6.16 GLOSSARY

Protected Areas : A Wildlife Sanctuary, National Park, Conservation Reserve or Community Reserve established as per provisions of the WLPA, 1972.

Specified Plants : Any of the plant species as listed in Schedule of the WLPA 1972.

6.17 REFERENCES AND SUGGESTED READINGS

- Commentaries on Wildlife Law, by Ritwick Dutta- published by Wildlife Trust of India.
UNIT 7  THE WILDLIFE (PROTECTION) ACT, 1972 – PART II

Structure

7.1 Introduction
7.2 Objectives
7.3 Establishment and Role of National Tiger Conservation Authority
   7.3.1 Project Tiger was Launched on 1st April, 1973 at Corbett National Park
   7.3.2 Powers and Functions of the NTCA
   7.3.3 Tiger Conservation Plan
   7.3.4 Establishment of Tiger Conservation Foundation
7.4 Establishment of Wildlife Crime Control Bureau
   7.4.1 Creation of Wildlife Crime Control Bureau (WCCB)
   7.4.2 Power and Functions of the Wildlife Crime Control Bureau
7.5 Trade in Wild Animals and Animal Articles
7.6 Prevention and Detection of Offences
   7.6.1 Powers of Various Officials
   7.6.2 Special Power to Conduct Investigation
   7.6.3 Statements Recorded before Forest Officers
7.7 Penalties
   7.7.1 Penalties
   7.7.2 Attempts and Abetment
7.8 Compounding of Offences
7.9 Cognizance of Offences
7.10 Forfeiture of Property Derived from Illegal Hunting and Trade (Chapter VI A)
7.11 Some General Provisions
7.12 Summary
7.13 Terminal Questions
7.14 Answers and Hints
7.15 Glossary
7.16 References and Suggested Readings

7.1 INTRODUCTION

As per 42nd amendment of the Constitution (1976), the subject, “Forests” and “Wildlife” shifted from State list to the Concurrent list. National Tiger Conservation Authority (NTCA) was created by an Amendment to the Act in 2006. The Powers and Functions of NTCA, inter alia, are to evaluate and assess various aspects of sustainable ecology and to disallow any ecologically unsustainable land use, such as mining, industry and other projects within the tiger reserves, to lay down normative standard for tourism activities and guidelines for Project Tiger from time to time for tiger conservation, while preparing a Tiger Conservation Plan, the State Govt. is expected to ensure the
agriculture, livelihood, development and other interest of the people living in a tiger-bearing forest or a tiger reserve. The Wildlife (Protection) Act provides for the creation of a multidisciplinary Wildlife Crime Control Bureau (WCCB).

7.2 OBJECTIVES

After reading this unit, you should be able to:

- explain the role of the National Tiger Conservation Authority and the Wildlife Crime Control Bureau;
- explain the provisions related to “trade” in the Wildlife (Protection) Act, 1972;
- discuss the various provisions on prevention and detection of offences;
- describe the penalties in the WLPA; and
- explain key provisions related to cognisance of offences under the WLPA.

7.3 ESTABLISHMENT AND ROLE OF NATIONAL TIGER CONSERVATION AUTHORITY

7.3.1 Project Tiger was Launched on 1st April, 1973 at Corbett National Park

Initially, the Project started with 9 tiger reserves, covering an area of 16,339 sq.km. This scheme has since been under implementation since 1973 as a Centrally Sponsored Scheme of Government of India. However, it was seen only as a source of central funding for management of tiger Reserves spread across the country and had a limited role in enforcing management actions.

Following the 42nd amendment to the Constitution in 1976, the subject of ‘forests’ and ‘wildlife’ shifted from the State list to the Concurrent list. “The Centre acquired overriding powers to ensure protection and preservation of forests and wildlife”. By the 1990s, this arrangement began to function more in the breach. Project Tiger suffered. Without direct stake in protecting wildlife and forests, states treated these as matters to be administered. State politicians found protecting huge swathes of land expensive, even inimical to growth. The Centre had a direct stake, but was too distant from ground realities to be effective.

Among a series of recommendations made by the Tiger Task Force, one was that the Project Tiger directorate must be given the legal status of an authority, to facilitate its work and provide it autonomy.

This is how the National Tiger Conservation Authority (NTCA) was created by an amendment to the Act in 2006.

The NTCA is to be headed by the Minister in charge of the Ministry of Environment and Forests along with other members including three M.P.s, and 8 experts including two from Tribal Welfare.

1 Joining the Dots, the report of the Tiger Task Force, August 2005
7.3.2 Powers and Functions of the NTCA

The NTCA is mandated with a vast range of powers and functions including:

a) to approve the Tiger Conservation Plan prepared by the State Government under sub-section (3) of section 38V of this Act;

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

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

d) provide for management focus and measures for addressing conflicts of men and wild animals and to emphasise on co-existence in forest areas 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 and areas linking one protected area or tiger reserve with another protected area or tiger reserve are not diverted for ecologically unsustainable uses, except in public interest and with the approval of the National Board for Wild Life and on the advice of the Tiger Conservation Authority;

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

i) ensure critical support including scientific, information technology and legal support for better implementation of the tiger conservation plan;

j) facilitate ongoing capacity building 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.

Even under the most enabling environment, this is certainly a tall ask.

The State Governments are advised to create a **Steering Committee** headed by the Chief Minister, to ensure coordination, monitoring and protection of tigers and their habitats.

The State Government is also required to notify an area as a Tiger Reserve, on the recommendation of the Tiger Conservation Authority.
Various provisions of the Act such as 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 become applicable, as far as may be, to a tiger reserve as they apply in relation to a sanctuary.

Thus, from being a Management Category, a Tiger Reserve acquires a legal sanction under the Act. Please also note that it still does not qualify as a Protected Area.

### 7.3.3 Tiger Conservation Plan

The State Government shall prepare a Tiger Conservation Plan including staff development and deployment plan for the proper management of each such Tiger Reserve 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 is expected to ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve. Explanation.- For the purposes of this section, 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 rights 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 such areas are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for this purpose.

While the intentions of the law makers must be complemented, the above is clearly a set of intentions that will be very very difficult to implement. In effect, in our opinion, a lot of field management issues and terms including those which are very poorly defined or understood have now been included within the ambit of the Act. As such, they become open to interpretation and judicial scrutiny.

**For example**

Areas….. established, on the basis of scientific and objective criteria….. without affecting the rights of the Scheduled Tribes or such other forest dwellers…………..!!
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 such areas are determined on the basis of scientific and objective criteria…………!!

Any of the above can be interpreted in any whichever way depending on who is doing the arguing! Whether an area has adequate dispersal for tiger species is a question, to my mind, almost impossible to resolve, especially when a dispute has arisen to the same.

7.3.4 Establishment of Tiger Conservation Foundation

The State Government is also required to 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.

7.4 ESTABLISHMENT OF WILDLIFE CRIME CONTROL BUREAU

7.4.1 Creation of Wildlife Crime Control Bureau (WCCB)

The Act has provided for the creation of a multidisciplinary Wildlife Crime Control Bureau (WCCB) consisting 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.

7.4.2 Powers and Functions of the Wildlife Crime Control Bureau

The WCCB has been mandated with the following:

i) collect and collate intelligence related to organized wildlife crime activities and to disseminate the same to State and other enforcement agencies for immediate action so as to apprehend the criminals and to establish a centralised 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 concerned authorities in foreign countries and concerned international organisations 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) advice 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.

### 7.5 TRADE IN WILD ANIMALS AND ANIMAL ARTICLES

Chapter V of the WLPA: This chapter deals with various issues related to trade in wild animals, animal articles and trophies.

A) Sec. 39 of the Act, which is the first section within the chapter, is easily one of the most important.

The Caption for this section says, “Wild animals etc. to be Govt. property”.

For a casual observer, this would imply that the prevailing legal provision is that all wild animals are, in effect, Govt. Property and belong to the Government. Closer examination suggests this is not entirely the case.

This section clearly states that every wild animal, other than vermin, which is hunted either legally or in violation of any provisions of this Act, any wild animal either kept in captivity or hunted or any animal article, ivory (including imported ivory) or any article made from such ivory, meat which is in violation of any of the provisions of this Act, shall be Government Property.

It is thus, clear that free living wild animals are no one’s properties but the moment any offence as per the provisions of this Act is committed against such wild animal, they come under the protective umbrella of the state and become Government Property. The same extends to any animal article or trophy etc.

In another important statement, Section 39 (d) prescribes that “every vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provision of this Act shall be the property of the State Government…..”

This has led to differing viewpoints. One interpretation of the above is that whenever any vehicle or weapon etc. has been seized during the commission of a wildlife related offence under this act, it automatically becomes Government Property. Thus vested in the state, no court can give it back to its original owner. This view has, predictably, been taken by many Forest Departments across the country and the same has been challenged before several courts of law.

Several courts across the country have dealt with this issue. Based on the various judicial pronouncements on this issue, the following emerges:

1) In case of any offence against the Act, a criminal trial is mandatory, otherwise Sec. 39 of the WLPA will not have any application…

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2 Indian Handicrafts Emporium v. Union of India, AIR 2003 SC 3240
2) If the competent court of law does not find the involvement of seized vehicle in the commission of the offence, the seized vehicle will not become Govt. property….3

3) The main object of the Act is to preserve wild animals, birds and plants. Liberal approach in such matters with respect to property seized which is liable for confiscation, is uncalled for……. The liberal approach in such matters would perpetuate the commission of more offences ………..therefore the court may release the vehicle during the pendency of the case and furnishing a bank guarantee should be the minimum condition…4

Self Assessment Question
1) Write in brief about Section 39.

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B) Other sections of this Chapter prescribe that without the previous written permission of the CWLW, no person is allowed to keep, receive, acquire or otherwise transfer or transport any animal or animal article of any species listed in Schedule I or Part II of Schedule II.

Every person who had the possession of any such animal or animal article as described above when this Act was enacted, was required to declare the same to the CWLW.

After due enquiry, the CWLW may issue a certificate of ownership for such wild animals or animal articles.

Animals or animal articles of species listed in Schedule I or Part II of Schedule II can be transferred only by inheritance and cannot be otherwise gifted, transferred or sold.

Any person who has a captive animal or animal article or trophy etc. for which he has a Certificate of ownership, is prohibited from transferring by sale or offer for sale or by any consideration of commercial nature.

Please note that this restriction does not apply to:

1) Trade in tail feather of peacock and any articles made from it

2) Transfer of captive animals amongst recognised zoos and transfers amongst zoos and public museums.

Sec. 44 also expressly prohibits any person from carrying out any business as a manufacturer or dealer in any animal article, trophy or uncured trophy or a dealer

3 Baikuntha Bihari Mohapatra v. State of Orissa, 2001 , Orissa High Court
in captive animal, meat; or a taxidermist, dealer an meat; or derive collect or prepare or deal in snake venom, except with a license issued by the CWLW or authorised officer.

This section also does not apply to dealers in peacock tail feathers or manufacturers of articles made from such feathers.

C) An interesting fact is that many dealers of ivory and ivory articles had challenged the ban on such trade as being violative of the Constitution of India. The Supreme Court, in an important judgement, upheld the constitutional validity of the provisions of the said Act. This Court held that in terms of Sub-Section (7) of Section 49-C of the Act all persons in general and traders in particular have become disentitled from keeping in their control any animal article including ivory imported in India.

This Court further held that as a logical corollary to the said finding, the statutory authorities would be entitled to take possession of such ivory in terms thereof; the purport and object of the Act being to impose a complete ban on trade in ivory. A complete prohibition has been imposed in the trade of ivory (whether imported in India or extracted by killing Indian elephants) for the purpose of protecting the endangered species. Trade in ivory imported in India has been prohibited further with a view to give effect to the provisions contained in Article 48A as also Article 51A(g) of the Constitution of India.

In another important judgment, the Supreme Court of India also expanded the definition of the term, “ivory”. The question before the court was whether ‘mammoth ivory’ imported in India answers the description of the words ‘ivory imported in India’ contained in Wild Life (Protection) Act, 1972 as amended by Act No. 44 of 1991.

The court made the following observations:

“The appellants M/s Unigems had imported mammoth fossil said to be of an extinct species in the year 1987. The stock of mammoth fossil held by the appellants is said to be periodically checked by the statutory authorities. The appellant in the other case Balram Kumawat is a carver.

Mammoth is said to be pre-historic animal which disappeared due to climatic conditions prevailing in Alaska and Siberia. According to the appellants the distinction between mammoth and elephant ivory is that whereas mammoth belongs to an extinct species, the ivory of elephant is of an extant living animal. The appellants state that mammoth ivory is distinguishable by visual and non-destructive means vis-à-vis elephant ivory and even in Convention on International Trade in Endangered Species.

What has been banned is ivory. There is complete prohibition of trade in ivory. Such a complete prohibition is a reasonable restriction within the meaning of Clause (6) of Article 19 of the Constitution of India. The impugned Act being not unreasonable does not also attract the wrath of Article 14 of the Constitution of India.

5 Indian Handicrafts Emporium & Ors. v. Union of India & Ors. (Civil Appeal No. 7533 of 1997)
6 Balram Kumawat v. Union of India & Ors., Civil Appeal No. 7536 of 1997 Supreme Court of India, decided on 27/08/2003
For the purpose of determination of the question, we need to consider only the dictionary meaning of the term ‘ivory’. Commercial meaning or technical meaning of an object or article is required to be taken recourse to when the same is necessary for the purpose of meeting the requirements of law. The law in no uncertain terms says that no person shall trade in ivory. It does not say that what is prohibited is trade in elephant ivory or other types of ivory. The purport and object of the Act, as noticed in the judgment in Indian Handicrafts Emporium (supra), is that nobody can carry on business activity in imported ivory so that while doing so, trade in ivory procured by way of poaching of elephants may be facilitated. The Parliament, therefore, advisedly used the word ‘ivory’ instead of elephant ivory. The intention of the Parliament in this behalf, in our opinion, is absolutely clear and unambiguous. We cannot assume that the Parliament was not aware of existence of different types of ivory. If the intention of the Parliament was to confine the subject matter of ban under Act 44 of 1991 to elephant ivory, it would have said so explicitly.

As noticed hereinbefore, the object of the Parliament was not only to ban trade in imported elephant ivory but ivory of every description so that poaching of elephant can be effectively restricted. An article made of plastic would by no means resemble ivory. …………..”

Thus, in one stroke the highest court of the land has banned any trade in all forms of ivory.

Chapter V A of the Act was introduced in 1986 and prescribes a prohibition of Trade or Commerce in Trophies, Animal Articles, etc. derived from animals listed in Schedule I or Part II of Schedule II.

7.6 PREVENTION AND DETECTION OF OFFENCES

7.6.1 Powers of Various Officials

Certain specific powers have been given to various officials, for the purposes of preventing and detecting any offences under this Act.

Thus,

- Director, Wildlife Preservation or any officer so authorised by him
- Chief Wildlife Warden
- Authorised Officer
- Any Forest Officer
- Any police officer not below the rank of a sub inspector

If, they have reasonable grounds to believe that any person has committed any offence under this Act, have been provided the following legal powers under this Act:

1) To require any such person to produce for inspection any captive animal, wild animal, animal article, meat, etc. in his control, custody or possession, or any licence, permit or any other document granted to him or required to be kept by him under the provisions of this Act;

The Wildlife (Protection) Act, 1972 – Part II
2) **stop** any vehicle or vessel 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;

3) **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, 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.

It shall be lawful for any such officer as referred to above to stop and detain any person, whom he sees doing any act for which a licence or permit is required under the provisions of this Act, to ask such person to produce 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.

However, in case where a fisherman, residing within ten kilometres of a sanctuary or National Park, inadvertently enters on a boat not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net no such boat shall not be seized.

Please note that this makes an offence against the Act cognizable, which means that a person accused of an offence against this Act can be arrested without a warrant.

Please note that if the situation so warrants, the officer may also enter a premises and carry out a search of premises or vessel or vehicle etc. without a search warrant.

If any captive animal or wild animal is seized by an officer under the provisions of this Act, any officer not below the rank of an Assistant Director of Wildlife Preservation or Wildlife Warden may give the same for custody on the execution by any person of a bond for the production of such animal if and when so required, before the magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law.

Any person who, without reasonable cause, fails to produce anything which he is required to produce under this section, shall be guilty of an offence against the Act.

All persons, when approached, are duty bound to provide assistance for prevention or detection of any offence under the Act. Thus, whenever any person is approached by any of the officers as referred above, for assistance in the prevention or detection of an offence against this Act, or in apprehending persons charged with the violation of this Act, or for carrying out any seizure, it shall be the duty of such person or persons to render such assistance. (Sec. 50 (7)).
2) What is a seizure?

7.6.2 Special Power to Conduct Investigation

Forest officers of a certain rank have been provided certain special powers to conduct investigations under the provisions of this Act.

Thus, any officer not below the rank of an Assistant Director of Wild Life Preservation or not below the rank of Assistant Conservator of Forests so authorised by the state Government, shall have the powers, for carrying out investigation into any offence against any provision of this Act,

a) to issue a search warrant;
b) to enforce the attendance of witnesses;
c) to compel the discovery and production of documents and material objects; and
d) to receive and record evidence.

Any evidence recorded as above shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person.

It is to be noted here that the granting of these quasi judicial powers does not mean that the Asstt. Conservator of Forests is the only person who can conduct an investigation into various offences under the Act.

In Motilal v. Union of India7, the Supreme Court of India has held that “…..As provided under sub-Section (1) of S. 50 ‘police officers’ are not excluded for the purpose of investigation including inspection, search and seizure of the offending articles. No doubt, special powers are conferred to other officers but that is in consonance with sub-Section (2) of S.4 of Code of Criminal Procedure……….. The aforesaid Section inter alia specifically provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure but it shall be subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In view of specific provision under the Wild Life Act, apart from the police officer not below the rank of Sub-Inspector, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or Authorised Officer or any Forest Officer can inspect, conduct search or inquire, seize article mentioned in

7 Moti Lal v. Central Bureau of Investigation and others, Supreme Court of India, 2002 CRI. L. J. 2060
the Cls. (a), (b) and (c) of sub-Section (1). To this extent, there is contrary provision under the Wild Life Act and would prevail as provided under sub-Section (2) of S.4 of the Code of Criminal Procedure.

The scheme of S. 50 of the Wild Life Act makes it abundantly clear that Police Officer is also empowered to investigate the offences and search and seize the offending articles. For trial of offences, Code of Criminal Procedure is required to be followed and for that there is no other specific provision to the contrary. Special procedure prescribed is limited for taking cognizance of the offence as well as powers are given in other officers mentioned in S.50 for inspection, arrest, search and seizure as well of recording statement. The power to compound offences is also conferred under S. 54. Section 51 provides for penalties which would indicate that certain offences are cognizable offences meaning thereby police officer can arrest without warrant. Sub-Section (5) of S.51 provides that nothing contained in S.360 of the Code of Criminal Procedure or in the Probation of Offenders Act 1958 shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a national park or of an offence against any provision of Chapter 5-A unless such person is under 18 years of age. The aforesaid specific provisions are contrary to the provisions contained in Code of Criminal Procedure and that would prevail during the trial. However, from this, it cannot be said that operation of rest of the provisions of the Code of Criminal Procedure are excluded….."

The Hon. Supreme Court thus held that Sec.50 of the Wild Life Act is not a complete Code and, therefore, it does not imply that CBI would have no jurisdiction to investigate the offences under the said Act.

7.6.3 Statements Recorded before Forest Officers

It is important to note here that various judicial pronouncements have clarified that “Forest officers are not police officers and as such, statements made before them do not attract the provisions of Sec. 25 of the Indian Evidence Act 1972 and Section 162 of the Cr.P.C.

In one of the most quoted cases in this regard, 8 the main evidence against the petitioner consisted in the statement made by him to by the Forest Range Officer who with his party of guards and foresters found the petitioner and others coming in a lorry with carcasses of deer. This statement of the petitioner was made before the Range Officer which was a confession of his shooting the deer.

It was argued before the court was that this statement is inadmissible in evidence. It was contended that the Forest Range Officers have powers similar to those of a police officer to arrest and detain the offenders, that for all practical purposes they have the same powers of a ‘police officer’ and that, therefore, they must be deemed to be ‘police officer’ within the meaning of S.25 of the Indian Evidence Act and hence any statement made by the petitioner before the Forest Range Officer must be ruled out as inadmissible.

After detailed consideration, the Bombay High Court ruled that, “Therefore the statements made to a forest officer stand on a different footing from those made to police officers. As the forest officers are not conferred with powers of an

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8 E.C. Richard v. Forest Range Officer, Mettupalayam, as reported in AIR 1958 Madras 31 (V 45 C 10)
officer in charge of a police station they cannot by any means be considered police officers under the Criminal Procedure Code and S.25 of the Evidence Act cannot apply to them. Therefore, in the present case the statement made by the petitioner to the Forest Range Officer, P.W.1 is admissible to evidence and it is not disputed that if this statement is admissible, the conviction is sustainable.”

7.7 PENALTIES

7.7.1 Penalties

The following penalties are prescribed for violations of the Act:

1) For any general offence under this Act:
   Imprisonment upto 3 years OR with fine upto twenty five thousand Rupees OR both.

2) Offence committed is related to any species listed in Schedule I or Part II of Schedule II of the Act, or hunting in a National Park and Sanctuary or altering the boundaries of a National Park or Sanctuary.
   Imprisonment not less than 3 years upto 7 years AND also with fine not less than ten thousand Rupees.

3) For second and subsequent offences as above:
   Imprisonment not less than 3 years upto 7 years AND also with fine not less than twenty five thousand Rupees.

4) For violation of provisions of Chapter V A (relating to trade in animals specified in Schedule I or Part II of Schedule II of the Act):
   Imprisonment not less than 3 years upto 7 years AND also with fine not less than ten thousand Rupees.

5) For violation of Sec. 38-J relating to teasing or molesting animals in a zoo and littering etc. in a zoo:
   Imprisonment upto 6 months OR with fine upto two thousand Rupees or both.
   For any second or subsequent offence in a zoo, the punishment would be enhanced to Imprisonment upto 1 year OR with fine upto five thousand Rupees.

6) For offences in relation to the Core area of a Tiger Reserve or hunting in a Tiger Reserve or alteration of boundaries of the Tiger Reserve:
   Imprisonment not less than 3 years upto 7 years AND also with fine not less than fifty thousand Rupees which may extend upto two lakh Rupees.

For second and subsequent offences, the imprisonment could be not less than seven years AND also with fine not less than five lakh Rupees which may go up to fifty lakh Rupees.
7.7.2 Attempts and Abetment

Every attempt to contravene, or abetment of the contravention of, any of the provisions of this Act or of any rule or order made thereunder is deemed to be a contravention of that provision or rule or order.

In this, the Act does not make any distinction between any violation or attempt to violate and both are treated on an equally. This is clearly distinct from similar provisions from other laws, e.g. in the Indian Penal Code where murder and attempt to murder are two different offences.

7.8 COMPOUNDING OF OFFENCES

The Central Government may by notification, empower the Director of Wild Life Preservation of any other officer not below the rank of Assistant Director of Wild Life Preservation and similarly, of State Government may empower the Chief Wild Life Warden or any officer of a rank not below the rank of a Deputy Conservator of Forests, to accept from any person against whom a reasonable suspicion exists that he has committed an offence against this Act, payment of a sum of money by way of composition of the offence which such person is suspected to have committed.

On payment of such sum of money to such officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person.

The sum of money accepted or agreed to be accepted as composition under sub-section (1) shall, in no case, exceed the sum of twenty five thousand Rupees.

No offence for which minimum period of imprisonment has been prescribed in the Act, shall be compounded.

7.9 COGNIZANCE OF OFFENCES

The Act clearly provides as to how matters related to the violation of the WLPA can be taken up before courts of law:

It has to be in the form of a complaint. This is defined as "Any allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but does not include a police report." 9

Please note that A Complaint is NOT a police report and as such, Charge sheets filed by police in wildlife offences under the Act are liable to be dismissed.

There is no prescribed format for a complaint and any written submission before the Magistrate, carrying an allegation that an offence has been committed and ending with a prayer to deal with the accused as per relevant provisions of law, is a complaint.

9 Section 2(d) of Cr.P.C
The following persons only are authorised by the Act, to file complaints:

a) Director of Wild Life Preservation or any other officer authorised in this behalf by the Central Government, or

b) Member Secretary, Central Zoo authority in matters relating to violation of the provisions of Chapter IV A or

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

d) Officer incharge of the Zoo in respect of violation of provisions of Section 38J; or

e) Any person who has given notice of not less than sixty days, in the manner prescribed, 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 above.

Thus, private persons are also authorised to file complaints in these matters, but only after they have given a notice of 60 days, to the concerned official of his intention to file such complaint.

7.10 FORFEITURE OF PROPERTY DERIVED FROM ILLEGAL HUNTING AND TRADE (CHAPTER VI A)

By an amendment brought in 2003, there is now a prescribed procedure wherein any illegally acquired property held either by any person or through any other person on his behalf or where any person holds such property in contravention of the provisions of this Act, such property shall be liable to be forfeited to the State as per procedure laid down in accordance with the provisions of this Chapter. No property shall be forfeited under this Chapter if such property was acquired by a person to whom this Act applies before a period of six years from the date on which he was charged for an offence relating to illegal hunting and trade of Wildlife and its products.

This provision is specifically applicable to every person who has been convicted of an offence punishable under this Act with imprisonment for a term of three years or more; every associate of a person referred to as above; any holder of any property which was at any time previously held by a person referred to in as above unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

7.11 SOME GENERAL PROVISIONS

Finally, there are certain general provisions laid down which include the following:

- Operation of other laws is not barred (Sec. 56)
- All officers are deemed to be Public Servants (Sec. 59)
Law and Policy Framework Related to Forest

- Court may order reward upto 50% of any fine ordered, to such persons who have assisted in detection of the offence or in apprehending the offenders.
- States can empower CWLWs to grant reward of upto Rs. Ten thousand to such person or persons who have assisted in detection of the offence or in apprehending the offenders.
- Power of Central Government to make rules on certain aspects of the Act. (Sec. 63)
- Power of Central Government to make rules on certain aspects of the Act. (Sec. 64)

7.12 SUMMARY

- In this unit, we have discussed various provisions of the Wildlife (Protection) Act, 1972 with respect to the National Tiger Conservation Authority and the various roles and responsibilities of the same.
- We further discussed the establishment and role of the Wildlife Crime Control Bureau.
- We have also looked at the various provisions related to trade in various animals and animal parts.
- We have also looked at provisions related to prevention and detection of offences, various powers granted to authorities under this act.
- We have also examined the various penalties prescribed under the Act.

7.13 TERMINAL QUESTIONS

1) What are the roles and responsibilities of the NTCA with respect to management of a Tiger Reserve?
2) What are the special powers vested upon a Forest Officer in comparison with a Police Officer for the investigation of offences under this Act?
3) How can courts take cognizance of offences under this Act?

7.14 ANSWERS AND HINTS

Self Assessment Questions
1) Refer to Section 7.5
2) Refer to Section 7.6

Terminal Questions
1) Refer to Sub-section 7.3.2
2) Refer to Section 7.6
3) Refer to Section 7.9
7.15 GLOSSARY

Tiger Conservation Plan : A plan prepared by a state government under the provisions of this Act for the proper management of a Tiger Reserve in the state so as to ensure better protection of the tiger reserve and providing site specific habitat inputs for a viable population of tigers, co-predators and prey animals, keeping in view other social considerations as laid down.

7.16 REFERENCES AND SUGGESTED READINGS
