

CHAPTER - V

JUDICIAL ATTITUDE AND WILD LIFE PROTECTION

I. Introduction

Man is destroying nature, environment and wild life. We all know that wildlife and wild animals are an essential part of nature. Technological excellence, growth of industries and economical gains had led to depletion of natural resources, irreversibly. This is mainly because of lack of public awareness and foresightedness, lack of concern and indifferent attitude towards the grave consequence of destruction of wildlife. Large scale killing of wildlife and loss of vegetal cover has resulted in decline of environmental quality.¹

The judiciary is the custodian of the rights of the citizens and if the citizen's right guaranteed under the Constitution of India is violated, the court can use its power to grant relief in the form of damages or compensation. If any right is violated or the laws are not complied with respect to any person, the court can't sit with folded hands and closed eyes and let the laws being violated.²

The courts have played an unfortunate role of bending backwards to interpret the laws in favour of the predator and it is only in the course of the last ten years that a citizen movement began to emerge which has achieved results in isolated areas and has received a fair support from the judiciary. The judiciary plays an active role in giving decisions in favour of wildlife preservation. Now the

1 See, S.A.K. Azad, Hunting of Wild Animals and its Legal Control in India, 2004, p. 212

2 Ibid.

courts are also participating in wildlife protection by giving appropriate sentencing and deterrent sentencing in wild life crimes.

II. Hunting

In India, wildlife has been traditionally hunted since ages. Perhaps such hunting was sustainable when forest cover was vast, human population was low and wildlife existed in high density. Hunting was more for subsistence and not for commercial interest.

Various forms of wildlife are hunted for commercially valuable products like horns, antlers, pelt, bone, feather etc. Charismatic animals like tigers, rhinos and elephants are hunted for the high value international trade in tiger bone, rhino horn & ivory.

It has been held in **State of Bihar vs. Murad Ali Khan**³ that hunting is an offence under Section 51(1) of the Wildlife Protection Act. In the present case the Range Forest Officer filed a complaint in Magistrate's Court in writing that the accused had shot and killed an elephant in Range Forest and had removed the tusks. The Magistrate ordered issue of process against the accused, even though the investigations by police were in progress in relation to same offence.

The respondents approached the High Court under Section 482 of the Cr.P.C. for quashing the order of the Magistrate. Taking cognizance of the alleged offence and issuing summons, the High Court of Patna accepted the petitioner's contention and quashed the order of the Magistrate. In view of the High Court the Magistrate acted without jurisdiction in taking cognizance of the offence and

3 AIR 1989 SC 1.

ordering issue of process against the accused. Relying on this the High Court quashed the proceedings. The decision of High Court was based on two grounds. Firstly, the learned Magistrate acted contrary to the provision of Section 210 of Cr.P.C. and Secondly on the merits of the complaint. ⁴

Hon'ble Supreme Court observed that the High Court has erred in coming to the right conclusion. The Court said,

"Cognizance of an offence against the 'Act' can be taken by a court only on the complaint of the officer mentioned in Sec. 55 and it has been done in this case."

The Court also said that the Section 482 of Cr.P.C. should be used sparingly and that an offence under Sec. 9(1) read with Sec.2 (16) and 51 of the Wildlife Protection Act in its ingredient and content is not same or substantially the same as section 429 of the Indian Penal Code. Therefore, in case of killing an elephant, the report of the police investigation, which made out that no offence was committed under section 429 of Indian Penal Code would not bar with initiation of such proceedings under Sec. 9(1) read with Sec. 51 of the Wildlife Protection Act, 1972. Hence the Court set aside the High Court order and the Magistrate order was restored.

Hunting of wild animals is to be permitted in certain cases, for example, in self defence. To decide whether in killing an animal the accused acted in self-defence or not, the nature and ferocity of the animal will be a relevant factor.

In **Trilok Bahadur vs. State of Arunachal Pradesh**,⁵ it was argued that whether the accused acted in self-defence or not. The brief facts of the case are that the petitioner was

⁴ Ibid.

⁵ 1979 CrLJ 1409 (Gauhati)

a guard in Changlai camp, when on sentry duty he observed the presence of a tiger. He reported the same to his Commander. Accordingly, he was ordered by his Commander to fire two or three rounds in the air. The tiger instead of fleeing came towards him and attempted to assault him. The accused had no option but to fire at the tiger. As a result the tiger died.

The Deputy Commissioner sentenced the accused for 6 months simple imprisonment under section 51 of the Wildlife Protection Act. A Criminal Revision was filed before the High Court. The basic question before the Court was to determine whether the accused killed the tiger in hunting or self-defence. The Court observed that the ferocity of the animal would be relevant in that context.

A tiger is an animal, what the Romans called a *ferae naturae*. Tiger by nature is a dangerous animal. In the case of attack by '*ferae naturae*' the victim cannot be expected to weigh the chances in golden scale. The inference can be drawn that he was acting in good faith in defence of oneself and it can't be said that the accused was committing any offence prior to shooting the tiger that charged at him. Therefore, he will be completely protected under sub-section (2) of Sec 11.

The impugned order of conviction and sentence is contrary to the provisions of Sec 11 of the Wildlife Protection Act and as such it is liable to be set aside.⁶

In another case, **Jagdish Singh vs. State of Bihar**⁷ the accused was held for killing a Bison and the Trial Court convicted him for the imprisonment of 3 months. The petitioner filed the appeal against this order. The facts of the case are that while the Wildlife Warden was patrolling

6 Ibid.

7 1985 CrLJ. 1314 (Pat.)

the forest along with his staff in the Belta Reserved Forest, he found the petitioner killing a Bison. The Wildlife Warden prepared the seizure list and arrested the petitioner and filed the case before the Sub-Divisional Magistrate. He charged him under Sec. 51 of the Wildlife Protection Act. Against this order the petitioner filed an appeal before the Sessions Judge. The petitioner contended that the Wildlife Warden had no jurisdiction to file a complaint; only Chief Wildlife Warden or any authorized person under the Act by the State Government had power to do so.

In view of Rule 31 of 1973,⁸ framed by the State Government, besides the Chief Wildlife Warden, the Divisional Forest Officer or the Deputy Conservator of Forest is also entitled to file complaint. In **Jagdish Singh vs. State of Bihar**,⁹ the complaint was filed after obtaining sanction from the Divisional Forest Officer who was authorized to file the complaint.

It is relevant to mention here that under the Wildlife Protection Act the authorities concerned are given power to delegate his powers to any of his subordinate officers.¹⁰ Therefore, it can't be said that no other person except the Chief Wildlife Warden or such other officer who has been authorized by the State Government can file a complaint upon which cognizance can be taken.

Before the enactment of Wildlife Protection Act, 1972, the position was totally different. In the absence of the Act; the courts were guided by mainly the provisions of Indian Penal Code and Wild Birds and Animals Protection Act, 1912. Even before that there were legislations like the Forest Act, 1878, which dealt with wild animals and plants.

8 The Bihar Wild Life Protection Rules, 1973, Rule 31

9 1985 CrLJ1314 (Pat.)

10 The Wild Life Protection Act, 1972, Sec.5 (2)

The Prevention of Cruelty to Animals Act, 1890 dealt with prevention of cruelty against domestic animals.

If we look at the Forest Act (1878), in Sec. 26 it defined the word 'hunt'. The word hunt implies motion, a chase and a pursuit. Hence any person who was one of the party beating up game in a reserved forest in this fashion was a member of the hunt, and even though he himself may not be within the prohibited areas he was guilty of the offence along with the rest of the hunt.¹¹

Nabin Chandra Gogoi vs. State¹² was decided according to the provisions of Indian Penal Code and Wild Birds and Animals Protection Act (1912). In this case, the petitioner shot and killed a Rhinoceros with gun. The Magistrate convicted the petitioner under Sec. 429 of Indian Penal Code and the Sessions Judge upheld the Magistrate's decision in an appeal.

However, the petitioner contented that the conviction under Section 429 of the Indian Penal Code was not valid, as the Section does not apply to the killing of wild animals like Rhinoceros. It is clear from the language of Sec. 429, that the various animals enumerated therein are all domestic animals. A Rhinoceros can't in any sense of the term be described as a domestic animal. The word 'any other animal' also means the animal of same kind or class.

Further the court held that Sec. 425 which speaks of mischief does not apply here. Where no one has any property or right in an animal, the rule of mischief can't be admitted. Hence the killing of Rhinoceros does not come within the meaning of Sec. 425.

The learned counsel for the State has submitted that an offence has been committed under Sec. 3 of Wild Birds

11 Jagannath Rao Dani & others vs. Emperor, AIR 1935 (Nag.) 23

12 AIR 1961 Assam 18.

and Animals Protection Act, 1912, the petitioner should be convicted under Sec. 4 of the Act and an appropriate sentence must be imposed on him.

It was held that this can't be done for the obvious reason that there is nothing to show in this case that there was any such notification by the Government declaring that the offence, if any, committed in a close season, as prohibited by law. The Court set aside the conviction and sentence of the petitioner and ordered for refund of fine imposed by the Wildlife Warden.

The trapping of birds specified in Schedule IV also comes under the word 'Hunting' defined in Sec. 2(16) of the Wildlife Protection Act, 1972. 'Any person who traps a bird shall be prohibited under Sec. 9 of Wildlife Protection Act.'

Chief Forest Conservator (Wild Life) vs. Nisar Khan¹³ is well known case on this point. The facts of the case are that Nisar Khan carried a business as a dealer of birds which were bred in Captivity. The Division Bench of Allahabad High Court allowed the appeal of the respondent whereby the appellants were directed to grant a licence for carrying on business as a dealer in birds which are bred in captivity. The contention of the dealer (respondent) was that he had been dealing in birds of several varieties specified in Schedule IV of the Act. He had a licence to do so which was valid till 31st Dec.1990. He had applied for the renewal of licence but the same was not granted to him.

Then, the appellant said that Sec. 9 of the Act says that the term 'Hunting' includes trapping of birds as specified in Schedule IV and no licence for dealing in them can be lawfully granted. Against the order of the High Court, the present appeal was made to the Supreme Court.

13 2003-AIR SCW-1333

The Supreme Court allowed the appeal partly and set aside the order of High Court.

In **I. R. Coelho vs. State of Tamil Nadu**¹⁴ the petition and other land owners living in the hilly areas of Tamil Nadu filed complaint. It was said that the animals listed in Schedule I to the Act were likely to damage their property, including standing crops. But the Wildlife (Protection) Act, 1972 prohibits the hunting of animals specified in Schedule I-V under Section 9 of the Act. They pleaded that the petitioner has a right to hunt these animals. The High Court rejected this plea and held that the Wildlife (Protection) Act, 1972 did not deprive the owner from holding enjoying and protecting the property. The right claimed by the petitioners to hunt wild animals when they proved dangerous to property was without basis.

A similar situation arose in **Sukh Dev Singh Roy vs. Union of India**.¹⁵ In his complaint Sukh Dev Singh said that his crops were frequently damaged by wild boars and blue bulls. Section 62 of the Wildlife (Protection) Act prior to its amendment in 1991 allowed the State Government to declare any wild animals to be a 'vermin' for an area. (Vermin may be hunted without restriction). However, the 1991 amendment divested the State of his power and now the Centre was empowered to declare vermin. Petitioner considered the impugned provision illegal since they divested the State Government of lawful authority. The High Court dismissed the petition since the subject of wildlife was in the Concurrent List and Parliament had the power to legislate on this regard. The court held that the impugned provision related principally to the protection of animals & birds and not agriculture.

14 1992 (1) Mad. L.Rep. 355.

15 1993 (60) Del.L.T.319

III. Protected Areas (Sanctuaries, National Parks, and Closed Areas)

The Wild Life (Protection) Act, 1972 was enacted when environmental consciousness was at low ebb. However, the provisions for declaration of Wildlife Sanctuary and National Park have 'ecological, faunal, floral, geomorphological or zoological significance.' Entry and movement in these areas is restricted and any private rights in the territory are subject to the conditions of permit granted by Chief Wildlife Warden, such conditions are imposed for preservation of the Sanctuary & National Park and protection of wild animals and their habitat in these areas.¹⁶

Can the extent of a Wild Life Sanctuary be reduced in order to exploit mineral resources available in the territory? Can such a reduction be valid if it is made by the legislature enacting a law? Should not the legislature, if it can do, consider all relevant aspects relating to sanctuary? All these contentions were raised in **Consumer Education and Research Society vs. Union of India**;¹⁷ the petitioner filed a special leave petition against the order of the High Court of Gujarat. The petitioner challenged the High Court Order which dismissed its contention which challenged the State Government notification reducing the area of 'Narayan Sarovar Chinkara Sanctuary'. In April 1981, the Gujarat Government declared 765 sq. kms. of thorn forest in Kutch District as the Narayan Sarovar Sanctuary. It covers prime habitats of Chinkara and is the only protected area where the Great Indian Bustard, the Houbara Bustard and the lesser Florican occur together. A variety of migratory birds (cranes) pass through the area.

¹⁶ Annual Survey of Indian Law, Vol. XXXVI, (2000) p.261.

¹⁷ AIR 2000 SC, 975.

In 1990s, Sanghi cement set up its plant on the southern fringes of the Sanctuary. Among the location advantages of the site was the proximity to rich limestone, lignite and bentonite deposits within the protected areas.

In 1993, the Gujarat Government issued two notifications. The first claimed that the area of the sanctuary was substantially in excess of the requirements of the sanctuary and proceeded to cancel the April 1981 declaration. Simultaneously, the new Chinkara Wild Life Sanctuary of just 95 sq. kms. was reconstituted by 2nd notification.

The High Court held that for about 1200 Chinkaras the reduced area of Narayan Sarovar Chinkara Sanctuary was enough and the economic development of the area is of immense benefit to the people.

However, in this case the Apex Court held that,

"it will not be proper to invalidate the resolution of the State legislature on such a ground when we find that it took the decision after duly deliberating upon the materials which was available with it and did not think it necessary to call for further information."

The Court further observed that:

*"Even when it is found by the Court that the decision was taken by the State legislature hastily and without considering all the relevant aspects it will not be prudent to invalidate its decision unless there is material to show that it will have irreversible adverse effect on the Wild Life and the environment."*¹⁸

The Court declined to quash the State Government notifications and resolutions of the State legislature,

18 Ibid.

instead ordered restoration and controlled exploitation of the mineral wealth of that area.

The provisions to eliminate human intervention within National Parks and Sanctuaries operate harshly against forest communities. It is estimated that there are nearly 5000 villages in protected areas with a population of about 2,50,000. There are conflicts between the tribals and the conservationists on their traditional rights. The task of balancing these competing interests fell on the Supreme Court in the cases below.¹⁹

In **Pradeep Krishan vs. Union of India**²⁰ the petitioner, an environmentalist, challenged the order of the Department of Forest, State of Madhya Pradesh. The order permitted collection of Tendu leaves from sanctuaries and National Parks by villagers living around the boundaries in order to maintain their traditional rights. The petitioner contended that the said order violates Wildlife (Protection) Act, 1972, Articles 14 and 21, 48-A & 51-A (g) of the Constitution.

He also argued that order is malafide and against the public interest. He based his contention on the following points:

- (1) Whether an area declared as a sanctuary and National Park under Sec. 18 can be exploited for collection of minor forest produce in violation of the restrictions contained in the Act?
- (2) Whether State Government has the right to exploit minor forest produce from the sanctuaries & National Parks?

The respondent informed the Court that there is no real danger to flora, fauna and Wildlife in the National

19 See, Divan, Rosencranz, Environment Law and Policy in India, (2001), p.335

20 AIR (1996) SC 2040.

Parks and Sanctuaries. However, the petitioner clarified to the court that he is challenging commercial exploitation of tendu leaves through the contractor, as it goes against the scope and object of Wildlife Protection Act, not the right of tribals in relation to the collection of tendu leaves in the National Parks and Sanctuaries.

The tribals contended that tendu leaves are for their livelihood and not for commercial purposes. The Court observed that the procedure with regard to acquisition of rights in and over the land to be included in a Sanctuary or National Park has to be followed before a final notification under Sec. 26 or Sec. 35(1) issued to State Government. There was no final notification, being issued under these provisions. In the instant case,²¹ since no final notification was issued, the State government was not in a position to bar the entry of the villagers living in and around the Sanctuaries and the National Park. So long as their rights were not acquired and final notifications under the aforesaid provisions were issued. So the State Government has not violated any law.

The Court gave several directions which include:

- (1) The State Government must complete the process of issuing final notifications.
- (2) Immediate action with regard to institution of an inquiry.
- (3) Acquire the rights of those who claim any right in or over any land proposed to be included in the Sanctuary/National Park.

In a similar case, **Animal and Environment Legal Defence Fund vs. Union of India**,²² the petitioner filed a Public Interest Petition challenging the order of the Chief

²¹ Ibid.

²² AIR 1997 SC 1071

Wild Life Warden, Forest Department Government of Madhya Pradesh, granting 305 fishing permits to the tribals formerly residing within, the Pench National Park area for fishing in the Tottadoh Reservoir situated in the heart of the Pench National Park Tiger Reserve.

Under Sec.26(1)(i) of the Indian Forest Act,1927, any person who fishes in contravention of any rules made in this behalf by the State Government, shall be punishable in the manner provided in that Section. Therefore, the ancestors of the present tribals could not have acquired any fishing right in the Pench River. Although the necessary proclamations were issued earlier nobody came forward to claim their rights on account of illiteracy and unawareness. They have claimed that their traditional right of fishing should be preserved as this is the only source of their livelihood.

The reservoir is in the center of the National Park area which partly falls in Maharashtra and partly in Madhya Pradesh. Fishing activity had been started in this reservoir by the Fisheries Development Corporation of the State of Madhya Pradesh despite protests.

The petitioner as well as the State of Maharashtra has pointed out that if the 305 fishing permits are issued, the bio-diversity and ecology of the area will be seriously affected. The National Park is also a tiger reserve and all these other activities have a direct bearing on the protection of Wildlife in the National Park area.

The Court issued detailed directions for the proper implementation of the licence conditions. The directions included the issue of photo identity cards for permit holders; restriction of the route traveled while entering and leaving the Park; a prohibition on lighting fires for cooking

or for any other purpose; and strict monitoring by the State Government to ensure that, there was no poaching.

In the case of **Pradeep Krishan vs. Union of India**²³ the Supreme Court pointed out that the total forest cover in our country is far less than the ideal minimum of 1/3rd of the total land. We can't therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the Sanctuaries and the National Park there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in those areas.

The court in **Animal and Environment Legal Defence Fund vs. Union of India**,²⁴ directed that the State Government of Madhya Pradesh shall expeditiously issue the final notification under sec. 35(4) of the Wildlife (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh.

There is a case **Gujarat Navodaya Mandal vs. State of Gujarat**²⁵ related to laying of pipeline inside a Sanctuary. In this case the petitioner filed a writ petition challenging the permission given to Reliance Petroleum Ltd. to lay a pipeline in the Marine National Park/Sanctuary.

The respondents had undertaken 'Moti Khadi Refinery Project' for the production of petroleum products. Reliance Petroleum Limited had taken clearance from the State Government and no objection certification from Gujarat Pollution Control Board. The Environment Department of the Government of India gave clearance under Environment Protection Act, 1986 on certain conditions. Further Reliance

23 AIR 1996 SC 2040

24 AIR 1997 SC 1071

25 1992(2) Guj.L.Her.359

Petroleum Limited sought permission under sec. 2 of the Wildlife Protection Act, 1972 and Sec. 2 (ii) of the Forest Conservation Act and the same was granted by the Chief Wildlife Warden.

The petitioner argued that the Chief Wildlife Warden had no jurisdiction to pass the said order of clearance under sec. 29 of the Wildlife Protection Act, 1972. The petitioner also contended that the said order would render damage to the forest as well as the marine life and environment. The petitioner prayed for striking down the impugned order.

Reliance Petroleum Limited contended that the order would in no way cause damage to environment. Reliance Petroleum Limited had engaged National Scientific and Industrial Research as well as National Institute of Oceanography (NIO) to survey the implementation of the project. These organizations carried out the survey project and cleared the project for Reliance Petroleum Limited. The respondent informed to the court that it has adopted the spillage control system and would not cause any damage to marine life.

The court after hearing the arguments observed,

"If section is considered as a whole, then it would be quite clear that the destruction can be done only with the permission granted by Chief Wildlife Warden. Sec. 29 does not say that for granting such permission, Chief Wildlife Warden is required to obtain permission from the State Government which is to be satisfied that the same is necessary for better management and improvement of wildlife. The condition is applicable only in case if, there is

destruction or exploitation or removal of wildlife.”²⁶

The court also held that both the Central Government and the State Government have been taking necessary precautions to ensure that neither the ecology nor the environment is damaged while implementing the project in question. Hence petition was rejected.

Tarun Bharat Sangh, Alwar vs. Union of India²⁷ is a case on ‘Mining operations in Tiger Forest’. The recent petition was filed by a voluntary organization, working for the betterment of environment. The petitioners complained that the illegal mining operations for lime stone and marble was going on in the area declared as tiger reserve in the Alwar District of Rajasthan. It prayed to the court that such activity should be stopped in the interest of the environment and ecology.

The Tiger Reserve is a protected forest under Rajasthan Forest Act and also a National Park under the Wildlife Protection Act, 1972. The petitioner argued that the mining licence could not be granted within the protected forest except with prior permission of the Government of India under Forest Conservation Act, 1980.

A Committee was appointed by the court. In its report the Committee revealed that 215 mines fall completely within the areas declared as protected forest. 47 mines fall partly inside and partly outside the areas declared as protected forest. The Rajasthan Government on its behalf filed an application before the court seeking permission to delineate 5.02 sq. km. of land from out of the protected forest as the interest of economy of the State, industry and

²⁶ Ibid.

²⁷ (1993)Sup(3) SCC 115

workers was involved. These 5.02 sq. kms. of land was meant to be used for mining operations.

In May 1992 the Central Government issued a notification under Sec. 3 of the Environment Protection Act, 1986, which prohibits carrying of mining operations except with Central Government's prior permission in the area covered under Project Tiger.

Adjudicating the case, the court issued a series of directions:

- (1) *"Stopping mines listed in Appendix A&B of the Committee Report.*
- (2) *Central Government has to submit the report before 3 months regarding the state Government's proposal to delete 5.02 sq. kms from the protected area.*
- (3) *Mines outside the protected forest permitted for 4 months & have to take Central Government's permission in that period. They have to close their mines if permission is not granted by the Central Government".²⁸*

In another case **Jalandhar Chakma vs. Deputy Commissioner of Aizwal**,²⁹ the petitioners challenged the order of notification passed by Administrative Officer under the Wildlife Protection Act, 1972. The orders related to eviction of certain villages that are within Dampa Wild Sanctuary. The petitioners have been staying within the area described in the notices before passing of the order and they also have their homes and cultivable lands. The orders were made under Wildlife Protection Act. Under Sec.18 of the Act a notification has been issued by the Development Commissioner declaring the area given in that

28 Ibid.

29 AIR (1983)Gau.18.

notification as Dampa Wild Life Sanctuary. It appears that the respondents have not followed any provisions of Chapter IV of the Act. The petitioner contended that there was no publication of such notification in the official Gazette and therefore, the said notices can't be sustained. The court after observing the provisions of Chapter IV of the Act held that the said order are without jurisdiction and they were to be set aside.

Essar Oil Ltd. vs. Halar Utkarsh Samiti,³⁰ was a case dealing with the grant of permit allowing activities relating to the destruction of habitat and permission for laying of pipeline carrying crude oil through the Marine National Park and Sanctuary. The court was of the view that, Sec. 29 provides for three prohibitions. Prohibition (a) is concerned with wildlife and its protection, (b) and (c) relate to the habitat of wild animals. The protection afforded to wildlife is more rigorous, but in no case is the prohibition absolute in the sense that the prohibited activities may not be allowed under any circumstances whatsoever. Thus wildlife may be destroyed, exploited or removed from a sanctuary under and in accordance with a permit granted by the Chief Wildlife Warden. Similarly, the habitat of the wild animals may also be destroyed, damaged and the wild animals may be deprived of its habitat within such Sanctuary under and in accordance with a permit granted by the Chief Wildlife Warden.

In this case the pipelines were to be laid in the Sanctuary and it was held that there is no allegation in the present case that the proposed activity of laying pipelines carrying oil through Sanctuary will remove or exploit wildlife within the Sanctuary or National Park.

30 AIR, 2004 SC 1834.

The notifications issued under the Environment (Protection) Act, 1991 and 2001 clearly allowed the buying of pipelines across ecologically sensitive areas such as National Parks/Marine Parks and Sanctuaries. It can't therefore be said, that the invariable consequences of laying pipeline through ecologically sensitive area has been the destruction or removal of wildlife.

There is no *apriori* presumption of destruction of wildlife in the laying of pipelines. Every application must be dealt with on its own merits keeping in view the need to sustain the environment. If it amounts to destruction of wildlife permits may not be granted unless there is proof that it is for the betterment of wildlife.

In the present case it was held that the legislative intent of Ss. 29 and 35 is that the State Government itself should apply its mind and form the requisite satisfaction. Once the State Government has exercised this power, it is not open to the Chief Wildlife Warden to decide to the contrary.

Nagarhole Budakattu Hakku Sthaapana Smiti vs. State of Karnataka³¹ is a case related to grant of leasing rights in a National Park. This is an organisation working for the welfare of tribals and is interested in ensuring the maintenance of the ecological fame in Nagarhole National Park. It challenged lease hold rights of certain properties situated in the midst of Nagarhole National Park under lease deed by the Government of Karnataka in favour of M/S Gateway Hotels Resorts Ltd. This private company was running its business of boarding, lodging and restaurant for the past 18 years in the National Park. The petitioners contended that the grant of leasehold rights violates the

31 AIR (1997) Kar., 288

statutory restrictions of the Wildlife (Protection) Act, 1972 and the Forest Conservation Act, 1980.

The Petitioners argued that there is a threat to tribes and eco-tourism will bring in modern day voices of ultra urban culture. The petitioners alleged that the respondent is putting up new structure in the name of renovation of structures and extending its operational activities by constructing metalled roads and cutting trees. They also claimed that powerful generator sets have been installed, which in due course will severely effect natural movement of wild animals.

The respondent company repudiated to the allegations of the petitioner and argued that they placed builders on pre-existing jungle pathways to make the roads motorable for an easy access to resort.

The Court observed that the State Government should have taken prior approval of the Central Government as stated under Section 2 of the Forest Conservation Act before leasing the same kind to the Private Company.

The court held that after the declaration of an area as a National Park by State Government under sec. 35(1) no one can acquire any State in on or over the land comprised therein. The Court ordered the respondent Company to immediately stop all its activities on the forest land in question and handover the possession to the State Government.

In another case **Center for Environment Law WWF for Nature vs. State of Orissa**,³² the petitioner sought the intervention of the High Court to stop a project involving the construction of a Fish Landing Centre at Talchua as

32 AIR (1994) Ori., 14.

flora and fauna are directly going to be affected in and around the Bhitar Kanika Wildlife Sanctuary.

The court ordered to constitute a Committee by the Ministry of Environment and Forests, along with the Principal Secretary of the State and other authorities as its members. The Environment Impact Assessment Committee submitted its report to the Court. In its contention the State Government justified before the court that it would continue the project without effecting eco-systems of the sanctuary and also said that no violation has taken place.

The court after referring the Committee's Report and arguments of the parties, observed that there could not be a golden scale to evaluate these problems. The court further laid down the directions to be followed by observance of conditions of the Environmental Statutes like the Wildlife (Protection) Act, 1972, in the interest of the local people without affecting the environment.

Disposing the petition, the court passed the following orders:

- (1) All possible attempts for influx of migratory human population of surrounding area.
- (2) To restrict the State Government from furthering the construction of bridges and developmental activities in the sanctuary.

T.N.Godavarman Thirumulpad vs Union of India³³,

In this petition the court gave a direction to the State of Chhattisgarh to prepare a rescue plan to save wild Buffalo, an endangered species from extinction and to make available necessary funds and resources required for the said purposes. The court rejected the stand of lack of funds

33 AIR 2012 SC 1254.

taken by the State Government in view of centrally sponsored scheme, framed by Central Government and directed the State of Chhattisgarh to give effect fully to the Centrally Sponsored Scheme "the Integrated Development of Wildlife Habitats", so as to save wild buffalo from extinction. The State would take immediate steps to ensure that interbreeding between wild and domestic buffaloes does not take place and genetic purity of the wild species is maintained. The state is also directed to take immediate steps to undertake intensive research and monitor the wild buffalo population in Udanti Wildlife sanctuary.

In **Mahesh Kumar Virjibhai Trivedi vs State of Gujarat**³⁴ the Gujarat High Court point out that no one has a right to enter/ possess a land in a sanctuary except under a permit granted by the Chief Wildlife Warden as per the scheme provided under sections 27 and 28 of the Wildlife Protection Act, 1972. In this case, the government allotted land in 1978 to the petitioners under a scheme for the rehabilitation of the Pakistani Nationals who crossed over to India in 1971. Later on, a Wild Ass Sanctuary was declared in 2001 under the Wildlife Protection Act, 1972 covering the land area allotted to the petitioners. They challenged this declaration and demanded that they may be permitted to live at the allotted land even if it may be inside the sanctuary. The court declared that the petitioners can't claim any right to live there and continue to have possession of the land as the land was within the game sanctuary.

In **Corbett Road Case** WPSI successfully intervened in public interest litigation in the Uttarakhand High Court seeking the construction of a road through Corbett Tiger

34 AIR 2006 Guj. 35.

Reserve. The court dismissed the petition on 3 September 2010, based on our intervention that the matter had already been litigated and decided on by the Supreme Court of India in an older case to which WPSI was also a party.³⁵

IV. Trade in Wild Animals, Animal Articles and Trophies

Sec. 39 of the Wildlife Protection Act, 1972 is very important for the simple reason that all the animals, animal articles and trophies in respect of which any offence against this Act or any rule or order has been committed or ivory imported into India and articles made from it shall be the property of the State Government.

In **Rafique Ramzan Ali vs. A. A. Jalgaokar**,³⁶ the petitioner has displayed for sale of lizard and snake skin articles without declaring the same to the Chief Wildlife Warden. The petitioner has filed an appeal against the order of the Additional Chief Metropolitan Magistrate. He was convicted for offences under sections 39(3), 40(2), 42(1), 44(2), 49 read with section 51 of the Wildlife Protection Act. The Assistant Conservator of Forest raided the petitioner's shop when he was exhibiting for sale of articles made of lizard and snake skins.

The petitioners argued that the Wildlife Protection Act was designed to protect certain species of wildlife as listed in the Schedule of the Act. So the Act does not apply to all types of snakes and lizards. The prosecution could only proceed if the articles seized were made of protected species of snakes and lizards.

After hearing both the parties the court concluded that the complaint did not disclose any offence especially whether articles seized were made of skins of species of

35 http://www.wpsi-india.org/projects/cases_wpsi.php

36 1984 CrLJ 1460. (Bom.)

lizard and snakes specified in the Schedule. So the court held that the petitioner has not committed any offence under the Act, hence the conviction was set aside.³⁷

No offence could be said to be made out. Certain articles were seized from the petitioner and he did not possess any certificates or documents issued by the authorities under the Wildlife Protection Act, 1972. But it was not clear that the articles seized from him did require any such document or certificate. Looking to the nature and facts of the case before the court, no offence has been made out.

In another case **B. Nathmall Vaid vs. State of Tamil Nadu**,³⁸ the petitioner contended that the animal found dead on his land was not a government property. The appellant was the owner of Singara Estate. One day a tusker elephant was found dead on his land. The plaintiff informed the second defendant, of his intention to bury the carcass in his estate. The Forest Officer and Veterinary Doctor came to the spot and took the custody of two tusks of the dead elephant from the plaintiff after giving an acknowledgement that the tusks would be returned to the plaintiff after getting formal approval of the higher authorities.

Since the defendant didn't return the tusks, the petitioner on demand was told that his claim for tusks had been rejected. The defendant argued that the elephant was found to be roaming in the forest with difficulty and that the guards of the Forest Department were keeping a watch over the elephant since 15 days prior to its death and that the tusks are the property of government and the plaintiff is not entitled for the tusks.

³⁷ Ibid

³⁸ AIR 1979 Madras 218.

The trial court held that neither the provisions of the said Act nor the government order in question will apply to the facts of this case. Under the general law, the tusker, which is a wild animal having been found dead in the plaintiff's land, is entitled to the ownership of the tusks.

It is also held that the Wild Birds and Animals Protection Act is applicable only in respect of animals and birds which are specified in the schedule and not an elephant which is not an animal specified in the schedule to the Act.

In regular second appeal, again the ownership of the tusks was contended. The respondents have relied on the government order of 1954 whereby it is said that the right of the owner of a forest continues after they are hunted out of the forest but not after they voluntarily quit it.

In this case the elephant was a wild animal and there was no proof of any chase. The wild animal had voluntarily left the Reserve Forest and died on the plaintiff's land. Therefore, in view of the court the government can't claim ownership of the tusks in this case.³⁹

The similarly decided case was **Kisore Chandra Mardaraj vs. Radha Gobind Das**.⁴⁰ In this case the plaintiff and his *shikaris* inflicted three wounds on an elephant that appeared in their forest. But the elephant escaped and entered the defendant's land. The plaintiff's *shikaris* again inflicted same wounds upon it but did not kill it. As a result, subsequently, the elephant died on defendant's lands. The ownership of the tusks was contended. The court held that nobody has an absolute property in animals which are *ferae naturae*; a wild animal is the property of the

³⁹ Ibid.

⁴⁰ AIR 1919 Patna 400.

person in whose land it happens to be for the time being so long as it is in the land of the person, he entitled to take it and kill it but when he chose to quit the land and go into the land of another, then he ceases to have any property in it and such wild animal becomes the property of the other person in whose land it chooses to go.⁴¹

In **G. R. Simon and others vs. Union of India**⁴² the petitioner challenged Chapter V-A inserted by the Wildlife Protection (Amendment) Act, 1986. The petitioners were the manufacturers, wholesalers and dealers engaged in retail trade of tanned, cured and finished skin of animals and are also engaged in retail trade of articles made of skin (animal articles).

The petitioners challenged Chapter V-A of Wildlife Protection (Amendment) Act, 1986, and notifications issued as violative of Articles 19(1) (g) read with Article 300 and Article 300 A of the Constitution of India. The petitioners argued that there is no nexus between the object of preservation of animal life and banning and destroying trade/business in the animal skins and articles made from them. Further they refused the offer of Bharat Leather Corporation to buy the articles, as the price was very low. They argued that by this amendment of the Act, the holding of stocks on expiry of stipulated period shall be unlawful and the property shall be confiscated. They contended that the Amendment Act rendered the petitioners jobless without any compensation. The petitioners who had lawfully acquired skin and skin articles of animals had invested huge amounts of money were deprived of sources of livelihood and violative of Art. 19(1)(g). However, the court

41 Ibid.

42 AIR 1997 Del 301.

rejected the petitioners' contention and stressed the importance of passing the Wildlife Protection Act.

The court said that the wildlife form part of the cultural heritage and each and every animal plays a role in maintaining the ecological balance. The Amending Act was not a colorable exercise of power. The power to make necessary changes in the schedule of Wildlife (Protection) Act vests in government under sec. 61 of the Act. The submission that Chapter V-A of the Act provides for acquisition and confiscation of property is not correct. For the preservation of certain species in Schedules I and II after the prescribed period makes the possession and retention of the said animal articles an offence.

The court also held that neither the State nor the Bharat Leather Corporation and State Trading Corporation are under any legal obligation to purchase the stocks of the petitioners. The petitioners are also not entitled to any further time for disposal of stocks. The stocks of the petitioners would therefore be liable to be dealt with in accordance with the provisions of the Act. The amendment to the Act are valid and *intra vires*.⁴³

In **Pyarelal vs. State**,⁴⁴ the appellant was found guilty under sec. 51 of the Wildlife (Protection) Act, 1972. He was the owner of Haryana Novelty Emporium, Delhi. The Wildlife Inspector, on information conducted a search of the premises and found lion shaped trophies of chinkara skins meant for sale. A complaint was lodged stating that the provisions of Ss. 44 & 49 punishable under sec. 51 have been contravened. Plea of the accused has been that those trophies were made out of goat skin, after being painted and

⁴³ Ibid.

⁴⁴ AIR 1995 (SC)1159

that the skins were not that of wild animals mentioned in the schedule of the Act.

The trial court assented to the prosecution case mainly relying on the evidence and convicted the appellant and was to undergo two month's rigorous imprisonment. His appeal and further revision were dismissed.

There was no evidence whatsoever when the accused came in to possession. No doubt it was for the accused to have given an explanation, but what was clear from the evidence that there was only a contravention. Under these special facts and circumstances obtained in the case, the minimum sentence of 6 months as provided under the provision was not attracted. It was stated that the appellant has been in jail for about 2 months. The court observed that,

"We think that the ends of justice will be met if the sentence of imprisonment is reduced to the period already undergone. His sentence of fine and default clause shall however remain as it was."

In **Ivory Traders and Manufacturers Association Vs Union of India**,⁴⁵ the petitioners challenged the provisions banning trade in imported ivory and articles made from this ivory on the ground that it violated their fundamental right to carry on their trade or business guaranteed under Art. 19(1) (g) of the Constitution.

Rejecting the challenge, the High Court held that the prohibition was justified since the sale of ivory by dealers would encourage poaching and killing of elephants to replenish the stocks held by petitioners. The Court observed,

45 AIR (1997) Del. 267

“Trade and business at the cost of disrupting life forms and linkages necessary for the prevention of biodiversity and ecology cannot be permitted. . .”

The High Court expressed concern over the serious threat to the Indian elephant, particularly in South India. The International ban on the trade of ivory of the African elephant was likely to exert even greater pressure on the Indian elephant necessitating a complete prohibition. The High Court concluded that under the Constitution, the trade in ivory was similar to a precious activity like the business in intoxicants and could be lawfully banned.

The petitioners pleaded that they will only deal in mammoth ivory, which poses no threat to elephants. The court found that it was difficult to distinguish between the two types of ivory and hence the ban applied to dealers in mammoth ivory articles as well.

Two cases were decided involving the similar contentions. Firstly in **Indian Handicrafts Emporium Vs Union of India**⁴⁶ the petitioner alleged that a prohibition of trade in imported ivory is violative of Article 19(1)(g).

The court held that a trade which is dangerous to ecology may be regulated or totally prohibited. Implementation of Directive Principles contained in Part IV of the Constitution is within the expression of restrictions in the interest of general public. The prime object for which the dealing in ivory imported from Africa had been prohibited was to see that while holding the stock, the people may not deal in Indian ivory. The Amending Act indirectly seeks to protect Indian elephant and to check their further depletion. Therefore, Article 49-C is not *ultra-vires* Article 19(1) (g) of the Constitution.

⁴⁶ AIR (2003) SC 3240.

The State contended that by reason of sale of ivory by the dealers, poaching and killing of elephants would be encouraged. Preventive measures as regards poaching and killing of elephants for the purpose of ivory are a difficult task to achieve and thus, Parliament must have thought it expedient to put a complete ban on ivory trade.

In **Balram Kumawat vs. Union of India**⁴⁷ the court held that the object of Parliament was not only to ban trade in imported elephant ivory but also ivory of every description including 'Mammoth Ivory' to restrict the poaching of elephant, effectively.

The Wildlife (Protection) Act, 1972, is a law which has been enacted in larger public interest and in consonance with Article 48A and 51-A(g) of the Constitution of India as also International Treaties and Conventions. The law 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. It cannot be assumed that the Parliament was not aware of the existence of different types of ivory. It was held that Section 49-C is not constitutionally invalid because ban on trade in ivory is a reasonable restriction under Article 19(6).

In **State of Tamil Nadu v Kaypee Industrial chemicals (P) Ltd.**⁴⁸ the petitioners, a registered company engaged in the manufacture of lime were orally informed that all corals have been included in Schedule I, part IV A of the wild Life Protection Act, 1972 as per the notification issued by the Ministry of Environment and Forest which warned of legal action under the Act against purchase, transportation or use of any kind of coral. The coral in the

47 AIR (2003) SC 3268

48 AIR (2005) Mad. 304.

question was lifeless substance, which is secreted by marine polyps (also called corals). The Madras High Court noted that the word 'coral' can have two meanings, i.e., i) a marine living organism; and ii) dead secretions or outer skeleton of the said living organism. It opined that the items mentioned in the notification only referred to the living marine organism, and not the dead secretions or the outer skeleton of the dead sea- animal and hence, the second interpretation of the word 'coral' does not come within the ambit of the impugned notification. Further, the court observed that the interpretation is in consonance with the aims and objectives of the Wildlife Protection Act, 1972. The court dismissed the petition and held that, "as long as the writ petitioners do not catch and kill animals by severing their external skeleton, but only purchase the coral reef being the outer skeleton of the dead sea animal, which is fast ashore after the death of the reef building coral, the authorities have no right to interfere with the activities, as they do not violate the permission if the act.⁴⁹

V. Prevention and Detection of Offences

Any person, who contravenes any provisions of this Act, shall be guilty of an offence against this Act and shall, on conviction, be punishable with imprisonment for a term which may extend to three years or with fine which may extend to twenty five thousand rupees or with both.⁵⁰

In some cases, the decision is delayed so much so that the justice is denied. There is a case **Jagdish Singh vs. State of Bihar**,⁵¹ on this point. An appeal was filed against the order of the trial court which convicted the petition for the imprisonment of three months for killing a Bison. So far

49 *Annual Survey of Indian Law*, (2005) Vol. XLI.

50 The Wildlife (Protection) Act, 1972, Sec. 51.

51 1985 CrLJ1314

as the sentence awarded to the petitioner is concerned, it is submitted that the occurrence took place in 1974, i.e. ten years ago, and no fruitful purpose would be served in sentencing them who are on bail, again to jail after a lapse of 10 years. It is pleaded that the sentence be converted to some fine. The ends of justice would be fully met if the sentence of rigorous imprisonment of three months is altered into a fine of Rs 50/- each. The fine must be paid by each of the petitioners within two months from the day of order. If the petitioners fail to pay the fine within the time specified, the modification in the sentence would become inoperative.

By looking at such cases, we can conclude that the judiciary must play an active role in giving justice, so that such cases do not occur in future, otherwise justice will be denied.

The conviction may be set aside in some cases. Where the complaint did not disclose any offence especially whether articles seized were specified in the schedule, the conviction may be set aside. In **Rafique Ramzan Ali vs. A.A. Jaljaokar**,⁵² the complaint did not disclose any offence, especially whether articles seized were made of skin of species of lizard and snakes specified in the Schedule. So the court held that the petitioner has not committed any offence under the Act, hence the conviction was set aside.

The conviction may also be set aside if the offence committed is an act of self-defence. In **Trilok Bahadur Rai vs. State of Arunachal Pradesh**,⁵³ it is in record that the accused did not go out of his post while the tiger approached him. On three shots being fired in the air the

52 1984 Cr.L.J. 1460

53 1979 Cr.L.J. 1404

animal instead of fleeing away charged at the accused seeing which the accused fired two shots to kill, which killed the tiger. The Deputy Commissioner sentenced the accused for 6 months under sec. 51(1) of the Wildlife Protection Act, on revision the High Court inferred that he was acting in his self defence and therefore, completely protected under sec. 11(2) of the Act.

Where an offence against this Act has been committed by a company every person responsible for the conduct of business of the Company at the time of commission of offence shall be deemed to be guilty of the offence.

In **Babu Lal vs. State**,⁵⁴ the incriminating trophy was recovered from the factory premises owned by a firm. The facts of the case are that the Chief Wildlife Warden received a telephone call from an unknown person that there is a person dealing in skins. He passed on the information to the Wildlife Inspector who recovered six leopard and one leopard cat skin from a room, inside the brush factory owned by Babu Lal and his two sons Din Dayal and Sohan Pal. At the time seizure his servant Mangal Sain was present.

After inquiry a complaint was lodged against Bau Lal, Din Dayal, Sohan Pal and Mangal Sain under Section 55 of the Wildlife (Protection) Act, 1972 read with Sections 40 and 44. Babu Lal pleaded that he was in the hospital on those days and was not attending to any work for the last 4 years. Sohan Pal was on a business tour to Rajasthan and Din Dayal was sick on the date of the raid. Mangal Sain ran before receiving the copy of seizure memo.

The Additional Chief Metropolitan Magistrate convicted all the four accused persons, Babu Lal, Sohan Pal, Din

54 1982 Cr.L.J. 41 (Del.)

Dayal and Mangal Sain. He awarded a rigorous imprisonment of three years and a fine of Rs. 2000 to Babu Lal and his sons and sentenced Mangal Sain to rigorous imprisonment for six months and a fine of Rs. 500 in default to undergo simple imprisonment of 1¹/₂ months.

On appeal the Additional Session Judge acquitted Sohan Pal and Din Dayal as he was of the view that the case was not covered by Section 58 of the Act. He maintained the convictions and sentences of Babu Lal and Mangal Sain except that the sentence awarded to Babu Lal was reduced to one year.

Now, the responsibility for individual offences under Section 58 of the Act was to be decided. The trophy was recovered from the factory premises and at the time of recovery the entire factory premises and the hold-all which contained the trophy were in possession, custody or control of the firm and in physical custody of their workman Mangal Sain. Therefore, a presumption was raised against all of them which they have not been able to rebut. Every Partner was equally responsible to and in charge of the affairs of the firm. The offence was therefore committed by the firm; it does not matter if its main business was brush making.

While dismissing the revision the learned Additional Session Judge said,

"I find no substance in any of the arguments of the counsel and direct that (i) the revision of Babu Lal and Mangal Sain is dismissed; and (ii) Acquittal of Sohan Pal and Din Dayal is set aside and the case in respect of them shall be sent back for their retrial."

The Supreme Court in **State of Madhya Pradesh and others vs Madhukar Rao**⁵⁵, ruled that the provisions of the Wildlife Protection Act, 1972 do not bar interim release during pendency of trial of vehicle involved in such offences by the magistrate, more so when Section 50 (4) of the said Act requires that any person detained or things seized should be taken before him. The Supreme Court observed that section 50 of the Act conferred powers of entry, search, arrest and detention on the Wildlife and Forest Officers besides police officers who are normally entrusted with responsibility of investigation and detection of offences. After deletion of section 50 (2) the aggrieved person is left with no other option but to approach the magistrate directly for interim release of the vehicle, however, before the deletion he was required to weigh the findings and observations made by the Departmental Authorities at the time of refusal to release the vehicle.

In **Principal Chief Conservator of Forests vs J.K. Johnson**⁵⁶ the police while patrolling found in a jeep one wild boar and three rabbits in two bags, all hunted and killed. These along with two rifles were confiscated and a case was registered under section 9 of the Wildlife Protection Act, 1972. The petitioners were taken into custody. The respondents, thereafter, compounded the offence without making any inquiry and without stating anything as to whether the offence was actually committed by the petitioners or any minimum imprisonment is prescribed for the same or not. Under section 39 (1) (d) of the Act, whatever may be the reasons for compounding the offence, unless the case is tried and the accused are convicted by the criminal court, there is no possibility of

55 AIR 2008 SCW 787.

56 AIR 2012 Supreme Court 61.

confiscating the seized goods. The compounding of offence is only against the persons, but not against the forfeited goods. Once the offence against the person is compounded by imposing compensation, it can't be said that there is conviction enabling the Forest department to treat the seized goods as Government property. There can't be any automatic presumption to treat the seized goods as government property unless there is trial and conviction in the criminal proceedings or in the departmental proceedings conducted by the authorities. The High Court concluded that there were lapses in the procedure and directed the respondent- department to release the said vehicle and rifles to the petitioners.

In **State of H.P. vs Mohammad Aslam Wani**⁵⁷ the respondent alleged to have sold Shahtoosh shawls which is highly protected as it is made up of Chiru and hunting Chiru is an offence. There was non- compliance of the provisions of Section 100 (4) of Cr. P.C. in joining two or more respectable witnesses of the locality in which the search was conducted. Neither any effort was made by the Investigating Officer, the incharge of the raiding party, or the other members of the raiding party, to associate independent witnesses, though available, nor any explanation was given in regard to the non- compliance of the provisions of Section 100 (4) of the Cr. P.C. the acquittal was upheld by the court.

Sansar Chand vs State of Rajasthan⁵⁸

Sansar Chand, the Verrapan of North India is one of the India's most wanted wildlife smugglers. His godown consisted of two tiger skins, 28 leopard skins, 42 other

57 2010(2) Him. L.R. 1049

58 2010 (11) JJ 518 (SC).

skins, 14 tiger canines, three k.g. of tiger claws, 10 tiger jaws, 60 k.g. of tiger and leopard paws and 135 k.g. of porcupines quills in all, one of the country's biggest ever seizure.

On 30th June, 2005 the Delhi Police arrested the most wanted person who was allegedly involved in more than 20 cases of poaching and animal smuggling registered in five States.

Sansar Chand is the main accused behind the disappearance of the tigers from the Sariska Wildlife Reserve in Rajasthan. Poachers sell tiger skin to Sansar Chand for Rs. 75,000 each which he reportedly sold in the international market for Rs. 3 lakh to Rs. 5 lakh.

Sansar Chand was absconding himself and his wife Rani and son Rakesh were behind the bars for their involvement in another wildlife case.⁵⁹

On 22nd August, 2010 in a rare verdict convicting one of the country's most infamous wildlife criminals, Sansar Chand was held guilty by a city court hearing a 15-year-old case of illegal possession of a leopard skin.

The judgment was announced by the Court of the Additional Chief Metropolitan Magistrate (Special Acts) Dig Vinay Singh. The sentence was scheduled to be announced on August 25.

The case pertains to the seizure of one leopard skin from Sansar's possession in an operation carried out by a team from Police Station Sadar Bazar on July 17, 1995, in the Indian capital.

"A team comprising police authorities – Inspector HS Meena, ASI Dal Chand, ASI Surender Singh, Head Constable

59 The Telegraph, Sunday Feb. 20, 2005.

Vedpal, Constables Virender and Dhaniram had apprehended Sansar with the skin hidden in a canvas bag, following a tip-off. Them, as well as wildlife inspector VB Dasan, who was the complainant in the case and had identified the article, were called in as witnesses. Their statements, as well as constant follow-up of the case by the office of Delhi Chief Wildlife Warden, DM Shukla, helped nail Sansar,” said Saurabh Sharma, Wildlife Trust of India (WTI) lawyer, who assisted the prosecution led by Atiq Ahmed, Prosecutor, Delhi Government.

Although accused in numerous other wildlife cases, Sansar Chand has been convicted in only a few. This includes the first instance of his arrest in 1974 when he was 16-years-old.

“Sansar’s first arrest was in September 11, 1974. He was arrested from his house in Sadar Bazar, and several wildlife articles were recovered. He was sentenced to a year and half in prison along with a fine of 5,000 rupees, by an ACMM court. His petition in the High Court was quashed. After serving about six months in prison, he was pardoned by the Supreme Court as he was a juvenile during his arrest,” added Sharma.

In at least four cases in Delhi, Sansar Chand was tried on the basis of confessional statements of various accused traders but later discharged as there was no direct recovery of contraband from his possession. However, in an exception, he was convicted by the Special Railway Court of Ajmer in 2004, following seizure of leopard skins, which was linked to him through confessions of the apprehended person.

Under Indian laws, generally, confessions made to a police authority are not admissible as evidence unless it can

be proven in court at a later stage. However under the Indian Wildlife (Protection) Act, 1972, any confession made to an authorised officer (holding positions of Assistant Conservator of Forests and above) is admissible as evidence, as long as it is recorded in the presence of the accused (Section 50(9) of the WPA). The recorded confession must be signed by the authorised officer as well as the accused.

“The conviction of Sansar Chand was definitely a morale booster for all of us who have been working to conserve India’s natural heritage. However, complacency is something we cannot afford. The case took 15 years despite Sansar being caught red-handed with the skin. This scenario has to change for good,” said Ashok Kumar, Vice-chairman, WTI.

On May 31, 2012 Sansar Chand was granted bail by a Delhi court in a 2005 case, involving violation of the Wildlife Act. Additional Sessions Judge Pawan Kumar Jain granted bail to Sansar Chand, who was currently lodged in a Jaipur jail in Rajasthan for various other wildlife offences. The ASJ granted bail to him after his counsel Pramod Dubey submitted that he has been in jail for over six years while the maximum punishment under the Wildlife Act itself is seven years.

Alwar, June 20, 2011: In a landmark judgement, the Court of the Additional Chief Judicial Magistrate - II, Alwar, Rajasthan convicted noted wildlife poacher Juhru and his associates, Tayyeb, Ramzan, Noora and Jiwan Das, sentencing them to a maximum imprisonment of seven years and a fine of Rs 50,000, in a case related to tiger hunting in the Sariska Tiger Reserve. According BS Nathawat, ACF Sariska Tiger Reserve, the hunting took place in Routkhola beat of Akbarpur range, Sariska Tiger Reserve in 2003. The

case was investigated by Range officer, Akbarpur. "The maximum imprisonment for wildlife crime till 2002 was six years," explains Ashok Kumar, Vice Chairman, Wildlife Trust of India. "It was increased to seven years after an amendment, and this is the first time that a Court is awarding this in India. Juhru is one of the notorious poachers of the Sariska Tiger Reserve area, and has a total of 14 wildlife cases pending against him in Sariska alone. Six of these cases concern tiger poaching.

Unlike Sansar Chand and Shabbir Hasan Qureshi who are essentially wildlife traders, Juhru is a poacher involved in hunting protected wildlife as well as illegal trade. So far he has been convicted in two cases of leopard poaching with his accomplices in January and March 2009. He was sentenced to subsequent jail terms of five years in each of these two cases. Juhru had challenged his convictions before the Rajasthan High Court, Jaipur Bench and applied for bail while his Revision Petition was pending adjudication but the High Court refused to grant him bail. He then filed a Petition in Supreme Court of India requesting for bail.

On the basis of a misleading statement that 'he had spent four and a half years in jail out of a total sentence of five years handed out to him', he had succeeded in getting bail from Supreme Court in September 2010. However, the Supreme Court recalled its earlier order of grant of bail, when it was pointed out that Juhru had spent only about one year and eight months in Jail. Later in December 2010 Juhru was apprehended from his hideout by a joint team of Rajasthan Police and Forest staff led by the Additional Superintendent of Police of Alwar.

State of Madhya Pradesh v. Ittu Baiga and others

On 15 November 2010 in Katni, Madhya Pradesh, three

poachers, Ittu Baiga, Bahilal Baiga, and Iqbal (alias Atiq Ahmed), were sentenced to rigorous imprisonment of six years each and a fine of Rs. 10,000 each under the Wild Life (Protection) Act, 1972. On 25 June 2009, the three had poisoned a water-hole in the Dhimarkheda Range of Katni Forest Division with an organo-phosphate pesticide (phosphamidan) which led to the death of nine wild animals including three leopards, two civet cats, a spotted deer and a langur monkey. One of the poachers, Iqbal, is still absconding. On appeal before the Sessions Court, the convictions were upheld on 13 September 2011. The prosecution of this case was conducted on behalf of the Forest Department by Advocate Ms Manjula Shrivastava.⁶⁰

In the **Gujarat Lion Poaching Case**, on 26 February 2009, the Chief Judicial Magistrate in Bhavnagar, Gujarat, sentenced nine men and seven women to five years imprisonment and a fine of Rs. 2,000/- for poaching eight critically endangered Asiatic lions in Gir National Park in 2007. The Government of Gujarat appointed a WPSI lawyer as the Principal Legal Advisor for this case. Twenty more people were sentenced in a related lion poaching case in October 2008. Both cases were notable for the speed with which the trials were concluded and the political will to ensure that the poachers did not escape with an acquittal.

In ***State of Madhya Pradesh v. Dariya and another*** notorious tiger poacher Dariya and his wife Bhagwati were convicted under the Wild Life (Protection) Act, 1972, on 28 July 2010 in Madhya Pradesh. The trial of this case had been pending for more than 21 years. Dariya was sentenced to three years rigorous imprisonment and a fine of Rs.

60 http://www.wpsi-india.org/projects/cases_wpsi.php

10,000/- while his wife Bhagwati was sentenced to the same quantum of punishment, with one and a half years of probation. The prosecution of this case was conducted on behalf of the Forest Department by Advocate Ms Manjula Shrivastava.

In The Deputy Director- cum- Authorised Officer vs Jatin Brahma and Others⁶¹ a complaint in writing was made by the Forest Range officer, Bhuyanpara Range, which falls under Manas National Park against the accused. On the basis of an information that some persons were carrying 'Trophies' with intention to sell, the complainant, along with some Forest guards and police personnel, raided the house of one Sailen Talukdar and recovered six wild life 'trophies', namely, one Leopard skin, one Leopard Cub skin, two Bon Row, one Pigmy Hog Cub Skin and one Claw Less (Otter). The questioning of the accused- opposite party revealed that the said 'trophies' had been collected by hunting the animals inside the Manas National Park.

At the Trail, the prosecution examined three witnesses before framing of charge. On the basis of evidence so adduced, the learned Sub- divisional Judicial Magistrate, Barpeta, framed a charge under Section 51(1) of the Wildlife Protection Act, 1972 against the accused. The accused- opposite party pleaded not guilty to the charge so framed. A petition was filed by the prosecution contending that under Section 57 of the Wildlife Protection Act, a person in possession, custody or control of any captive animal, article, meat, it shall be presumed, until contrary is proved, the burden of proof that the accused were not in unlawful possession, custody or control of such captive animal, animal article, meat, and hence, when the court has found

61 2011 Cri.L.J. 1663.

that there is prima facie case against the accused- opposite party and has accordingly framed charge, the burden of proof that the accused were not in unlawful possession, custody or control of such captive animal, animal article, meat, is upon the accused and a direction is given to the accused- opposite party to adduce evidence to disprove the charges framed against them instead of asking the prosecution to offer its said three witnesses for cross-examination by defence and also further evidence, if any, to be adduced by the prosecution. The accused resisted by submitting an objection.

It was held by the Sub- Divisional Judicial Magistrate that a person guilty under Section 51 (1) of the Wildlife Protection Act, 1972, is liable to be punished with an imprisonment for a term which may extend to three years and a fine which may extend to 25,000 rupees or both. As the case under the Wildlife Protection Act, are punishable by imprisonment exceeding two years, an offence committed under this section has to be tried, under the scheme of the Code of Criminal Procedure. The provisions as embodied in Section 57, requiring the court to raise a legal or statutory presumption, if certain facts are proved, do not amount to obliterating the procedure meant for trial of warrant cases instituted otherwise than on police report. Although when cross examination of the prosecution witness is not yet complete, no case for raising the presumption, as envisaged under Section 57, can be said to have been made out.

VI. Compensation

In **State of Himachal Pradesh vs. Halli Devi**⁶² the Himachal Pradesh High Court held that there is no provision in the Wildlife (Protection) Act for such a relief.

62 AIR 2000 H.P. 113

The respondent was attacked by a black bear as a result of which she sustained serious injuries like loss of complete eye sight, compound fracture of left mandible, nasal bone, left forearm etc. Her permanent disability was assessed at 100% by the medical authorities. Thus a claim of Rs.1,00,000/- was made against the Divisional Forest Officer.

There was no evidence that the animal was let loose in the jungle by the State officials. Hence, the claim for damages as a result of attack by a wild animal could not stand. It is true that the animals hunted or kept or bred in captivity are the property of the State. But the mere fact that the killing of animals roaming in jungle is prohibited under the law does not mean that the State is their owner. The *exgratia* payment of Rs.50,000/- does not mean that the government had accepted the liability.

In **All India Mobile Zoo owners and Animal Welfare Association vs. Union of India**,⁶³ the Delhi High Court had further examined the matter of compensation. The petitioners prayed the court to issue a writ of *mandamus* directing the Chief Wildlife Warden under the Wildlife Protection Act, 1972, for adequate compensation of Rs. 15 to 20 lakhs in the event of closure of the zoo, as ordered by the warden under this Act.

The petitioners challenged the order which rejected the recognition of their mobile zoos under section 38(H) of the Wildlife Protection Act. As they had failed, they were left with no alternative but to surrender the animals before the Wildlife Warden for which they seek instruction from the court for compensation.

63 AIR 2000, Del. 449.

The petitioner submitted that their life was wholly dependent on the animals, which they surrendered, and they deserved to be compensated for the same.

The court after hearing both the parties, held that the petitioners were entitled to compensation as regards animals, the possession and holding of which was not illegal under the Act of 1972, but were surrendered to the authorities. But as to the holding of animals, which was illegal under the Act, no such compensation need to be paid, nor could any ex-gratia payment be made, as the petitioners were holding the animals without the permission of the authorities.

VII. Regulated Tourism in Sanctuaries

The Hon'ble Supreme Court in an order dated 24 July 2012 given on a public interest petition filed by Bhopal-based non-profit Prayatna has put a stop on all tourism activities in the core zones of the tiger reserves in India. The SC will hold the final hearing in this case on 22 August 2012 wherein the final outcome of this case will be clear. While in principle, we all agree that wildlife tourism in India needs to be controlled and strictly regulated; placing a complete ban on any kind of tourism activities in the core areas will certainly not help the wildlife of the tiger reserves.

The Wildlife (Protection) Act, 1972 (WLPA), as amended in 2006, specifies that the core zones or 'critical tiger / wildlife habitats' must be inviolate for a sustainable population of tigers in tiger reserves. The guidelines were circulated by the NTCA in November 2011. Having inviolate habitat for tigers (and other wildlife species) is an 'ideal' situation for conservation; it is unfair to blame only the tourism sector for the depletion of tigers in India, as is the

basis and assumption for this petition. Tigers in Sariska and Panna were wiped out completely. Were the tourists responsible for this debacle? Obviously not, the tigers were killed by poachers. If having no tourism in core areas was good for wildlife, the tigers reserves like Buxa (in West Bengal) and Palamou (in Jharkhand), where wildlife tourism has been almost non-existent, should have been the models of sustainable tiger populations since 1973 when the Project Tiger was launched in India.⁶⁴

The various indicators of the problems faced by the wildlife managers as well as those dealing with the prosecution of offenders in various wildlife cases are enumerated below:

VIII. The growing number of cases

The first major problem is the growing number of arrears relating to the wildlife cases in the courts. There are an increasing number of cases that are being reported on a daily basis at the field level. The sheer quantum of such cases is extremely alarming and the worsening situation needs urgent redressal.

Belinda Wright, Executive director of Wildlife Protection society of India reports that between 1994 and 2009, out of 691 cases of crimes against tigers filed in Indian courts, 10 cases have resulted in conviction of a total of 30 persons. It clearly shows that wildlife crimes are flourishing also because of the low conviction rate. Another thing that needs to be done for the effective enforcement of Wildlife laws is to make a distinction between the poachers and the traders. Both face similar punishments under the law however the traders are the real culprits who make all

64 The Supreme Court's 'green signal' to wildlife tourism in tiger reserves.
Available at <http://corbettfoundation.blogspot.in/>

the money where as the poachers are often poor villagers compelled to poach wild animals. There has to be a balance between the protection of wildlife and interests of the people living in and around the protected areas in the form of incentives of employment so that they do not feel deprived

IX. Reasons for delay

Although there are a numerous reasons that have been attributed for slow rate of conviction some of them can be summed up in the following paragraphs.

i. Procedural delays

It has been observed in the court's proceedings that the accused obtain easy exemption from appearing in the court and thus the evidence stage is prolonged immensely. This is further aggravated by the fact that the witnesses are not easily available as they are primarily government servants and unavailable due to their official commitments. Another major negligent tactic that is often resorted to is that of filing of frivolous appeals especially on interim orders and thus stalling the case at the trial courts.

ii. Lack of trained legal manpower

The various stages of wildlife cases warrant expert knowledge of laws relating to wildlife and forests. This is the major lacuna that has been observed in the complainant officials such as wildlife inspectors, rangers as well as the prosecutors.

iii. Minimal Professional Agencies backup

At present the courts recognise only Central forensic Sciences Laboratory as well as State Forensic Sciences Laboratory as institutions which can substantiate evidences in criminal offences. The facility of identification of wildlife and its products exist primarily at the Wildlife Institute of

India. In this context, it is worth noting that even the WII's statutory authority has been challenged in a number of cases especially in Delhi.

iv. No Special courts

Despite the large number of cases pending at various stages in different states, there are no special courts that have been assigned to deal with such cases expeditiously.

v. Wildlife cases receive least priority

Since there are no special courts relating to wildlife offences, it is often listed at the end along with numerous other cases. It receives least priority resulting in building up of backlogs in the courts. It has also been observed that bail is easily granted in the wildlife related cases.

vi. Lack of training on legal aspects of wildlife

The practice of wildlife offence related complaints in the courts are a recent phenomenon. Further there are minimal precedents that have been established in the wildlife laws. As a result, the court officers including the judges have limited experience in such cases especially relating to the substantive aspects of wildlife.

This is only an illustrative list of indicators and a comprehensive study needs to be conducted for identifying the precise reasons preventing expeditious disposal of wildlife cases.

X. Sum up

Every citizens of the country expects to be protected by State but the animals cannot demand justice. It is for the human beings to see that our floral and faunal wealth is not wasted or destroyed. Therefore, we should work towards protection and conservation of our rich wild life.

Some of the organizations in India such as Wildlife Protection Society of India; Wild Life Trust of India; People for Ethical Treatment of Animals; etc are performing their duty very well.

Under the Indian law, only the State is authorised to prosecute criminals, so Wildlife Protection Society of India provides public prosecutions with assistance. Some of the cases are high profile cases, in which the people involved have good backgrounds, therefore, the cases keep on going from year to year and are delayed so much that, everyone forgets what crime they have committed when the decision is given.

In 1998, Salman Khan, 'Bollywood' star was arrested for allegedly hunting protected black buck while filming at Jodhpur in Rajasthan. The incident led to nationwide outrage and the authorities filed cases against the film star. Most of the witnesses turned hostile and changed their testimonies. The case is still being heard at Jodhpur.

In 2005, in a case of poaching famous cricketer Mansoor Ali Khan Pataudi was arrested. In June 2005 he was found to have killed the protected black buck and two rabbits. It had been seven years since then but the case was not solved and no convictions were done.

The story so far was that Pataudi and his party were caught with carcasses of a black buck and two rabbits in their car in Jhajjar, Haryana on 3rd June, 2005. Charged under various sections of the Wildlife Protection Act, Pataudi and his party may have faced seven years in jail and a fine of Rs. 25,000/-, if found guilty.

Now as the high profile figure of the case, i.e. Mansoor Ali Khan Pataudi has died this year no one is even

concerned about the fate of the case and the other people involved in the offence with him.

Apart from the oft-cited 'implementation problem' of the Act, there are numerous reasons where it has failed to meet its desired objectives. One such reason, and perhaps the most important one, is the slow rate of conviction especially in the trail courts, which conducts wildlife related cases. This has led to a total disregard for wildlife laws making them an ineffective deterrent to rampant hunting, poaching and habitat destruction by offenders.