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The Wildlife (Protection) Act, 1972



Important Sections

SECTION 2 - DEFINITIONS

- (5) Captive animal means any animal specified in Schedule I,II,III or IV which is captured or kept or bred in captivity
- (16) Hunting with its grammatical variations and cognate expression includes,
 - (a) Killing or poisoning of any wild or captive animal and every attempt to do so
 - (b) Capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so.
 - (c) Injuring or destroying or taking any part of the body of any such animal, or damaging the eggs or nests of wild birds or reptiles, or disturbing the eggs or nests of such wild birds or reptiles



Important Sections

- (20) ‘meat’ includes blood, sinew, eggs, shell or carapace, fat and flesh with or without skin, whether raw or cooked, of any wild animal or captive animal, other than a vermin
- (24) ‘person’ includes a firm
- (31) ‘trophy’ means the whole or any part of any captive or wild animal, other than vermin, which has been kept or preserved by any means, whether artificial or natural and includes,
 - (a) rugs, skins and specimens of such animals mounted in whole or in part through taxidermy, and
 - (b) antler, bone carapace, shell, horn, rhino horn, hair, feather, nail, tooth, tusk musk, eggs, nests and honeycomb



Cottage Industries Exposition Limited and Another v. Union of India and Others (2007)

- Delhi High Court, Writ Petition
- **Facts**: The petitioner argued that a shahtoosh shawl, made from the hair of the Tibetan antelope, a protected species listed in Schedule I of the Act would not fall within the definition of “animal article” under **Section 2(2)**, since the definition did not specifically include the word ‘hair.’
- **Held**:
- “...In our view, the definitions of 'uncured trophy', 'trophy' and 'Scheduled animal article' are not separate, distinct and exclusive compartments but are complementary to one another. Any other construction would defeat the object of the Act and the intention of the Legislature.”



State of Tamil Nadu and Another v. M/s. Kaypee Industrial Chemicals Private Limited (2005)

- Madras High Court
- **Facts**: allowed the collection of coral for commercial use in lime manufacture.
- **Held**: Dead pieces or the outer skeleton of a protected marine living organism would not fall within the definition of animal article or wild animal and that therefore its collection was not banned.
- **This judgment is contrary to the Delhi High Court's view in *Cottage Industries Exposition Limited* since as per that view, the dead coral would fall within the definitions of trophy or uncured trophy and would therefore be protected.**
- The judgment was appealed by the State to the Supreme Court where a stay was granted on such collection.
- Owing to the stay, the Madras High Court declined to allow collection of coral in **C.Rathinavel v. State of Tamil Nadu & Ors. (2008)**.



Important Sections

CHAPTER III – PROHIBITION OF HUNTING

Sec 9. No persons shall hunt any wild animal specified in Schedules I, II, III and IV except as provided under Sections II and 12

CHAPTER III A- PROHIBITION ON PICKING, UPROOTING, POSSESSING, SELLING SPECIFIED PLANTS

Section 17A- prohibition

17B- Grants for special purposes

17C,D- Cultivation & dealing without License prohibited

17H- Plants to be Govt. property



State of Rajasthan v. Salman Khan and Others (2012)

- Rajasthan High Court
- **Held**: the Court observed that:
 - a damage caused to the wild life qualifies as a loss to the ecology
 - By the act of using fire arms for killing wild life, the accused committed the offence of mischief as defined in Sections 425 and 429 IPC.
 - Section 141 IPC covers in its ambit, mischief, criminal trespass or other offence, and can very well be applied to an offence of mischief when committed in relation to a wild animal also.
 - Accordingly, the term 'other offence' as mentioned in Section 141 covers in its ambit, an offence under Wild Life Protection Act.



- **Center for Environmental Law, WWF India v. Union of India (1995) and Goa Foundation v. Union of India (2004)**: The Supreme Court has held that any non-forest activity falling within sanctuaries, National Parks, and 10 kilometers of their boundaries now requires prior consultation with the Standing Committee of the National Board for Wild Life.
- **Satyapal Verma v. State of Jharkhand (2004)** : the Jharkhand High Court upheld the Chief Wild Life Warden's order under Section 29 banning the movement of mineral loaded trucks through Betla Wild Life Sanctuary.
- **Kamla Kant Pandey v. State of Uttar Pradesh (2006)** : the Allahabad High Court upheld the cancellation of a mining lease falling within Kaimur Wild Life Sanctuary.



- **T.N. Godavarman Thirumalpad v. Union of India (2006)**: the Supreme Court upheld the Central Empowered Committee's recommendations for the destruction of all fishing tanks and bunds used for pisciculture within Kolleru Wild Life Sanctuary.
- **Maa Dasabhuja Furniture Unit v. State of Orissa and Others (2006)**: the Orissa High Court, dismissed a petition for grant of a license to a saw mill that was located within 10 kilometers of Chandaka-Damapara Wild Life Sanctuary.
- **Mohd. Hazi Rafeeq v. State of Uttaranchal (2006)**: the Uttarakhand High Court, dismissed a petition for a saw mill license close to the boundary of Rajaji National Park.



Important Sections

- **Sec 39** Wild animals to be government property.
- **Sec 40:** Every person in possession or custody of any captive animal specified in Schedule I or part II of Schedule II (or animal article, trophy or uncured trophy from such animal) is required to declare this to the Chief Wildlife Warden
- **2-A:** No person except one with a certificate of ownership can keep, acquire , keep in control etc. any captive animal specified in Schedule I or part II of Schedule II except by inheritance
- **2-B:** Such inheritance to be declared within ninety days to CWLW

(Note: the above two sections do no apply to live elephants)



- **Baburao v. State of Maharashtra and Others (2012) (Bombay High Court)**

Facts: Dealing with a petition claiming compensation for damage done to crops since the petitioner was unable to take care of his agricultural land due to the presence of tigers. While the High Court rightly held that the petitioner was eligible for compensation, one of the reasons it gave for the same was Section 39 of the Act. After quoting Section 39, the Court observed that:

Held: *“Though the provision declares that the wild animals are Government property, in the context of their protection from being hunted, we are of the view that the wild animals should be treated as Government property for all purposes.”*



Important Sections

- **Sec 42:** Certificate of ownership to be granted only after ensuring that the applicant has adequate facilities for housing, maintenance and upkeep of the animal ownership
- **Ajay Shankar & Ors. V. Union of India & Ors. (2001)**
 - Bombay High Court
 - Certificate of ownership - Cancellation - Power to grant a certificate implies a power to cancel the certificate.
 - Held that, power to grant a certificate includes the power to rescind or cancel the certificate. Therefore, Chief Wildlife Warden can exercise that power under Section 42.



Sec 43 (1): No person who has with him a captive animal with a certificate of ownership shall transfer by way of sale or offer for sale or any other commercial consideration, any captive animal

Sec 44: Dealing trophies and animal articles without license is prohibited.

Sec 45: Licenses in given under S. 44 can be cancelled upon reasonable grounds

CHAPTER V – A- PROHIBITION OF TRADE OR COMMERCE IN TROPHIES, ANIMAL ARTICLES ETC .



- **Indian Handicrafts Emporium and Others v. Union of India and Others (2003)**: The Supreme Court upheld the constitutional validity of the inclusion of “ivory imported into India” within the Act observing that the restrictions imposed on the trade were reasonable, as the main reason was to plug the loopholes in the Act whereby illegal ivory was laundered as legal ivory and traded, resulting in endangering Indian elephants.
- **Balram Kumawat v. Union of India and Others (2003)**: The Supreme Court used the same reasoning to hold that the ban on ivory trade was applicable even to Mammoth ivory, even though the species is extinct.



- **J.P. Samuel and Company v. Union of India (2002)**: the Madras High Court upheld a ban on export of sea fans since they were clearly listed in Schedule I of the Act and fell within the definitions of wild life and wild animal.
- **Zen Clothing Company v. Commissioner of Customs ACC, Mumbai (2007)**: the Customs Excise and Service Tax Appellate Tribunal upheld the confiscation and penalty imposed on the importers of python skins (listed in Schedule I) since it was prohibited under the Act.
- **Samir Thapar v. Union of India (2010)**: the Delhi High Court while dealing with a petition for the import of a leopard (*Panthera Pardus*) trophy which had been hunted in Africa, established that a conjoint reading of Foreign Trade (Development and Regulation) Act, 1992, the Foreign Trade Policy and the Act was necessary.



- **Chief Forest Conservator (Wild Life) and Others v. Nisar Khan (2003):**
 - The Supreme Court dealt with issue of birds bred in captivity.
 - nature of mandamus for the grant of a license under Section 44 of the Act
 - Wild Life (Protection) Licensing (Additional Matters for Consideration) Rules, 1983
 - Held, the licensing authority may refuse to grant license if grant of such license has implications on the hunting or trade of the wild animals concerned.



Important Sections

CHAPTER VI – PREVENTION AND DETECTION OF OFFENCES

- **Sec 55:** Cognizance of offence can be taken by competent court only upon complaint of authorized government officer and any person who has given such authorized officers at least sixty days notice of his intention to file a complaint



Investigation

Investigation protocol largely dictated by CrPC

- Forest officer has rights to search and seize (S. 50 (1))
- Evidence recorded by officer above the rank of ACF is admissible in trial (S. 50 (9))
- Offences against species listed in Schedule I and part II of Schedule II are non-bailable (S. 51-A)





Section 39(1) & Section 50

These two provisions led to a line of argument that upon seizure, the items listed in section 39(1) would become property of the State Government, and that a court had no power to order its interim release to its owner under Section 451 of the Code of Criminal Procedure (“CrPC”).



State of Uttar Pradesh and Another v. Lalloo Singh (2007)

- The Supreme Court, while dealing with the application for the release of a tractor trolley, the court held that in view of the language of Section 50 of the Act, Section 457 of the CrPC had no application to it, but that Section 451 of the CrPC was applicable.
- The Court observed that:
 - Magistrate dealing with an application for interim release must keep in mind the statutory mandate of the Act



State of Maharashtra v. Gajanan D Jambhulkar (2002)

- Bombay High Court
- The Court struck down the decision of order of a Judicial Magistrate allowing release of a jeep to its owner, when it was alleged to have been used in the commission of an offence under the Act.
- **Held**: Before the Courts allow the application of the accused for releasing the vehicle on Supratnama, the Courts have to give sound reasons which justify such release of the vehicle, to prima facie exclude the possibility of such vehicle being liable for forfeiture as per S. 51 of the Wild Life Protection Act at the conclusion of the trial.



- **Princl. Chief Conservator of Forests and Another v. J.K. Johnson and Another (2011):**
- The Supreme Court held that a compounding officer has no power to order the forfeiture of property seized, and that he would have to comply with Section 50(4) and present the property before a Magistrate to be dealt with according to law.



Investigations (case laws)

- **Pu. C. Thangma v. State of Mizoram and Others (2004)** : the Gauhati High Court ordered the Chief Secretary of the Government of Mizoram to take appropriate steps for investigation of a matter in accordance with law when a writ petition revealed that prima facie some offence under the Act had been committed.
- **Tahawwar v. State of Uttar Pradesh and Others (2012)**: in a case regarding hunting, the Allahabad High Court emphasized the importance of strict compliance with the newly amended provisions of the CrPC relating to arrest.



- **Directorate of Enforcement v. Deepak Mahajan and Another (1994) :**

Held that apart from police officers, **an officer empowered under a Special Act** may also apply for detention of the accused under Section 167 of the CrPC, when the Special Act does not provide for such detention, provided that the Magistrate is satisfied that:

- (1) the arresting officer is legally competent to make the arrest;
- (2) that the particulars of the offence or the accusation for which the person is arrested or other grounds for such arrest do exist and are well-founded;
- (3) that the provisions of the special Act in regard to the arrest of the persons and the production of the arrestee serve the purpose of Section 167(1) of the Code.



- **Forest Range Officer, Chungathara Ii Range v. Aboobacker and Another (1989):**

the Kerala High Court, overturning the acquittal order by the Sessions Court, in a case of hunting and killing a bison observed that the poaching techniques go unnoticed by others including wild animals and that it would be pedantic to insist on the rule of corroboration by independent evidence in proof of offence relating to forests and wild life.

“If a crime is committed in such a manner that no other person could normally have been present in the vicinity, insistence on the rule of corroboration in such case would maul the cause of justice because such insistence would only help the perpetrator to go scot-free.”



- Abetment of a crime treated equal to the crime (S. 52)
- For possession, burden of proof rests with the accused (S. 57)





- **Babu Lal and Another v. State and Others (1982)**: the Delhi High Court, dealing with a case involving the seizure of six leopard skins and one leopard cat skin, held that as long as simple possession and recovery are proved by the prosecution, the burden would shift upon the accused to prove that he was not in conscious possession of the article and was not aware of its existence.
- (Relying on the Supreme Court decision of 1972 in *Pabitar Singh v. State of Bihar*)



One issue of concern is that courts sometimes award less than the minimum punishment for the offence despite finding the accused guilty.

- **State of Uttarakhand v. Akbar Ali Ansari, (2007)**: a case involving the seizure of five unlicensed leopard skins, the Magistrate convicted the accused for One year, three months imprisonment when the minimum sentence for the offence is three years.
- **State of Uttarakhand v. Rampal and Harish (2006)** : a case involving the seizure of two unlicensed leopard skins, the Magistrate, convicted the accused for five months, and one and a half months imprisonment when the minimum sentence for the offence is three years.
- **Hikmat Singh Ghatal v. Divisional Forest Officer and Another (2011)** : a case involving the seizure of an unlicensed leopard skin, the Uttarakhand High Court reduced the sentence of the accused from three years to time already undergone (more than two years) when the minimum sentence for the offence is three years.



Princl. Chief Conservator of Forests and Another v. J.K. Johnson and Another (2011)

- the Supreme Court held that the effect of compounding was not the same as that of a conviction
- any property seized in respect of the alleged offence must produced before the competent court to be dealt with according to law as per Section 50(4)



- **Moti Lal v. Central Bureau of Investigation and Another (2002)**: The provisions of the CrPC are generally applicable to the investigation and trial of wildlife offences unless specifically contradicted by the Act.
- **Ashwini Kumar Bhardwaj v. State of Rajasthan (2002)**: the Rajasthan High Court quashed proceedings in a case in which a challan had been filed officers not specifically been authorized to file complaints for wildlife offences.



- **S. Bylaiah v. State by Bannerghatta Police (2008)**: the Karnataka High Court quashed proceedings in a case in which the complaint had been filed by the police, but not by an officer of the rank specified by the State Government notification.
- **Mahendra Panwar v. State of Uttarakhand (2012)**: an authorized police officer had filed both a charge sheet under the CrPC, as well as a complaint under the Act. The Court ordered that both shall stand merged, and that the trial would proceed on the basis of the complaint filed under the Act.



- As seen in *J.P. Samuel and Company v. Union of India (2002)* and *Samir Thapar v. Union of India (2010)*, the Courts while interpreting the items in the Schedules must go by the scientific classification rather than the dictionary or common meaning.



- Sec 56: Operation of other laws not barred

Indian Penal Code, 1860

Prevention of Cruelty to Animals Act, 1960

Food Safety & Standards Regulations 2011



THE HINDU

CITIES » VIJAYAWADA

VIJAYAWADA, June 21, 2015

Two baby orangutans rescued in A.P., three held

- APPAJI REDDEM
- B. V. S. BHASKAR



Special Arrangement
The rescued orangutans.

Lacunae in WLPA

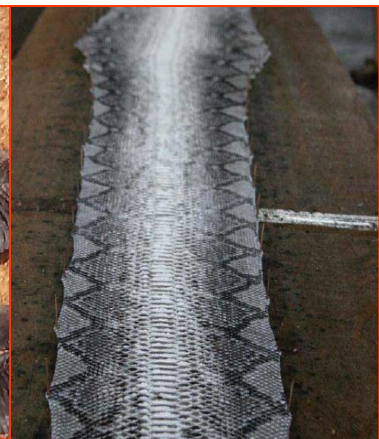
Trade in peacock feathers and snake venom trade is legal

Does not cover exotic or invasive species

Schedules not revised regularly ; do not concur with IUCN/ CITES listing of wild life



Wildlife continues to be hunted & traded !





GUYS! LISTEN TO THIS!!
CHINA FINALLY AGREES
TO END THE IVORY
INDUSTRY!!



IDEALLY I'D LIKE
TO HAVE SOME
ELEPHANTS AROUND
TO CELEBRATE WITH.



-TMMW

Questions and Answers



Thank You



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