

## INDIAN LAWS AGAINST POACHING AND ANIMAL TRAFFICKING: AN OVERVIEW

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### INTRODUCTION

Animal poaching is a term that can be defined as an activity of capturing, exploiting, and further hunting animals for various purposes. For example, animals like giant elephants are hunted for their tusks to produce ivory, tigers, and leopards for their claws, bone, skin, and whiskers; turtles for their unique shells and other body parts; and so on. Several body parts of animals are used to fulfill a variety of purposes in India. Several surveys and in-depth research have clearly shown how poaching today has grown into becoming a billion-dollar industry. Poaching is the illegal killing, capturing, or hunting of wild animals. In addition to this, poaching carries a huge negative impact on natural resources. In recent years, the continuance of illegal wildlife trade has taken a form of an organised transnational crime that adversely affects the very existence of several wildlife species all over the globe. “A traffic analysis finds a significant increase in reported poaching of wild animals in India during the lockdown period that is not restricted to any geographical region or state or to any specific wildlife area. Reports of poaching incidences for consumption and local trade have more than doubled during lockdown although there was no evidence of stockpiling of wildlife products for future trade<sup>1</sup>.” Therefore, there is an urgent need to gain knowledge and understand the importance to preserve wildlife, efficient actions are required to bring the wildlife trade within a sustainable standard, and to put a stop to the illegal trade of wild animals which are pushed to extinction due to such activities.

### HISTORICAL BACKGROUND

Poaching is not an activity that has evolved in recent times, it holds a critical historical reference. “In India poaching has a long history. In the 16th century, Mughal monarch Jalal-ud-Din Muhammad Akbar is said to have popularised the activity. He became enamoured

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<sup>1</sup> “Dr. Saket Badola, Indian Wildlife Amidst the Covid-19 Crisis: An Analysis of Poaching and Illegal Wildlife Trade, TRAFFIC(June 3, 2020) <https://www.traffic.org/publications/reports/reported-wildlife-poaching-in-india-more-than-doubles-during-covid-19-lockdown/>”

with it and established the shikar ritual (royal hunting)<sup>2</sup>". Therefore, hunting was seen as an activity that could be linked to royalty and power. These activities which were conducted by the royal state caused a huge amount of harm to several species of animals, leading to ecological damage. In addition to this, poaching and the killing of animals are not just done for the sake of pleasure and profit but are also linked to various religious and traditional beliefs in the country. For instance, it is believed that wearing a tiger necklace bestows you with power and fortune. Certain bones, horns, fur, and other animal parts are believed to hold magical as well as medical properties that can be used to treat ailments. Many people also use the skin, horns, and claws of the wild species as a piece of decoration which downgrades the life and dignity of these wild creatures.

### **LAWS PROHIBITING POACHING AND ANIMAL TRAFFICKING**

"The Directive Principles as mentioned in the Indian constitution requires the state under article 48(a) to work in order to protect and improve the environment and safeguarding of forests and wildlife The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country<sup>3</sup>". Another important article mentioned in the constitution is "article 51(a)(ii) imposes a fundamental obligation on all residents to maintain and improve the natural environment, which includes woods, lakes, rivers, and wildlife, as well as to have compassion for all living things. Although fundamental duties are not legally enforceable in and of themselves, a statute could be included to make them so<sup>4</sup>." Several laws have been put forward in order to prohibit poaching and animal trafficking in India.

### **THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960**

The bill for the Prevention of the cruelty of animals was for the first time introduced by Srimati Rukmani Devi Arundale in the year 1964 in order to prevent cruelty against animals. She believed that India. The revised form of this bill was passed in the year 1960 which as result of came to be referred as The Prevention of Cruelty to Animals Act, 1960. The main objective of this act was to "declare certain types of cruelty to animals to be offences and providing necessary penalties thereof and establish Animal Welfare Board for promoting

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<sup>2</sup> "Arshia Jain, Poaching and Animal Trafficking in India, Law Insider (Nov. 26 2021) <https://www.lawinsider.in/columns/laws-against-poaching-and-animal-trafficking-in-india>"

<sup>3</sup> INDIA CONST. art 48, cl. 2

<sup>4</sup> INDIA CONST. art 51, cl. 2

measures for animal welfare”<sup>5</sup>. This act contains all 41 sections which are spread under six chapters. Furthermore, section 11 of the act provides several circumstances which can lead to cruelty to animals. Any person who commits any of the mentioned acts or deeds in section 11, shall be punishable and will be held accountable firstly with a fine, of not less than 10 rupees and which can be extended to fifty rupees. However, in the case of a second or any subsequent offence which is committed by the offender within the course of three years of the previous offence, then he shall be penalized with a fine which is not less than twenty-five rupees and can extend to one hundred rupees or with imprisonment for a term that may extend for three months, or with both. The act also distinguishes between cognizable and non-cognizable offences.

### **THE WILDLIFE PROTECTION ACT, 1972**

The most significant step towards the protection of wild creatures is The Wildlife Protection Act of 1972. “The act has three-fold objectives which are: to have a uniform legislation on wildlife throughout the country, to establish a network of protected areas, i.e., national parks and sanctuaries, and to regulate illicit trade in wildlife and its products<sup>6</sup>.” This act includes 60 sections, divided into seven chapters. It is a very important act regarding the functioning for the protection of animals. Overall, the acts provide for the implementation and functioning of the authorities in order to administer; restrict illegal trade and commerce of wild animals, protect sanctuaries and the natural habitat of animals, and other miscellaneous matters. Furthermore, the act refers to the capture, buying, killing, and selling of animals and their body parts which are illegally captured first and then sold to the people. This act gives the state authority to take steps that they feel are fit in order to conserve the fauna and the flora. Hunting is usually linked to the capture and eventful slaughter of wild animals the act also includes the various activities of capturing and trapping. According to, section 57 of the Act the possession, custody, or control of a wild creature by a person, is considered to be unlawful.

### **THE INDIAN PENAL CODE, 1860**

The Indian penal under sections 428 and 429 states that, whoever commits mischief by killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten

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<sup>5</sup> “Dr. Sukanta K. Nanda, Environmental Law 317 (2<sup>nd</sup> ed. 2009)”

<sup>6</sup> “Dr. Sukanta K. Nanda, Environmental Law 285 (2<sup>nd</sup> ed. 2009)”

rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”<sup>7</sup> and “Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both respectively<sup>8</sup>”. Therefore, the code prohibits people from intentionally causing harm to animals. Furthermore, the offenders can be reported to a local animal welfare organization and also to a police station, and a case can be filed under the laws mentioned.

Theft is defined in Section 378. “Any person who moves movable goods out of another person’s hands with the intent of taking them away is guilty of stealing. Animals fall within the category of movable property.”<sup>9</sup> For instance, it is theft if a person behaves in a way that causes another person's dog to chase after him in an attempt to take the dog away from the owner. Section 379 provides that any person who commits theft must be punished by imprisonment for a term not to exceed three years, a fine, or both.

### **THE EXPERIMENTS ON ANIMALS (CONTROL AND SUPERVISION), 1968**

Under the following act, it is laid down that the experimentation and testing on animals should be conducted in such a manner that proper procedure is used which involves due care and diligence. Furthermore, the animal must be kept under the strong influence of an anesthetic to avoid causing any discomfort or pain to the animal during the experimentation. In addition to this minimum number of animals must be used for experiments and tests. The Experiments on Animal (Control and Supervision) Rules, 1968 lays down the basic standard for animal testing and experiments, section 4 of the following act mentions the prerequisites for the performance of experiments, which include It is importance to conduct experiments with care and compassion. Experiments must be conducted by trained personnel or under their supervision, in a lab that is equipped and staffed appropriately for the purpose, and under the direct supervision of the subject of the experiment.

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<sup>7</sup> “Indian Penal Code, § 428, 1860 (India)”

<sup>8</sup> “Indian Penal Code, § 429, 1860 (India)”

<sup>9</sup> “Indian Penal Code, § 378, 1860 (India)”

## **THE TRANSPORT OF ANIMALS RULES, 1978**

Under The Transport of Animals Rules, 1978, various rules and regulations are laid down which are required to be followed while animals are transported. Section 98, lays down the general standards for animal transportation. “Transported animals must be healthy and in good condition. They should be inspected by a veterinary doctor to ensure that they are free of infectious diseases and fit to travel, with the nature and duration of the anticipated excursion taken into account when determining the degree of fitness<sup>10</sup>.” Furthermore, animals that are not in the condition for being transported should not be considered for the same. Unsuitable animals, as well as the newborn, blind, ill, lame, malnourished, exhausted, or the ones that have given birth in the last 72 hours or are likely to give birth during transportation, should not be transported. In addition to this, animals that are very young or are about to give birth should be transported separately and not along with other animals. While transporting diseased animals for treatment, they should not be mingled with other animals during transportation. It is necessary that during transportation, the different groups of animals should be maintained apart.

## **THE PERFORMING ANIMALS (REGULATIONS) RULES, 2001**

The Performing Animals (Regulations) Rules, 2001 talks about the various conditions which can be imposed in order to ensure that the animals are not misused for selfish purposes by humans. Furthermore, section 3 of the Performing Animals (Registration) Rules, 2001 mentions the requirement of permission in order to train or show any sort of animal performance. The considered authority has the power to impose any condition(s) while issuing registration that it deems fit in the animal’s interest. Special provisions and regulations are laid down which put forward special mention on preventing unnecessary infliction of pain and suffering on animals during their training and exhibition.

## **COMPETENCE OF THE LAWS**

In spite of various laws against poaching and hunting of animals have been implemented. The major concern is the effectiveness of these legislations which is majorly determined by its effectiveness and its outcomes. Furthermore, the current statistics clearly show that only these

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<sup>10</sup> Gurdip Singh, Environmental Law 513 (2<sup>nd</sup> ed. 2015)

legislations have achieved only a little success so far in the path of reducing poaching and reserving the wildlife of the country.

### **R. SIMON V. UNION OF INDIA (AIR 1997 DELHI 301)**

In the year 1991, the Department of the Environment and Forestry revised the Ministry of The Wildlife Act based on the recommendations of the Indian Wildlife Board. Poaching and hunting activities were rising rapidly and therefore, it was necessary to take steps by the government in order to control the country's declining animal population. The amendment made the dealing of animal products illegal. In this case, the petitioner was a maker of animal-derived products which included items like purses, shoes, briefcases, belts, and so on. These products were made from snakeskin, the petitioner, therefore, challenged this amendment as it violated his basic right which was to practice and trade or profession under article 19(1)(g) of the Indian Constitution.

The petitioner argues that several animal species serve a very helpful purpose. "The court dismissed his arguments, stating that **Article 19(6)** enables the court to enact rules restricting the right to trade and profession in the public good. The preservation of flora and fauna is unquestionably in the public interest. The court also stated that, even though many species serve no beneficial use to people, they must be protected, and that every person has a responsibility to safeguard and improve animals and the environment."<sup>11</sup>

### **BALRAM KUMAWAT V. UNION OF INDIA & ORS. (AIR 2003 SC 3268)**

After the amendments of 1991, by The Wildlife Protection Act, which made it illegal to import ivory in India. In the given case, the petitioner argued that the elephant fossil ivory which is the mammoth ivory is not similar to the conventional elephant ivory as the mammoth had long died out. "The court, however, ruled that the 1991 amendment prohibits the import of "any types" of ivory, including mammoth ivory. The Wildlife Act was also enacted in the wider public interest and in accordance with Articles 48A and 51A(g) of the Indian Constitution, as well as international treaties and agreements, according to the statement."<sup>12</sup>

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<sup>11</sup> "R. Simon v. Union of India, AIR 1997 Delhi 301"

<sup>12</sup> "Balram Kumawat v. Union of India & Ors, AIR 2003 SC 3268"

**PRADEEP KRISHEN V. UNION OF INDIA (1997 AIR SC 1071)**

This case sets an example of the widely held belief that Individuals that are settled near the villages need to be obedient to the natural order. Therefore, the lawsuit filed directly challenged the government directives which allowed the local people living in the villages to collect the tendu leave without any restrictions from the contractors of Madhya Pradesh. As a result of the same, a huge number of trees fell. The Supreme Court of India declared an order on the government of Madhya Pradesh to bar any villagers or tribal people from entering the wildlife-protected areas.

**CONCLUSION**

Severe consequences are faced by the wildlife population, environment, and the residents of the natural due to the increasing wildlife poaching, which is supported and promoted by the profitable black-market trade of various body parts of animals. It is believed that the virus stays alive if the host of that virus is alive. Similarly, poaching and animal hunting must be stopped and banned in order to continue humanity to thrive globally. Several ways can opt in order to prevent such harm to the environment and wildlife, Education without any doubt is one of the main and most crucial measures which can be implemented in order to prevent poaching and animal hunting. In India, there are still more than 300 million illiterate adults. The main cause of unrestrained poaching has been the long-held belief that animal parts have mystical therapeutic qualities. People must therefore be made aware of how poaching upsets the ecological equilibrium.

Higher sanctions for poaching are an additional action that needs to be taken. To make an impression on the offender's or others' thoughts that will prevent them from engaging in the same action again in the future is the primary objective of punishment. The law could become ineffectual with minimal punishment. Harsher anti-corruption measures ought to be put in place to make people reluctant to accept bribes. A more forgiving and advantageous strategy to lessen and ultimately end the practise of corruption is to raise the wages of all government employees, which would decrease their need for corruption. This tactic would put a strain on the government's resources, but it would also contribute to its expansion by progressively lowering the amount of black money available for circulation.