

Effectiveness of Forest and Wildlife Laws in India

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Abstract: *Forest and wildlife protection will be fruitful with the help of legislations enacted for that purpose. Therefore, merely framing environmental policies will not achieve the goal of protection of forest and wildlife resources, but also environmental statute by its nature of enforceability will provide assistance to the executives to minimise the adverse impact to the environmental resources because of trade commerce and industrialisation. These statutes on environmental protection can provide number of restrictions, regarding what should be done and what should not be done, but the real deterrence can be faced by the wrongdoer/polluter once the violation of such statutes leads to extreme penalty and punishment measure. However, there should be a balance, because environmental protection regime should not anyway undermine the rate of development of the nation and vice versa. The paper aims to examine the scope of deterrence and its effectiveness under forest and wildlife laws connected with environmental protection in India.*

Keywords: Environmental, forest, wild life.

1. Introduction

Effectiveness of environmental legislation depends on three factors, for example, first, the provisions of the statute should not have any loopholes, that is, provisions should be prepared meticulously, second, formation of enforcement agencies should be strong enough to implement the provisions efficiently without any setback and third, the deterrence mentioned in the form of penalty or punishment must be effective one, that is, the amount of penalty and the duration of imprisonment should clearly act as a fear to the wrongdoer or polluter, which further means that the deterrence should not be taken lightly or casually by the wrongdoer. In this present article, I would like to review the provisions related to prohibitory actions, enforcement agencies and effectiveness of deterrence through penalty provisions under the environmental legislations, such as, the Indian Forest Act, 1927, the Wild life (Protection) Act, 1972, and the Forest (Conservation) Act, 1980. In spite of having many legislations¹ on environmental protection, there are no signs of

reduction of environmental dispute settlement in India. Therefore, the conclusion would be that the environmental legislations are not very effective to deter the action of the wrongdoer or polluter. The meaning of this non-effectiveness seems to be because of casual approach of penalty provisions and punishment mentioned in the respective environmental statutes and also lack of effectiveness with regard to enforcing the provisions of the statutes by the enforcement agencies mentioned under these respective environmental laws.

2. The Indian Forest Act, 1927²

The Forest Act has been enacted for the purpose of regulating the transit of forest produces including the timber and collect duty or taxes from the traders who are engaged in purchasing timber and other Forest produces. Therefore, it is clear from the preamble of the Forest Act that the statute is not dealing with conservation or preservation of forest, rather, it helps to deplete the forest in a systematic manner. The Forest Act defines the expressions such as reserved forest³, village forest⁴ and protected forest⁵ for the purpose of reserving trees⁶ and also protecting the forest resources including trees. For the proper enforcement of the provisions of this statute, the Forest officers⁷ shall be appointed by the state government. There are many provisions which are dealing with penalty and punishment under this statute. If any violation has been done to section 30 of the rules framed under section 32, the concerned person shall receive the punishment of imprisonment which may extend up to 6 months or with a fine which shall be Rs. 500⁸. The same penalty and punishment is also prescribed under sections 42 and 62 of this statute. However, under section 63 of this Forest Act the penalty and punishment is different, for example, in case of counterfeiting or defacing the marks on timber and trees or changing the boundary marks, the person concerned involved in this activity shall receive a punishment of two years or fine⁹ or sometimes both. Accordingly, from this observation it is clear that the Forest Act is not the environmental legislation which can prevent the forest depletion or preserve the forest trees resources for environmental protection purposes.

3. The Wild Life (Protection) Act, 1972¹⁰

The wildlife law in India has been enacted for the purpose of protecting the wild animals, birds and plants. Therefore, from the preamble of this wildlife law one can easily make a conclusion that this statute is basically for environmental protection, in particular for the protection of wild animals. This statute defines the expressions, such as, animal¹¹, animal article¹², hunting¹³, land¹⁴, meat¹⁵, trophy¹⁶, et cetera comprehensively. To implement the provisions of this wildlife law effectively, it is prescribed to appoint wildlife Warden and other officers¹⁷. The hunting of wild animals¹⁸ is prohibited under this wildlife law. However, the wildlife Warden may allow the hunting of wild animals, if such animal is beyond the recovery of any particular disease or disability¹⁹. The wildlife Warden may also allow the hunting of wild animals for education and scientific research purposes²⁰. This wildlife law also imposes restriction on picking, uprooting or destroying the plants, which are notified by the central government for protection purposes²¹. To protect the ecological sensitive area, where there are presence of significant flora and fauna including zoological importance, the state government can declare a portion of reserved forest or territorial water as sanctuary under this wildlife law²². Similarly, the state government can declare any portion of sanctuary or any part of forest as national park for the purpose of protection of any wild animal because of the significance of flora and fauna including zoological importance²³. Sometimes, it happens that protection of certain rare wildlife animal may not be possible with the deep dense forest, because of lack of human surveillance, therefore, establishment of zoo²⁴ has been proclaimed under this wildlife law, where the rare animals will be brought for protection²⁵ and for further propagation in the name of *in situ*²⁶ conservation. Any sort of trade or commerce on wild animals and trophy is strictly prohibited under this wildlife law without licence²⁷. Even, purchase of wild animals should be authorised one, that is, only the person who is having the valid license can purchase these animals²⁸. However, the wildlife law strictly prohibits the trade and commerce on the animals and animal articles including trophy which are protected in the schedule²⁹.

The penalty provision has been prepared meticulously under this wildlife law. For example, a person will receive a punishment which may extend up to 3 years or with a fine which may be Rs. 25,000, in case the person, who has contravened any of the provisions of this wildlife law. Similarly, a person who is found with violation of altering the boundaries of sanctuary or has caused damage to the

wild animals which are mentioned under schedule I of this wildlife law shall receive the punishment maximum of 6 years and minimum of one year or with a fine which shall be of Rs. 5000 only. In case of second or subsequent violation of any of the provisions of this wildlife law, the concerned person shall receive the punishment minimum of two years which may extend up to 6 years or with a fine of Rs. 10,000 only³⁰. At the same time, it is prescribed under the wildlife law that a person who has not obeyed rule of prohibition of trade and commerce on the animal articles and trophy shall receive the punishment minimum of one year but which may extend up to 7 years or with a fine of not less than Rs. 5000³¹. If, any person is being found in the National zoo area, who is teasing or misbehaving with any wild animal shall receive the punishment which may extend up to 6 months or with a fine of Rs. 2000 only. However, in case of second and subsequent offence the punishment shall be of one year or with fine of Rs. 5000 only³². If an offence has been committed by a person with a weapon for which a valid license has been obtained under the Arms Act, 1959, once convicted the arms licence shall be cancelled and the person concerned shall not be able to claim arms license for the next five years³³. Though, the wildlife law gives immense power to the director or the wildlife Warden to implement the provisions of this Act, however, if such a director or wildlife Warden or any person authorised under them wrongfully seizes the animal or animal article, on conviction, the director or wild life warden or persons authorised on their behalf shall receive a punishment of six months or with a fine of Rs. 500 only³⁴. Therefore, from this discussion it is clear that the wildlife law is comprehensive enough to tackle the crisis with regard to wild life protection. However, it is to be noted here that, in spite of having comprehensive legislation, there is no sign of reduction in the poaching of wild animals. Accordingly, it raises the question with regard to effective implementation of the provisions of wildlife law.

4. The Forest (Conservation) Act, 1980³⁵

Before the enactment of forest conservation law, it was the state government, who could decide to convert the forest land for nonforest purposes. Therefore, there was no check and balance by the central government on the action of state government for this conversion and de-reservation of forest land. In the year 1976 the items like 'forest' and 'wildlife' have been shifted to concurrent list, that is, third list from the second or state list³⁶. The forest conservation law has come into operation for the purpose of checking deforestation and conversion of Forest land for nonforest purposes³⁷ by the central

government on the action of state government. The forest conservation law prohibits the action of the state government, with regard to deforestation and converting the forest for nonforest purposes. Forest conservation law clearly states that the state government will obtain prior permission from the central government for the purpose of seizing the effect of reserved forest or any part thereof³⁸. Similarly, the state government can convert the forest land or any part thereof for nonforest purposes, provided, prior approval from the central government has been obtained to that extent³⁹. With the prior approval of central government any portion of land can be leased out to any corporation or private individual, provided, such forest land is not owned, controlled or managed by the government⁴⁰. However, it is to be noted here that, now, this provision is not applicable to any categories of forest land. Forest is considered to be the public property and not government-owned property, government merely acts as a trustee to this public property. After the *Kamalnath case*⁴¹ the forest land is protected under the concept of public trust doctrine⁴². Even for reforestation, the state government will have to take prior approval from central government for the purpose of cutting down of trees on the forest land to make the land free for reforestation⁴³. The advisory committee can be appointed by the central government for the purpose of examining the scope of conversion of Forest land for nonforest purposes and this committee's decision shall aid the central government to take a final call⁴⁴. However, the penalty provision is not efficient one and it will not act as deterrence from the violation of this forest conservation law. The Act suggests for 15 days imprisonment in case of violation of provisions of this forest conservation law. This also be applicable equally to the persons who are assisting in contravention of this forest conservation law⁴⁵. Therefore, it can be stated that this forest conservation law is not very efficient to protect the forest land against its depletion and there is a scope for lease out some portion of forest land which is not owned or controlled by the government.

5. Conclusion

It can be concluded from the above discussion that the protection of forest and wildlife depends on the efficient enforcement of meticulous provisions by the enforcement agencies. It is true that environmental policy can be of guideline only and cannot be enforceable. However, the environmental legislations, in particular of forest act, wildlife laws, forest conservation laws can not only control the degradation of the environment, but also can preserve the forest and wildlife for the present and for future generation. It is also true that The Forest

Act is the law which is not protecting and preserving the environmental resources, in particular forest resources but systematically encouraging the depletion of forest for the purpose of revenue generation. The penalty provision is, whatever available, under this Act is made for the purpose of protecting resources for revenue generation. However, under the wildlife law, it has been seen that the Act is comprehensive and with the help of efficient enforcement mechanism can protect and preserve the wildlife for present and future generation. However, there is no sign of reduction of poaching of wild animal, therefore, it can be concluded that enforcement mechanism is suffering decay from within. Finally, the forest conservation law which shows that there should be prior approval from central government for the purpose of conversion of Forest land for nonforest purposes, yet, forest land can be given in the hand of private individual or corporation by of lease, when such forest land is not owned or controlled by the government. Moreover, the penalty provision is not comprehensive one and the government should revisit to enhance the penalty provision, so that it should look as proper deterrence. In the end, it can be concluded that most of the provisions of these laws are efficient, but somewhere the enforcement of these provisions is lagging behind, which raises the question of efficiency of enforcement agencies.

¹ See, the Indian Forest Act, 1927, the Wild life (Protection) Act, 1972, the Water (Prevention and Control of Pollution) Act, 1974, the Forest (Conservation) Act, 1980, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the National Green Tribunal Act, 2010, etc.

² Hereinafter Forest Act.

³ See, Section 20 of the Indian Forest Act, 1927

⁴ See, Section 28 of the Indian Forest Act, 1927

⁵ See, Section 29 of the Indian Forest Act, 1927

⁶ See, Section 30 of the Indian Forest Act, 1927

⁷ See, Sections 72-75 of the Indian Forest Act, 1927

⁸ See, Section 33 of the Indian Forest Act, 1927-
"Penalties for acts in contravention of notification under section 30 or of rules under section 32. (1) Any person who commits any of the following offences, namely:- a) fells, girdles, lops, taps or burns any tree reserved under section 30, or strips of the bark or leaves from, or otherwise damages, any such tree; b) contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal or collects, subjects to any manufacturing process, or removes any forest-produce; c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land

in any protected forest; sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing fallen or felled, or to say closed portion of such forest; e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion; f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid; g) permits cattle to damage any such tree; h) infringes any rules made under section 32. shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.”

⁹ See, Section 63 of the Indian Forest Act, 1927

¹⁰ Hereinafter wildlife law.

¹¹ See, Section 2 (1) of the Wild life (Protection) Act, 1972 "animal" includes amphibians, birds, mammals and reptiles and their young, and also includes, in the cases of birds and reptiles, their eggs;

¹² See, Section 2 (2) of the Wild life (Protection) Act, 1972 "animal article" means an article made from any captive animal or wild animal, other than vermin, and includes an article or object in which the whole or any part of such animal has been used, and ivory imported into India and an article made there from;

¹³ See, Section 2 (16) of the Wild life (Protection) Act, 1972 "hunting", with its grammatical variations and cognate expressions, includes,- (a) capturing, killing, poisoning, snaring and trapping of any wild animal and every attempt to do so, (b) driving any wild animal for any of the purposes specified in sub-clause (a), (c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles or disturbing the eggs or nests of such birds or reptiles;

¹⁴ See, Section 2 (17) of the Wild life (Protection) Act, 1972 "land" includes canals, creeks and other water channels, reservoirs, rivers, streams and lakes, whether artificial or natural, marshes and wetlands and also includes boulders and rocks;

¹⁵ See, Section 2 (20) of the Wild life (Protection) Act, 1972 "meat" includes blood, bones, sinew, eggs, fat and flesh, whether raw or cooked, of any wild animal, other than vermin;

¹⁶ See, Section 2 (31) of the Wild life (Protection) Act, 1972 "trophy" means the whole or any part of any captive animal 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 animal mounted in whole or in part through a process of taxidermy, and (b) antler, horn, rhinoceros horn, hair, feather, nail, tooth, musk, eggs and nests;

¹⁷ See, Section 4 of the Wild life (Protection) Act, 1972

¹⁸ See, Section 9 of the Wild life (Protection) Act, 1972

¹⁹ See, Section 11 of the Wild life (Protection) Act, 1972

²⁰ See, Section 12 of the Wild life (Protection) Act, 1972

²¹ For details See, Section 17A of the Wild life (Protection) Act, 1972

²² See, Section 26A of the Wild life (Protection) Act, 1972

²³ See, Section 35 of the Wild life (Protection) Act, 1972

²⁴ See, Section 38-H of the Wild life (Protection) Act, 1972

²⁵ See, Section 38-I of the Wild life (Protection) Act, 1972

²⁶ Although viable populations of some organisms can be maintained ex-situ either under cultivation or in captivity, these methods are far less effective than in-situ methods, and, generally, they are extremely costly. Likewise, although ex-situ methods are important under a number of conditions, in-situ methods are generally recognized as being more secure and financially efficient. The challenge in using in-situ methods is to expand our vision of protected areas to include multiple use and extractive reserves and to develop new models for conservation including, for example, such innovative proposals as using damaged ecosystems to preserve rare, endangered, and threatened species (Cairns, 1986) and to expand the range of options available for economic development. Available at <https://www.oas.org/dsd/publications/Unit/oea04e/ch04.htm> (last visited on 12.03.2017)

²⁷ See, Section 44 of the Wild life (Protection) Act, 1972

²⁸ See, Section 48 of the Wild life (Protection) Act, 1972

²⁹ For details, See, Section 49-B of the Wild life (Protection) Act, 1972

³⁰ See, Section 51 (1) of the Wild life (Protection) Act, 1972

³¹ See, Section 51 (1A) of the Wild life (Protection) Act, 1972

³² See, Section 51 (1B) of the Wild life (Protection) Act, 1972

³³ See, Section 51 (4) of the Wild life (Protection) Act, 1972

³⁴ See, Section 53 of the Wild life (Protection) Act, 1972

³⁵ Hereinafter forest conservation law

³⁶ For details, see 42nd Amendment to Indian Constitution, 1976.

³⁷ "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

³⁸ See, Section 2 (i) of the Forest (Conservation) Act, 1980

³⁹ See, Section 2 (ii) of the Forest (Conservation) Act, 1980

⁴⁰ See, Section 2 (iii) of the Forest (Conservation) Act, 1980

⁴¹ M.C. Mehta v. Kamalnath (1997) 1 SCC 388

⁴² Basically, the ancient Roman Empire developed this legal theory i.e. Doctrine of the Public Trust. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. Available at <http://www.legalserviceindia.com/articles/ptdoc.htm> (last visited on 12.03.2017)

⁴³ See, Section 2 (iv) of the Forest (Conservation) Act, 1980

⁴⁴ See, Section 3 of the Forest (Conservation) Act, 1980

⁴⁵ See, Section 4 of the Forest (Conservation) Act, 1980