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Illegal Trade of Endangered Species

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ABSTRACT

International trade possibly covers every field of business. One of the branches which fall under the umbrella of global trade is environmental aspect, under which trade of wildlife is the emerging trend as it gives huge profit. Wildlife trade can be legal as well as illegal. Trade in wildlife species also includes the trade of the endangered species. Illegal trade is the one factor which devastating the wildlife and putting the ecosystem at risk. The increase in trade of endangered species, there is an increase in risk of environment and ecosystem on the whole getting affected. Prevention of the survival of endangered species is necessary in order to protect the biodiversity. Illicitly removing one species from the chain of ecosystem will affect the other species which depends on it. There is an high demand of endangered species products which results in increase in the trade of those species which automatically affects the existence of the endangered species at large. The illegal trade of the animals that are prone to extinction will result in the exploitation of those species which indirectly or directly affects the environment. Many laws and Conventions has been implemented for protecting the endangered species. Here we are going to discuss the overview of the illegal trade of endangered species.

Keywords: *International law, environmental aspect, wildlife trade, endangered species, trade can be legal as well as illegal, Laws and Conventions.*

I. INTRODUCTION

In international sense, trade is one of the growing phenomenon across the world. Trade plays a vital role in promoting the economy of the country. Nowadays everything is traded between countries, starting from vegetables to gold, animals etc. Environment is the factor around which trade is happening. As the ambit of subject matter of what is to be traded is increasing, it's high time for us to know what is not to be traded. There are certain things and beings which are excluded from being subjected to trade both in international sense and in domestic sense. One among which is 'Endangered Species'. 16,928 plant and animal species are known to be threatened with extinction. This may be a gross underestimate because less than 3% of the world's 1.9 million described species have been assessed for the IUCN Red List of Threatened Species. Here, in this chapter we are going to see how endangered species are traded and as a

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result of which, how environment and ecosystem is being affected.

II. ENDANGERED SPECIES – MEANING

Endangered species are the species which has high risk of extinction. Endangered species includes those animals, plants which are less in number and prone to extinction in the near future.

As many wildlife species are at impending danger of extinction, pulling out one specie from the chain of ecosystem will ultimately affect the other species as a whole.

According to ICUN, “A species is classified as endangered when it’s population has declined between 50 and 70 percent. This decline is measured over 10 years or three generations of the species, whichever is longer.”

Only 1.9 million species have been described out of an estimated 13-14 million species that exist. In the last 500 years, human activity is known to have forced 869 species to extinction (or extinction in the wild). One in four mammals and one in eight birds face a high risk of extinction in the near future. One in three amphibians and almost half of all tortoises and freshwater turtles are threatened. The current species extinction rate is estimated to be between 1,000 and 10,000 times higher than the natural or ‘background’ rate. The total number of known threatened animal species has increased from 5,205 to 8,462 since 1996.²

(A) Trade of Endangered Species – Legal or Illegal:

Wildlife trade generally means trading of living or dead animals and plants and it also includes the products derived from them. Whereas, in case of the endangered species it can be traded for their parts like fur, skin, tusks, horns etc.

Trade of wildlife species that are prone to extinction is prohibited. Whereas, the CITES convention (Convention on International Trade in Endangered Species of wild Flora and Fauna), states that it is legal to trade wildlife species under certain circumstances which are stated under the appendices of the convention.

(B) Provisions under CITES:

Under the CITES convention provides Appendices under it which provides for the conditions under which legal wildlife trade of endangered species can be carried on rather than those conditions any trade happened then it is termed as illegal trade

² The IUCN red list of threatened species

APPENDIX I:

Under Appendix I it is stated that as many species are affected by the effects of international trade, the trade of the species will be allowed but under exceptional circumstances which includes educational purpose, breeding and scientific exchange etc. It also states that the export can be permitted only if the exporting country ensure the survival of the species will not be affected and also should give confirmation that the travel precautions will be taken to reduce the risk of injury [art III (2) (a)-(c)]. Prior to export, import permission must also be granted by the importing State, provided that the permit for import will be granted only if the purpose of the impose is not detrimental to the survival the species and also not for any commercial purpose [art III(3)].

Examples: some of the species under Appendix I include, Tiger, Giant Panda, Elephant, Gorilla, Lady Slipper Orchids, and currently 1082 species are listed.

where the specimens of species under Appendix I are bred to captivity for commercial purpose, then it is deemed to cover under the ambit of appendix II.

APPENDIX II:

Appendix II, deals with those animal which are not currently under the threat of extinction but may be prone to threat if not regulated properly. Appendix II has less restrictions compared to Appendix I. Appendix II allows trade of species for commercial purpose if it is not detrimental to the survival of the said species which is traded. Export permits are necessary for the export of the species provided that, the state has to ensure the survival of the species will not the affected [art IV (2)(b)]. Under article IV (3), It mandates that if the role of the species traded is reduced in the ecosystem, then that species may be included in Appendix I for the protection of the species and to maintain it's role in the ecosystem.

In case of imports, import permit is not required in Appendix II. For re-export of the said species from the importing State, re-export certificate is necessary [art IV(5)].

Appendix II includes species namely, Southern White Rhinoceros, Seahorses, Tokay Gecko, Paddle Lions, American Alligators, Mahogany, currently 37, 240 species are listed.

APPENDIX III:

Appendix III deals with the species that are subjected to domestic regulation within the State (party to CITES), for the purpose of preventing and restriction exploitation. For this cooperation of the parties also required. [Art II(3)].

Example of species included in this Appendix are, Bengal Fox (listed by India), Walrus (listed

by Canada), common snapping turtles (listed by US), Cape Stag Beetles, currently 211 species are listed.

Exemption: In some cases the species those listed on the CITES are exempted and certificate of exemption will be issued at the place of permit [Art VII].

III. ILLEGAL TRADE ON ENDANGERED SPECIES

Illegal trade is one of the largest form of transnational organized crime today.

As we saw earlier, that the trade of endangered species are legal under certain circumstances by law if it doesn't affect the survival of the said species. Now let's see how the trade of endangered species is termed as illegal. The trade of the species can be illegal if a person trade the specie(s) that is prone to extinction without permission or without any law making the trade of that species valid/legal. If anyone trade any species where under the law it is said to be illegal to trade those species, then it's known as illegal trade and the same is punishable.

Illegal trade of wildlife is driven by the huge profit margins, and in many cases high prices are paid for the rare species. Vulnerable wildlife are further pushed to the edge of extinction when nature can't replenish their stock to keep up with the rate of human consumption.

“Demand drives Crime” – The demand of the parts of the body of the animals are tend to increase the crime. The parts of the animals traded are considered to be valuable treasures because it is traded for like huge amount. The trade includes the trade of fur, teeth, leather, food, medicine, pet, tusks of various animals which also includes some of the other parts, even animals are traded from one place to another in the case if it is considered to be a rare species which will become endangered in the distant future. Some of the examples for trade of parts of animals includes: Ivory of elephants, horn of Rhino, and teeth and skin of Tiger are in high demand among the consumers, therefore the prices of them are bomb. Even though, the trade of these items are said to be illegal, still the trade is carried on just because for the demand and to earn huge profit from the same.

Despite of having many laws with the view to protect the survival endangered species, many countries are still engaged in the trade of species which are categorised as endangered. China is considered to be one among the top countries to import illegal wildlife. Wildlife trade is still a common phenomenon among many countries. It is turned to a big business where the estimated illegal profit is around billion of dollars. The Golden triangle of Laos, Thailand and Myanmar is a golden hub for illegal wildlife trade and trafficking.

The wildlife trade carried out by many countries will most probably result in affecting their

wildlife in return.

(A) How Trade Affects Wildlife:

One of the biggest threats to wildlife is illegal trade of wildlife. It results in destruction in habitat of the species which ultimately results in domestic and global extinction. When endangered species are involved, any poaching or harvesting of that species to supply the illegal trade risks the species becoming extinct. Further worsening the problem is the fact that the demand for larger and more ornate specimens means that hunters and collectors often aim for the fittest individuals from the breeding population, with serious consequences for subsequent generations (Rosen & Smith, 2010)³. Moreover, many endangered species are fragile and require expert and delicate handling. The ways in which many animals and plants are caught, transported, and kept, however, frequently cause injury, death, or attrition, resulting in further losses especially when living animals or plants are trafficked (UN ECOSOC, 4 March 2003).

The trade which taking place in wildlife will affect the other species which are dependent on those traded species. This will ultimately affects the ecosystem. The only way to help the environment and wildlife to maintain its natural sustainable routine is by preventing the trade of wildlife and imposing strict restriction especially trade in Endangered Species.

The trade of wildlife whether legal or illegal it has its own effects on the wildlife and environment. Trade.

(B) Laws Available to Prevent Illegal Trade on Wildlife Species:

- a. **Wildlife Protection Act, 1972** provides for legal protection to wildlife animals and also provisions against commercial exploitation and hunting.

This Act consists of 60 sections and 8 chapters. The act divided into 6 schedule list that provides for varying degrees of protection. Poaching, Smuggling, and illicit trade of animals listed in schedule 1-4 are prohibited.

The main features of the Act includes:

- Establishment of protected wildlife areas like wildlife sanctuary National Park etc.
- Protection and Management of wildlife habitats - which especially bans industrial activities to be carried on in these protected area.
- Regulation and control of trade - it restricts trade or commerce in wild life.

³ Rosen GE, Smith KF. Summarizing the evidence on the international trade in illegal wildlife. *Ecohealth*. 2010 Aug;7(1):24-32. doi: 10.1007/s10393-010-0317-y. Epub 2010 Jun 4. PMID: 20524140; PMCID: PMC7087942.

- Prohibition of Hunting – This Act prohibits hunting of animals except with permission of authorized authority.
- Amendment 1982, introduce provision for permitting to capture and transportation of wild animals for scientific management of animal population.
- The Government of India constituted a statutory body, the Wildlife Crime Control Bureau on 6th June 2007 by amending the Wildlife Protection Act, 1972.
- Section 39 of this Act specifies that any wild animals hunted, bred, fed, found, killed, dead or alive shall be property of the government.
- Case Law: Babran Kumawat V. Union of India⁴ – A Ivory trader who was poaching wild Elephants and was selling it in the name of Mammoth Ivory was punished under the act.
 - b. **National Biological Diversity Act (NBA), 2002** has been enacted to ensure protection of threatened species and their habitats. Under the Section 38 of the NBA, 2002 the species which are on the verge of extinction or likely to become extinct in near future as threatened species, are notified.
 - c. **CITES:** CITES, which stands for the Convention on International Trade in Endangered Species of Wild Fauna and Flora, is a global agreement among governments to regulate or ban international trade in species under threat. There are 184 member parties in CITES and trade is regulated in more than 38,000 species. It grouped into 3 appendices which provides for the protection of the survival of endangered species (discussed above). The CITES Secretariat is administered by UNEP (The United Nations Environment Programme) and is located at Geneva, Switzerland.

FACT: World Wildlife Day has been celebrated every year on the 3rd of March since 2013. The date chosen coincides with the day of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) which was signed in 1973.

- d. **The International Consortium on Combating Wildlife Crime (ICWC)**, a consortium of the CITES Secretariat, **INTERPOL** (International Criminal Police Organization), the **UN Office on Drugs and Crime**, the **World Bank** and the **World Customs Organization** has been established to tackle

⁴ AIR 2003 SC 3268

the illegal wildlife crime. It brings together the entire enforcement chain to assist national enforcement authorities and regional bodies to combat illicit trade in wildlife.

- e. **TRAFFIC: Trade Record Analysis of Flora and Fauna in Commerce** is a non governmental Organisation which is established for maintaining and improving the biodiversity conservation and sustainable development. It was established in the year 1976 by ICUN and WWF as a wildlife monitoring network. In 2017 TRAFFIC became an independent organization. Since its establishment it has helped in the evolution of international wildlife trade treaties. IT focuses on leverage resources, expertise and awareness on globally urgent trade species such as Tiger parts, Elephant ivory, Rhino horn. The conservation projects of TRAFFIC mainly focuses on reducing wildlife crime and illegal trade.
- f. **WWF: World Wildlife Fund**, is a science-based organization which addresses issues such as the conservation of species and its habitats, climate change, water and environmental education, among many others. Established as a Charitable Trust on 27 November, 1969, WWF India set out with the aim of reducing the degradation of Earth's natural environment and building a future in which humans live in harmony with nature. In 1987, the organization changed it's name from the World Wildlife Fund to World Wide Fund for Nature India. With five decades of extensive work in the sector, WWF India today is one of the leading conservation organizations in the country.⁵ WWF is one of the leading organizations which helps to stop the global wildlife crime. It pushes the government to take steps to protect the population of the threatened wildlife animals through enforcement of strict laws, reducing the demand of endangered species products and by following the commitments given under the CITES.
- g. **UNTOC: The United Nations Conventions against Transnational Organized Crimes**. A new protocol on illicit trafficking of wildlife under UNTOC is established as a global initiative to address the gap between the existing international legal framework for combating the illegal wildlife crime and to regulate trade. From article 7 to 11 of the draft protocol of UNTOC

⁵ See, <<https://www.worldwildlife.org/pages/stop-wildlife-crime>>

provides provisions for ‘prevention, cooperation and other measures’. In which art 7 exclusively deals with prevention of illicit trafficking in specimens.

- h. **ICCWC: The International Consortium on Combating Wildlife Crime** (ICCWC) was established in 2010 and it is a coordinated global response to wildlife crime, comprised of five inter-governmental organizations with the global presence, mandates and expertise to provide much needed front-line support and capacity building to address wildlife crime. The ICCWC partners are the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Criminal Police Organization (INTERPOL), the United Nations Office on Drugs and Crime (UNODC), the World Bank Group (WBG) and the World Customs Organization (WCO).⁶

IV. REPORT GIVEN BY NGOS IN THIS REGARD

(A) RENCTAS Report:⁷

A non-profit, the National Network Combating Wild Animal Trafficking (RENCTAS) was founded in 1999, and since then has won international awards and acclaim for its innovative approach to tracking and combating the global illegal wildlife trade, especially the sourcing of animals in the Brazilian Amazon rainforest and Cerrado savanna biomes. This NGO tracks the Brazilian wildlife trade on WhatsApp and Facebook.

RENCTAS was the first environmental organization in Brazil to use the internet in a major way as a tool to combat the illegal wildlife trade. Founded in 1999, after Giovanini was awarded a three-year fellowship from the US-based foundation Ashoka, RENCTAS made a name for itself by logging its first legal complaint regarding the use of the internet by animal traffickers in Brazil. In its first year, the NGO identified nearly 6,000 ads featuring the illegal sale of animals on major e-commerce platforms. By 2019, it reported a staggering 3.5 million advertisements for the illegal wildlife trade on social networks.

Of the approximately 38 million animals removed from Brazil every year, RENCTAS estimates that only roughly 1 in 10 will ever reach the final consumer — the rest die during capture or in transit, suffering the shock of being ripped from their natural home, starved and abused. The most trafficked Brazilian animals currently: the double-collared seedeater (*Sporophila*

⁶ See, <<https://www.unodc.org/unodc/en/environment-climate/ICCWC.html>>

⁷ see, <<https://news.mongabay.com/2020/11/crimefighting-ngo-tracks-brazil-wildlife-trade-on-whatsapp-and-facebook/>>

caerulescens); a small, finch-like songbird with a yellow bill that thrives in the southern Cerrado, and the white-cheeked spider monkey (*Ateles marginatus*), found across the Amazon basin. Sales of animals have been tracked to 200+ illegal trafficking organizations.

This report is purely a Brazil based study in which the trafficking of wildlife is caught through online medium. This kind of methodology is now more important than ever.

(B) Report of FATF:⁸

Recently, the Financial Action Task Force (FATF) has released the first global report on the Illegal Wildlife Trade (IWT) namely, “Money Laundering and the Illegal Wildlife Trade”. The report comes amid increasing international concern that the crime could lead to more zoonotic diseases in the future. The report has also described IWT as a “global threat”, which also has links with other organised crimes like modern slavery, drug trafficking and arms trade.

Recommendation made under this report:

The countries should consider implementing the good practices which include providing all relevant agencies with the necessary mandate and tools; and cooperating with other countries, international bodies and the private sector. The legislative changes are necessary to increase the applicability of anti-money laundering laws to the illegal wildlife trade-linked offences. India amended the Prevention of Money Laundering Act in 2012 removing a value threshold — of ₹30 lakh and above — that was earlier applicable to the wildlife trade predicates. It has suggested treating IWT as money laundering offences since the proceeds enter the global market through money laundering and also money laundering offences carry more severe penalties in many countries.

(C) Wildlife Crime Report, 2020:⁹

The first World Wildlife Crime Report was published in 2016. In the interim, there have been significant changes in both the policy environment and the illicit markets. If anything, trafficking of wild fauna and flora has grown in importance in the public consciousness and has risen on the political agenda, as it becomes clear that wildlife crime has negative implications for climate change, preservation of biodiversity, security and public health. In response, controls have tightened in a number of wildlife markets since the first publication, including those for rosewood, ivory, and pangolins.

The nature of this CITES-oriented data source affects the scope of this report. CITES lays out

⁸ see, <<https://www.fatf-gafi.org/content/dam/fatf/documents/Money-laundering-and-illegal-wildlife-trade.pdf>>

⁹ UNDOC world wise database

rules for trade in over 36,000 protected species, and it requires its parties to penalise trade in violation of these rules. But there are many crimes affecting wildlife that have nothing to do with these species. For example:

- The millions of species that are not listed by CITES may be illegally harvested and traded internationally, as is frequently the case in timber and fish trafficking;
- CITES is limited to regulating international trade, so the illegal harvesting of wildlife, such as the poaching of protected species, does not fall within its scope if the product is not transported internationally;
- domestic markets for wildlife are also beyond its jurisdiction, whatever the source of the wildlife, so long as the products concerned cannot be proven to have crossed borders in contravention of CITES rules.

This report focused on CITES related seizures. Therefore the core related data bases used in this report will not cover all crime. This reports contained forms of species that are used for the purpose of wildlife trade.

V. SUGGESTIONS

As we already discussed trade of wildlife species especially endangered species has its own effects on the environment and the ecosystem. But, Under certain circumstances And reasons endangered species can be traded provided that their survival is not affected. In general endangered species are those species which are prone to extinction. So, there is a need to protect the endangered species from being traded for its products. Many laws and Conventions provides provisions for protection of the endangered species and for its survival. CITES states the circumstances under which endangered species can be traded by giving 3 appendices and it also provides for strict application of the same. Many other acts like Wildlife Protection Act, 1972, UNTOC, WWF, TRAFFIC etc., as mentioned above also helps in protecting the species that are listed as endangered. Even though many laws, rules, regulations are in existence there is still trade of endangered species are carried out in many countries. Also to note that China is the largest country to import wildlife trade and also there are many other countries starting from Australia to Asia engaging in wildlife trade. My opinion and suggestion would be that, stringent laws have to be implemented and also existing laws have to be amended to be more stringent, as the only drawback of present laws are that they are not strictly followed. Protecting the survival of the endangered species will automatically helps for the development of the ecosystem and the environment at large. Species that are rare to be found and which are prone to extinction in the distant future has to be saved from its exploitation, because once these

species are exploited we will not be able to see the prints of the species in this world as it is endangered species i.e., the last one in that breed to be survived. And also we will not be able to increase its population if we encourage these kind of illegal trade of wildlife. It's high time now to create the awareness among the people and to push the government to make steps in this regard. And also we should allow the trade that is considered to be legal and if ensures the survival of the species if its for the purpose of education, scientific and such other purposes as mentioned in the laws.

VI. CONCLUSION

Trade is a common factor in both domestic and international sense. It also includes trade of various commodities, one among which is trading of animals. Endangered species are traded for the products made from them which has a high demand among the people like fur, tusks, horns and also other parts which are used for medicinal purpose. Trade of species can be legal, but highly comparable it's considered as illegal if it violates the provisions of law or traded for other purpose than for which it is allowed. There are many laws and Conventions which prevent the endangered species and help them for their survival. Only drawback is that the laws are not strictly followed in many countries and trade of species are taking place or carried out even though the laws are in existence. Species are one of the reason for smooth working of the environment and also for maintaining a sustainable ecosystem. Protecting the endangered species is very important because after the life of those species there will no prints which remind of their existence.

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