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Protection of Exotic Species under Indian Law: A Critical Appraisal of the Wild Life (Protection) Act, 1972

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ABSTRACT

Through this paper, the author has attempted to analyse the legislative and regulatory framework regarding the protection of exotic species of animals being traded in India. The paper identifies the lacunae in the Wild Life (Protection) Act of 1972 (“WLPA”) and the highlights the need to harmonise the national legislation with the international regulatory framework, that is, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”). In recent times, various schemes and developmental actions have been taken by the Indian government that indicates a positive and secure future for the exotic animal species being traded in India. In light of these developments, this paper also puts forth a few suggestions to fill in the gaps in domestic law in order to ensure wider applicability of the WLPA and subsequently greater protection to the exotic animal species in India.

Keywords: Exotic species, wildlife, protection, India.

I. INTRODUCTION

Over the years, the illicit wildlife trade has developed into a type of transnational organised crime that threatens the survival of several wild species all over the world.² In the period during and after the pandemic, there has been a registered rise in the demand for exotic animal species, which has led to an increase in the illegal trading and smuggling of such species across borders.³ The internet has enhanced the availability of exotic animals, whether the species is legal or unlawful in commerce.⁴ The internet further heightens consumers’ interest in exotic pets through videos posted on social media platforms such as Facebook and YouTube.⁵

The smuggling of endangered and exotic fauna from many parts of the world into India is a

¹ Author is a LL.M. Student at TERI School of Advanced Studies, New Delhi, India.

² Illegal wildlife trade in India, https://www.wwfindia.org/about_wwf/enablers/traffic/illegal_wildlife_trade_in_india/ (last visited Nov. 20, 2022).

³ Ankur Tripathi & Abhijit Roy, *Analysis of Legislative Framework concerning Exotic Species in India*, 4 Issue 3 INT’L J.L. MGMT. & HUMAN. 5180, 5180 (2021).

⁴ Anita Lavorgna, *Wildlife trafficking in the Internet age*, 3 CRIME SCIENCE 5 (2014).

⁵ K. Anne-Isola Nekaris et al., *Tickled to Death: Analysing Public Perceptions of ‘Cute’ Videos of Threatened Species (Slow Lorises – Nycticebus spp.) on Web 2.0 Sites*, 8 PLOS ONE e69215 (2013).

terrible and growing problem.⁶ A majority of these are exotic pets and macaws and cockatoos are just two examples of such exotic pets. The demand for birds and tortoises has also driven the emergence of the exotic pet sector in India.⁷ This trade in wildlife has threatened the existence of numerous wild species globally. According to the World Wildlife Report 2020, 6,000 different species of plants and animals were captured between 1999 and 2018.⁸ Since the trade of Indian species is completely prohibited under the Wild Life (Protection) Act, smugglers' attention has turned to exotic species, which has had disastrous effects on the ecology worldwide.⁹

II. EXOTIC SPECIES AND THE NEED TO REGULATE TRADE IN EXOTIC SPECIES

The term, "exotic animals" or "exotic species" has not been defined under any law in India. However, the term is mostly used to refer to those living species of flora and fauna that are moved, by human intervention, from their local geographical region to a foreign land.¹⁰ The term "exotic" is understood to mean only species and not the individual organism or specimen.¹¹ Exotic living species are wild species of animals or plants that have been relocated from their indigenous habitat.¹² Usually, humans are responsible for introducing these animals to a new area.

With the influx of these exotic species of animals and plants from foreign lands into the domestic territory, there arises an urgent need to regulate the entry and trade of such species. The foremost reason for regulating the trade of such exotic species is that the global trade of endangered species can lead to species extinctions.¹³ As illegal trade in endangered species gains momentum, it carries with it the dangers of complete extinction of the traded species, as the species are moved away from their natural habitat. Second, the movement of exotic species into the land also poses a risk to national security as there exists a possibility that these species may be used as biological weapons by nations who are in disagreement with the trading nation and third, the entry of exotic species can lead to breakout of infectious zoonotic infections, as seen

⁶ Illegal Wildlife Trade in India, 2014 (WWF IND) 3.

⁷ Smuggling in India Report, 2019-20 (DRI) 47.

⁸ World Wildlife Crime Report: Trafficking in Protected Species, 2020 (UNODC) 9.

⁹ *Ibid.*

¹⁰ *Exotic Species*, in CONSERVATION BIOLOGY AND BIODIVERSITY, 47.3C.1 (BIOLOGY LIBRETEXTS, 2018), [https://bio.libretexts.org/Bookshelves/Introductory_and_General_Biology/Book%3A_General_Biology_\(Boundless\)/47%3A_Conservation_Biology_and_Biodiversity/47.03%3A_Threats_to_Biodiversity/47.3C%3A__Exotic_Species](https://bio.libretexts.org/Bookshelves/Introductory_and_General_Biology/Book%3A_General_Biology_(Boundless)/47%3A_Conservation_Biology_and_Biodiversity/47.03%3A_Threats_to_Biodiversity/47.3C%3A__Exotic_Species) (last visited Nov. 19, 2022).

¹¹ Ankur, *supra* note 3

¹² WILDLIFE DIVISION, MINISTRY OF FOREST, ENVIRONMENT AND CLIMATE CHANGE, GOVERNMENT OF INDIA, ADVISORY FOR DEALING WITH IMPORT OF EXOTIC LIVE SPECIES IN INDIA AND DECLARATION OF STOCK (2020).

¹³ Purva Variyar, *Why India Needs Stronger Laws to Protect Exotic Species on its Soil*, WILDLIFE CONSERVATION TRUST (2021), <https://www.wildlifeconservationtrust.org/why-india-needs-stronger-laws-to-protect-exotic-species-on-its-soil/> (last visited Nov. 26, 2022).

in the case of spread of Covid-19 throughout the world.¹⁴ Lastly, the environmental repercussions of exotic species in natural ecosystems are severe. If the species becomes invasive, it has the potential to significantly disrupt food systems, alter habitats, and potentially result in the local extinction of native species.¹⁵

III. LEGISLATIVE AND REGULATORY FRAMEWORK CONCERNING EXOTIC SPECIES: AN OVERVIEW OF THE INTERNATIONAL AND DOMESTIC LAW

i. Convention on International Trade in Endangered Species of Wild Fauna and Flora¹⁶

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) is an international agreement between nations designed to ensure that the worldwide trade in species of wild plants and animals does not endanger their existence.¹⁷ CITES regulates the worldwide trading of certain species of flora and fauna specified on its Appendices. Almost 36,000 protected species are covered by CITES, and it also mandates that the parties to the Convention penalize trading activities that violate these regulations.¹⁸ Parties to the convention must put the treaty into effect by national legislation and the creation of a management authority.¹⁹ However, the Convention lacks the force of law as it provides no legal basis for confiscation of animal specimens and/or prosecution, or procedures linked with or incidental thereto (such as search, seizure, and so on), especially if such steps are harmful to the animals themselves.

ii. Prevention of Cruelty to Animals Act, 1960²⁰

The Prevention of Cruelty to Animals Act of 1960 (“PCAA”) lays down the procedure and penalties in an instance where an act of cruelty has been committed against animals. The purpose of this Act was to prevent the incidence of undue pain or suffering faced by animals. The Act defines cruelty, the activities that constitute cruelty to animals, and the punishment for such acts. It also specifies the powers of the police, such as entry, search, seizure, treatment, and care of animals. It is worth noting that the aforementioned Act makes no distinction between

¹⁴ Exotic animal trade carries risks of disease outbreak and introduction of invasive species, MONGABAY-INDIA (2021), <https://india.mongabay.com/2021/04/exotic-animal-trade-carries-risks-of-disease-outbreak-and-introduction-of-invasive-species/> (last visited Nov. 26, 2022).

¹⁵ Purva Variyar, *India’s Burning Exotic Pet Trade Crisis*, WILDLIFE CONSERVATION TRUST (2021), <https://www.wildlifeconservationtrust.org/indias-burning-exotic-pet-trade-crisis/> (last visited Nov. 26, 2022).

¹⁶ Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 03, 1973.

¹⁷ What is CITES? | CITES, <https://cites.org/eng/disc/what.php> (last visited Nov. 21, 2022).

¹⁸ UNODC, *supra* note 8

¹⁹ Ragnhild Sollund, *Wildlife Trade and Law Enforcement: A Proposal for a Remodeling of CITES Incorporating Species Justice, Ecojustice, and Environmental Justice*, 66 INT J OFFENDER THER COMP CRIMINOL 1017 (2022).

²⁰ The Prevention to Cruelty to Animals Act, 1960, No. 59, Acts of Parliament, 1960 (India).

exotic and indigenous species.²¹ It is also worth mentioning that the Act does not take effect until an act of animal cruelty is found.

iii. Customs Act, 1962²²

The Customs Act exclusively covers “goods” under Section 2(22). As per the definition, “goods” includes vessels, aircrafts, and vehicles; stores; baggage; currency and negotiable instruments; and any other kind of movable property²³. According to the rules of interpretation, laws governing taxation and punishment must be strictly understood without any extrapolation²⁴. Hence, the Act’s definition of “goods” excludes animals from its scope. However, different laws define “goods” to include live animals, cattle, and other items, which on the surface seems problematic given the current situation of importing exotic species under the helm of international trade. Any court of law could decide to interpret the provisions of the Customs Act and include animals under the definition of “goods”.²⁵ As keeping, breeding, purchasing, selling, and exhibiting exotic animals and birds domestically is not subject to any permits under the Act,²⁶ the provisions of the Act are exploited by the illegal breeders and traders who interpret the term “goods” to include live animals and birds under the expression “movable property”.

iv. Wild Life (Protection) Act, 1972²⁷

The Wild Life (Protection) Act of 1972 (“WLPA”) was enacted by the Government of India in 1972 with the main aim to protect the wild species of flora and fauna, thereby conserving the biodiversity of the country.²⁸ WLPA is the most important piece of law enacted in India for the protection and conservation of local wildlife and ecosystems. The Act prohibits the hunting, trade, or commerce of wild animals specified in various Schedules. The Act’s six Schedules contain solely native plant and animal species. Furthermore, the Act is concerned with the prevention and identification of offences against wildlife and can be used by wildlife law enforcement authorities and the judiciary to penalise those who violate the law.²⁹ However, the Act contains no prohibitions or punishments for dealing or holding exotic animals, whether

²¹ Deborah R. Dyer, *The Role of Exotic Species Within Ecosystem Management*, 19 (2) *Environ* 75 (1996).

²² The Customs Act, 1962, No. 52, Acts of Parliament, 1962 (India).

²³ The Customs Act, 1962, § 2(22), No. 52, Acts of Parliament, 1962 (India)

²⁴ G. P. SINGH, *PRINCIPLES OF STATUTORY INTERPRETATION*, 879 (14th ed. 2016).

²⁵ Ankur, *supra* note 3

²⁶ *Rajesh Agarwal Raju Sagar v. Commissioner, Customs-Indore*, Customs Appeal No. 50170 of 2021 (Custom, Excise & Service Tax Tribunal, Order dated Jan. 07, 2021).

²⁷ The Wild Life (Protection) Act, 1972, No. 53, Acts of Parliament, 1972 (India).

²⁸ Supriti Trivedi, *Conservation of Wildlife: Legal Issues and Challenges in India*, SSRN JOURNAL (2014), <http://www.ssrn.com/abstract=2437317> (last visited Nov. 19, 2022).

²⁹ *Ibid.*

endangered or not. This is a significant barrier, as unfettered trade and possession of exotic animals within the country implies anarchy.³⁰

v. Prevention of Cruelty to Animals (Pet Shop) Rules, 2018³¹

The Rules formulated in 2018 under Section 38(1) of the PCAA prescribes the procedure regarding operation of pet shop including, registration of pet shop, maintenance of standards for well-being of species. The Rules also prescribe standards with respect to general care, veterinary care, accommodation, food for keeping/holding species such as hamsters, rabbits, dogs, cats, mice, guinea pigs, birds, in a pet shop.³² Most of the commonly traded exotic species are, however, excluded from the purview of these Rules and thus, widely bred and sold.

IV. DEFICIENCIES IN THE WILDLIFE LEGISLATION OF INDIA AND REPARATIVE ACTION

WLPA contains no provisions addressing foreign species that might be transported through India and is primarily focused on protecting local species only.³³ The term “exotic species” has not been defined under the Act. It is pertinent to note that WLPA prohibits trading, hunting and commerce of wild animals listed in the Schedules to the Act but does not cover exotic species of animals introduced into India. This was further upheld in a case concerning the arrest of two persons in Assam after rare animals like kangaroos, macaws, and Aldabra tortoises were seized from their truck. Gauhati High Court³⁴ granted bail after stating -

“As seized animals do not come under the purview of the Wildlife (Protection) Act, 1972, the detention of the petitioners would not be permissible under Wildlife (Protection) Act, 1972 and, since the only case registered against the petitioners is under the Wildlife (Protection) Act, 1972, the Court is of the view that the petitioners will be entitled to go on bail vis a vis the aforesaid case under the Wildlife (Protection) Act, 1972 unless wanted in connection with any other case.

From the most endangered species in Appendix I to the species of lesser concern in Appendix III³⁵, the CITES lists various animal and plant species. These Appendices are extensive taxonomic lists of the species that are prohibited from international trade. However, the Wildlife

³⁰ Purva, *supra* note 13

³¹ The Prevention of Cruelty to Animals (Pet Shop) Rules, G.S.R. 1152(E) (Sept. 06, 2018).

³² ANIMAL WELFARE LAWS, POLICIES AND ORGANIZATIONS, 146 (IGNOU), <https://egyankosh.ac.in/bitstream/123456789/70864/1/Block-8> (last visited Nov. 20, 2022).

³³ Akash S. Karmakar, *The lacunae in wildlife protection laws in India*, 1 (2013), <http://www.elaw.in/forest/wildlife/lacunaewildlife-Akash.pdf> (last visited Nov. 24, 2022).

³⁴ Narsimha Reddy and Anr. v. State of Assam and Ors. (Gauhati High Court, Order dated Aug. 20, 2022).

³⁵ Appendices | CITES, <https://cites.org/eng/app/appendices.php> (last visited Nov. 25, 2022).

Protection Act does not provide for the levy of penalties against domestic trade in these species. As a consequence, even though the authorities under the Customs Act are responsible for preventing the international trafficking of these species, the domestic legislation on protection of wildlife is lacking in imposing penalties for domestic dealing in these species as well as in listing these species.³⁶

Recognizing these lacunae in the wildlife legislation of India, the Centre formulated the following policies to counter the growing exotic pet trade crisis in the country and to keep a check on the influx of exotic species in India:

i. National Wildlife Action Plan (2017-2031)

The National Wildlife Action Plan's ("NWAP") was formulated in 2017 by a Committee appointed by the Ministry of Environment, Forest and Climate Change ("MoEF&CC"). This Committee was entrusted with the task to review the NWAP-2 (2002-2016) and thereafter, draft NWAP-3 for the next 15 years, that is, 2017 to 2031.³⁷

With main goals of the Plan set at achieving sustainable development and ensuring the preservation of genetic variety,³⁸ it also places a strong emphasis on protecting endangered animal species' habitats, which include terrestrial, inland aquatic, coastal, and marine environments³⁹. The Plan emphasizes the integration of measures to mitigate effects of climate change and adapt it to wildlife planning and conservation.

ii. Advisory for Dealing with Import of Exotic Live Species in India and Declaration of Stock, 2020

With the growing number of people keeping exotic species as pets during the lockdown in 2020, the MoEF&CC issued an Advisory for Dealing with Import of Exotic Live Species in India and Declaration of Stock ("Advisory") in June 2020. The purpose of the Advisory was to streamline and formalize the process of importing live exotic animals; develop an inventory of exotic live species in India, and register/declare progenies of imported exotic live species.⁴⁰ As per the definition given in the Advisory, exotic animals as those that are mentioned under the Appendices of the CITES, but not under the schedules of the WLPA 1972, thus limiting the scope of the advisory. The Advisory, however, lacks the force of law as it does not specify the

³⁶ Akash, *supra* note 33

³⁷ National Wildlife Action Plan 2017-31, https://wii.gov.in/nwap_2017_31 (last visited Nov. 25, 2022).

³⁸ National Wildlife Action Plan 2017-2031 (NWAP-3) - JournalsOfIndia, (2019), <https://journalsofindia.com/national-wildlife-action-plan-2017-2031nwap-3/> (last visited Nov. 25, 2022).

³⁹ NWAP, *supra* note 37

⁴⁰ WILDLIFE DIVISION, MINISTRY OF FOREST, ENVIRONMENT AND CLIMATE CHANGE, GOVERNMENT OF INDIA, ADVISORY FOR DEALING WITH IMPORT OF EXOTIC LIVE SPECIES IN INDIA AND DECLARATION OF STOCK (2020).

parent statute under which it has been issued. Further, the exemption from any documentation requirement means that the Indian government is unconcerned whether the exotic species is legitimately imported or trafficked, thus, openly breaching CITES.⁴¹

iii. Wild Life (Protection) Amendment Bill, 2021

The Wild Life (Protection) Amendment Bill, 2021 (“WLP Amendment Bill”) was passed by the Lok Sabha in August 2022. Its purpose is to guarantee that provisions relating to CITES become part of the local law. Furthermore, the Bill seeks to simplify WLP by streamlining the schedules.⁴² WLP Amendment Bill recommends the inclusion of a section regarding the implementation of CITES provisions in India and a separate Schedule dedicated to species listed in Appendices I, II and III of the CITES.⁴³ The Amendment Bill deserves to be acknowledged because it has resulted in the resolution of various issues raised by members of India’s conservation community.

V. CONCLUSION

Considering the burning exotic pet trade crisis that India is facing, it is of utmost importance that a robust legal protection regime for exotic animals is put in place that harmonizes the domestic law with the country’s obligations under CITES. The steps taken by the Government of India concerning the exotic species such as the Advisory of 2020 and the WLP Amendment Bill are all laudable efforts in the direction towards addressing concerns surrounding exotic species, as India offers almost negligible protection to exotic species within its territory. The WLP Amendment Bill lays a foundation towards securing a better future for wildlife.

In order to ensure a stronger legal regime for protection of exotic species on Indian land, we must look to reforming the existing laws in order to bring them at par with the international agreements and legislations. One of the measures could be to amend the wildlife legislation to include provisions concerning exotic animals and those species that require attention from both the conservation as well as animal welfare perspectives. Further, it could be fruitful if a new law is introduced that addresses exotic species trade and criminalizes not only ownership but also possession of such animals. Finally, the judiciary of the country can play an important part in filling up the legal lacunae through judicial interpretations and by issuing directions to the

⁴¹ Anil Ghanghas & Asha Poonia, *Advisory for Dealing with Import of Exotic Live Species in India and Declaration of Stock: A Boom or Bane for Illegal Wildlife Trade in India*, INTERNATIONAL JOURNAL OF ENVIRONMENTAL ANALYTICAL CHEMISTRY (2022).

⁴² LIFE Comments on Wildlife Protection Amendment Bill, 2021 | LIFE, (2022), <https://thelifeindia.org.in/life-comments-on-wpa-amendment-bill-2021/> (last visited Nov. 29, 2022).

⁴³ Preliminary comments on the Wild Life (Protection) Amendment Bill, 2021, WCS-India, <https://india.wcs.org/Newsroom/News/ID/17140/Preliminary-comments-on-the-Wild-Life-Protection-Amendment-Bill-2021> (last visited Nov. 28, 2022).

Government, which has proved effective in the past and has formed part of India's environmental law jurisprudence.

VI. REFERENCES

(A) International Conventions

- Convention on International Trade in Endangered Species of Wild Fauna and Flora

(B) Statutes

- The Customs Act, 1962
- The Prevention to Cruelty to Animals Act, 1960
- The Wild Life (Protection) Act, 1972

(C) Cases

- Narsimha Reddy and Anr. v. State of Assam and Ors.
- Rajesh Agarwal Raju Sagar v. Commissioner, Customs-Indore

(D) Regulations

- National Wildlife Action Plan 2017-31
- The Prevention of Cruelty to Animals (Pet Shop) Rules, 2018
- Advisory for Dealing with Import of Exotic Live Species in India and Declaration of Stock, 2020

(E) Reports

- Illegal Wildlife Trade in India, 2014 (WWF IND)
- Smuggling in India Report, 2019-20 (DRI) 47
- World Wildlife Crime Report: Trafficking in Protected Species, 2020 (UNODC) 92

(F) Treatises

- IGNOU, Animal Welfare Laws, Policies and Organizations
- Conservation Biology and Biodiversity
- G. P. Singh, Principles of Statutory Interpretation

(G) Scholarly Articles

- Akash S. Karmakar, *The lacunae in wildlife protection laws in India*
- Anil Ghanghas & Asha Poonia, *Advisory for Dealing with Import of Exotic Live Species in India and Declaration of Stock: A Boom or Bane for Illegal Wildlife Trade in India*, International Journal of Environmental Analytical Chemistry (2022)

- Anita Lavorgna, *Wildlife trafficking in the Internet age*, 3 Crime Science 5 (2014)
- Ankur Tripathi & Abhijit Roy, *Analysis of Legislative Framework concerning Exotic Species in India*, 4 Issue 3 Int'l J.L. Mgmt. & Human. 5180
- Deborah R. Dyer, *The Role of Exotic Species Within Ecosystem Management*, 19 (2) Environs 75 (1996)
- K. Anne-Isola Nekaris et al., *Tickled to Death: Analysing Public Perceptions of 'Cute' Videos of Threatened Species (Slow Lorises – Nycticebus spp.) on Web 2.0 Sites*, 8 PLOS ONE 69215 (2013).
- Ragnhild Sollund, *Wildlife Trade and Law Enforcement: A Proposal for a Remodeling of CITES Incorporating Species Justice, Ecojustice, and Environmental Justice*, 66 Int J Offender Ther Comp Criminol 1017 (2022)
- Supriti Trivedi, *Conservation of Wildlife: Legal Issues and Challenges in India*, SSRN Journal (2014)

(H) News and Media

- Exotic animal trade carries risks of disease outbreak and introduction of invasive species, Mongabay-India (2021)
- LIFE Comments on Wildlife Protection Amendment Bill, 2021 | LIFE, (2022)
- Preliminary comments on the Wild Life (Protection) Amendment Bill, 2021, WCS-India
- Purva Variyar, *India's Burning Exotic Pet Trade Crisis*, Wildlife Conservation Trust (2021)
- Purva Variyar, *Why India Needs Stronger Laws to Protect Exotic Species on its Soil*, Wildlife Conservation Trust (2021)
