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Revisiting Wildlife Laws of Bangladesh

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ABSTRACT

Bangladesh has a rich heritage of wildlife as well as long history of its conservation. Efforts for protection of wildlife in Indian subcontinent seem to have been initiated as far back as 242 B.C. when Emperor Ashoka passed laws for the protection of forests, birds and animals. The erstwhile British government made laws for conservation of forest and wildlife. It is often criticized that the British adopted legislations for earning revenue, but the early British efforts is also regarded as a primary step towards protection of forest and wildlife. During Pakistan period few rules were made for wildlife conservation. In independent Bangladesh the newly formed government realized the importance of wildlife conservation and passed laws accordingly and established a wildlife circle within the Forest Department. Of late the Bangladesh has added constitutional provision for conservation of forests, wildlife and biodiversity and promulgated the Wildlife (Conservation and Safety) Act, 2012. Thus wildlife conservation has got momentum in Bangladesh. This article briefs evolution of wildlife laws in Bangladesh and some issues raised by the field officers that seem to hinder optimum enforcement of the Act.

Keywords: *wildlife conservation, constitutional provisions, enforcement.*

I. INTRODUCTION

History of evolution of laws pertaining to wildlife management in Bangladesh wildlife management starting from the Maurya period till to date has been briefed as follows:

Maurya dynasty: Wildlife conservation, particularly protection of elephants, in India dates back to fourth century B.C. during the time of Kautilya and Chandragupta Maurya, and there were severe penalty for those found guilty of cruelty to animals. The earliest codified law traces back to 242 B.C when king Ashoka made a law in the matter of protection of forests, birds and animals [1].

Mughal period: Although the Mughal period (1526-1761) was characterized by continuous destruction of forests for timber and clearance for cultivation [2], but there were some instances of establishment of magnificent gardens and fruit orchards, green parks around their places and along banks of rivers. The Mughal Emperors and rulers preserved some forest areas, but as royal hunting grounds [3]. They did not have any definite policy to protect the forest or wildlife

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rather they considered forest as a good source of revenue [4].

The British India period: The erstwhile British India Government (1858-1947) started the Imperial Forest Department during the year 1864 and appointed Dr. Dietrich Brandis, a German Forest officer as Inspector General of Forests who helped the British to formulate the first Forest Act – the Government Forests Act, 1865 (Act VII of 1865) which was followed by ‘The Indian Forest Act, 1878 (Act VII of 1878)’ and ‘The Indian Forest Act, 1927 (Act XVI of 1927)’ respectively.

It is often criticized that the laws formulated pertaining to wildlife conservations during the British period were inadequate and like the Mughal the British government also adopted legislations for earning revenue only. Nevertheless, the early British efforts are regarded as a primary step towards protection of forest and wildlife in British India. ‘The Indian Forest Act, 1927 (Act XVI of 1927)’ is still in force in India, Pakistan and Bangladesh with necessary amendments from time to time. The Bengal Rhinoceros Preservation Act, 1932 (Act VIII of 1932); Wild Birds and Animals Protection Act, 1912 (Act VIII of 1912); Elephant Preservation Act, 1879 (Act VI of 1879) promulgated during the British period were in force in Bangladesh until 1973 when President’s Order No. 23 of 1973 was enacted.

The Pakistan period: During Pakistan period (1947-1971) under the provisions of the Act VIII of 1912 the government declared the list of animals restricted for hunting [5]. The Hunting, Shooting and Fishing Rules, 1959 were framed under the provisions of the Forest Act, 1927 [5] and amended the in 1967 [6]. Further the Rules to regulate hunting, shooting and fishing within the controlled and vested forests were framed in 1959 under the East Pakistan Private Forest Ordinance, 1959 (Ordinance No. XXXIV of 1959) [8].

Due to depletion of wildlife resources, extinction and nearly extinction condition of some species, game sanctuaries were established in early sixties of the last century to conserve and develop wildlife and for raising public awareness. The Sundarban game sanctuary was established in 1960 at Katka with an area of 195 square kilometers. During the same year one more sanctuary was established in Chittagong Hill Tracts at Pablakhali spreading over an area of 280 square kilometers. Some areas were notified as closed for hunting, shooting and tapping in Cox’s Bazar district [9].

The Government appealed to the World Wildlife Fund (WWF) to send an expedition team to investigate the status of Pakistan's wildlife. In compliance the WWF made two expeditions in East Pakistan in 1966 and 1967. Mountfort and Poore submitted the first report arising from the 1966 expedition in 1967 and the second expedition report in 1968 with elaborating and listing

status of wildlife and recommendation for its conservation.

Bangladesh period: The Bangladesh Wild Life (Preservation) Order, 1973 (President's Order No. 23 of 1973) [10] was passed repealing the laws inherited from the British to cater to the needs of time. Subsequently it was amended twice by the Bangladesh Wild Life (Preservation) (Amendment) Act, 1973 (Act XVII of 1973) [11] and the Bangladesh Wild Life (Preservation) (Amendment) Act, 1974 (Act XVII of 1974) [12] respectively. In some documents the Bangladesh Wild Life (Preservation) Order, 1973 (President's Order No. 23 of 1973) is erroneously appeared as the Bangladesh Wild Life (Preservation) (Amendment) Act, 1974 (Act XVII of 1974). The P.O. 23 of 1973 is possibly the best contribution to conservation of wildlife in Bangladesh during the short reign of Bangabandhu Sheikh Mujibur Rahman [13].

A Wildlife Circle was first established headed by a Conservator of Forests within the Forest Department following the WWF Expedition Reports mentioned above and in pursuance of the President's Order No. 23 of 1973 for the conservation of wildlife in the war-ravaged country. The Circle was functional for 10 years from mid-1973 to June 1983. It was abolished in 1983 in pursuance of the recommendation of the Administrative Reform Committee, popularly known as **Enam Committee** during the Martial Law Government. Officers and staffs engaged in the Circle were merged with territorial units for management of National Parks and Sanctuaries. The Conservator of Forests (General Administration) at headquarters was assigned to serve as Conservator of Forests (Wildlife and General Administration). His responsibilities were limited to issuing directives and compounding offences. The Wildlife Advisory Committee formed back in 1973 under the provision of P.O. 23 of 1973 made an effort to impress the military dictatorship *to re-establish the Wildlife Circle*, but it went in vain.

A decade later, in 1994 the Wildlife Circle was revived under the Forest Department led "Development of Wildlife Conservation and Management Project (DWCMP)" during 1994 to 1997. The end of DWCMP in June 1997 further caused abolishment of the revived Wildlife Circle. The Conservator of Forests (General Administration) resumed the responsibilities of the rudimentary Wildlife Circle as Conservator of Forests (Wildlife and General Administration) as before and continued till 2001.

In an organizational reform in 2001, wildlife management in Bangladesh was given unprecedented priority. The Wildlife Circle was re-named as "Wildlife and Nature Conservation Circle" headed by an officer in the rank of Conservator of Forests with four subordinate Wildlife Management and Nature Conservation Divisions. Three more divisions were created under the "Strengthening Regional Cooperation for Wildlife Protection in Asia

(SRCWP), implemented in Bangladesh from 2011 to 2016. Thus the wildlife conservation and protection in Bangladesh got momentum than ever before.

Meanwhile in 2011 the Constitution of the People's Republic of Bangladesh added a new article 18A pertaining to the protection of forest, wildlife and biodiversity by the State for the present and future citizens [14]. Accordingly the Government enacted the Wildlife (Conservation and Safety) Act, 2012 (Act No. XXX of 2012) [15].

Major wildlife conservation activities in the country are implemented through Protected Area (PA) networks under the provisions of the Wildlife Act, 2012. Protected Areas include 20 National Park, 25 Wildlife Sanctuary, 9 Eco-park, 2 special biodiversity conservation area, 2 Safari Park, and 2 Marine Protected Area. Wildlife sanctuary includes 6 Dolphin Sanctuary. Currently, the extent of 64 terrestrial and marine protected area is nearly 0.82 million ha. The total terrestrial protected area is about 0.47 million ha, which is 3.18 percent of the total area of the country [16]. In addition the Government declared 2 vulture safe zones for white-rumped vulture-*Gyps bengalensis* under the provision of the Act. Vulture Safe Zone I is located in Sylhet, Chattogram and part of Dhaka divisions extending over an area of 4603.98 ha and Vulture Safe Zone II is in Khulna, Barishal and part of Dhaka divisions extending over an area of 148457.56 ha.

There has been a ban on hunting of all kinds of wild animals and birds in the country since 11 December 1989 until further order under the provisions of the President's Order No. 23 of 1973 [17]. The Wildlife Act, 2012 is in force in Bangladesh for protection of wildlife. Forest Department is entrusted with the responsibilities of conservation of forest, wildlife and biological diversity in the country

II. FACTORS HINDERING OPTIMUM ENFORCEMENT

Forest officers assigned for wildlife law enforcement and conservation of wildlife often encounter different unpredictable and stressful situations in the line of duty. Seemingly it does not hinder their performance rather few unresolved queries and misreading or incorrect application of law affect their performance. Some of such factors are discussed here.

Power to arrest: The arrest of the accused is an integral part of the investigation into wildlife crimes. In India forest officers authorized by Chief Wildlife Warden or any police officers, not below the rank of sub-inspector may arrest and detain any person committed an offence [18]. The P.O. No. 23 of 1973 empowered any officer not below the rank of Forester or Senior Wildlife Scout to arrest any person without orders from a Magistrate and without a warrant, who committed an offence against the P.O. [19]. Without power of arrest it is difficult to

proceed with the offender caught red-handed in the remote forests. The accused may provide false name and address. It is also difficult to establish the claim if the offender could not be arrested. During forest patrolling it is not invariably possible to come across an offender. When an offender is found but cannot be arrested - misery knows no bound.

Situational leadership works: The officers go with the Forest Act, 1927 that provides them power to arrest without orders from Magistrate or without a warrant [20]. Even prior to this in 1878 the legislature provided exactly the same power to Forest-officer or Police-officer [21]. The provision may be revisited for the sake of conservation of national wildlife heritage.

Delegation of functions: The overall duties of conservation, development of safety measures and management of biodiversity, forests and wildlife of the country shall be delegated to Chief Warden; Additional Chief Warden and Warden [22]. The Chief Conservator of Forests of the Forest Department, the Conservator of Forests in charge of the Wildlife and Nature Conservation Circle and Divisional Forest Officer in charge of Wildlife and Nature Conservation Division shall, *ex-officio*, perform duties as the Chief Warden, Additional Chief Warden and Warden respectively [23]. The duties and functions of the Chief Warden, Additional Chief Warden and Warden shall be prescribed by rules and they shall also perform their duties as directed by the Government or the Board, as the case may be [24]. To this end, necessity of framing rules cannot be overemphasized.

Carrying firearms: Forest officers serving under the Forest Department of East Pakistan, [now Bangladesh] are authorized to possess firearms issued by the government for protection in execution of their duties, but not as part of officers' equipment [25], but the P.O. 23 of 1973 provided for carrying of firearms up to rank of junior wildlife scout as part of uniform [26]. Moreover, it provided power to resort to the use of firearms in the exercise of the right of private defence [27]. Such supportive provisions are not found in the Wildlife Act. However, provisions for exercising the right of private defence are there in the Penal Code [28].

Fear of Failure: Though there is an indemnity clause in the Wildlife Act [29], it also provides an alert to the officers—submission of false case is punishable with imprisonment or with a fine [30]. When court mentions that the complaint brought against the accused is groundless, the complainant is liable to higher levels of punishment [31]. Similar provisions against false, frivolous or vexatious accusations are already there in the Code of Criminal Procedure [32].

Law provides—Judge to decide as to admissibility of evidence [33]. The court may dismiss or discharge a case [34] or facts may be proved not proved or disproved [35]. All logically relevant facts are not legally relevant and all legally relevant facts may not be logically relevant. So all

the evidences that are to be produced in the courts have to pass two hurdles it has to be both logically relevant and legally admissible at the same time [36]. Poor presentation and also poor pleadings of cases may lead to loss of claim. In a word *there is no guarantee in a courtroom*.

Of Schedules: Both Schedule I and Schedule II contain list of ‘Protected Animal’ [37]. The purpose of these two schedules is apparently uncertain—whether they are protected and strictly protected animal, or CITES and Non-CITES species, or Protected Animal or Game Animal, or Trade Animal or Non-Trade Animal or differentiated in other ways which is implied but not expressed. .

spotted deer: The Act provides penal measures for killing of animals — cheetah, lam cheetah, hoolock, sambar deer, crocodile, gharial, whale or dolphin [38]. The description appears to be exhaustive. The Spotted deer is not included in the description or elsewhere in the body of the law, but included in Schedule II. It is a common wild animal in the mangroves. Incidence of crimes related to spotted deer is comparative frequent. The officers and the court express their desire for inclusion of spotted deer in the text of the law.

Compounding Offence: Except section 36, offences against all sections are compoundable subject to compensation [39]. Inclusion of a section to provide a self-sufficient provision for compounding offence reviewing the P.O. 23 of 1973 [40] and the Forest Act, 1927 [41] including a mention of suspension of any ongoing proceeding in the court and immediate release of the accused if in custody and goods if not confiscated, may be considered. Alternately framing rules could be a remedy [42].

Station officer: The Act provides that killing a tiger or elephant or Cheeta or crocodile in exercise of the right of private defence is not an offence [43] and station officer in consultation with warden may lodge cases if required. ‘Station officer’ is not defined in the Act. Further, station officers are not invariably responsible for enforcing wildlife laws across the country. Needs of defining ‘station officer’ and authorizing ‘officer’ already defined or ‘authorized officer’ or ‘authorized person’ to be defined in the Act may be examined.

Authorized officer, authorized person: The Chief Warden or any ‘officer authorized by him may enforce several provisions under this Act [44]. More clarity is required whether all officers as defined in the Act [45] including all wildlife officers of varying designations are *ex-officio* authorized or they need authorization by the Chief Warden. Furthermore, the Act makes a class of people bound to assist ‘authorized person’ in rendering services under the Act or Rules [46]. It also needs clarification who is the ‘authorized person’.

The Act provides that no court shall take cognizance of any offence committed against this Act

without a written complaint by ‘any officer authorized under this Act’ or any person affected [47]. More clarity requires—who are the ‘authorized officers under this Act’.

Use of other routes except custom ports: Import or export, re-export of wildlife is prohibited through any other route except customs port of entry [48]. The Act provides only for the legal consequences of goods related to contravention of such provisions [49]. Penalty for person involved is uncertain. However, the Customs Act, 1969 prescribes punishment for such offence [50] and the Wildlife Act only provides penal measures for export or import of wildlife or trophies without licence or permit [51].

BAIL: The offence related to killing of tiger or elephant against section 36 is non-bailable [52] and offence committed under other sections is bailable [53]. Contrarily, the Act also provides that offences related to protected areas enumerated in section 14 are also non-bailable [54]. However, in such cases Courts apply ‘**Doctrine of Harmonious Construction**’ [55] that brings consistency between different conflicting provisions until it is reformed by the legislature.

Animals not included in the Schedules: Due to the presence of section 6 no offender can escape. It says - No person shall hunt any wild animal without a license or a permit under this Act, or damage or collect any plant mentioned in Schedule IV. Here equality has been given all wildlife offences providing same and lower degree of punishment [56]. Exclusion of animals, for unlawful hunting of which different penal measures have already been there [57] or to be prescribed for any other scheduled animals and inclusion of animals not included in any schedule may be considered.

Wildlife Crime Control Unit: The Wildlife and Nature Conservation Circle is functional. In 2012 a Wildlife Crime Control Unit (WCCU) also has been established within the Forest Department under the Strengthening Regional Cooperation for Wildlife Protection in Asia (SRCWP) with various responsibilities such as prevention and control of illegal hunting and prevention of illegal exports and imports, regular patrolling, criminal prosecution, law enforcement, wildlife rescue and medication [58]. The WCCU remains operational after the project closeout in 2016. To make these two units to function optimally the WCCU needs to be regularized [59] and rules need to be framed prescribing its duties and responsibilities [60] elaborating specified jurisdiction, pre-defined tasks and inter-unit and interagency coordination.

animal wandering crossing borders: Nilgai (*Boselaphus Tragocamelus*) is not found in northwestern Bangladesh. Nilgai often found to wander there, outside the protected areas, crossing the border. Some of them chased to death by local people [61]. Some were safely rescued by the Forest Department and rehabilitated in the Safari Park while the rest was died in

captivity. The nilgai is not included in the Schedules, but hunting of any wild animal without permit is prohibited [62]. Provisions for such wandering wild animals may be dealt with in the Act and such wandering animals may be deemed to be public property until the *contrary is proved*. Concerned law enforcement agencies and Forest Department may be entrusted to handle them humanely and with compassion.

Empowerment of Wildlife Officers: A good number of wildlife officers with different designations such as Biodiversity and Wildlife Conservation Officer, Wildlife Inspector, Wildlife Ranger, Wildlife Scout and Junior Wildlife are engaged in the field for wildlife conservation. They may be empowered by the Chief Warden and included in the definition of ‘authorized officer’ or ‘authorized person’ in the Act. This will encourage them and make them understand clearly about their role in law enforcement. It is to say the Forest Act, 1927 and Gazette Notification [63] issued subsequently for the purpose of the Forest Act, 1927 clarified the powers of all forest officers starting from the Chief Conservator of Forests down to the Forest Guard without any ambiguity.

Wildlife Forensics: Forest Department has established a Wildlife Forensic Laboratory. Any forensic DNA laboratory required to be established by the Government, by notification in the official Gazette, for the purposes of the law [64]. The Deoxyribonucleic Acid (DNA) Act, 2014 provides for determination of the process and methods of DNA sample collection and its analysis, control of using DNA sample and profile, and establishment of forensic DNA laboratory.

The Evidence Act, 1872 has been amended in 2022 to include inter alia forensic evidence [65]. At present evidence includes blood, hair, all body material, organ or part of organ, DNA, finger impression, palm impression, iris impression and foot print or any other similar material or—object which may establish that an offence has been committed or establish a link or relation between an offence and its victim or an offence and its offender; and prove or disprove a fact [66]. In this regard Court may have to form an opinion based on expert opinion [67]. Procedure for submission of forensic report and provision for comparison of forensic evidence with other evidence are provided in the Evidence Act [68]. The Wildlife Forensic Laboratory needs to be established by law and admissibility of forensic evidence prepared by Wildlife Forensic Report needs to be tested.

Coordination among Law Enforcement Agencies: Integrated efforts of all the government, non-government and volunteer organizations are the crucial means of protecting wildlife of the country. Forest Department enforces laws in cooperation with other law enforcement agencies

such as Bangladesh Police (including River Police), Border Guard Bangladesh (BGB), Bangladesh Coast Guard (BCG), Rapid Action Battalion (RAB), even Bangladesh Navy and also public agencies like Bangladesh Customs and Department of Fisheries. Deputy Commissioner (DC), Upazila Nirbahi Officers (UNO) and local government authorities like local union parishad chairman and members always help support in combating wildlife crime. Border Guard Bangladesh (BGB) has at least 134 border outposts (BOP) and they patrol in the border areas. Bangladesh Coast Guard (BCG) and Bangladesh Navy (BN) patrol in Inland River and deep sea, police and Rapid Action Battalion (RAB) have *instant access to any area*. Inter alia, they all are responsible for controlling smuggling. Bangladesh Customs is also responsible for prevention of smuggling. So, there is no legal barrier in taking their cooperation for combating wildlife trafficking. Strengthening of cooperation among the agencies is much needed for timely and effective cooperation in dealing with wildlife matters in consultation with the Forest Department in conformity with the Wildlife Act to avoid any conflict as the Wildlife Act is a special Act related to wildlife matters. To this end some mechanisms may be explored.

Ambiguity and Uncertainty in the Law: *Ambiguity occurs where there is lack of clarity or when there is uncertainty about the application of a term.* When differences in understanding are irresolvable by intelligent reading of text of a law, there are two broad ways to go ahead: It may be interpreted by Court or clarified by legislature. In the eyes of the law, when this kind of situation arises, the legislative Act contains ambiguity. According to Sanford Schane of University of California lawyers and legislatures ideally need use language that is clear, certain, unequivocal, and to the point. Attempts needs to be made at restoring certainty in the law, if there is any.

III. CONCLUSION

Wildlife crimes threaten the security, economy, and biodiversity of Bangladesh. Demand for elephant ivory, buckskin, deer horn, tiger skin and furs, and meat continues to rise as global syndicates connect traders in global markets. Bangladesh has also emerged as a hub and safe route for illegal wildlife trafficking. Apart from poaching, population pressure, habitat loss, and pollution are putting tremendous pressures on the existing wildlife resources.

Bangladesh is a party to several global efforts for conservation of wildlife, for example, stands for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)-a global to regulate international trade in wildlife and plants to protect species from extinction. The country is also a party to Convention on Biological Diversity (CBD)-an international legal instrument for sustainable use of components of biodiversity and the fair and

equitable sharing of the benefits arising out of the utilization of genetic resources.

Though Forest Department (FD) is the nodal agency for protection of wildlife in the country, but it alone cannot combat the situation due to lack of human resources and logistics. To address this complex issue, Wildlife Conservation Society (WCS) Bangladesh has been supporting the FD to bring the concerned law enforcement agencies in a common platform. However, an interagency agreement with the FD and other law enforcement agencies such as Bangladesh Police, BGB, BCG, RAB and RAB – a partnership to End Wildlife Trafficking in Bangladesh is essential. This Agreement will build capacity within the agencies involves and, improve national and international networking and coordination, and share best practices across the country, even regionally and globally.

The government is very keen towards conservation and protection of forest, wildlife and biodiversity. If the remaining biodiversity can be saved and developed, it is possible to get much of the wildlife heritage back. The existing Wildlife Act is very comprehensive one and credit always goes to them who put their unwearied efforts in giving it a shape. But law is dynamic in nature and it requires changes to meet the needs of time and also for its clarity. Even changes may be required for achieving its intended objectives and ensuring its optimum enforcement. The exiting Wildlife Act needs to be reformed and rules need to be framed there under to empower the officers categorically to take action for the purpose of the Act that aims at conservation of wildlife.

The article is intended to be food for thought in the process of bringing changes in the law in maintaining its spirit. Relevant sections of laws have been quoted as ready reference. Interested readers might read the Bare Act.

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