

# **WILDLIFE CONSERVATION V. LIVELIHOOD PRESERVATION**

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## **ABSTRACT**

Preservation of wildlife and other scarce natural resources has always been a controversial issue faced by developing India. The advancement of civilization has brought with it, the problem of over-exploitation of forests and its resources to meet the selfish and insatiable needs of human kind. To combat this crisis a number of laws, policies and Acts were passed both at the national as well as international level. There exists conflicting opinions regarding the value of wildlife preservation. This has increased the level of environmental awareness and has caused a growing concern for the diminished stocks of certain wildlife species. There are strong opinions suggesting that the intrinsic value of all animal species is infinite, and that all native animals have a 'right to live' that should be preserved regardless of the cost of current generation. Nevertheless it can be asserted that the future of wildlife is the future of humankind. The question of whether animals have moral status or values is examined. This part deals with the modern philosophical debate on the issue of use of animals in bio-medical and cosmetic researches.

In this paper, a simple model is developed that incorporates individual preferences and animal rights and attempts to strike a balance between 'Right to Life' of humans as well as animals. Wildlife preservation may be an important contribution to animal lives, but what happens if these animal's lives gets in the way of our economy gaining money? Why do we have to risk the lives of these innocent animals?

This paper also discusses the herculean task of the Indian courts to balance the competing interests of Conservationist and the traditional forest dwellers. The provisions to eliminate human interventions within preserved areas operate harshly against the forest communities.

The role of government in balancing the various interests, through the enactment of legislations has been examined.

One of the important elements of the Participatory Forest Management System relates to the use of indigenous capacity and local knowledge regarding the various aspects of conservation, development and use of forests. The Participatory Forest Management approach promotes active participation and involvement of the people in forest conservation and development, including the development of micro-level plans and their implementations.

The scope of Participatory Forest Management as an effective means of re-generating degraded forests is examined.

This paper concludes with the discussion of rights of animals which are conveniently neglected by human kind. An appropriate approach to achieve wildlife conservation with the view of livelihood preservation is sought. Despite the fact that various legislations have been passed, no attempt at conservation will succeed in India unless the requirement of local communities are harmoniously integrated into the conservation strategy. For over a century, Indian wildlife has received sporadic protection through numerous, species-specific statutes.

As rightly said, by being cognizant, and by being morally alive, humanity can work to save its own body and soul.

## **INTRODUCTION**

The Indian wildlife system has received sporadic protection through numerous, species-specific statutes, for over a century. The primary and most important objective of early Indian statutes was to preserve game animals for hunting. The Indian Wildlife Protection Act was implemented in India in 1927 solely for the purpose of protecting the wildlife. The Indian Forest Act of 1927 included provisions for hunting, restrictions in reserved or protected forest and authorized the establishment of sanctuaries. The 42<sup>nd</sup> Constitutional amendment in 1976 moved wildlife and forest from the State List of Constitution to the Concurrent List. The Central Government has increased its role in developing National Wildlife Policy. The current debates among Conservationists are reflected in the issues raised relating to the rights and livelihood of forest dwellers and villagers who live in and around protected areas.<sup>1</sup>

The Wildlife (Protection) Act, 1972 provides the statutory framework for protecting wild animals, plants and their habitats. The Act adopts a two-pronged conservation strategy; specified endangered species are protected regardless of location, and all species are protected in designated areas called sanctuaries or national parks.

The Wildlife Act and Forest Act together establish 5 main categories of protected areas: National Parks, Sanctuaries, Protected Forests and Village Forests. The categories clearly have not emerged out of a comprehensive national scheme for conservation, utilization and development of natural and biological resources. The categories do not have well defined objectives and functions, let alone a clear demarcation between them. One is at a loss to search for a rationale or necessity underlining the classification of habitats into these 5 categories.<sup>2</sup>

All the Acts and Rules relating to the forest speak of certain rights that may be claimed by the forest-dwellers. Both the Indian Forest Act 1927 and the Karnataka Forest Act, 1963 speak of certain claims and rights of indigenous people ting cultivation, such as claims relating to the practice of shifting cultivation, the right of way in the forest, pasture and right of forest produce or water. But regard subject to conditions and limitations. The Acts also provide that the forest settlement officer may, when such claims are made, exclude the forest area to a sufficient extend and in a locality reasonably convenient for the purpose of the claimants. If such rights

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<sup>1</sup> Environmental law in India 3<sup>rd</sup> edition, P. Leela Krishnan – pg: 45-52

<sup>2</sup> Natural Resources Conservation Law, Sairambhat

are impossible to be granted, the compensation shall be paid in the basis of the value of such rights. The Karnataka Forest Rules, 1969 (Sec.3) provides that claims on behalf of tribes or community may be made by any member of the tribe or the community. These are few rights that are specifically provided for in the various Acts and Rules concerning forests.

Going into the depths of a few cases of how the destruction of nature has affected the lives of the people in India. The entire tribal population, and millions of other forest dwelling people, depend on the forest for their very existence. Destruction of forests has meant the social, cultural and economic destruction of the tribal population. Beginning with the British and continuing with free India, the government has decided to control the forest resource itself, leaving little or no control in the hands of the forest dwellers. Government control over forest has definitely meant a re-allocation of forest resources away from the needs of local communities and into the hands of urban and industrial India.<sup>3</sup>

## **JURISPRUDENCE – ANALYSING LEGAL RIGHTS**

The classical view of rights as expressed in the doctrines of Natural law and Natural right which was the dominant influence for centuries is that rights derive directly from God or nature from the ultimate structure of things and they belong to man as part of his intrinsic nature, as much as to his body, his mind and his various powers. Law merely recognises these rights and enforces respect for them.

Whereas according to the schools of Legal Positivism as put forth by Holmes and Grey, law literally creates right: the legislative or judicial act accounts certain privileges and protections to some persons, and imposes corresponding duties on other persons, and it is this act that brings the right into being and constitutes its content.

Putting these views it can be asserted that the essential function characteristic of rights is the same on both of these views. Men are “endowed” with rights- by God, Nature, or Law- in order to serve certain purposes that lie beyond these rights themselves. The claims, privileges liberties and immunities that make up the body of rights are all of them particular means to general end of human well-being. Their role is to assure to men the security and protection that they needed if they are to develop to their full potential.

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<sup>3</sup>Environmental Law and Policy, second edition, Shyam Divan, Armin Rosencranz

## **EXPLORING THE LEGAL RIGHTS OF ANIMALS**

The real protection in our legal system involves more than protection as mere property. It involves the right to be heard, right to be treated as having a unique worth. Such protection has not been limited exclusively to humans. As we know, corporations, ships and governmental entities are all granted legal identity. Obviously, these non-human parties could not appear in court to seek remedies for injuries caused unless human spokesmen were allowed to argue on their behalf. Yet, we have been willing to confer on them the status of right-holders because we have made the judgement that they are sufficiently unique and valuable enough to deserve protection in and of themselves. Similarly, humans who are incompetent to assert their own rights are still granted full protection. Children and the mentally ill or retarded may argue for their own interests before our courts through guardians.

According to Western thought particularly according to the views of Kant, one is to avoid contamination of the moral theory with compassion, sympathy or caring. Duty is the foundation of morality and through the application of reason we discover our duties. Reason is distinguished from emotion. This distinction assumes that emotion is irrational.

David Hume reversed this idea and claimed that reason should be the slave of passion, contrary to most philosophers. Hume was of the view that the passions are the basis for all moral thoughts. His view was based on the idea that reason is inert; it is just the mechanism used for the discovery of truth or falsehood- it concerns the relation of ideas or the existence of facts. Passions, violations and actions are not susceptible to bring true or false and, thus cannot be the subject of reason. Morality is concerned with actions, and since actions have been their basis in passion, passions are the foundations of morals.<sup>4</sup>

On the issue of whether it is fitting to attribute rights to animals in order to protect them from ill-treatment, we might ask whether we feel attachment to them, whether we feel a sense of kinship to them, whether we feel sense of awe at their resilience, and whether these feelings give us reason to grant their rights. If we conclude that animals should be accorded rights, as popular belief that they should, what role might emotion play in determining what rights we grant to animals? Our primary emotional response to animal is to feel compassion for their suffering. As Jeremy Bentham stated “the question is not, Can they reason? nor, Can they talk? But, Can they suffer?” Our emotional response to animal suffering must be considered in determining whether a practice violates an animal right given.

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<sup>4</sup> Ibid

Vivisection is the practice of doing scientific or medical experiments on live animals. There are arguments supporting as well as opposing vivisection. Pro-vivisection arguments include, that such practise is needed for human health and well- being; that there are no real alternatives. Animals don't experience pain and distress the way humans might; humans count more. There's plenty of mystery in human conditions that could use the attention of the anti-vivisectionists. Contra- vivisection argument includes, that we can eliminate much of the animal research that we currently conduct; there exists continued reliance of scientists on animal models because of economical or financial power structure this includes development and testing of cosmetics. Research shows that animals are remarkably similar to humans; sentience, consciousness and they do feel pain similar to that of humans. Animals are vulnerable to unavoidable suffering caused by humans.

We will always have to make tough decisions when it comes to weighing the protection of animals and the benefits of bio-medical research to humans. But what if there exists alternatives to the use of animals in research? According to one of the generally accepted principles for the use of animals in research, namely 'replacement', non-animal methods should be preferred over animal methods whenever the same scientific aim can be achieved.

## **THE RIGHTS OF FOREST DWELLERS AND SUSTAINABLE DEVELOPMENT**

The essential growth and progress, exploitation of resources available from forests cannot be ruled out. The location of development projects in/or a forest area raises complex questions such as conflict between short-term benefits and long-term tangible and intangible losses, the social impact, re-habilitation of the local population and re-afforestation. In approving the advent of a thermal plant of National Thermal Power Corporation Ltd. (NTPC) in a location that extended to a forest area, the Supreme Court observed in *Banwasi Seva Ashram v. State of Uttar Pradesh*<sup>5</sup> that a scheme to generate electricity is of national importance and cannot be deferred. The court said that the concept of sustainable development demanded that the ousters be rehabilitated after examining their rights. While endorsing the project, the court gave equal

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<sup>5</sup> AIR 1987 SC 374

importance to this question, and issued various orders for the determination of the rights. The court imposed more responsibilities in the second *Banwasi Seva Ashram case*<sup>6</sup> on NTPC to find out alternative plots, render re-settlement and substance allowance, give free transportation, reserve jobs and provide facilities of roads, water supply, health care and electricity.

## FOREST DWELLERS V CONSERVATION

The provisions to eliminate human intervention within national park and sanctuaries operate harshly against forest communities, one of the poorest and politically weakest constituencies in India. It is estimated that there are nearly 5000 villages in protected areas with a population of about 2, 50,000<sup>7</sup>. Tribal activities argue against protected areas because they deny forest dwellers access to common property resources, uproot communities, halt development activities and heighten tensions between local residence and the wildlife. Separating forest dwellers from their traditional access to forest produce ‘criminalizes honest citizens who have little choice but to tap the forest for fodder, fuel, food and minor forest produce. Conservationists sympathize with this view, but justify the extension of the national park and sanctuary network because of the degraded conditions of our forest. They argue that the best preserved wildernesses in India are within the National Parks and Sanctuaries. Even when the wildlife Act cannot be said to be perfect at present, it offers a proven legal frame work to preserve our vanishing natural heritage. The task of balancing these competing interests falls on the Supreme Court of India.

*Fatesang Gimba Vasava v State of Gujarat*<sup>8</sup> is one such case that explains the impact that reservation of forest had upon tribal habitat. In this case, the tribal population was supplied bamboo at reduced rate to enable them to make out a living by selling them in the open market. This was blocked by the State forest officials on the ground of possible exploitation. But the Gujarat High Court laid emphasis on the right of tribal to depend on the forests, which was the source of their livelihood. Similarly in the case of *Animal and Environmental Legal Defence*

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<sup>6</sup> (1992) 2 SCC 202

<sup>7</sup> Stressed Woods in Down to Earth, 31 Dec 1995

<sup>8</sup> AIR 1987 Guj 9

*Fund v Union of India*<sup>9</sup> the Supreme Court had to resolve a dispute between two neighbouring states on the rights of tribal. The Government of Madhya Pradesh allowed fishing permits to the displaced tribal people in Totladoh reservoir within Pench National Park. The Government of Maharashtra objected this on Environmental grounds, such as potential danger of felling trees, harm to crocodiles and turtles in the reservoir, disturbance to water birds and migratory birds, and the possibility of forest fires and garbage pollution. Emphasizing stricter vigilance on the exercise of fishing and similar matters, the court put forth the process of photo identity for access of permit holders, check post to bar access to other parts, daily record of fish catch, and prohibition of tribal fishermen from lighting fires on the banks of reservoir.

In the case of *Pradeep Krishen v Union of India*<sup>10</sup> the court referred to the tribal rights and privileges in the forest area. The Supreme Court suggested that “there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and Wild life in these areas (Sanctuaries and National Parks).

The observations in the above cases are relevant in assessing the symbolic relationship between the tribal and the forest. Tribal dwellers were considered as protectors of the forest in the past. However, when the needs of development started to displace them from their habitat, the tribal were seen as a group causing a threat to the environment. This conflict can be seen in the very foundations of all legislative policies and can be seen as a by- product of the social economic development. As the Apex Court has indicated, urgent steps are necessary for bridging the gap between tribal and forest.

The forest dwelling Scheduled Tribes where living in the forest for generations and their plight was miserable in the past. It is true that states have enacted legislations to protect tribal lands from being exploited but the conditions remained the same. Non recognition of their rights over forest lands has always been a historical injustice. The Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2007 which came to force on 1<sup>st</sup> January 2008 aims to do away with this injustice, by endowing the tribal people and other forest dwellers with certain rights and duties, and attempts to recognize the symbiotic relationship between the tribal and the forest this duties include protection of wildlife, forest and biodiversity and other ecologically sensitive areas and ensuring that the habitat is preserved

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<sup>9</sup> AIR 1997 SC1071

<sup>10</sup> AIR 1997 SC3297



and the decisions by Grama Sabha to regulate activities affecting forests and biodiversity are complied with.

Any law relating to forest rights treating the tribal as foes, and not as friends, of the forest habitat will only help to mask intruders and, treat forest communities as scapegoats. This fact has been considered and accepted by the National Tiger Conservation Authority when it suggested that Tiger Reserve States should recruit local forest dwelling tribes as field staffs.<sup>11</sup> It was also observed in the case that it is essential to strike the difference between those who are in the forest for survival and livelihood and those who are there for commercial purpose and for making profit. It is the lateral category that needs to be prevented from gaining access to the forests.<sup>12</sup>

## **CONCLUSION**

Towards the conclusion of this paper, it is our opinion that there will always lie ahead a situation where tough decisions has to be made when it comes to weighing the protection of animals and the benefits of humans.

As for medical re-searches, we could always find alternatives to the use of animals which yields the same results. Non – animal methods should be preferred over animal methods whenever the same scientific aim can be achieved. It has already been established in this paper that animals possess moral and legal rights. Those who override or abrogate these rights must provide compelling reasons for doing so. Humility and sensitivity must be the hallmark of animal research.

Despite the fact that various legislations have been passed, no attempt at conservation will succeed in India unless the requirement of local communities are harmoniously integrated into the conservation strategy. For over a century, Indian wildlife has received sporadic protection through numerous, species-specific statutes.

As rightly said, by being cognizant, and by being morally alive, humanity can work to save its own body and soul.

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<sup>11</sup>Bagla Bhatia, 'Compulsory Concerns', Economic and Political Weekly, 19<sup>th</sup> Nov 2005, pp4890,4892

<sup>12</sup> Environmental Law and Policy in India, Second Edition, Shyam Divan, Airmin Roseencranz, pp-335