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## WILDLIFE JURISPRUDENCE

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| ARTICLE DETAILS  | ABSTRACT   |
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| <p><b>Article History:</b><br/>Published Online:<br/>_Published_</p>                       | <p>The present paper is on the “Wildlife Jurisprudence.” Wildlife helps in maintaining the ecological balance of nature. So wildlife is as important as humans. Each organism on this earth has a unique place in the food chain so contributes to the ecosystem in its own special way. Historically, wildlife was given lower legal status as “things”, it was not having independent standing in the legal system Rather, the legal system has presumed that wildlife are available for use and consumption by humans. It is time to take full measure of where wildlife presently stands within the realm of jurisprudence, as well as what is possible for the future. As humanity comes to accept that we share this earth with other species as part of a global community, and that an ethical duty exists toward wildlife, the necessity of change within jurisprudence becomes stronger.</p> |
| <p><b>Keywords:</b><br/>Wildlife,<br/>Ecosystem, legal system, Humanity, jurisprudence</p> |  |



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## STATEMENT OF PROBLEM

Wildlife forms an important part of our environment. It is a key player in maintaining the ecological balance. But unfortunately in present era, most of the wild animals have been extinct and many are at the verge of extinction. There are inter nation conventions for the preservation of wildlife. India has received the call and enacted a number of legislations to protect them but still the protection of wildlife is a question mark.

## HYPOTHESIS

In Indian Jurisprudence we have a number of laws dealing with the wildlife protection but still it is not properly protected and conserved.

## RESEARCH QUESTIONS

1. Does the increase in environmental pollution affects the habitat of wildlife?
2. Despite having a number of laws, are wildlife still be brutally killed by humans for trade purposes?

## OBJECTIVES OF STUDY

1. To understand the term wildlife jurisprudence.
2. To study the wildlife legislations.



3. To find out whether wildlife legislations are properly implemented.
4. To see the influence of mankind on wildlife.

## **RESEARCH METHODOLOGY**

The Methodology is one of the most important aspects of any research work. This work is doctrinal in nature as both primary as well as secondary source has been used. This paper involves the general important headings related to wildlife jurisprudence. This paper was written after going through various websites, article and relevant legislations.

## **INTRODUCTION**

The term wildlife refers to the animals of this earth that are not the property of human beings and are not under direct human sovereignty and control. Man is always attempting to establish dominion over nature. When animals have come under human dominion and control they were historically considered to be personal property, but today they should be considered living property. Wildlife has been before Homo erectus, means before human civilizations, and the adoption of legal systems.



Historically, wildlife was given lower legal status as “things”, it was not having independent standing in the legal system. Rather, the legal system has presumed that wildlife are available for use and consumption by humans. It is time to take full measure of where wildlife presently stands within the realm of jurisprudence, as well as what is possible for the future. As humanity comes to accept that we share this earth with other species as part of a global community, and that an ethical duty exists towards wildlife, the necessity of change within jurisprudence becomes stronger.

Each species plays a vital and different role in the ecosystem in which it lives. In the functioning of environment, humans are its part. All humans and human societies use wildlife directly or indirectly. Humans tend to be selfish and greedy by nature. They are not greedy only for money but in general for everything. Human activities are a major factor in ecosystem disruption worldwide. Human population growth and technological development result in dramatic reductions and alterations in quality and availability of wildlife habitat, over-use of some wildlife species, greater human dependence on domesticated animals and changes in the functioning of most ecosystems.



The realization of these goals should be accomplished by allowing wildlife an enhanced presence in the legal system and by making their interests more visible when humans make decisions impacting wildlife and their habitat. The enhanced presence of wildlife on the stage of jurisprudence will give greater weight to their interests in the everyday balancing of interests that is the bread and butter of the legal process.<sup>1</sup>

## **SOCIAL, CULTURAL AND LEGAL PERSPECTIVES ON WILDLIFE**

Human views regarding wild life and therefore the values they represent vary considerably from person to person and over time. Throughout the world people have different reasons for caring regarding wildlife. Wildlife area unit a supply of attraction and concern. they have symbolic meaning mean they are having religion and spiritual significance and they are a barometer meaning peoples concern for environmental sustainability.

The social and cultural perspective toward wildlife are reflected in the laws of a country. The Indian landmass is home to a large

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<sup>1</sup>David S. Favre, "wildlife jurisprudence", 2010, MSUCL



variety of flora and fauna. India has an amazing huge variety of wildlife animals that live in the diverse terrain of the country.

## **WILDLIFE LEGISLATIONS**

Wildlife laws in India can be traced back to early third century BC, when Ashoka, the Emperor, codified a law for the preservation of wildlife and environment. Thereafter came several laws among which, the first codified law was the Wild Bird Protection Act, 1887, enacted by the British Government. The Government of India brought for the first time a comprehensive act, the Wildlife Protection Act (WPA), 1972, which was later amended and changes were brought in this as the need arose. Furthermore, to protect the wildlife, the Government of India also became a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since October, 1976.

Besides WPA and CITES; the Indian Penal Code, 1860; the Code of Criminal Procedure (Cr.P.C), 1973; Customs Act, 1962; Indian Forest Act, 1927; Forest Conservation Act, 1981; Prevention of Cruelty to Animals Act, 1960 are some of the important weapons available for check and control of wildlife offences including trade.



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## CENTRAL LEGISLATION

Wild Life Protection Act (WPA), 1972 provides for the protection of Wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto. It extends to the whole of India. The act includes all animals like birds, mammals etc. While the act clearly defines hunting it also prohibits the usage, supply etc. of animal articles, Animal article means an article made from any captive animal or wild animal, other than vermin, and includes an article or object in which the whole or any part of such animal has been used and ivory imported into India.

Section 9 of the Act prohibits hunting of wild animals and birds specified in Schedule I, II, III and IV, except as provided under Sections XI and XII. This classification has been made keeping in mind the significance and population of wildlife. Those highly threatened find a place in Schedule I.

As of punishment for offences, Section 51 of the Act prescribes a maximum imprisonment of six years, Rs 25,000 fine or both for hunting animals and birds specified in Schedule I.



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The major activities and provisions within the act are often summed up as follows:<sup>2</sup>

- It defines the wildlife related terminology.
- Enactment of an All India Wildlife Protection Act (1972).
- It provides for the appointment of wildlife planning board, Wildlife warden, their powers, duties etc.
- Becoming a celebration to the Convention of International trade species of Fauna and Flora (CITES, 1976).
- Launching a “national component of UNESCO’s ‘Man and Biosphere Programme’ (1971).
- Under the Act, comprehensive listing of endangered wildlife species was finished the primary time and prohibition of hunting of the species was mentioned.
- Protection to some endangered plants.
- The Act provides for fixing of National Parks, Wildlife Sanctuaries etc.
- The Act provides for the constitution of Central Zoo Authority.

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<sup>2</sup>The Wildlife[Protection]Act,1972, available at [www.legalserviceindia.com](http://www.legalserviceindia.com) visited-[May 16, 2020].





- There is provision for trade and commerce in some wildlife species with license purchasable, possession, transfer etc.
- The act imposes a ban on the trade or commerce in scheduled animals.
- It provides for legal powers to officers and punishment to offenders.

It provides for captive breeding programme for species. Several Conservation Projects for individual species like Lion (1972), Tiger (1973), Crocodile (1974) and Brown antlered Deer (1981) were stated under this Act.

Some of the main drawbacks of the Act include mild penalty to offenders, illegal wildlife trade, personal ownership certificate for animal articles like tiger and leopard skins, no coverage of foreign endangered wildlife, pitiable condition of wildlife in mobile zoos and tiny emphasis on protection of plant genetic resources. As this Act is also lacking in providing the speedy compensation to the victims of the wild attack.

Recently the National Board for Wildlife, an advisory committee which has been constituted under Wild Life Protection Act, 1972



has held a meeting through video conference and the meeting was less for the purpose of protecting and conserving wildlife. As some proposals were approved which will help to develop tourism, infrastructure, employment and economic growth but not to protect the national parks and sanctuaries that is their mandate to protect.

## TORTS

In the world of torts, wildlife has almost no presence. This is not because the wildlife doesn't cause harm to humans, but rather, as beings without financial assets, it makes no sense to file a lawsuit seeking to make an animal defendant financially liable for any harm which that animal causes. <sup>3</sup>However, animals are often summarily killed for harm caused to humans. Because life instead of money is in danger, it is best to consider these deaths within the legal code context of subsequent section. On the opposite side of the courtroom, wildlife species are not presently ready to seek recovery as plaintiffs for the intentional

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<sup>3</sup>David S. Favre, "wildlife jurisprudence", 2010, MSUCL



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or negligent harm to their bodies and minds, harm to their dwellings and food lands, or perhaps misappropriation of their images. If wildlife can be acknowledged to possess a robust legal personality, then perhaps within the future wildlife are going to be allowed to file tort lawsuits and be allowed a remedy of a minimum of injunctive relief to prevent unjustified harm by humans.

If the wild animals are harming to the people, had we ever thought why? The reason can be simple because the humans are greedy, for the sake of money, they have entered into their arena and destroyed their habitat which in vice versa has compelled them to enter into our arena and give response by making injuries. Now the question can arise about the tribal people, I think it is not true that these people are totally dependent on hunting etc. they may have also modified and are cultivating their own crop fields. So it should not happen that for their survival they will kill or disturb the habitat of wildlife as it is the natural phenomenon that if we will disturb any part of creatures of nature, nature automatically will disturb our living. Nature



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has created a chain which maintains an ecological balance and which should not be disturbed.

## **REALM OF PROPERTY**

The trend to vest environmental bodies such as the earth, rivers and animals has been an emerging trend in environmental legislation and jurisprudence globally. Ecuador was the first country to grant rights to nature under its constitution including right to exist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution. Similarly, many other countries have also given certain rights to the nature. Recently in India personhood status has been given to the animals in the states of uttarakhand and Haryana where High Courts of the respective states has declared its citizens as loco parentis. So it means that some species of animals such as cattle and poultry are considered as property and right to the ownership of that property is protected under the constitution.

Rather than stating that wildlife are not the property of humans, a better view is to say that wildlife is self-owned unless possession, dominion, and control by a human are lawfully obtained, in which



case legal title will be held by the human. However, even when a human holds legal title, the individual animal still retains equitable title. This approach allows for wildlife to retain a legally recognized status (holder of equitable title), which in turn allows for them to be recognized as having a legal personality with interests that need to be considered when humans act against the interests of wildlife. The conceptual basis for this perspective has been developed elsewhere. Looking to the future, a number of interesting property issues can be expected to arise: to what extent will wildlife be considered to have real property interests in the places they live and possess? Will wildlife be granted the legal capacity to hold actual or equitable title to land? Perhaps property law may even allow wildlife to be beneficiaries of funded trusts established for their benefit. The door for this possibility has already been opened by the new position of domestic animals in the realm of trusts and estates.<sup>4</sup>

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<sup>4</sup>David S. Favre, "wildlife jurisprudence", 2010, MSUCL



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## CONSTITUTIONAL PERSPECTIVE

Article 21 of the Indian constitution guarantees the right to life and personal liberty. The term life should specifically include the life of wild animals. This Article also includes right to clean and healthy environment which is not possible without protection of wildlife. As wildlife is vital for maintaining food chain.

Article 48 A, mandate that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

It is the fundamental duty of every citizen under Article 51A[g] of the Indian constitution to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have sympathy for living creatures.

## BASIC ETHICAL PRINCIPLES FOR WILDLIFE

The following principles are segmented as a basic for developing a new legal perspective.

- Wildlife should not be killed, harmed, captured, by humans without any reasonable cause.



The humans should counter attack to wildlife only in case of self-defense but not unreasonably. As the habitat of wildlife should not be disturbed by the humans, if is done, will disturb the ecological balance.

- Wildlife should have a habitat sufficient to support their lives.  
Wildlife should be conserved so that our future generation can enjoy our natural world and the incredible species that live within it. Initiatives should be taken by the government to provide full support to the lives of wildlife. Their habitat should be developed with possible facilities.
- Humans should perform their duties i.e. to protect and conserve environment which includes wildlife also.  
Despite having fundamental duty under Article 51A[g] of the constitution, the people are still turning away from their responsibilities. Protection and conservation of environment including wildlife is for the benefit of whole biodiversity.
- Wildlife should be given status of juristic person.  
As the humans are greedy by nature, for their own satisfaction level, wildlife are being maimed, killed, and tortured by some



humans either for the purpose of trade or for other reasons. Once they will be given status of juristic person, they will be entitled with certain rights which will in return help them in their protection.

## CONCLUSION

An issue concerning wildlife form a part of legal system since the legal system was established. However, the rise in the interests of wildlife has been recently developed. The moral obligation which permits wildlife to live their lives independent of humans is now widely accepted. Legal rights are obtained for wildlife when their interests are asserted within the courts. While some legal rights do currently exist, the weight of wildlife interests is sorely undervalued when balanced against human interests. As our respect for wildlife increases, the weight of their interests should also increase. They should be given status of juristic person so that they will be entitled with certain rights which will in return help them in their protection. Human's use of natural resources including wildlife must be carried out in a responsible manner so that ecological processes can continue to function and sustain a diverse, healthy environment. Throughout the world human





activities are the major factor in ecosystem disruption and also cause the loss of habitat of wildlife like by deforestation for farming, by killing them for trade purposes, by capturing them for the performances in the circuses or exhibitions and for entertainment purposes. Pollution is also the main cause for destruction of the habitat of wildlife and that pollution is also caused by the humans. Every creature in the biodiversity has its own special function or importance so we should not intervene into their domain in such a way as we will destroy the habitat of others. Environmental pollution also affects the habitat of wildlife. so we should keep our environment clean and healthy which is beneficial for every creature in this biodiversity. Despite having a number of laws for the protection of wildlife still many of wildlife species are vulnerable, endangered and some are in the category of extinction like Indian cheetah, Sumatran rhinoceros etc. Instead of making new and new laws it is better to improve and implement the existing laws. A single law is also sufficient in any legal system if is properly implemented and followed. Moreover, we should understand our responsibilities towards nature and should perform



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the same with determination as if we will give tribute to nature, we will receive the same from nature.