

Legal Initiative for Forest and Environment

Comments on

**WILDLIFE
PROTECTION
AMENDMENT
BILL, 2021**

The Wildlife (Protection) Amendment Bill, 2021 (Bill No 159 of 2021) is the most substantial amendment of the Act after the amendments made in 2003. On the positive part, it is intended to ensure that provisions with respect to Convention on International Trade in Endangered Species is part of the domestic law. Besides, the Bill aims to also make the law simple by streamlining the schedules. However, there are issues of concern which need to be addressed.

1. Inadequate Provision with Regard Alien Invasive Species

The Bill introduces 'Alien Invasive Species' with the scope of the Act, which is a positive development. Under Section 62 A (i) The Central Government has the power to regulate or prohibit the import, trade, possession or proliferation of invasive alien species which pose a threat to the wildlife or habitat in India

(16A) "invasive alien species" means a species of animal or plant which is not native to India and whose introduction or spread may threaten or adversely impact wild life or its habitat;";

However, the definition of 'invasive alien species' is not the correct scientific definition. As per the definition given in the Bill, an alien species is one 'which is not native to India'. The Convention on Biological Diversity defines it as follows:

Invasive alien species are plants, animals, pathogens and other organisms that are non-native to an ecosystem, and which may cause economic or environmental harm or adversely affect human health. In particular, they impact adversely upon biodiversity, including decline or elimination of native species - through competition, predation, or transmission of pathogens - and the disruption of local ecosystems and ecosystem functions.

As per the IUCN

An alien species is a species introduced outside its natural past or present distribution; if this species becomes problematic, it is termed an invasive alien species (IAS).

Thus, the focus is that a species is alien to the ecosystem. It does not matter whether it is Indian or not. Thus Spotted Deer (*Axis axis*) though an Indian species is an alien invasive species when it comes to the Andamans and Nicobar Islands.

2. State Board for Wildlife to be rendered Defunct.

As per the existing Act, the State Board for Wildlife is headed by the Chief Minister as chairperson and the Minister in Charge of Forest and Wildlife as Vice Chairperson. In addition to official members it has ten persons who are eminent conservationist, ecologists and environmentalist. All statutory functions are to be exercised by the Board as a whole.

The Amendment Bill (Section 6A) however proposes to set up a 'Standing Committee' of the State Board for Wildlife which is to be headed by the Vice Chairperson i.e Forest Minister and 'not more than ten members to be nominated by the Forest Minister. This in effect means that the Standing Committee can function with just two member i.e the forest minister and a member. The State Board will be a defunct body.

The Bill therefore intends to replicate the model of the National Board for Wildlife and its Standing Committee. It is pertinent to point out that the National Board for Wildlife headed by the Prime Minister has not met since 2014; all its statutory functions are carried out by the Standing Committee of headed by the Environment Minister with no accountability to the Board.

At present the State Boards by virtue of their composition are still able to speak in the interest of wildlife. This will no longer be the case once the Standing Committee of the State Board is constituted.

3. The Bill Will Allow For Commercial Trade In Live Elephants

The Wildlife (Protection) Act, 1972 specifically prohibits trade in Wild Animals including captive and wild elephants. Section 40 of the Act prohibits any person from acquiring, receiving, keeping in one's control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal specified in Schedule I and Part II of Schedule II except with the previous permission of the Chief Wildlife Warden. Thus not only is sale prohibited: even an offer for sale is prohibited without prior approval of the CWLW. The Chief Wildlife Warden's power are however restricted in view of proviso 2 (A) and 2 (B) which states that that only way one can acquire, receive, keep in control, custody and possession is through the mode of inheritance. Thus one could inherit Ivory, Tiger Skin Rhino horn Antlers etc of scheduled species after prior approval of CWLW but cannot acquire or receive the same through any other manner other than inheritance. Thus inheritance is the sole method through which one can acquire Scheduled animal and animal article. However, the proviso to Sub Section 2 (A) and 2 (B) states that it the inheritance clause will not apply to elephants. This means that elephants could be acquired through mode other than inheritance.

However, Section 43 of the Act however limits the power of the CWLW by stipulating that any such transfer, even if allowed cannot be of a commercial nature. Section 43 reads:

No person having in his possession captive animal, animal article, trophy or uncured trophy in respect of which he has a certificate of ownership shall transfer by way of sale or offer for sale or by any other mode of consideration of commercial nature, such animal or article or trophy or uncured trophy.

A combined reading of existing Section 40 and 43 leads to the following conclusion with respect to a live elephant:

- Transfer, acquiring and receiving of a live captive elephant is permissible under the existing legal provision with the prior approval of the Chief Wildlife Warden.
- However, such transfer, acquisition and receiving of an elephant should not involve any commercial transaction. Thus sale, purchase and offer for sale or purchase is explicitly prohibited under the provisions of the Act.

The Amendment Bill however, inserts a new subsection (4) to section 43 which reads:

“(4) This section (section 43) shall not apply to the transfer or transport of any live elephant by a person having a certificate of ownership, where such person has obtained prior permission from the State Government on fulfilment of such conditions as may be prescribed by the Central Government.”

Thus an exception has been carved out by excluding 'live elephant' from the general prohibition contained in Section 43. The implication of the same is that commercial sale and purchase is no longer prohibited, under the Act.

The Amendment Bill therefore allows for commercial trade in elephants.

4. Use of Water in Sanctuaries and National Park

In Section 29 of the Act, the Explanation has been substituted by adding the following:

‘Bona fide use of drinking and household water by local communities, shall not be deemed to be an act prohibited under this Section’

While, this is a positive development, it is important to ensure that such exercise of bonafide use is recorded in Management Plan of the Sanctuary. It is pertinent to point out that water holes, streams and other water sources are also use by wild animals, birds and reptiles as well as constitute a habitat for fishes. It is imperative to ensure that such exercise of bonafide rights is done in a manner which harmonizes the need of local communities with that of wildlife.

Section 33 of the Act with respect to Management Plan for Sanctuaries.

It introduces Management Plans for Sanctuary and that states that all Sanctuaries and states that the Management Plan shall be 'approved by him' which means that it will have to be approved by the Chief Wildlife Warden

However, it has been observed that the position of CWLW is only an administrative post with no fixed tenure. There is no requirement of the holder of the office to have any specialized training in wildlife. Therefore, it is imperative that the Management Plan should be reviewed by the Wildlife Institute of India or any other competent body. The draft Management Plan should be made public for inviting public comments. It must be placed before the State Board for Wildlife for its approval.

5. Excessive Delegation and Unrestricted Power of Central Government to Declare Species as Vermin

Once a wild animal is declared as vermin, it enjoys no legal protection and has the same status as a domestic animal. It can be killed, traded and tamed.

Under the existing Act, the Central Government can issue a Notification declaring a Species as a Vermin so long as the Species is not listed in Schedule I or Part II of Schedule II. Thus, species such Civets, Common Fox, Jackal, Martens, Andaman Wild Pig among others could not be declared as Vermin under the Act in view of the statutory protection. However, as Bill amends Section 62 by stating that only species listed in Schedule I cannot be declared as vermin, while species listed in Schedule II can be declared as Vermin. Schedule II in the Bill includes the following among other species which if declared a vermin can pose serious threat to their existence in the wild.

Striped Hyena

Andaman Wild Pig

Indian Fox

Bengal Fox

Jungle Cat

Asiatic Jackal

It needs to be pointed out that declaration of species as vermin till date has been without any scientific study or assessment and is more a result of political pressure. It is also important to highlight that declaration of one wild animal as a vermin has serious consequence on other species eg. Traps laid for wild boars leads to killing of leopard, tiger and other unintended species. Similarly, poison used for killing monkeys and other such animals invariably kills other species who eat the same. There is also no assessment as to how such declaration of vermin could lead to ecological imbalance and increase human animal conflict eg. Killing of wild boars would deplete prey base of leopards and tigers which in turn are likely to depend more on livestock.



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