

AN ANALYSIS OF THE WILD LIFE PROTECTION AMENDMENT BILL, 2021

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ABSTRACT

Environmental laws need not only be in consonance with environmental science but ensure democratic soundness as well as in line with international treaties that the formulating parliament of the country is signatory to. The paper is an evaluation of the recent Wild Life Protection Amendment Bill 2021, against these markers, and whether it will be able to support biodiversity in a world currently afflicted by the Covid 19 pandemic and prone to other zoonotic diseases arising out of harm to biodiversity. The major issues it shall take up is human wildlife conflicts, the controversial definition of 'vermin', the conflict between forest dwelling communities, biodiversity conservation and land acquisition ventures, whether Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is being properly implemented, among others. It ends with recommendations on how to make the amendment bill more democratic and aligned with the aims of the act.

INTRODUCTION

Providing legislative backing to India's obligation, to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), was flagged as the most important reason for initiating the [Wildlife Protection Amendment Bill 2021¹](#), by Union Minister of Environment, Forest and Climate Change (MoEFCC), Bhupendra Yadav. While the bill proposes 50 amendments, key features include rationalizing schedules of wildlife species, empowers centre to regulate international trade in wildlife according to CITES, prohibits proliferation of invasive species and establishes a management authority for issuance of permits for the trade of scheduled specimens in accordance with the Convention. While certain drawbacks of the Wildlife Protection Act, 1972 have been addressed, (for instance the one related to lack of consultation with the Gram Sabha for decision making in protected/scheduled areas), however, changes in the system of power wielders seem to be a smoke screen to aid the liberal clearance of developmental projects for the areas in question. The [Parliamentary Standing Committee²](#) on Science and Technology, Environment, Forests and Climate Change headed by senior congress leader and Rajya Sabha member, Jairam Ramesh, has reviewed the amendments and recommended changes. The following shall analyse some points of contention and offer recommendations to alter the Bill to make the ultimate Act stronger.

ANALYSIS OF SIGNIFICANT AMENDMENTS/ASPECTS AND CRITICISMS

Prohibiting Invasive species

[Studies³](#) have shown that Covid is linked to disturbances to the ecosystem that have been caused by deteriorating biodiversity and cruel methods of poaching animals overriding animal welfare norms and sanitary requirements, increasing chances of more [zoonotic disease](#)

¹Suchitra Karthikeyan, *Explained | What India's Wild Life (Protection) Amendment Bill seeks to change*, THE HINDU, (July 9, 2022, 21:14pm), <https://www.thehindu.com/sci-tech/energy-and-environment/explained-indias-wild-life-protection-act-features-shortcomings-recommended-changes/article65579474.ece>.

²Aesha Roy, *Bill to amend Wild Life Act: Many species missing from schedules, House panel says in report*, THE INDIAN EXPRESS, (April 22, 2022, 2:20am), <https://indianexpress.com/article/india/bill-to-amend-wild-life-act-many-species-missing-from-schedules-house-panel-says-in-report-7881128/>.

³Odette K. Lawler et. al., *The COVID-19 pandemic is intricately linked to biodiversity loss and ecosystem health*, Vol. 5, The Lancet, 2021, [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(21\)00258-8/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(21)00258-8/fulltext).

[outbreaks](#)⁴ like Covid. With this context, prohibiting alien species from entering ecosystems is the need of the hour. The bill brings in a provision prohibiting the proliferation of alien invasive species to Indian forests as they disturb the balance maintained by species of a particular ecosystem.

Labelling of any nuisance creating species as ‘Vermin’

However, another provision in the bill holds the potential to reverse the achievement of the aim to limit disruption to ecosystems. This amendment changes the number of schedule lists from [6 to 4](#)⁵, removing ‘vermin’ population as a whole from protection. The reason being ‘human wildlife conflict’ (HWC) wherein species generally understood to be vermin (fruit bats, mice, common crow, rats etc.) are potential threats to livestock, property, and humans. Leaving the term ‘vermin’ undefined in the amendment has opened gates for the discretionary authorities (Indian States) to label any animal ‘vermin’, resulting in its ‘culling’. For example, [4,729 nilgais](#)⁶ were culled in 2016-2019 after the Bihar government declared the animals to be ‘vermin’ to deal with crop damage. A study estimated the potential impact on [41 species](#)⁷ of mammals, 864 birds, 17 reptiles and amphibians and 58 insects if this provision is implemented. Such a policy not only endangers the species labelled vermin, but other animals get caught in the crossfire too. The [Karnataka government](#)⁸ legalised the culling of wild boars in 2016 in the name of crop damage. However, animals like tigers, leopards, and bears (all Schedule I animals) were getting caught in these traps as well.

⁴BAR AND BENCH, [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(21\)00258-8/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(21)00258-8/fulltext), February 5, 2022.

⁵ PRS INDIA, <https://prsindia.org/billtrack/the-wild-life-protection-amendment-bill-2021>, 2022.

⁶Mohd Imran Khan, *Bihar plans to sterilise, not cull, nilgais*, DOWN TO EARTH, (December 28, 2021), <https://www.downtoearth.org.in/news/wildlife-biodiversity/bihar-plans-to-sterilise-not-cull-nilgais-80882>.

⁷*Culling of Vermin*, DRISHTI IAS, (June 11, 2022), <https://www.drishtias.com/current-affairs-news-analysis-editorials/news-analysis/11-06-2022>.

⁸ManuAiyappa Kanathanda, *Karnataka allows killing of wild boars to protect crops*, THE TIMES OF INDIA, (January 24, 2017), <https://timesofindia.indiatimes.com/city/bengaluru/karnataka-allows-killing-of-wild-boars-to-protect-crops/articleshow/56742735.cms>

Opposite consequence: increase in HWC

Human encroachment characterised by ‘vermin removal’ may seem to eliminate the conflict causing agents, vermin, but this activity yields the opposite result. Eliminating species causes habitat destruction which becomes the biggest cause of increase in HWC incidents. This happens because, when natural habitats get disturbed, wild animals are brought near agricultural settlements.

[Section 6\(1\)⁹](#) of the Wildlife Act, 1972 constituted a State Board for Wildlife (SBWL). The amendment proposes to institute a standing committee of the SBWL, headed by its vice-chairperson - the state’s forest minister, including no more than 10 members. This standing committee with officials (to be nominated by the Vice-Chairperson, from amongst the members of the SBWL) shall be the mechanism executing the decisions of the SBWL such as selecting areas to be declared as protected areas, matters relating to the amendments to any Schedule of species, in the formulation of policies for protection and conservation of wildlife and certain specified plants and in any other matter concerned with the protection of wildlife. This can translate into ease of clearance of forest regions for developmental projects, considering the committee consists of only officials, carrying out orders of the state board. Ultimately impacting biodiversity and contradicting the aim to protect wildlife and reduce HWC.

Ambiguity regarding elephant trade and contradicting CITES

There are strict rules under [CITES¹⁰](#) to regulate trade in elephants but, trade is allowed. However, the allowance depends on the country of origin and the species. For instance, African elephants in Botswana, Namibia, South Africa and Zimbabwe are included in CITES Appendix II, therefore their trade closely regulated but not prohibited. The Asian Elephant on the other hand is understood to be ‘threatened with extinction’, prohibiting its trade for ‘primarily commercial purposes’. [The 1972 Act reflected¹¹](#) this concern and protected Asian Elephants by prohibiting commercial transaction with regulation on transportation of live captive elephants. The amendment has [exempted elephants¹²](#) from this protection, allowing

⁹The Wild Life (Protection) Act, Section 6, Act of Parliament, 1972, India.

¹⁰CITES, https://cites.org/eng/prog/terrestrial_fauna/elephants.

¹¹Mahima Sharma, *Indian Laws Protecting Elephants*, WILDLIFE SOS, (November 11, 2020), <https://wildlifesos.org/elephant/indian-laws-protecting-elephants/#:~:text=By%20all%20means%2C%20the%20Asian,of%20up%20to%207%20years>.

¹²Roohi Narula, *The Paradox of Elephant Trade in The Wildlife (Protection) Bill, 2021*, WILDLIFE SOS, (February 18, 2022), <https://wildlifesos.org/chronological-news/the-paradox-of-elephant-trade-in-the-wildlife-protection-bill-2021/>.

transportation of any live captive elephant by a person having ‘certificate of ownership’, where such person has obtained prior permission from the State government. By removing the clause for notifying transportation of elephants and including the unclear phrase ‘prior permission’ without clarification on how to obtain said permission - the amendment presents ambiguity regarding elephant trade. In this way, the amendment fails to implement the principle upheld by CITES - the main reason for bringing it in as per the Union Environment Minister.

Consultation with ‘Gram Panchayat and its consequences for ‘Forest Dwelling Communities

While there are noteworthy criticisms on the amendment’s ability to promote wildlife protection further, the amendment has brought in provisions to improve the management of sanctuaries. The act entrusts the Chief Wildlife Warden to control, manage and maintain all sanctuaries in a state. A new aspect has been proposed by the bill wherein the management plan for sanctuaries that are part of special areas, must be prepared after due consultation with the concerned Gram Sabha.

On the surface this provision seems to make decision making inclusive of communities living in said areas. A deeper visualisation of ‘on ground reality’ shall paint a different picture. Lingering conflict has existed between ‘protection of the rights of forest dwellers’ and ‘commercial interests of the governments and corporations. Despite of being enacted, WLPA 1972 has held [precedence](#)¹³ over the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, which protects the rights of forest dwelling communities over the land they use to sustain themselves. The grounds of human encroachment and threat to wildlife have been utilized to evict indigenous forest dwelling communities. This conflict is relevant to the implementation of the following provision mandating consultation with Gram Sabha by the Chief Wildlife Warden regarding special areas, as this mandate will include a ‘Scheduled Area or areas’ where the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is applicable. It is important to indicate the difference between village communities and forest dwelling communities, who are not

¹³Mohamad Meer Hamja & Pranav Menon, *How the Van Gujjars perceive the Wildlife Protection Amendment Act, 2021*, DOWNTOEARTH, (March 5, 2022), <https://www.downtoearth.org.in/blog/forests/how-the-van-gujjars-perceive-the-wildlife-protection-amendment-act-2021-81830>.

necessarily governed by the Panchayati Raj system. The applicability of this consultation to the dwellings of traditional forest communities shall continue to isolate them as stakeholders.

Amendment related to ‘Compensation and Rehabilitation’ of displaced communities

Moreover, hitherto the ‘Land Acquisition Bill 1984’ guided compensation to those evicted from their land acquired by the government. The bill shall substitute this Act by the ‘Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013’. It also shifts authority regarding dealing with claims against land acquisition from courts to the ‘Land Acquisition, Rehabilitation and Resettlement Authority’. Removing the impartial third party, the courts, and including the land acquisition authority, removes checks and balances to the power of the government in land acquisition. However, it is yet to be witnessed if the right to fair compensation and transparency bill does provide fair rehabilitation, considering that the term ‘public purpose’ for acquisition is not misused in the first place by the government and no mention of a definite plan for alternative livelihood support and compensation.

Issues arising from the definition of ‘Zoo’

One of the most arbitrarily defined terms in the bill is ‘zoo’. Foremost within the criticism is inclusion of the word ‘circus’ in the definition. It can potentially have the inverse effect of conservation, since the treatment of animals within circuses is abhorrent, and there is no mention of any regulatory guidelines to be followed up with to protect animals from harm. Moreover, this shall be in complete contradiction to the government’s move towards a [draft notification](#)¹⁴ from November 28, 2018, banning the use of all animals in circuses across the country. The definition of zoo also lumps rescue centres and conservation breeding centres within it, avoiding outlining of sanitation and welfare standards for these facilities.

The Bill on ‘Science’ and ‘Management’

The bill empowers the central government to designate a ‘Management Authority’, which shall grant permits for export or import for trade of specimens. It goes on to prohibit modifications or removal of the identification mark of the specimen made by the authority. It also provides

¹⁴Vishwa Mohan, Centre proposes ban on all animals in circuses, THE TIMES OF INDIA, (November 30, 2018), <https://timesofindia.indiatimes.com/india/govt-issues-draft-rules-banning-use-of-all-animals-in-circuses-across-the-country/articleshow/66871202.cms>.

for the formation of a ‘Scientific Authority’, to give advice on dealing with the impact on the survival of the specimens being traded.

RECOMMENDATIONS

1. **Consultation with stakeholders and field experts:** The bill, drafted without proper consultation of field experts (botanists, biologists, environmental scientists etc.) and stakeholders (forest dwellers) lacks a scientific approach and inclusivity of affected communities. One of the most pertinent amendments requiring deeper scientific analysis is the freedom to declare any nuisance creating species, vermin. Since the aim was to reduce HWC, it is essential to manage the problem of ‘vermin’ by involving sophisticated science involved in maintaining the balance of the ecosystem. This can be done by increasing the purview of the ‘scientific authority’ proposed by the bill to include their advice on methods of culling as well studying whether the impact of culling certain species considered vermin, would worsen HWC.
2. **Composition of standing committees:** On similar lines with the logic of establishment of a scientific authority with a management authority, it is also important from the point of view of scientific knowledge criteria and to ensure checks and balances, if a standing committee is formed by the SBWL, it should have as its members non officials as well as field experts. The committee led by the Congress leader, Mr. Jairam recommended the following: at least one-third non-official members, at least three institutional members (like the National Tiger Conservation Authority), and the director of the Wildlife Institute of India (WII) or their nominee.
3. **Translation:** While legal language has its place amongst lawmakers and lawyers, it isolates stakeholders who may be affected by their legislation. Vernacular translation of the act will allow forest dwelling communities and other stakeholders or concerned citizens to get easier access to the act, in order to give their input.
4. **Restructuring of Schedules:** Many species are missing from the schedules and individual species instead of groups of species have been listed (i.e., all Holothurians, all Syngnathidae, Testudinidae, Tryonychidae, Hornbills etc.). This can lead to

confusion while looking up the species, therefore, the committee led by Mr. Jairam recommended restructuring of Schedules 1 and 2. Furthermore, A list should be made of all the species of wildlife that may have been discovered since 1972, and then categorised under schedules so as to not miss out species from protection under the act.

5. **Alternative to (or in addition) using increased penalty as deterrence:** The increase in fine to 1 lakh for general violation and 25 lakhs for crimes against protected animal may seem to strengthen the law and reduce crime, by increasing punishment. However, increasing fines does little to deter crime. In a study conducted by the 'National Institute of Justice' in the US it has been opined that the likelihood of being caught, rather than a change in the fine amount, deters criminals. Notwithstanding this, a criminal may or may not know of the fine and it is unlikely that the awareness about the increase in fine will reach, particularly those who are involved in crimes against wildlife (due to lack of proper legal literacy) rendering the increase in fines inconsequential to deterrence.

CONCLUSION

The amendment bill proposed to update the 1972 Act, to regulate trade in species by offering protection to some and guidelines on other species for transactional purposes according to CITES. While including consultation with Gram Sabha, taking cognizance of proliferation of invasive species, establishing management and scientific authority among other provisions, may further the cause of conservation, the bill becomes less effective due to vague language in some places and failing to protect species in others. Making the amendment bill more congruent with science of conservation and strengthening protection may help in achieving its aim better.