



THE MADRAS HIGH COURT- HEROIC IN PROTECTING WILDLIFE IN TAMILNADU

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Abstract : The State of Tamil Nadu is known for its rich flora and fauna from time immemorial. But with the rising threats such as poaching, man-animal conflicts, deforestation, many species are becoming endangered and most are turning vulnerable. To reduce the threats endangering wildlife habitats, the Government has introduced so many legislations, policies, guidelines, and schemes to protect and wildlife. But due to its ineffective implementation and legislative inertia, protecting wildlife habitats from such threats has become difficult. The Madras High Court vide its power has intervened certain orders & guidelines and acted proactively in protecting wildlife habitats which has raised concerns among various quarters that it amounts to a greater activism by the Madras High Court. The author in this paper had described in less about wildlife in Tamil Nadu, legislative framework of wild life protection and discussed in detail about the active and proactive role of Madras High Court in preserving wildlife in the State of Tamil Nadu.

Index Terms - Wildlife, Madras High Court, active role.

1. INTRODUCTION:

Wild life has been defined under Sec 2 (37) of The Wild life Protection Act, 1972 which includes any animal, aquatic or land vegetation which forms a part of any habitat [1]. The State of Tamil Nādu has 8 wildlife sanctuaries spread over 2,82,685.57 ha and 12 bird sanctuaries spread over 17,074.59ha; 5 National Parks spread over 30784.23 ha; 1 Tiger Reserve, 3 Elephant Reserves and 3 Biosphere Reserve for in situ conservation of wild fauna and flora [2]. Though the State of Tamil Nadu has rich demographical setup for wildlife habitats, there has been a rapid decline of India's birds and animals these years which is a grave and serious concern need to be addressed. Some wild animals and habitats have already become extinct and others are on the verge of extinction. Animals such as Elephants, Tiger, Lion tailed Macaque and Nilgiri Tahr[3] are some examples of endangered species in Tamil Nadu and its number is lowering at an alarming rate. Poaching, hunting, reduction in forest cover, habitat loss, fragmentation and wildlife trade are some of the threats which endanger the lives of wildlife. Man-animal conflict is one such additional issue endangering animals and also causes danger to human beings. An official data states that man-animal conflicts have resulted in 50 deaths and 82 injuries in Pollachi division of Coimbatore district in the past ten years. Most of the victims of man-animal conflicts were labourers of tea and coffee estates situated around 200 sqm of that region [4]. In addition to the above, in the State of Tamil Nadu man animal conflict have caused death of about 185 humans, more than 132 elephants and tigers between 2013 to 2016[5]. The National Tiger Conservation authority has released a Status Report on Tiger, 2022 which stated that there is a dip in population of tigers in Western Ghats [6].

2. LEGISLATIVE FRAMEWORK AND POLICIES:

For the protection of wildlife numerous legislations have been framed. Even before Independence for the protection of wild animals and birds, an Act by name called "The Wild Birds and Animals Protection Act, 1912" [7] has been enacted for protection and preservation of animals and birds. Later, this Act has been outmoded.

Article 51 A (g) of the Constitution states that it shall be the fundamental duty of every citizen to protect and improve the natural environment including forest, lakes, rivers, wildlife, and to have compassion for living creatures [8]. Directive Principles of State policy, mandates that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country [9]. To empower both Central and the State to make laws for the protection of wildlife, The Constitution by its 42nd Amendment Act, 1976, have transferred Forest [10] and Protection of Wild Animals and Birds [11] from State List to Entry 17A and Entry 17B of Concurrent List. The Parliament has enacted the Wild Life Protection Act, 1972[12] with the object of protecting of wild animals and birds for ensuring the ecological and environmental security of India. The Act has protected wild animals by prohibiting hunting, cruelty to animals. The Act empowers the Government to declare areas as National Parks, Sanctuaries, and protected areas. In order to prevent infliction of unnecessary pain or suffering to animals, The Government enacted The Prevention of Cruelty to Animals Act,1960[13]. The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act,2006[14] cast duty on holders of forest rights to Protect wildlife & forest. For the protection of tigers, the Act [15] has been amended as The Wild life (Protection) Amendment Act 2006[16] which constituted a tiger conservation authority called "National Tiger conservation Authority to lay down standards & guidelines for project tiger and to facilitate tiger reserve managements. Various guidelines have also been framed by the Government to protect tiger elephant and other wild life [17]. To mitigate man-animal conflict, the Tamil Nadu government has allocated Rs 7.2 crore for seven forest ranges under the Coimbatore

Forest division. It has also directed that Artificial Intelligence-based e-surveillance cameras would be installed on a pilot basis in the Madukkarai forest range under the Coimbatore Forest division [18].

3. THE MADRAS HIGH COURT IN WILDLIFE PROTECTION:

The Madras High has been actively and sometimes proactively taken part in wildlife protection which can be well understood from the following cases. Taking into account the impact of cattle grazing, in the case of Senniappan v. the Wildlife Warden, Indira Gandhi Wild Life Sanctuary and National Park[19], the Court held that the cattle are not allowed inside the sanctuary for grazing and rearing as it affects the animal wildlife. In the case of Defence of Environment & Animals v. The Principle Chief Conservator of Forest, the petitioners challenged the legality of decision made by the Government to notify elephant corridor at Nilgiris. "Project Elephant", a project to protect elephants is launched by the Government of India, Ministry of Environment and Forest to provide technical and financial support for protecting Asian Elephants. The Ministry of Environment and Forest by its proceedings dated 11.08.2006 requested the Government of Tamil Nadu to take action for notification and protection of elephant corridors in the State. Pursuant to which the Government of Tamil Nadu [20] has appointed a committee to explore the possibility of acquiring patta lands with the willingness of farmers who can provide their land for elephant corridors. When the petitioners challenged the legality of the decision of the Government to notify elephant corridor at Nilgiris, the Court held that the State Government was fully empowered to notify elephant corridor as management strategy and was also authorized by the Central Government and the Court also stated that there was no impediment under 1972 Act in declaring elephant corridor by the State Government. The Court also directed the resort owners and private land owners to vacate the vacant lands and hand over it to be notified as elephant corridors [21].

In order to reduce man animal conflict, the Court in the case of E. Seshan v. Union of India [22] observed that while laying roads and railway lines in and around forest areas, the concerned Departments of State & Central Government have to take note of the pattern of pathway of animals and avoid laying roads/ railway lines in those areas so that man-animal conflict won't happen in future. The Court has also directed the Principal Conservator of Forests to translocate elephants in suitable wild area and provide them with food until translocated to such areas.

In the case of S.P Chockalingam & Ors v. Principal Chief Conservator of Forests & Chief Wildlife Warden, Dept of Forests Government of Tamil Nadu & Ors, the petitioner has challenged an order passed by the District Collector whereby restriction was imposed on vehicles passing through Dhinbam Ghat road which passes through the Sathya Mangalam Tiger reserve. The direction has imposed ban on heavy commercial vehicles plying between 6.00 p.m to 6.00 a.m. and other vehicles from 9.00 p.m to 6.00 a.m. In this case, the Court has reserved a serious direction for commercial vehicles, Cargo/loaded vehicles, buses, two, three and four vehicles to be mandatorily followed by those who are using ghat road [23].

In the case of G. Thirumurugan v Union of India, the Court held that cattle owners are not allowed to graze cattle inside Megamalai Wildlife Division and Sanctuary and they cannot claim it as a matter of night. The Court also observed that cattle grazing causes damage to wildlife habitats and held it is prohibited under law [24].

In S. Manoj Immanuel v. Union of India [25], the Court has directed the Constitution of Special Investigation team comprising of CBI, State Police and Forest Department officials to investigate into issues relating to elephant poaching in the Western Ghats.

In the case of Bombay Burmah Trading Corporation v. Field Director (Project Tiger) and Conservator of Forests, the Court pointed out that even though the petitioners have a private right over the estate which is located amidst the sanctuary, his right is subject to a restriction imposed by the Chief Wild life Warden. The restriction imposing that vehicles should not ply between 6.00 a.m to 6.00 p.m is a reasonable restriction taking into consideration the security of wild animals and preservation of sanctuary [26].

In the case of People For Cattle In India vs Additional Principal Chief, the National Green Tribunal Southern Zone[27] has directed the Southern Railways and the Forest Department of both the States of Tamil Nadu and Kerala to explore the possibility of using artificial Intelligence based systems to provide a system of alerting loco pilot at a sufficient distance on locating the passage of elephant and other wild animals so that they can reduce the speed and avoid hitting of wild animals' death. They are also directed to convene meetings to evolve sustainable methods and to conduct awareness programs to loco pilots with the new technology. They are also directed to create a team to interact with the villagers where there is a possibility of conflict between elephants and villagers and educate them about the methodology which they can adopt to drive away the animal. The Court has also directed the respective State Governments namely, State of Tamil Nadu and Kerala are directed to provide necessary assistance i.e., infrastructure, finance and staff required for meeting the situation to build up the technology thereby reducing man-animal conflicts.

An interesting step taken by the Madras High Court (Madurai Bench) recently while encountering a petition filed pertaining to injuries sustained by a private Captive elephant in Virudhunagar District. The Court ordered that no Tamil Nadu temples shall have Captive elephants and asked the Government to decide a strategy to shift all the elephants held under captive in temples to rehabilitation camps [28].

4. CONCLUSION:

Protecting wildlife is an important duty which has been casted on three pillars of the Constitution viz: judiciary, executive and legislative. Lacunae on any part of executive and legislature needs intervention by the Courts. It has been well said in the case of the Registrar (Judicial) Madurai Bench of Madras High Court v The Secretary to Government, Environment and Forest Department and Ors [29], the Court held that courts being enforcing organs of Constitutional objectives have legitimate duty to forbid all actions of State and Citizen from upsetting environmental balance. Thus, a proactive role by the Madras High Court can't be said to be a judicial overreach.

Though many legislations are in place to protect the wildlife, live of many species has become endangered. It is suggested that effective implementation of Acts framed by the legislature is a need for an hour.

There must be cooperation among government of two different States in wildlife protection in increasing their population. For example, recently the State of Gujarat Sakkarbaug Zoo has rejected the request of /Vandalur Zoo for a pair of pure Asiatic lions

for breeding which would increase the population of lions in Tamil Nādu [30]. Therefore, it is suggested that cooperation between Governments is necessary in increasing, maintaining, and preserving wildlife of the Nation.

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