
WILDLIFE PROTECTION AND ENVIRONMENTAL REGULATIONS

NALSAR UNIVERSITY

Kanika Sood, Environmental lawyer

kanikassood@gmail.com

THE WILDLIFE (PROTECTION) ACT, 1972

Salient provisions re: wildlife clearances

5C. Functions of the National Board.—(1) It shall be the duty of the National Board to promote the conservation and development of wild life and forests by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provision, the measures referred to therein may provide for—

(a) framing policies and advising the Central Government and the State Governments on the ways and means of promoting wild life conservation and effectively controlling poaching and illegal trade of wild life and its products;

(b) making recommendations on the setting up of and management of national parks, sanctuaries and other protected areas and on matters relating to restriction of activities in those areas;

(c) carrying out or causing to be carried but impact assessment of various projects and activities on wild life or its habitat;

(d) reviewing from time to time, the progress in the field of wild life conservation in the country and suggesting measures for improvement thereto; and

(e) preparing and publishing a status report at least once in two years on wild life in the country.]

8. Duties of ¹[State Board for Wild Life].—It shall be the duty of ¹[State Board for Wild Life] to advise the State Government,—

²[(a) in the selection and management of areas to be declared as protected areas;]

³[(b) in formulation of the policy for protection and conservation of the wild life and specified plants;]

(c) in any matter relating to the amendment of any Schedule; ⁴***

⁵[(cc) in relation to the measures to be taken for harmonising the needs of the tribals and other dwellers of the forest with the protection and conservation of wild life; and]

(d) in any other matter connected with the protection of wild life, which may be referred to it by the State Government.

INTERPRETATION OF THESE FUNCTIONS

“The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of “public trust” has to be addressed in that perspective.”

Centre for Environmental Law, World Wide Fund-India v. Union of India, (2013) 8 SCC 234

“Ecocentrism is nature centered where humans are part of nature and non-humans has intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-human independently of human interest.”

T.N Godavarman Thirumulpad Versus Union of India, (2012) 3 SCC 277

“47. We reiterate that while examining the necessity of a second home for the Asiatic lions, our approach should be eco-centric and not anthropocentric and we must apply the “species best interest standard”, that is the best interest of the Asiatic lions. We must focus our attention to safeguard the interest of species, as species has equal rights to exist on this earth. Asiatic lion has become critically endangered because of human intervention.”

Centre for Environmental Law, World Wide Fund-India v. Union of India, (2013) 8 SCC 234

“Fundamental to the outcome of this case is a quest for environmental governance within a rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our eco system.”

Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401

CASE STUDY:
MOLLEM CAMPAIGN
AGAINST DOUBLING
RAILWAY LINE
PASSING THROUGH
THE BHAGWAN
MAHAVEER
WILDLIFE
SANCTUARY

56.3.1 Proposal for wildlife clearance for doubling of existing railway line from Castlerock to Kulem, Goa State

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The IGF(WL) briefed the Standing Committee and stated that the proposal is for use of 120.875 ha of land (PA area : 113.857 ha + Non-PA area : 7.108 ha) from the Bhagwan Mahaveer Wildlife Sanctuary for doubling of existing railway line from Castlerock to Kulem. He stated that the State Chief Wildlife Warden has recommended the proposal with the condition that the railway authorities may explore the option of putting some gate in tunnel which can be opened through some mechanical / electronically controlled switches before train arrival so as to ensure the wild animals are not trapped in some of long tunnels when no train is there in tunnel.

Further the IGF(WL) stated that the State Board for Wild Life has recommended the proposal in its meeting held on 16/12/2017.

After discussions, the Standing Committee decided to recommend the proposal subject to the conditions that

- (a) The project proponent will comply with all the conditions imposed by the State Chief Wildlife Warden. The approved Animal Passage Plan should be implemented by the project proponent.
- (a) The annual compliance certificate on the stipulated conditions should be submitted by the project proponent to the State Chief Wildlife Warden and an annual compliance certificate shall be submitted by the State Chief Wildlife Warden to Govt. of India.

56.3.2 Proposal for wildlife clearance for doubling of existing railway line from Kulem to Madgoan, Goa State

The IGF(WL) briefed the Standing Committee and stated that the proposal is for use of 16.514 ha of land (PA area : 14.4185 ha + Non-PA area : 2.095 ha) from the Bhagwan Mahaveer Wildlife Sanctuary for doubling of existing railway line from Kulem to Madgoan. He stated that the State Chief Wildlife Warden has recommended the proposal with the condition that the railway authorities may explore the option of putting some gate in tunnel which can be opened through some mechanical / electronically controlled switches before train arrival so as to ensure the wild animals are not trapped in some of long tunnels when no train is there in tunnel.

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CEC REPORT

32. The only justification given by the user agency for this rail doubling project is due to industrial growth in Karnataka and growth of tourism and that the existing single railway line capacity is saturated. But there are no material facts and figures to support the claim of growth of industry and tourism and saturation of the existing single line.

39. CEC during the site visit has visited the entire section passing through the Protected areas and observed that an over pass has been recommended by the Wildlife Institute, Dehradun at km23/450 where the railway line is passing on a 6 m high embankment. An overpass at this location is practically impossible.

CEC does not find any justification for undertaking a project of this nature which will destroy the fragile Eco-system of the Western Ghats which is an internationally recognised Biodiversity hot spot and also one of the most important wildlife corridor of the Country. Moreover this doubling project will only be marginally enhancing the capacity of the most inefficient section of the Railway Network passing through ecologically sensitive and bio-diversity rich Tiger Reserve, Two Wildlife Sanctuaries and a National Park. In these circumstances it is

JUDGMENT

15. Adherence to the principle of sustainable development is a constitutional requirement. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs. Therefore, Courts are required to balance development needs with the protection of the environment and ecology¹. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity². While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment³.



NATIONAL PARKS AND WILDLIFE SANCTUARIES

¹[**26A. Declaration of area as sanctuary.—(1) When—**

(a) a notification has been issued under section 18 and the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary, have been disposed of by the State Government; or

(b) any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological faunal floral geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment, is to be included in a sanctuary,

the State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be sanctuary on and from such date as may be specified in the notification:

Provided that where any part of the territorial waters is to be so included, prior concurrence of the Central Government shall be obtained by the State Government:

Provided further that the limits of the area of the territorial waters to be included in the sanctuary shall be determined in consultation with the Chief Naval Hydrographer of the Central Government and after taking adequate measures to protect the occupational interests of the local fishermen.

(2) Notwithstanding anything contained in sub-section (1), the right of innocent passage of any vessel or boat through the territorial waters shall not be affected by the notification issued under sub-section (1).

²[(3) No alteration of the boundaries of a sanctuary shall be made by the State Government except on a recommendation of the National Board.]

National Parks

35. Declaration of National Parks.—(1) Whenever it appears to the State Government that an area, whether within a sanctuary or not, is, by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park.

⁶[Provided that where any part of the territorial waters is proposed to be included in such National Park, the provisions of section 26A shall, as far as may be, apply in relation to the declaration of a National Park as they apply in relation to the declaration of a sanctuary.]

(2) The notification referred to in sub-section (1) shall define the limits of the area which is intended to be declared as a National Park.

such date as may be specified in the notification.

²[(5) No alteration of the boundaries of a National Park by the State Government shall be made except on a recommendation of the National Board.]

(6) No person shall destroy, exploit or remove any Wild Life including forest produce from a National Park or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the National Park, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the National Board that such removal of wild life from the National Park or the change in the flow of water into or outside the National Park is necessary for the improvement and better management of wild life therein, authorises the issue of such permit:

Provided that where the forest produce is removed from a National Park, the same may be used for meeting the personal *bona fide* needs of the people living in and around the National Park and shall not be used for any commercial purpose.]

(7) No grazing of any ³[live-stock] shall be permitted in a National Park and no ³[live-stock] shall be allowed to enter therein except where such ³[live-stock] is used as a vehicle by a person authorised to enter such National Park.

A large sea turtle, likely a Galapagos tortoise, is shown swimming underwater. The turtle is positioned diagonally across the frame, moving from the lower left towards the upper right. Its head is turned slightly towards the viewer, showing its eye and the pattern of its scales. The shell is a mix of brown and olive green with distinct scutes. The background is a deep blue ocean with a visible coral reef structure in the lower half, covered in green algae or coral. The water surface is visible at the top, with some light reflecting off it.

DE- RESERVATION OF GALATHEA BAY SANCTUARY

The Member Secretary briefed the Standing Committee and stated that Andaman and Nicobar Islands administration had notified intention to declare Galathea Bay as sanctuary for an area of 11.44 sq. km. vide notification dated 15.09.1997 under section 18 (1) of the Wild Life (Protection) Act, 1972. Proclamation notification for initiating acquisition proceedings was issued by the Collector on 14.10.1997. The acquisition proceedings have not been completed and final notification for the sanctuary has not yet been issued. Now, the Andaman and Nicobar Islands has submitted de-notification proposal for the Galathea Bay Sanctuary for which intention to declare as sanctuary alone was notified.

The proposal has been recommended by Chief Wild Life Warden and Andaman and Nicobar Islands Administration. The State Board for Wild Life, Andaman and Nicobar Islands have also recommended the proposal.

Secretary, MoEFCC stated that Andaman and Nicobar Islands Administration had sought clarification from the Ld. ASG who opined that de-notification of Galathea Sanctuary is not needed as the notification regarding intention to declare Galathea Bay as sanctuary is and void because rights were not settled within 2 years. Ministry had also sought clarification from the Ld. Solicitor General regarding the validity of the notification for intention to declare Galathea Bay as Sanctuary. However, the Ministry is of the opinion that the notification for intention to declare Galathea Bay as Sanctuary does not lapse even though the rights have not been settled. Therefore, the Ministry has decided to place the proposal before the Standing Committee to take a decision on this de-notification proposal of Andaman and Nicobar Administration.

Comments from the Wildlife Institute of India (WII) were sought and the Director, WII has opined that the concerned authorities develop and implement a mitigation plan to facilitate leather back and other turtles to continuously nest for which the connectivity between the Galathea River and the Bay should be ensured. The mitigation plan needs to be developed through a detailed study so that marine turtles continue to nest on the beaches near the Galathea Bay during both construction as well as operational phases of the International Shipment Project.

The provisions of CRZ should be enforced in the area. The concerned authorities should secure and conserve all other important turtles nesting areas of Andaman and Nicobar Islands with enhanced protection/conservation measures through appropriate legal/administrative means and through a Management Plan.

ENVIRONMENT

Leatherback nesting sites could be overrun by Andamans project



Pankaj Sekhsaria

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SHARE ARTICLE



PRINT



ENVIRONMENTAL DAMAGE

Indian government is about to irreparably damage the Great Nicobar Island with its mega project

If cleared, the project spreads over 1,044 square kilometres will ruin the pristine rainforests in the region.

No rehab for rare species, oil spill checks — govt panel flags gaps in Great Nicobar vision plan

Tasked with granting environmental clearance, expert panel has sought more details on NITI Aayog's plans to develop the biodiversity-rich island, so it can make an 'informed' decision.

DE-RESERVATION IS NOT PERMISSIBLE

- The Supreme Court ordered on 13.11.2000 that “... *pending further orders, no dereservation of Forests/ Sanctuaries/ National Parks shall be effected.*”
 - Alteration permitted by the National Board for Wildlife does not include de-reservation
 - Supreme Court refused to hear petition- sent it to the High Court- which for the Andaman and Nicobar Island is the Calcutta High Court
 - Galathea is one of MANY WLS or NPs in the recent years that have ‘disappeared’
-

Explanation.—For the purposes of this section, the expression “tiger reserve” includes—

(i) core or critical tiger habitat areas of National Parks and sanctuaries, where it has been established, on the basis of scientific and objective criteria, that such areas are required to be kept as **inviolate** for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers, and. notified as such by the State Government in consultation with an Expert Committee constituted for the purpose;

(ii) buffer or peripheral area consisting of the area peripheral to critical tiger habitat or core area, identified and established in accordance with the provisions contained in Explanation (i) above, where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species, and which aim at promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of such areas are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the purpose.

L. SRINIVAS BABU V. UOI (SC)

- National Highway NH-212 connecting Kollegal in Karnataka with Kozhikode in Kerala via Mysore goes through the core area of the Bandipur Tiger Reserve. 24.5 Kms. of this NH-212 goes through the core area, out of which 19.7 Kms. goes through the State of Karnataka and 4.8 Kms goes through the State of Kerala. Night time traffic was banned because of high incidence of road kills - Kerala wants it removed and Karnataka wants to keep it

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We, therefore, direct the Ministry of Environment Forests & CC to file an affidavit within a period of four weeks from today in this behalf with suggestions as to how NH-275 and State Highway No.90 be made into a National Highway (that is that State Highway No. 90 be merged into NH-275), and to see that both the width and other features of this Highway be made at least equal to NH-212 which may then, in the long run, be closed down altogether.

ECO SENSITIVE ZONES

3. Purpose for declaring Eco-Sensitive Zones:

The purpose of declaring Eco-sensitive Zones around National Parks and Sanctuaries is to create some kind of “Shock Absorber” for the Protected Areas. They would also act as a transition zone from areas of high protection to areas involving lesser protection. As has been decided by the National Board for Wildlife, the activities in the Eco-sensitive zones would be of a regulatory nature rather than prohibitive nature, unless and otherwise so required.

6.2 For the above purpose, a small committee comprising the concerned Wildlife Warden, an Ecologist, an official from the Local Self Government and an official of the Revenue Department of the concerned area, could be formed. The said committee could suggest the:

- (i) Extent of eco-sensitive zones for the Protected Area being considered.*
- (ii) The requirement of such a zone to act as a shock absorber*
- (iii) To suggest the best methods for management of the eco-sensitive zones, so suggested.*
- (iv) To suggest broad based thematic activities to be included in the Master Plan for the region.*

6.3 Based on the above, the Chief Wildlife Warden could group the activities under the following categories (an indicative list of such activities is attached as **ANNEXURE-1**):-

- (i) Prohibited*
- (ii) Restricted with safeguards.*
- (iii) Permissible*

SALIENT FEATURES

Decided on a case-to-case basis



Issued under the Environment (Protection) Act, 1986 therefore, issues can be brought up before the National Green Tribunal



Certain activities are completely prohibited within eco-sensitive zones around a NP or WLS – mining, setting up of saw-mills, setting up of any industries causing pollution – usually ESZ's made in ways to accommodate these interests – can be challenged in court



Provides a buffer around protected areas from human activities

ECO-SENSITIVE ZONES PROTECTING ELEPHANT CORRIDORS (BINAY KUMAR DALEI V. STATE OF ODISHA & ORS. (SC))

- Eco-Sensitive Zone of the Kuldiha Wildlife Sanctuary included the corridor linking Kuldiha wildlife Sanctuary of Balasore district and Hadgarh Wildlife Sanctuary of Keonjhar district.
 - Case filed to stop stone mining- NGT agreed and directed State of Odisha to notify 11 elephant corridors as ESZs for their protection
 - Appeal filed to the Supreme Court
 - Diluted- said mining permitted once a wildlife management plan is implemented- State still permitted to disallow mining under the plan
-

PROTECTING THE KAZIRANGA- NO DEVELOPMENT ZONE



1. As regards the wall with barbed wire fencing which comes in the way of Elephant Corridor, the same should be demolished. The area, where the wall has come up and the proposed township is to come up is a part of Deopahar 'PRF'. It also falls within the No-Development Zone notification, issued by the 'MoEF' in 1996. Thereby, any non-forest activity thereon would be in violation of the decision of the Apex Court in the T.N Godavarman case (1996). Thus, the wall should be demolished within a period of one month and the proposed township should not come up in the present location.

34. The MoEF and the State Government are directed to prepare a Comprehensive Action Plan and Monitoring Mechanism for implementation of the conditions stipulated in the 1996 Notification specifying "No Development Zone" and for inspection, verification and monitoring of the prohibitions imposed in the notification referred to above, as well as the provisions of Rule-5 of the Environment (Protection) Act, 1986.

35. After giving the matter a conscious thought and after taking into account all the factors, we are of the opinion that MoEF and the State Government of Assam have totally failed in their duties with respect to implementation of the provisions of the 1996 Notification and due to the callous and indifferent attitude exhibited by the Authorities, number of polluting industries / units were established in and around the No Development Zone of Kaziranga thereby posing immense threat to the biodiversity, eco-sensitive zone, ecology as well as environment. We are, further, satisfied that this is a clear case of infringement of law. We, therefore, have no hesitation to direct the MoEF and the Government of Assam to deposit Rs. 1,00,000/- (Rupees one lakh only) each, with the Director, Kaziranga National Park for conservation and restoration of flora and fauna as well as biodiversity, eco-sensitive zone, ecology and environment of the vicinity of Kaziranga National Park in general and within the No Development Zone in particular. The said amount shall be utilised exclusively by the Director, Kaziranga National Park for conservation, protection and restoration as well as for afforestation of suitable trees of the local species in and around the No Development Zone.
