



# **FACULTY OF JURIDICAL SCIENCES**

**COURSE: LL.B.**

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# Lecture-34



## LECTURE 34: Implementation Challenges and the Role of the Judiciary

Implementation of WLPA faces a number of challenges. In many cases, the higher judiciary has played a crucial and active role to facilitate the implementation of WLPA as well as to give progressive meaning to the provisions of the Act.

### **Centre for Environmental Law, WWF v. Union of India, WP(C) No.202 of 1995**

The issue of inaction by various state governments in implementing WLPA was discussed in this case. The Supreme Court directed state governments to establish Wildlife Advisory Boards. Further, the Court directed all states which had failed to appoint Wildlife Wardens to make the appointments. The Court also interfered when states failed to make the final notifications on Protected Areas.

It is to be noted that the active role of the judiciary has gone to the extent of rule-making also. The Supreme Court, *in Centre for Environmental Law, WWF v. Union of India (1997)*, laid down rules for de-notification of Protected Areas. The Court directed the state governments to refer proposals for de-notification to the Indian Board for Wildlife (IBWL) and place the proposal and opinion of IBWL before the Legislative Assembly. The Supreme Court also directed the Central Government and state governments to provide modern arms and communication facilities to forest guards in sanctuaries and national parks to control the menace of poaching. The judiciary had also assumed a monitoring role and examined proposals for development activities in protected areas and decided/monitored approvals.

Transportation of or trade in wildlife has been a contentious issue and the judiciary has taken a pro environment, pro-wildlife approach in **Ivory Traders and Manufacturers Association v. Union of India**. In this case, the constitutionality of the 1991 amendment of WLPA that prohibits trade in imported ivory was challenged before the Delhi High Court. It was argued that the prohibition violates the freedom of trade and profession guaranteed under the Constitution. The High Court upheld the constitutional validity of the amendment and said ‘trade and business at the cost of disrupting life forms and linkages necessary for the preservation of bio-diversity and ecology cannot be permitted’.

Trade or commerce in wild animals, animal articles and trophies The term trophy means the whole or any part of any captive animal or wild animal, other than vermin, which has been kept or preserved by any means, whether artificial or natural, and includes, rugs, skins, and specimens of such animals mounted in whole or in part through a process of taxidermy, and antler, horn,

rhinoceros horn, feather, nail, tooth, musk, eggs, and nests. And uncured trophy means the whole or any part of any captive animal, other than vermin, which has not undergone a process of taxidermy, and includes a freshly killed wild animal ambergris, musk and other animal products

Sec. 39 of the Act, declares that every wild animal other than vermin, which is hunted or kept or bred in captivity or found dead or killed by mistake, shall be the property of the State Government. Likewise, animal articles, trophy or uncured trophy, meat derived from any wild animal, ivory imported to India, article made from such ivory, vehicle vessel weapon, trap or tool that has used for committing an offence and has been seized shall be the property of the state government. If any of the above is found in the sanctuary or a National Park declared by the Central Government, then it shall be property of the Central Government.

In **Rajendra Kumar v Union of India AIR 1998 RAJ165**, the petitioner challenged the vis of the above clause which imposed a complete ban on import of ivory and articles made from it. It affected his livelihood and freedom of trade and business provided under Article 19(1). Moreover, he contended that ivory derived from a mammoth was not ivory derived from a scheduled animal, therefore, any article made out of such fossil ivory could not be brought within the purview of the Act. But the Court observed that, the Chapter V-A of this Act, is incorporated in accordance with the direction of Convention on International Trade in Endangered Species of Wild Fauna and Flora . The object and reasons of the Amendment Act, 1991 make it amply clear that trade in African ivory is proposed to be banned after giving due opportunity to traders to dispose of the existing stocks. So this Section cannot be void.