

# Wild Laws

*Global wildlife syndicates are gaining the upper hand despite increasing awareness of the need to defend our wildlife heritage. B.K. Sharma, winner of a special 2005 Sanctuary-ABN AMRO Wildlife Service Award for his investigative work on the tiger trade, takes us on a guided tour of some of the legalities that determine our ability to fight international wildlife crime.*

India has a long history of protection, dating back to the 3<sup>rd</sup> century B.C. when elephants, so vital for successful military campaigns, were protected during the Mauryan rule. The *Arthashastra* of Kautilya laid down the responsibilities of Forest Superintendents in protecting wild elephants and authorised them to kill anyone slaying elephants.

After embracing Buddhism, not only did Emperor Ashoka give up royal hunts, but further accorded protection to many animals and birds. A fine of 100 *panas* or coins was imposed on anyone poaching a deer in forests set aside for the king.

Initial British efforts to stop the killing of animals appeared to have the ulterior motive of securing a steady supply of elephants that were critical to their army. The *Forest Act* of 1878 empowered the British to ban the killing of animals in declared Government Forests, but the first codified law to protect wildlife – The *Wild Birds Protection Act* – was enacted around a decade later in 1887. This outlawed the possession or sale of any specified wild bird killed or taken during the breeding session. In 1912, the British enacted the *Wild Birds and*

*Animals Protection Act*, to prevent trading in birds and this was further amended in 1935. The *Forest Conservation Act* of 1927 stipulated imprisonment for six months and a fine of up to Rs. 500 or both for killing or catching elephants in contravention of legal clauses.

## WILDLIFE PROTECTION ACT

Historical hunting traditions and the absence of a deterrent legislation, however, saw the wanton killing of wildlife, with some species pushed to the brink. In 1969, during the General Assembly of the IUCN in New Delhi, it was announced that the tiger population had fallen to under 2,000 in India. The first

comprehensive legislation – the *Wildlife (Protection) Act, 1972* came into force, which laid down a legal basis for the forest departments of all states to ensure the ecological and environmental security of the country. It prohibited the trade or commerce in trophies and all manner of animal products from species listed in the four schedules. It also laid down punishments for offences. The Act underwent two major amendments: while the 1986 amendment made penal provisions stricter, amendment in 1991 added chapters for protection of plants and the management of zoos.

A comprehensive amendment was then effected in 2002 and

became operational on April 1, 2003. This expanded the scope of several sections and clauses. It also provided for the constitution of a National Board for Wildlife, with similar boards for states.

The most significant change pertained to penalties in Section 51. For an offence specified in Schedule I or Part II of Schedule II, the minimum sentence now is imprisonment for three years, extendable to seven years and a fine not less than Rs. 10,000. In the event of a second conviction, the fine rises by Rs. 25,000. What is more, any vehicle or weapon used in the commission of the offence is to be forfeited and an arms

license, if any, shall be cancelled for five years.

Conditions of granting bail have now been made more stringent and no accused can be released on bail unless the Public Prosecutor is heard and unless the Court is of the reasonable belief that the accused has not committed the offence or shall not commit any offence while on bail.

Introduction of a chapter for forfeiture of property derived from illegal hunting and trade makes the Act comparable in some respects to the *Narcotic Drugs and Psychotropic Substances Act, 1985* and *Prevention of Money Laundering Act, 2003*. Any property of a convict of three years or his associate, which is obtained from or attributable to illegal hunting and trade of wildlife is defined as 'illegally acquired property'. An officer not below the rank of Deputy Inspector General of Police shall trace and identify such property while the order of forfeiture can be passed by an officer of the rank

of Chief Conservator of Forests, designated as the Competent Authority. Interim seizure of property is permissible in case there is reasonable apprehension of concealment or transfer. Interestingly, the burden of proof to demonstrate that the property was not illegally acquired rests on the accused.

## COMPARISONS WITH THE UNITED STATES OF AMERICA

The illegal wildlife trade in the United States is regulated primarily under two statutes: *The Lacey Act* and *The Endangered Species Act*. The former was enacted in 1900 and is probably the oldest national wildlife protection law in the world. Its prohibitions are two pronged: wildlife trafficking, domestic and international, and false labelling. It makes it unlawful to import, export, transport, sell, receive, acquire or purchase any fish or wildlife taken or sold in violation of the State, Federal or even foreign laws or regulations, related to wildlife. The Act considers both misdemeanors and felony offences, distinguished by the defendant's knowledge of the underlying law violations. Felony violations can result in five years imprisonment, a fine of \$250,000 (\$500,000 for organisations) and the forfeiture of equipment. The maximum misdemeanor penalty is one year imprisonment and a \$100,000 fine (\$200,000 for organisations). The unique feature of the Act is its ability to incorporate foreign law as an underlying law or predicate offences to 'trigger' a *Lacey Act* violation. Thus a person who imports wildlife into the United States in violation of a foreign law can be prosecuted in the US.

The *Endangered Species Act*, enacted in 1973 fulfils the CITES obligations of the

United States. It establishes enforcement infrastructure, management authorities and prescribes penalties to execute the CITES mandate to regulate the international wildlife trade. The Act makes it illegal for any person to import, export, or offer or sell any endangered or threatened species. Criminal violations could lead to penalties of imprisonment up to one year and a fine of \$100,000 for individuals (\$200,000 for organisations). Equipment, vehicles, vessels, aircraft and other means of transportation can be forfeited on conviction. The Act's most far-reaching innovation is section 7, which directs federal agencies to ensure that their actions do not jeopardise the continued existence of protected species or degrade the habitat of species.

## THE CHINESE SITUATION

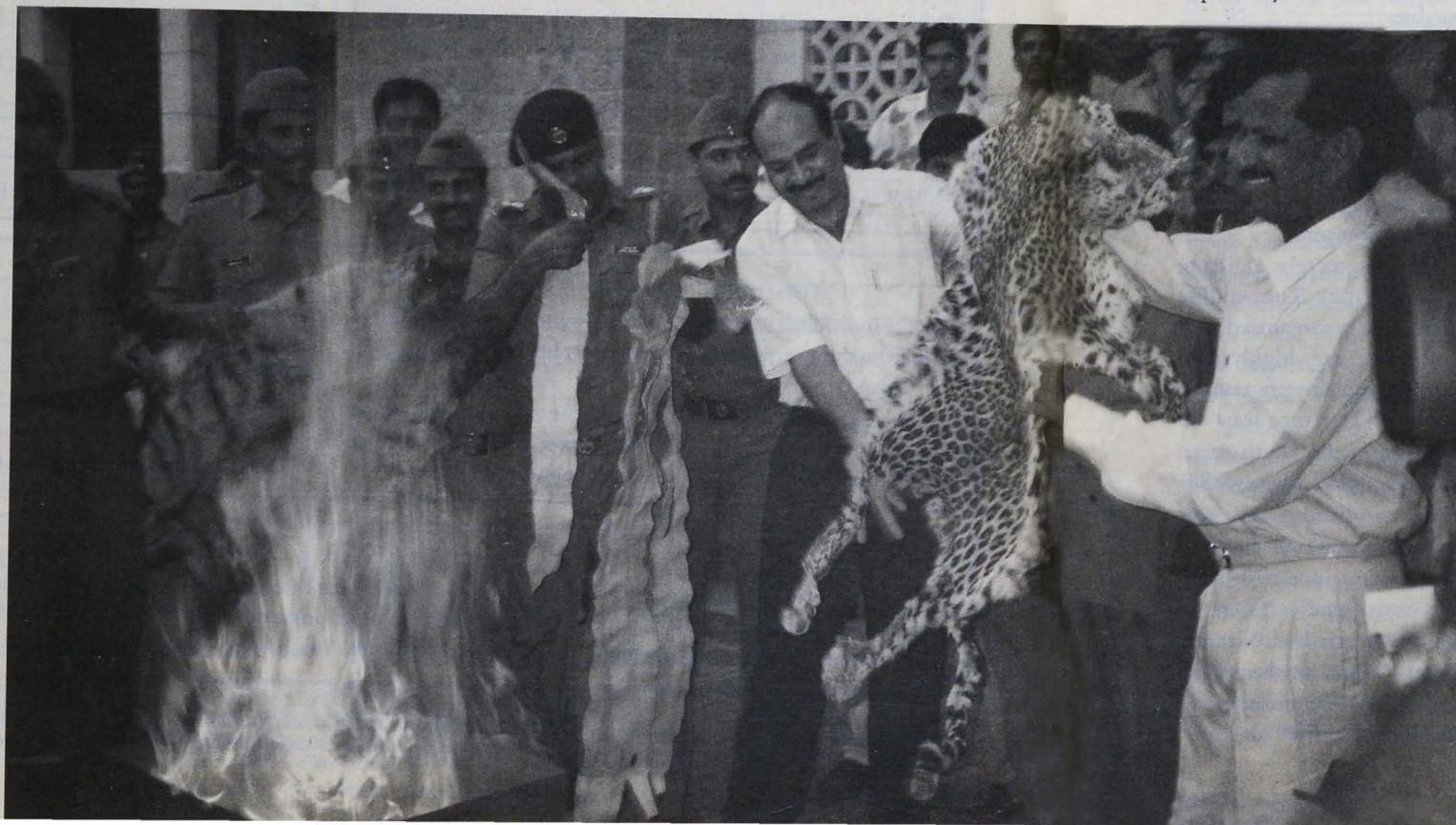
With a territorial boundary of 20,000 km. and a coastline of 18,000 km., China, the second largest country in the world has a total land area of 9.6 million sq. km. One of the 12 mega-diverse countries, China accounts for about one-tenth of the total species in the world. With nearly 2,200 nature reserves, covering 14.8 per cent of its territory, China has adopted a multi-agency enforcement approach that empowers the Forest Police, General Police and Customs to seize contraband and investigate offences. A late entrant to CITES in 1981, the first comprehensive legislation known as *Wild Animals Conservation Law* was enacted in 1988. It directs the State to pursue a policy of strengthening the protection of wild animal resources, while encouraging captive breeding of species. Hunting, catching or killing, sale or purchase of specified wild animals is prohibited, except for scientific research and breeding.

The *Criminal Law of 1997* provides for a fixed-term imprisonment of not less than five years and a concurrent fine for smuggling precious and rare species of wildlife forbidden for export or import. If the circumstances are especially serious, Article 151 of the Law provides for a mandatory sentence of life imprisonment or death and concurrent confiscation of property. Illegal catching or killing, sale or transportation of species under special State protection leads to a fixed-term imprisonment of five years with a fine and if the circumstances are especially serious, the offender will be sentenced up to 10 years with confiscation of property.

In 2004, China's Forest Police investigated 966 cases, dealt with 1,381 suspects and confiscated more than 13,000 species. Since 1999, nearly 50 cases of big cat-related crimes have been detected, which resulted in the seizure of 80 tiger skins, 744 leopard skins and 19 snow leopard skins. This included the famous October 2003 seizure at Sansan, a small township in Angren country, in southwest Tibet, from where 31 tiger skins, 581 leopard skins, 778 Eurasian otter skins and two lynx skins were recovered from three Tibetans at a police check point. The case ended in conviction after a trial, which lasted less than two years. Under Article 151 of the *Criminal Law*, two people were sentenced to death and one was awarded life imprisonment.

## THE NEPALESE CORRIDOR

With a rich biodiversity, Nepal was one of the earliest members, to join CITES in June 1975. The Magna-Carta of Nepalese enforcement is the *National Parks and Wildlife Conservation Act* of 1973. Besides the Department of



Confiscated tiger and leopard skins being burnt in Mumbai. Destruction of wildlife contraband is the only way to staunch the illegal wildlife trade. When countries sell confiscated contraband such as skins, ivory, rhino horn and antlers at 'official' auctions, this merely causes demand to rise.

National Parks and Wildlife Conservation, all wings including Forest, Police, Customs and the Royal Nepal Army have enforcement powers. In a unique institutional arrangement, the executive namely the Forest Department, exercises judicial powers when trying offences. If detected within the Protected Areas, the Chief Warden tries the case, while outside the Protected Area the adjudicating jurisdiction belongs to the District Forest Officer. Punishments are stringent and if endangered species such as the tiger, rhino, elephant, etc. are involved, sentences may range from imprisonment of five to 15 years and fines from Rs. 50,000 to Rs. 100,000, or both. Exclusive trial courts ensure speedy prosecution, normally within six months to two years.

Of an approximate population of 600, as many as 94 rhinos were poached between 2000 and 2005, averaging over 15 killings per year. Investigations have revealed that rhino horns are being traded through Tibet. Most of the arrested poachers were expeditiously tried and 60 per cent were awarded the maximum sentence of 15 years imprisonment, plus fines of Rs. 100,000. In the last two years, some Indians with tiger skins were arrested in Kathmandu and during interrogations, some Nepalese and Tibetans revealed close links with India in procuring skins.

## THE WAY FORWARD

A comparative assessment of the legal and enforcement systems suggests that India's wildlife laws are comparable to any international legislation. The death sentence is, of course, under question globally, and not many in India would advocate capital punishment for wildlife



**In the race to kill animals, poachers kill scores of Indian forest guards, who are among the least supported frontline wildlife warriors in the world. At the very least, guards need arms, communications equipment and immunity from prosecution when they take action against poachers in the line of work.**

offenders. If investigations reveal the existence of an organised crime syndicate in perpetuating wildlife crime, members of such syndicates may be awarded life imprisonment in select States under the *Organised Crime (Prevention) Act*. Provision of the forfeiture of property gained from the illegal wildlife trade makes our statute unique in attacking the foundations of wildlife crime.

We do, of course, need to fine-tune our wildlife laws and improve on-ground enforcement. There have been many impressive seizures, yet the quality of subsequent investigation has been unprofessional. Deterrence of prompt arrests is thus lost since shoddy investigations end up with easy bail for those arrested. Another key issue is the manner in which witnesses are easily induced to turn hostile. It hardly helps that delayed trials end up in frequent acquittals.

To stem the tide of wildlife destruction, what we need is a combination of many approaches working in tandem. We need to improve the visibility of deterrence, the logistic support and forensic assistance available to enforcement agencies. Strategic

offensives against known organised syndicates, as was successfully undertaken in the case of the Amur tigers in 'Operation Amba' should be emulated in India. Our anti-poaching strategies too need reorientation to deter would be poachers before crimes are committed. Our border management with Nepal needs improvement and incentives to induce informers to come forward must be provided to investigators.

It goes without saying that greater coordination between enforcement agencies would greatly enhance our strike capability, as would the improvement of the skills of the personnel involved in anti-poaching and crime detection work.

Synergising officialdom to work with credible NGOs is an imperative that would produce a multiplier effect in terms of information flow and awareness. More than anything else, we must train our people to 'go for the kill' by following up investigation work with good forensics and dogged purpose that ends up forfeiting property and wrapping up known offenders in litigation

and by keeping a very strict watch on them. Basically, we need to take every case to its logical conclusion.

Those directly involved with fighting wildlife crime realise that even minor procedural changes can tremendously magnify the lethality of the *Wildlife (Protection) Act*. For instance the mere substitution of the word 'Complain' by 'Police Report' in Section 55 would dispense with the need to replicate lengthy procedures for pre charge evidence. The constitution of Special Courts by a suitable amendment to the Act, at least in some states like New Delhi, which have a huge backlog, would expedite long-pending trials.

We also need to calibrate the punishment meted out so as to distinguish between poachers, carriers and large-volume traffickers. This is the case with the *Narcotic Drugs and Psychotropic Substances Act, 1985* and if this were applicable to wildlife prosecution, it would justify dispensing the mandatory maximum punishment for organised offenders. Special provisions to prevent suspended sentences would also check the disappearance of convicts and prevent possible further criminal activities by them during the pendency of appeal.

This is merely a listing of possibilities. The wildlife trade is very organised and syndicates use highly-paid lawyers to exploit every available loophole. The very least we could do in the South Asian and Asian region, where wildlife crime syndicates are now growing so powerful that they are almost at par with drug and arms syndicates, is to coordinate our battles across borders to prevent them from profiting by exterminating our natural heritage. 