

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. _____ OF 2020

IN THE MATTER OF PUBLIC INTEREST LITIGATION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Shubham Awasthi

... Petitioner

VERSUS

1. Union of India,
Represented by the Secretary,
Ministry of Environment and Forest,
Indira Paryavaran Bhawan,
Jorbagh,
New Delhi - 110 003

2. State of Kerala,
Represented by the Addl. Chief Secretary,
Department of Forests & Wildlife,
Vth Floor, Annex II Government Secretariat
Thiruvananthapuram - 110 001

3. State of Andhra Pradesh

Represented by the Principal Chief Conservator of Forests,
Andhra Pradesh Forest Department,
Government of Andhra Pradesh,
Tulja Guda Complex, building,
M.J. Market, Hyderabad – 500 001

4. State of Assam

Represented by Principal Chief Conservator of Forests,
Head of Forest Force,
Rehabari, Guwahari- 781008,

5. State of Chhattisgarh

Represented by Principal Chief Conservator of Forests (HoFF),
Chhattisgarh Forest Department,
Jai Road, Aranya Bhawan
Raipur - 492 007,

6. State of Jharkhand

Represented by Principal Chief Conservator of Forest
& Head of the Forest Force (HoFF)
Forests, Environment and Climate Change Department,
Van Bhawan, Doranda,
Ranchi, Jharkhand-834002

7. State of Karnataka

Represented by Principal Chief Conservator of Forests (HoFF),
Government of Karnataka
Department of Forest,
Aranya Bhawan, 4th Floor,
18th Cross, Malleshwaram,
Bengaluru – 560003

8. State of Meghalaya

Represented by Principal Chief Conservator of Forests,
Government of Meghalaya,
Department of Forests,
Sylvan House, Lower Laichumiere,
Risa Colony, SHILLONG - 793 001.

9. State of Nagaland,

Represented by Principal Chief Conservator of Forests, HoFF,
Department of Forest, Ecology, Environment and Wildlife,
Government of Nagaland,
Kohima, (Nagaland) – 797001

10. State of Odisha,

Represented by Principal Chief Conservator of Forests,
Government of Odisha,
Department of Forests,
Plot No. GD-2/12,

Aranya Bhawan, Chandrashekharpur,
Bhubaneshwar – 751 023

11. State of Tamil Nadu,

Represented by Principal Chief Conservator of Forests &HoFF,
Department of Forests,
Government of Tamil Nadu ,
No. 1, Jeenis Road, Panagal Maligai Building,
Saidapet, Chennai – 600015

12.State of Tripura,

Represented by Principal Chief Conservator of Forests,
Tripura, Aranya Bhawan,
Pandit Nehru Complex,
Gorkha Basti, P.O.- Kurja Van,
Agartala-799006, Tripura.

13. State of Uttarakhand

Represented by Principal Chief Conservator of Forests,
Department of Environment Forests,
Government of Uttarakhand,
87, Rajpur Road,
Dehradun-248001, Uttarakhand

14. State of West Bengal

Represented by Principal Chief Conservator of forests (HoFF),

Department of Forests,
Government of West Bengal,
Aranya Bhawan, Block No. LA-10A,
Sector III, Salt lake City, Kolkata– 700098 ...Respondents

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION SEEKING A WRIT, ORDER OR
DIRECTION IN THE NATURE OF MANDAMUS DECLARING
THE BARBARIC PRACTICES TO WARD OFF WILD
ANIMALS AS ILLEGAL AND UNCONSTITUTIONAL FOR
BEING VIOLATIVE OF ARTICLES 14 AND 21 OF THE
CONSTITUTION, AND A ISSUANCE OF GUIDELINES FOR
CREATION OF STANDARD OPERATING PROCEDURES TO
TACKLE SUCH INCIDENTS AND FULFILLING THE
VACANCIES IN FOREST FORCES ACROSS THE STATES OF
THE UNION.**

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. This is a Public Interest Litigation. This is a Writ Petition under Article 32 of the Constitution of India praying for a direction to the Union of India and others seeking a writ or order or direction in the nature of mandamus declaring the practices of filling fruits/food items and chalked off sticks to ward off animals as illegal, and to pass such further orders as this Hon'ble Court may deem appropriate to provide a life of dignity to Animals. Further, Petitioner is preferring this Writ Petition for directions to the Respondents for filling up of vacancies of Forest Forces in their respective States for better management of Animal Welfare and to have effective patrolling and preventive measures in place for the protection of both humans and animals.
2. The Petitioner has not approached any other court for the reliefs claimed in the present Writ Petition. No representation has been filed with any authority and the reliefs claimed can only be granted by this Hon'ble Court.
3. The Petitioner is a male citizen of India and a Hindu by religion. Petitioner is a practising Advocate and feels for the plight of Animals and Farmers alike.
4. Petitioner's Name is Shubham Awasthi, Age: 27 years, Father's Name is Mr. Ramesh Awasthi, Address: A-97, Sector 46, Noida, Gautam Buddh Nagar, UTTAR PRADESH - AADHAAR No: -, Email ID:

shubhamawasthi.adv@gmail.com and Phone Number : 8285002222,
Occupation: Advocate and Annual Income: .

5. That In the field of wildlife protection, the first wildlife statute was enacted in Madras (Chennai) in 1873 for the protection of wild elephants. The law introduced a general prohibition on destruction of wild elephants and imposed penalty on those who violated the embargo. The first effort by the Central Government came after six years later by the passing of the Elephant Preservation Act in 1879.
6. Wild life means the plants, animals, and insects etc., which are usually found in forests. In India, a long time back an attempt was made to save wildlife by way of enacting Indian Forest Act, 1927. It provided for hunting restrictions in protected and reserved forests. Art. 51-A (g) of Indian Constitution imposes a fundamental duty on every Indian citizen to protect and improve wildlife in the country.
7. In recent times, the wildlife in India is in danger due to poaching and trade in animal articles. To protect the wildlife of the country the parliament of India passed Wild Life (Protection) Act, 1972 (Hereinafter called as Wildlife Act) on the request made by eleven states. The Act was necessitated as some wild animals and birds had become already extinct while some others were on the verge of extinction. Further, the then existing state legislations were felt

inadequate in order to protect the wildlife of the country. The Act provides for the establishment of Wildlife Advisory boards and the appointment of wildlife wardens and other staff to implement the Act. In several states, the office of the Chief Wild Life Warden and the Chief Conservator of Forests is united in a single post. The Act prohibits hunting of animals listed in Schedule I, II, III and IV. Under the Act, the state government may declare any area of adequate ecological, faunal, floral, natural or zoological importance as a sanctuary or a national park. In both national parks and sanctuaries, public entry is restricted and the destruction of any wildlife or habitat is prohibited.

8. That the working of 1972 Act was not satisfactory and hence, in 1986 the Act was suitably amended. Under the 1972 Act, trade and commerce in wild animals, animal articles and trophies was permissible within the country. But many traders smuggled the animal skins, animal articles and trophies to foreign countries for getting huge profit. Hence, it became necessary to prohibit trade in certain specified wild animals. Accordingly, by 1986 Amendment Act it was provided that no one will be allowed to carry on trade in wild animals specified in Schedules I and II of the Act. Further the then existing licenses for internal trade of animals and animal articles were revoked. Further total ban was imposed on trade in Indian ivory. In 1991 the Wild Life Act was further amended. This amendment was made on the basis of recommendations of Indian Wildlife Board and Ministry of Environment and Forest. It was felt that due to continuous poaching

and illegal trade in animal articles, the wildlife population in India has rapidly declined. Hence, in 1991 Amendment Act, hunting of all wild animals except vermin was prohibited. But in certain exceptional circumstances such as for protection of life and property, education, research, scientific management and captive breeding, hunting of wild animals was permitted. Further to control the death rate of animals on account of communicable diseases, compulsory immunization was provided for in national parks and sanctuaries. The provisions of national park and sanctuary were extended to territorial waters without seriously affecting the interests of local fishermen. Further, it was provided that without settling the rights of tribal people, no area can be declared as a national park or a sanctuary.

1991 Amendment Act recognized the importance of zoos in protection of wild animals in the country and hence it was provided that the management of zoos will be monitored by the Central Zoo Authority established under the Amendment Act. Further on the basis of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), collection of endangered species of animals and plants has been prohibited. But it will not affect the collection of traditionally used plants for bona fide personal use of tribals.

9. The Wildlife Protection Act, 1972, which was amended in 2002, banned the sale of captive elephants that were not registered with the forest department. Owners of captive elephants now have to

mandatorily provide at least 1.2 acres of land as enclosure, ensure that the elephant has access to a pool of fresh water and access to veterinary care, which is impossible to do.

10. A pregnant Elephant died when she accidentally ate a Pineapple filled with crackers in a village nearby Silent Valley National Park, Palakkad, Kerala. This incident has caused quite an uproar amongst citizens about the kind of treatment being meted out to animals to ward them off from private lands. It was also reported that another elephant had died in a similar fashion and it was quite common for the locals to use fruits filled with crackers masquerading as food to ward off wild boars and other animals which may destroy standing crops.
11. That the Wildlife Protection Act, 1972 mentions of Wild Boars in Schedule II and of Elephants in Schedule III of the Act as Animals protected under Section 9 & Section 11 of the Act. Thus, the only instances when they could be killed are when they are a threat to life and property or become a man-eater. Using snares against them makes no sense as there are much less harmful means of controlling them like using solar fences with a 12v power supply among others.
12. Staff scarcity in forest department is a nation-wide issue with shortages ranging between 30% and 40% in different states. Delay in recruitment process, inadequate number of candidates in posts such as forest watchers and guards, are some of the issues that other states face. The Management Evaluation Report, third round of which was

published in 2014 mentions about the shortage of staff in various Tiger Reserves from 25% - 50+% and a lack of understanding of the Wildlife Sensitivity among employees. Another cause for concern has been the presence of a large number of personnel in the age group of 40-60 years. True Copy of the Management Evaluation Report, 2014 is annexed hereto as ANNEXURE –P/1.(Page No. to)

13. That the Indian Council of Agricultural Research had come up with a research paper about the intertwined life of Farmers and Animal Conflicts and the effective ways of combating Animal Human Conflicts. True Copy of the ICAR Research paper on Human Animal Conflict in Agro-Pastoral Context: Issues & Policies published in 2016 is hereby annexed hereto as ANNEXURE- P/ 2. (Page No. to)

14. That across India, the Forest Forces are usually mired with acute shortage of staff which makes their resilience ineffective against managing such large swamps of forests. It is quite a sorry situation that the same needs to be kept stock of and a dynamic recruitment be made as against the usual practice of recruiting the Forest Guards when the situation starts going out of hand. The Comptroller and Auditor General in its Report for Bihar in 2017, Karnataka in 2017 and Maharashtra in 2019 mentions about shortage of staff and equipment with the frontline forest workers across different sanctuaries in these States. The Shortage range from 4-11% to 80%. True Copy of the Overview of the Comptroller and Auditor General

of India's Report 2017 about Wildlife Sanctuaries in Bihar is annexed hereto as ANNEXURE- P/3 (Page No. to)

True Copy of the Overview of the Comptroller and Auditor General of India's Report 2017 about Wildlife Sanctuaries in Karnataka is annexed hereto as ANNEXURE- P/4(Page No. to)

True Copy of the News Article published in the India Today dated 23 January 2017 highlighting the acute shortage of Forest Inspectors in Delhi is hereby annexed hereto as ANNEXURE-P/5. (Page No. to)

True Copy of the News Article published in the Times of India dated 23 March 2017 highlighting the grim state of staff shortage at Gir National Park is hereby annexed hereto as ANNEXURE- P/6. (Page No. to)

True Copy of the Management Evaluation Report, 2018 is annexed hereto as ANNEXURE –P/7. (Page No. to)

True Copy of the News Article published in The Outlook dated 03 August 2018 highlighting the shortage of staff at Rajaji National Park in Uttarakhand is hereby annexed hereto as ANNEXURE- P/8. (Page No. to)

True Copy of the News Article published in Times of India dated 25

December 2018 about the plight of forest officers in Tamil Nadu is hereby annexed hereto as ANNEXURE- P/9. (Page No. to)

True Copy of the Overview of the Comptroller and Auditor General of India's Report 2019 about Management of Tiger Reserves in Maharashtra is annexed hereto as ANNEXURE- P/10(Page No. to)

15. That around 35000 animals died in the four period from 2015 to July 2019 due to various accidents across Railway Tracks across India. True Copy of the Newspaper Report published in the Business Insider dated 24th July 2019 is hereby annexed hereto as ANNEXURE – P/11. (Page No. to)

16. A pregnant Elephant died when she accidentally ate a Pineapple filled with crackers in a village nearby Silent Valley National Park, Palakkad, Kerala. This incident has caused quite an uproar amongst citizens about the kind of treatment being meted out to animals to ward them off from private lands. It was also reported that another elephant had died in a similar fashion and it was quite common for the locals to use fruits filled with crackers masquerading as food to ward off wild boars and other animals which may destroy standing crops. True Copy of the News Article published in Daily Mail dated 02 June 2020 about the death of the Pregnant Elephant is hereby annexed hereto as ANNEXURE- P/12. (Page No. to)

True Copy of the News Article published in NDTV dated 03 June 2020 about the death of another Elephant, suspected to have died of firecrackers in Kerala is annexed hereto as **ANNEXURE-P/13. (Page No. to)**

17. The Social Media and Netizens had numerous petitions filed online ta different online Petition platforms against the incident. It was highlighted after a Forest Officer by the name of Mohan Krishnan posted about it with pictures on his Facebook account in Malayalam. It is suspected that the elephant died by accident as such practices are common among farmers in forest fringe areas to keep wild animals from damaging their crops, besides preventing them from entering into their habitats.

True Translated Copy of the Screenshot of the Social Media post by Mohan Krishnan, Forest Officer is annexed hereby as **ANNEXURE – P/14(Page No. to)**

18. The incident of the death of the Elephant drew parallels between the reverence of religious and mythological symbols of different religions. Due to large scale reporting about the media of the incident being intentional and in a neighbouring district, it led to intense backlash against the Malayalis in different parts of the India with #KeralaElephantMurder trending on twitter. Due to lack of any information about the incident and official clarifications, it turned up into a situation where the Malayali community was subjected to

harassment as murderers or as people who have killed the elephant with different comments being raised/targeting them. The State Government had no official communication released which could have explained the situation and thus, it was allowed to mushroom into a full blown media trial. It further came to light later that a cow was injured in a similar cracker incident in Himachal Pradesh, this shows that the usage of such snares are Pan India in nature and affect wildlife across India. True Copy of the Newspaper Report dated 06.06.2020 published in The Indian Express about the Cow getting injured by a Snare in Himachal Pradesh is annexed hereto as **ANNEXURE- P/15. (Page No. to)**

19. Petitioner is filing this petition to declare the barbaric means of warding off wild animals using snares as illegal and unconstitutional for being violative of Articles 14 and 21 of the Constitution. The Respondent States are the ones which have at least 50+ Elephants in the wilderness and they have been made a party to the Petition to seek their response about the measures adopted by them.
20. Petitioner has not filed any other petition either in this Hon'ble Court or in any other High Court seeking same and similar directions as prayed in this petition.
21. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this petition. It is not guided for gain of any

other individual person, institution or body. There is no motive other than the larger public interest.

22. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with the issue involved in this petition. It is totally bona-fide.
23. There is no requirement to move concerned government authority for relief sought in this petition. There is no other remedy available except approaching this Hon'ble Court.

GROUND

- A. when they could be killed are when they are a threat to life and property or become a man- In addition to the various religious, ethical and philosophical bases for animal welfare, there is increasing recognition of the ties between animal welfare indicators and animal health.¹ Disregard for animal welfare often leads to poor animal health – increased susceptibility of animal populations to disease and injury and poor quality or contaminated animal-based food products – with resulting economic losses. Animal welfare is thus intrinsically related to other government concerns such as public health, food safety and long-term economic development.
- B. In Europe, animal welfare has been the subject of national legislation and regional agreements for more than a generation,

largely due to more exposure to and discomfort with the treatment of animals in industrialized farms and slaughterhouses. In light of increased international trade, globalization of animal health concerns and pressure for harmonization of food safety standards, many other countries are also choosing to regulate animal welfare. To improve their legislative frameworks, some countries use or adapt pre-existing legislation on the prevention of cruelty to animals, while others draft new animal welfare laws, blending national and local concerns with international animal welfare principles.

C. The Constitution of India recognizes the lives and welfare of animals by making it a fundamental duty of the citizens of India to respect and treat all living creatures with compassion.

D. Animal rights are protected under the Constitution of India. Article 51A(G) makes it a fundamental duty upon every citizen of India to protect wildlife and have compassion for all living creatures. According to Article 48, the State has the duty to organize agriculture and animal husbandry on modern, scientific lines and to take steps for preserving and improving breeds, prohibiting slaughter of cows and calves and other milch and draught cattle.

Article 48A provides that the State also has a duty to protect, safeguard and improve the forests and wildlife of the country.

In List II (State List), Seventh Schedule, it is provided that the State has the power and authority to:

14. Preserve, protect and improve stock and prevent animal diseases, and enforce veterinary training and practice.

In List III (Concurrent List), it is provided that both the Centre and the State have the power and authority to:

17A. Prevent cruelty to animals.

17B. Protect wild animals and birds.

The chief laws relating to wildlife in India are found in the Wildlife Protection Act, 1972. The Act prohibits the killing, poaching, trapping, poisoning, or harming in any other way, of any wild animal or bird. It also provides for establishment of Wildlife Advisory Boards in every State.

E. According to Section 2 (37) of the act, wildlife includes any animal, aquatic or land vegetation which forms part of any habitat, thus making the definition a wide and inclusive one.

F. Section 9 of the Act prohibits the hunting of any wild animal (animals specified in Schedule 1, 2, 3 and 4) and punishes

the offense with imprisonment for a term which may extend to **3 years** or with fine which may extend to **Rs. 25,000/-** or with both. The Act allows the Central and State Government to declare any area 'restricted' as a wildlife sanctuary, national park etc. Carrying out any industrial activity in these areas is prohibited under the Act. Section 48A of the Act prohibits transportation of any wild animal, bird or plants except with the permission of the Chief Wildlife Warden or any other official authorised by the State Government. Section 49 prohibits the purchase without license of wild animals from dealers. The Constitution neither grants any absolute protection to the omission of duties that is unjust, nor exempts animal laws from the jurisdiction of the Legislature or the Judiciary.

G. The Vedas, the first scriptures of Hinduism (originating in the second millennium BCE), teach ahimsa or nonviolence towards all living beings. In Hinduism, killing an animal is regarded as a violation of ahimsa and causes bad karma, leading many Hindus to practice vegetarianism. Hindu teachings do not require vegetarianism, however, and allow animal sacrifice in religious ceremonies. Jainism was founded in India in the 7th-5th century BCE, and ahimsa is its central teaching. Due to their belief in the sanctity of all life, Jains practice strict vegetarianism and many go to great lengths even to avoid harming insects. Buddhism is the third major religion to emerge in India, and its teachings also include ahimsa. Buddhism teaches vegetarianism (though not as strictly as Jainism), and many Buddhists practice life release in

which animals destined for slaughter are purchased and released to the wild.

- H. The cruelty with which elephants are treated nowadays is a far cry from what it was like in ancient India where they had pride of place. No army could be imagined without elephants leading the charge. Celebrated Indian philosopher and royal advisor Chanakya who authored Arthashastra, the ancient Indian political treatise, clearly laid down rules for the king to protect elephants. He said that whoever killed an elephant would be put to death. The pachyderms had to be fed even if they were incapacitated by war, old age or illness, the Arthashastra said.
- I. On 27th of May, a Pregnant Elephant succumbed to injuries caused by the eating of a Pineapple filled with Crackers which was left by the Villagers/Farmers/Local Men to ward off wild animals straying into the area which had their fields/property. It was again reported that this was not an isolated incident as another Elephant had died due to similar circumstances in Kerala.
- J. The Pregnant Elephant had her Jaws broken and Tongue severely damaged by the Crackers after which she chose to stand in the nearby river and succumbed to her injuries. It was pointed out by the Forest Officials that the Elephant had refused help when they tried to save her. Such an Act of desperation to save their crops by Farmers/Villagers in the vicinity of Silent Valley National Park in Palakkad District shows the level of desperation or helplessness of the Farmers/Villagers in these villages.

- K. It is quite a common practice to scare off wild animals or scare wild boars/Nilgai etc by using food stuff filled with crackers/snares as a bait as the damage caused by these animals at times is severe and there happens to be no means to stop it for them. The Forest Departments across India has failed in this endeavour to protect the Wildlife and Humankind due to a severe shortage of staff and lack of scientific measures being used by general populace.
- L. It is quite pertinent to mention here that the Union Government in 1992 had launched Project Elephant and had cultivated different varieties of Rice in association with Central Rice Research Institute which was not relishable by Elephants and was thus left untouched. It is submitted that similar simpler tools need to be developed to counter the menace of Wild Boars/Nilgais/Other Animals so that the Farmers/Villagers/Local Residents do not use such barbaric means to ward off Wild Animals.
- M. The Elephants Preservation Act, 1879, prohibits the killing and capture of wild elephants. It says that the government can order or grant a license to kill or capture wild elephants and the tusks of any killed elephant would be the property of the government. As India's forest cover collapses with commercial interests taking over, the land for elephants is shrinking. Assam has lost over 65 percent of its lowland semi-evergreen forests for the last 45 years. Meghalaya had a forest cover of about 33 percent 35 years ago; today, it is around 15 percent. Other areas, too, have seen similar tragedy. Many elephants have also been killed by speeding trains passing through protected elephant terrain.

- N. It is mentioned herein that the deaths of Wild Animals by accidents has been on a constant rise and the Indian Railways has given a statistic of 35000 Animals killed in the period between 2015-2019. This figure includes all types of Animals and had 65 Elephants and 5 Lions in Gujarat. Such incidents happen because of lack of Beat Boys and Forest Guards due to acute vacancies in their cadres and such gross shortage and under staffage results in omissions which cause such accidents. Furthermore, the Forest Forces find themselves severely under –equipped and covering a great area on foot which affects their efficiency. It is highly praiseworthy that these sentinels have always risen to the occasion and have had no difficulty diminish their spirits and fulfil their duties to the absolute best despite of the odds, they face.
- O. As the elephant habitat gets reduced due to incursions, they step out into human habitations in search of food and water. For many years now, man-animal conflicts have pockmarked rural India as hungry elephants destroy fields and dwellings for food. Over 100 people are killed every year by elephants in India. In retaliation, angry villagers kill the elephants. These conflicts have resulted in elephant populations declining from 1,00,000 to around 40,000 today. Many elephants have also been electrocuted by electric fences or low-slung electric cables.
- P. The Accidents could be mitigated using simpler means like Buzzing Bees sound buzzers and trackers on Railway tracks, Roads etc., after identifying areas where such Accidents are prone to happen and constantly monitoring them and using it to mitigate

such incidents in the future. It is submitted that effective understanding of these areas and removal of manmade obstruction to whatever extent possible and usage of Scientific Tools would create an effective society for the Animals and Humankind to co-exist and share the bounties of Mother Earth.

Q. The Forest Forces in almost every State of India face acute shortages and have to stand in for longer periods of duty due to such shortages. This results in a not so effective monitoring of the zones for which they are responsible. Various States need to step up with their Recruitments and Monitoring measures to see the fullest implementation of the Wildlife Protection Act. There is not only a lack of officers patrolling such areas but also a severe shortage of equipment's with the Forest Officers in almost every State which renders them ineffective. We praise the Forest Officers for trying to fulfil their duties to their absolute best in spite of the many issues plaguing them.

R. That across India, the Forest Forces are usually mired with acute shortage of staff which makes their resilience ineffective against managing such large swamps of forests. It is quite a sorry situation that the same needs to be kept stock of and a dynamic recruitment be made as against the usual practice of recruiting the Forest Guards when the situation starts going out of hand. The Comptroller and Auditor General in its Report for Bihar in 2017, Karnataka in 2017 and Maharashtra in 2019 mentions about shortage of staff and equipment with the frontline forest workers across different sanctuaries in these States. The Shortage range

from 4-11% to 80%. The Management Evaluation Report, third round of which was published in 2014 mentions about the Management Weaknesses of various Tiger Reserves and has a figure of 25-50+% as shortage of frontline forest workers in various reserves'. Furthermore, it highlights the plight of lack of equipment/basic facilities in the Fourth Round published in 2018, quite surprisingly, the 2018 Report is silent about shortages but does mention lack of Veterinary Doctors as a concern among various reserves. Though, the data is available for a few States and maybe old but still shows the conditions of the sentinels of the wild and their pitiable conditions. Most of these frontline forest workers have been doing their work without even basic necessities like water or charging stations being available to them. The CAG Report for Karnataka even mentions that a lot of guns are not usable when it comes to facing off poachers or hunters.

- S. The Founding Fathers of our Constitution had envisaged a Nation wherein every living soul had rights and Humans and Animals co-existed peacefully. The various provisions of Directive Principles of State Policies and the Fundamental Duties of Citizens stand as a testimonial to the fact.
- T. The Indian Council of Agricultural Research in its Paper on Human Animal Conflict in Agro Pastoral Contexts mentions that India is the seventh largest country in the world and second largest nation of Asia having 10 different biogeographic zones, encompassing varied landscapes with rich natural resources. India also has the rich diversity with approximately 45,000 species of

plants, 86,874 species of animals, 390 species of mammals, 1300 species of birds, 456 species of reptiles, 311 species of amphibians and 2546 species of fishes. All the bio-geographic zones are facing the issue of HWC from variety of species, in varying degrees. The major species involved in the Human Wildlife Conflict (hereinafter called as 'HWC') are Snow leopard, Himalayan bear, monkeys, wild ass, nilgai, black buck, wild boar, elephant, leopard, sloth bear, gaur, tiger, porcupine and crocodile. In Trans Himalayas and Himalayan zones the HWC is mainly due to snow leopard, Himalayan bear and monkeys. The wild ass and nilgai problems are severe in regions like Thar and Kutch of desert zone. The number of problematic species involved in HWC is comparatively similar in semi-arid, Western Ghats, Deccan peninsula and Gangetic plains. In these zones the predominant species like wild boar, nilgai, monkeys, elephants and other antelopes cause significant HWC in relation to agricultural landscape, while other species like tiger and leopard cause predation on livestock and human death.

U. Simpler means like Physical Barriers, Usage of Male Excreta, Overlapping of Branches etc. can be used for measures to reduce HWCs. It is pertinent to mention here that the Agricultural and Forest Departments of the States need to come up with a unified Standard Operating Procedure which considers the Wildlife Protection Act and the Prevention of Cruelty to Animals Act as its basic tenet and modulates rules and regulations pertaining to avoiding such incidents in the Future. The lack of such rules on the

model of Disaster Management Rules has given rise to a non-uniform approach to mitigating such incidents. This has often resulted in people using means which are otherwise prohibited to counter the menace of wild animals, resulting in injuries and deaths to not only animals but also to humans.

V. Prevention of Cruelty to Animals Act (hereinafter PCA Act) is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen and discover the true state of affairs. Court can go behind the form and see the substance of the devise for which it has to pierce the veil and examine whether the guidelines or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the Constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of *parents patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings.

W. By the 1986 Amendment of the Wildlife Protection Act, 1972; it was provided that no one will be allowed to carry on trade in wild animals specified in Schedules I and II of the Act. Further the then existing licenses for internal trade of animals and animal articles were revoked. Further total ban was imposed on trade in Indian ivory. In 1991 the Wild Life Act was further amended. This amendment was made on the basis of recommendations of Indian Wildlife Board and Ministry of Environment and Forest. It was felt that due to continuous poaching and illegal trade in animal articles, the wildlife population in India has rapidly declined. Hence, in 1991 Amendment Act, hunting of all wild animals except vermin was prohibited. But in certain exceptional circumstances such as for protection of life and property, education, research, scientific management and captive breeding, hunting of wild animals was permitted.

X. That the Wildlife Protection Act, 1972 mentions of Wild Boars in Schedule II and of Elephants in Schedule III of the Act as Animals protected under Section 9 & Section 11 of the Act. Thus, the only instances eater. Using snares against them makes no sense as there are much less harmful means of controlling them like using solar fences with a 12v power supply, using smells targeting them or through specific sound systems among others. It needs to be clarified that these specific provisions can only be used in certain exigencies and under what conditions can a Chief Wildlife Warden allow for the death of animal.

Y. People's participation and support is crucial for nature and Wildlife conservation, One of the important ways of enlisting such support is by involving the community leaders and other persons of standing, who have the interest as well as the capacity to render assistance for this cause. Such assistance can be very useful in control over poaching for this clandestine trade in wild animals or their articles, identification of relatively less known wildlife refuges needing protection, carrying the message of conservation to the people living in and around the sanctuaries and national parks, and related matters.

Z. Section 4(2)(bb) of the Wildlife Protection Act, 1972 provides for appointments of Honorary Wildlife Wardens under the head of any other officer and employees as necessary. Section 59 of the Act, makes them a public servant under the definition of Public Servants under Section 21 of the Indian Penal Code, 1860. Eminent Personalities from various walks of life can be made such Honorary Wildlife Wardens as Citizen Wildlife Wardens in order to effectuate streamlining of a lot of processes/identification of risks/studies to be undertaken/preventive measures to be designed/awareness programmes to be created among others. Such a measure with Public Participation would go a long way in effectuating real change in the Society and in creation of a society where Animals and Humans co-exist peacefully.

AA. The Hon'ble Apex Court in Animal Welfare Board of India vs. Nagaraja [2014 SCC 970 547] has ruled that :-

“.....Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Art. 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Art. 21 of the Constitution. So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognised under Ss. 3 and 11 of the Act and the rights framed under the Act.

- a. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right

guaranteed to the animals under Ss. 3 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Ss. 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over- ridden, over-loading is also a right recognized by S. 11 read with S. 3 of the PCA Act.

Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in S. 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the

statutory rights of animals under the PCA Act.”

BB. A bench of 3 judges of this Hon’ble Court in **Ahmedabad Women Action Group v. Union of India (1997) 3 SCC 573**, when faced with partially similar questions about Animal Rights as raised in this petition, opined about the presence of speciesism as a detriment to the harmonious existence of humans and wild. It opined such :-

“Speciesism as a concept coined by Richard Ryder in his various works on the attitude to animals, like *Animal Revolution, Changing Attitudes towards Speciesism* (Oxford: Basil Blackwell, 1989), *Animal Welfare and the Environment* (London: Gerald Duckworth, 1992) etc. Oxford English Dictionary defines the term as "the assumption of human superiority over other creatures, leading to the exploitation of animals". Speciesism is also described as the widespread discrimination that is practised by man against the other species, that is a prejudice or attitude of bias towards the interest of members of one's own species and against those of members of other species. Speciesism as a concept used to be compared with Racism and Sexism on the ground that all those refer to discrimination that tend to

promote or encourage domination and exploitation of members of one group by another. One school of thought is that Castism, Racism and Sexism are biological classification, since they are concerned with physical characteristics, such as, discrimination on the ground of caste, creed, religion, colour of the skin, reproductive role etc. rather than with physical properties, such as the capacity for being harmed or benefited.

We have got over those inequalities like Castism, Racism, Sexism etc. through Constitutional and Statutory amendments, like Arts. 14 to 17, 19, 29 and so on. So far as animals are concerned, S. 3 of the Act confers right on animals so also rights under S. 11 not to be subjected to cruelty. When such statutory rights have been conferred on animals, we can always judge as to whether they are being exploited by human-beings. As already indicated, an enlightened society, of late, condemned slavery, racism, castism, sexism etc. through constitutional amendments, laws etc. but, though late, through PCA Act, Parliament has recognized the rights of animals, of course, without not sacrificing the interest of human

beings under the Doctrine of necessity, like experiments on animals for the purpose of advancement by new discovery of physiological knowledge or of knowledge which will be useful for saving or for prolonging life or alleviating suffering or for combating any disease, whether of human beings, animals or plants and also destruction of animals for food under S. 11(3) of the PCA Act.

CC. It is submitted that such meagre Punishments under the Prevention of Cruelty against Animals have led to widespread violations of the Act with impunity. Such Acts have led to defeating the purpose of the Act and has made it redundant in modern times. It is submitted that the same be amended to be in sync with the changing times and be made dynamic to find itself in consonance with the increase in purchasing power and economic well being of people. The Imprisonment needs to be extended to a period of six months to two years.

DD. The idea of “constitutional morality” was elaborated on by a bench of 5 judges of this Hon’ble Court in Manoj Narula v. Union of India (2014) 9 SCC 1. Dipak Misra, J. (as he then was), speaking on behalf of the majority of this Hon’ble Court, held that traditions and conventions must grow to sustain the value of constitutional morality. Such traditions of using such harmful means to counter Animal-Human Conflicts is an anathema to the idea of Wildlife Protection and Morality.

EE. Several nations have banned or restricted the practice of usage of such barbaric means to minimise damage caused due to Human Wildlife Conflicts. Thus, the fundamental rights of Indian Citizens and Wild Animals are being violated continuously, despite reforms introduced by the Legislature to curb the same due to certain loopholes, shortage of staff handling wildlife protection and lack of scientific co-ordination and awareness from the States to tackle the issue.

FF. The issue was put on trial by various segments of the netizens and media and a lot of contradictory reports about the same were being circulated across social media. Such act had pitted us against our own brethren and is a serious threat to the democratic fabric of ours upon which we pride ourselves. The same could have been avoided if there was any real time information about the incident available on web/media platforms. It is called out that there should have been proper information to counter such information being published and media should have checked the facts about the same and treaded carefully and as not to publish news, which may incite tension in the society. The incident of the death of the Elephant drew parallels between the reverence of religious and mythological symbols of different religions. Due to large scale reporting about the media of the incident being intentional and in a neighbouring district, it led to intense backlash online against the people from Kerala in different parts of the India with #KeralaElephantMurder trending on twitter. Due to lack of any information about the incident and official

clarifications, it turned up into a situation where the people from Kerala were subjected to harassment as murderers or as people who have killed the elephant with different comments being raised/targeting them. The State Government had no official communication released which could have explained the situation and thus, it was allowed to mushroom into a full blown media trial. A dashboard with relevant information about such incidents needs to be maintained by the Appropriate Governments to tackle such issues and periodic updation of news bulletins needs to be done, in order to avoid such mushrooming of media trials.

GG. The issues of hunting/killing/maiming animals and Animal – Human Conflicts also draw our attention towards the declining rate of the Animals after the loss of habitat and failure of preservation/protection measures. It is submitted that a Animal Census be conducted and the Animals facing threats like Elephants be tracked and monitored to avoid such scenarios. Furthermore, it is also mentioned that areas having high populations of Elephants can come up with Elephant Sanctuaries to ward off future incidents like this. Creation of Protection zones or Buffer zones with adequate Forest Forces manning it, would help in mitigation of such incidents in the future. Furthermore, any mechanism be created for the effective tracking of wild animals using GPS, navigation systems or even faecal analysis as in the case of certain animals.

HH. The practice of using shaved sticks, fruits/food filled with crackers to ward off animals is antithetical to India's obligations

towards the fulfilment of fundamental rights of the Animals. Given the above Constitutional obligations, it is amply clear that the Democratic Republic of India cannot conceive of an institution such as shortage of staff to overlook protection of wildlife, issues of usage of barbaric means/snares to scare animals that rests itself on regressive notions of inherent brutality inflicted upon the wild beasts by Men.

- II. Failure to eliminate de jure (formal) and de facto (substantive) abusive treatment meted out to Animals including by non-State actors, either directly or indirectly, violates not only the most basic rights of Animals but also violates their basic dignity as a living being as envisaged in internationally, in our constitution and the guiding principles of every dominant religion or society in India. It is submitted that not only must the practices of usage of such means/snares be declared illegal and unconstitutional, but the actions of groups, bodies and leaders that permit and propagate such practices must also be declared illegal, unconstitutional, and violative of Articles 14 & 21 of the Constitution.

PRAYER

It is, therefore, prayed that this Hon'ble Court may be pleased to issue a Writ/Order/Direction in the nature of mandamus to:

- a) declare the practice of using barbaric means/snares/shaved sticks/explosives to ward off wild animals as illegal, unconstitutional, and violative of Articles 14, and 21 of the Constitution;
- b) direct the Central/State Government for necessary amendments in the Prevention of Cruelty against Animals Act, 1960 to enhance Punishments for causing Cruelty against Animals making it more stringent as per modern times;
- c) direct the Central/State Governments to fill the vacancies in Forest Forces for effective management and order in Wildlife Belts and for propagation of necessary awareness pertaining to Animal-Human Conflicts;
- d) issue directions to the Central/State Governments to update their Forest Forces with modern equipment and necessary literature required to fulfil their duties to the absolute best;
- e) direct Union of India to issue guidelines for Animal Census in States to understand the needs of the wildlife and take such measures to protect them;

- f) direct Union of India/States to issue guidelines for the tracking of Elephants in order to save them from the threat of extinction and cruelty against them;
- g) direct the Central/State Governments for the creation of Elephant Sanctuaries with Protected Zones and Buffer Zones in States with high Elephant population and issue guidelines for the same to tackle loss of habitat of Elephants and future Animal – Human Conflicts;
- h) direct the Union of India/States to create a cadre of Citizen Wildlife Wardens so as to create a volunteer force to tackle incidents of Animal Human Conflicts and seeking their help in adoption of scientific means to fight such conflicts;
- i) issue guidelines for the creation of a Standard Operating Procedure among States across the Union to deal with such Incidents and deaths of Animals due to Accidents and usage of Scientific means when such conflict arises and to achieve the goals of mitigating Animal Human Conflicts;
- j) issue guidelines explaining the specific instances when Wild Animals specified under different Schedules of Wildlife Protection Act, 1972 be killed to save property/life;

- k) issue guidelines for the careful and sensitive handling of such news by media and concerned authorities so as not to create any friction in the society and real time data of animal deaths be maintained by appropriate authority along with periodic updates through press releases by appropriate government to stop any dissemination of fake news;
- l) issue guidelines for the creation of scientific/alternative measures by the Union of India/States and their implementations to ward off wild animals which may prove danger to the standing crops and human settlements;
- m) Pass any other order as this Hon'ble Court deems fit/proper.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPELLANTAS IN DUTY BOUND SHALL EVERY PRAY

DRAWN BY:

**SHUBHAM AWASTHI
AKASH SHARMA
SAPTA RISHI MISHRA
ADVOCATES**

SETTLED & FILED BY:

**(VIVEK NARAYAN SHARMA)
ADVOCATE FOR THE PETITIONER**

Drawn on: 08.06.2020

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