

A HISTORY OF WILDLIFE LAWS IN WEST BENGAL

S.S. BISHT*

Introduction

There is nothing on record to indicate that protection and improvement of wildlife was a priority with the British when they initiated scientific and organised forestry in Bengal on 3.8.1864. But they did have a fascination for hunting, shooting and fishing. They also realised the economic importance of elephants, other wild animals and birds. Therefore, very soon, the foresters of Bengal (which in the old days encompassed the present day Bangladesh, Orissa, Bihar and West Bengal) found themselves engaged in managing and protecting 'game animals' and 'game fish' in the Reserved Forests (R.Fs) and the Protected Forests (P.Fs). As much of the 'game' also existed outside the Government forests, rules for protecting them in the non-forest areas were also framed, and the responsibility for enforcing these rules fell by default to the lot of the forest officers. With the passage of time, 'game' gave way to 'Wildlife', 'hunting' to 'conservation' and 'game reserves' to 'sanctuaries' and 'National Parks'. The changes in concepts and priorities of management of wildlife over the years have obviously influenced the corresponding laws and rules in what we have today as West Bengal. This paper seeks to trace the history of wildlife laws in West Bengal as they have evolved since the inception of the forest organisation in the State.

Wildlife Laws for Forest Areas

The Act VII of 1865 or the Government Forest Act, 1865 (GFA, 1865) came into force in Bengal on 1.5.1865. Section 4 of the GFA, 1865 authorised the Local Government to frame rules *inter alia* for prohibiting the collection and removal of Elephant tusks, horns, skins and hides (Stebbing, 1923). But the rules made by the Govt. of Bengal under GFA, 1865 did not mention about the collection and removal of the parts of wildlife which the parent law indicated (Guhathakurta, 1966).

The GFA, 1865 was replaced on 8.3.1878 by the Act VII of 1878 or the Indian Forest Act, 1878 (IFA, 1878). Section 2 of the original IFA, 1878 defined 'skins, tusks, bones and horns' as 'Forest-produce' when found in or brought from a forest (Anon., 1878). Section 25 of the Act prohibited killing or capturing of Elephants, hunting, shooting, fishing, poisoning of water, setting of traps and snaring in or over R.Fs in contravention of rules made by the Local Govt. Section 31 also empowered the Local Govt. to make rules for regulating the aforesaid activities over P.Fs. The definition of 'Forest-produce' was amended by the Forest Act, 1890 (Act V of 1890) and it now included 'wild animals and skins, tusks, horns, bones, —, and all parts or produce of animals' when found in or brought from a forest (Anon., 1905).

*Director, Project Elephant, Govt. of India, New Delhi.

The IFA, 1878 was revised in 1927 as the Indian Forest Act, 1927 (IFA, 1927), but the provisions relating to hunting, shooting and fishing in the R.Fs and P.Fs did not change materially. The Government of West Bengal, however, amended Section 2 of the IFA, 1927 on 15.12.1981 and the term 'Forest-produce' now includes 'wild animals, skins, tusks, horns and bones, and all other parts or produce of wild animals' whether found in or brought from a forest or not. The amended Act also defined the term 'wild animal' as having the same meaning as in the Wildlife (Protection) Act, 1972 (WPA, 1972).

The West Bengal Private Forests Act, 1948 (Act XIV of 1948) and the rules made thereunder prohibited hunting, shooting, fishing etc without valid permits in the vested forests on the same lines as the IFA, 1927. For the private forests controlled by the State Government, however, other wildlife laws of the State applied (Guhathakurta, 1966). Consequent on the implementation of the West Bengal Estate Acquisition Act, 1953 (Act I of 1954), most of the private forests became vested in the Forest Directorate during the period 1955-60 and declared as P.Fs under Section 29 of the IFA, 1927 (Lahiri, 1964). This has made the Act of 1948 and the corresponding rules almost redundant.

Hunting and Fishing Rules for Forest Areas

The State Government made use of the provisions of the IFA, 1878 and 1927 and notified rules from time to time for

regulating hunting, shooting and fishing in and over R.Fs and P.Fs. A brief account of these rules is given below :

(i) *Rules of 1888 and 1895* : Rules were initially notified separately for the R.Fs and P.Fs in Bengal on 7th and 8th August, 1888 under Sections 25 (i) and 31 (j) respectively of the IFA, 1878 for regulating hunting, shooting, fishing, poisoning of water, and setting of traps or snares. An attempt to frame a common set of rules applicable to all the R.Fs and P.Fs in Bengal was made in 1895¹. However, these rules did not cover the P.Fs in Khurda (Orissa), Chota-Nagpur and Santhal Parganas (Bihar) and separate rules were framed for these forests in 1895 itself². These rules were subsequently extended to Rohtas and Chainpur Parganas (Bihar) in 1895³, and to Angul (Orissa) in 1901⁴.

In 1895 the Government also authorised the Divisional Commissioner to grant special hunting permits to the 'shikaris' accompanying survey and demarcation parties over the P.Fs in the Sunderbans⁵. In 1896 the Government directed that no licence or permit would be required for fishing in the tidal waters⁶. Killing, capturing or injuring of Bison and Buffaloes in the R.Fs of Jalpaiguri and Darjeeling districts was prohibited in 1902 under Section 25 (i) of the IFA, 1878⁷.

It appears that these rules were not effective in controlling offences relating to hunting and fishing. The Conservator of Forests (C.F.) of Bengal mentioned in his report for 1901-1902 that : "In Jalpaiguri,

¹Notification No. 177-T.R. dated 18.5.1895.

²Not. No. 564-T.R. dated 24.9.1895.

³Not. No. 5441-For. dated 16.12.1895.

⁴Not. No. 949-T.R. dated 1.7.1901.

⁵Not. No. 5402-For. dated 16.12.1895.

⁶Not. No. 430-For. dated 27.1.1896.

⁷Not. No. 90 dated 4.1.1902.

the number of 'other offences' was double that of the previous year and for the most part consisted of breaches of the shooting and fishing rules."

(ii) *Rules of 1907* : The Government prescribed fresh sets of game rules in 1907 separately for the R.Fs and the P.Fs.

The game rules for the R.Fs⁸ promulgated under Section 25 (i) of the IFA, 1878 divided the forests into three categories viz., Class I forests where permits in Form A would be given; Class II forests where permits in Form B would be given; and Class III forests in which all hunting, shooting, trapping and fishing was prohibited in order to prevent extinction of any species, or to form a game sanctuary, or for any other reason. Senchal forests in Darjeeling were declared Class III forests in 1907⁹. The rules also declared whole year as closed year for Rhinoceros, Buffalo, female Bison, male Deer (without horns or with horns in velvet), and females of all Deer and Antelopes.

The game rules for the P.Fs were framed under Section 31 (j) of the IFA, 1878 for the 24-Parganas District¹⁰, and Khurda (Puri) and Angul¹¹. Under these rules whole year was declared as closed for Rhinoceros and Buffaloes, and the period from May 1st to October 31st was declared as closed for deer of all kind. These rules also recognised three types of game permits viz., Class I (a sportsman's permit), Class II (a trade permit) and Class III (a permit for killing Tiger).

The revised rules as stated above did

not bring down the level of offences as revealed by the annual reports. The C.F. reported that : "In Kurseong, it is known that illicit shooting has been rife and it is believed that similar offences are common in Tista Duars (now Kalimpong) forests and in Jalpaiguri and Buxa" (Annual Report, 1911-12). The report for 1912-13 recorded that : "In Jalpaiguri, the D.F.O. reports that illicit shooting and grazing causes much damage."

(iii) *Rules of 1915* : The need for consolidating game rules for the Eastern and the Western Bengal was felt once again (Annual Report, 1912-13). The consolidated rules for hunting, shooting and fishing for the R.Fs and the P.Fs in Bengal were notified in 1915¹². These rules were mostly framed on the lines of the rules of 1907 for the R.Fs. However, the rules provided that all forests would be considered as belonging to Class I unless the contrary was specially notified by the Local Government in the Calcutta Gazette. Fishing by use of poison, explosive, fixed engine and net as also by making dams was prohibited under these rules. Whole year was declared as closed for Rhinoceros, female Buffalo, female Bison and male Bison (for Jalpaiguri District only). Rule 6 provided that permits for Class II forests would not be given except to approved sportsmen and 'shikaris', for the exclusive purpose of hunting carnivorous animals and such other animals as might be exclusively mentioned in the permit. Rule 8 exempted Gazetted Officers of the Forest, Police and Civil Department from taking out a permit for hunting with some restrictions. No permit was required for hunting in tidal

⁸Not. No. 1992-For. dated 6.4.1907.

⁹Not. No. 408-T.R. dated 2.5.1907.

¹⁰Not. No. 1994-For. dated 6.4.1907.

¹¹Not. No. 1993-For. dated 6.4.1907.

¹²Not. No. 839-For. of 23rd January, 1915.

waters. Rule 14 gave powers to the C.F. to make rules for Class II forests, with the concurrence of the concerned Divisional Commissioner, for fixing the maximum number of animals (other than carnivorous animals) to be hunted and to prevent the hunting of immature animals (other than carnivorous animals).

These rules were subjected to a number of amendments till 1940 in regard to fees for hunting and fishing; conditions of hunting; closing period and composition of Class I, II and III forests. In particular, in 1930 the closed period for whole year was extended through a notification to a number of non-table birds, male Buffalo and male Bison (in the districts of Darjeeling and Jalpaiguri only)¹³. The same notification also provided for protection (i.e. closed period) for the whole year to Monitor Lizards of a size below the specified measurements. Protection to male Bisons (Gaurs) was extended to the Chittagong and the Chittagong Hill Tracts districts initially exclusive of the R.Fs in 1932¹⁴ and then inclusive of the R.Fs in 1939¹⁵. The rules were also amended in 1923 for accommodating the newly formed Hunting and Fishing Clubs in the districts of Jalpaiguri and Darjeeling holding leases granted by the Government¹⁶. In 1927 shooting of bears within Senchal (a Class III forest) was permitted to the members of the Darjeeling Shooting & Fishing Club¹⁷. In 1939, 2179 acres of forests of Jalpaiguri Division containing what later became the Gorumara Sanctuary was included in the list of Class III forests¹⁸.

Unrestricted fishing in the tidal waters

of the Sunderbans caused problems for protection as mentioned by the C.F. in the annual report for 1915-16: "In Sunderbans-boundary theft is rendered more difficult to detection owing to the rule permitting free fishing in tidal waters. —Accomplices of timber thieves, ostensibly visiting the forest to fish, watch the movement and give warning of the approach of forest staff. —Registration of all fishing boats in the reserved forests seems to be the likely solution." Exemption granted for fishing in the tidal waters was withdrawn in 1932¹⁹.

The forest officers also had to contend with some curious decisions of the Courts. The annual report for 1916-17 records that: "A serious situation has, however, recently arisen in Chittagong where the Courts have held that a 'shikari' armed with a loaded gun can perambulate the forests without rendering himself liable under the IFA or the Wild Birds and Animals Protection Act presumably until he destroys or attempts to destroy game. In the same case it was ruled that no prosecution could lie for trespass within Reserved Forest, which has hitherto been punishable under Section 25 (d) of the IFA.... the matter will be presented to the Government."

Poaching of Monitor Lizards in the Sunderbans had taken a serious turn as the annual report for 1928-29 reveals: "Majority of cases under illegal hunting and shooting occurred in the Sunderbans Division where the poaching of Monitor Lizards is rife. Lizard skins fetch such high prices that fines imposed by the Courts have no effect upon the poachers. Authority has been defined and murderous attacks

¹³Not. No. 12255-For. dated 24.10.1930.

¹⁴Not. No. 9919-For. dated 3.8.1932.

¹⁵Not. No. 7563-For. dated 8.7.1939.

¹⁶Not. No. 1420-T.R. dated 31.10.1923.

¹⁷Not. No. 594-For. dated 13.1.1927.

¹⁸Not. No. 12095-For. dated 24.11.1939.

¹⁹Not. No. 8533-For. dated 2.7.1932.

have been made on subordinates in attempts to release those who have been apprehended. In one case a Forester had to fire in self defence killing two poachers and wounding three." As stated earlier, orders to protect immature monitor lizards were issued in 1930.

Undue advantage of motor-cars taken by hunters in shooting of wild animals was brought to light by the C.F. in the annual report for 1929-30 : "We suggest that Government prohibit the shooting from motor-cars of anything except carnivorous animals between the hours of sunset and sunrise both inside and outside forests." It was in the revised game rules of 1940 that these suggestions were implemented.

(iv) *Rules of 1940* : A revised notification to regulate hunting, shooting, fishing etc. within the R.Fs and P.Fs in Bengal barring the Chittagong Hill Tracts, was issued in 1940 under Sections 26 (1) (i) and 32 (j) of the IFA, 1927²⁰. These rules seek to categorise all forest areas into two classes : Class A forests (listed in Schedule II) in which all hunting, shooting, trapping or fishing is prohibited, and Class B forests in which hunting, shooting, trapping or fishing by permit-holders or privileged persons listed under rule 8 is permitted. Sanctuaries were included in Class A forests. These rules do not apply outside the forests. These rules also do not apply to fishing in tidal waters. These rules prohibit the use of certain methods for hunting - such as shooting from motor vehicle, using explosives, shooting near water-holes and salt-licks etc. Fishing by use of poison, explosive, fixed engine and net as also by

making dams is prohibited in these rules. These rules also provide for close seasons for different species of birds, mammals and reptiles. For a number of important species, such as Rhinoceros, wild Buffalo, Pygmy Hog, Swamp Deer, Monitor Lizards, Florican, Pink-headed Wood Duck etc., whole year has been declared as closed.

The rules of 1940 were extended in 1942 with some conditions over the R.Fs and P.Fs of Chittagong Hill Tracts²¹. Mahananda Sanctuary was included in 1955 in Schedule II (Class A forests)²².

These rules are theoretically still in force. However, after the promulgation of the WPA, 1972 and rules framed under that Act, these rules have lost their relevance except in respect of fishing in the forests.

Wildlife Laws for non-forest area

In 1887, Government of India made the first attempt to enact an exclusive Act for protection of general wildlife in the Country in the form of 'The Wild Birds Protection Act, 1887' (Act 10 of 1887). This Act enabled the Government to make rules prohibiting the possession or sale of any kind of specified birds, which had been killed or captured during the breeding season (Stracey, 1963). On 16.10.1905, Jalpaiguri and Buxa Forest Divisions were transferred to the Eastern Bengal and Assam Circle as a consequence of the partition of Bengal (Annual Report, 1905-06). A notification was issued by the Government of Eastern Bengal and Assam in 1911 under the provisions of the Indian

²⁰Not. No. 10694-For. dated 18.11.1940 amended vide Not. No. 8403-For. dated 30.8.1941.

²¹Board of Revenue's Not. No. 106-S dated 4.7.1942.

²²Not. No. 12358-For. dated 29.12.1955.

Arms Rules, 1909 prescribing close season for a number of wild birds and animals²³. The Act of 1887 and the rules of 1911 were not found adequate for the protection of the wild birds and animals in Bengal and were replaced in 1914 by the Wild Birds and Animals Protection Act, 1912.

Wild Birds and Animals Protection Act, 1912 (Act VIII of 1912)

This Act, though enacted by Government of India in 1912, was extended in 1914 to Bengal except the district of Chittagong Hill Tract to which it was extended in 1916. Strictly speaking, the Act applied throughout Bengal - including forest areas where it was left to the forest staff to book the offenders under the Act (Muriel, 1917 and 1939). In practice, however, hunting and shooting within R.Fs and P.Fs continued to be regulated through the provisions of the IFA, 1878 and 1927 and the rules made thereunder as discussed earlier. The C.F. remarked in the annual report for 1915-16 that : "_____ It is possible that forest subordinates did not generally realise, till recently, that express design of this enactment is to protect birds and animals outside the Reserved Forests and Protected Forests".

According to this Act, it was unlawful during the close season, to capture or kill any bird or animal included in the Schedule, or to sell or buy or possess any such animal or bird (including its plumage). However, it was not an offence to capture or kill a wild animal in defence of human life and

property. The Schedule contained Ducks, Floricans, Pheasants, Wood Cock, Kingfisher, Antelopes, Bison, Buffalo, Rhinoceros etc.

The Government of Bengal issued a notification in 1914 extending the scope of the Act to Serow, Goral, Sambhar, and a number of species of birds²⁴. The Government also notified on 25.8.1914 close seasons for different wild birds and animals covered under the Act²⁵, but soon came up with a fresh notification on 10.11.1914²⁶. Whole year was declared as closed for Rhinoceros, female Buffaloes, female Bisons, male Bisons (in Jalpaiguri District only), female Deer, male Deer (when hornless or in velvet), female Antelopes, female Serow, female Ghorals and Gazelles, and some non-table birds. In 1930 male Bisons (in Darjeeling district), Swamp Deer and Monitor Lizards below a specified size were brought under the year-round closure²⁷. The prohibition was extended to the male Bisons - first outside the R.Fs of the Chittagong and the Chittagong Hill Tracts districts in 1932²⁸, and then to the whole districts in 1939²⁹. The prohibition was extended to Cheetal stags in 1938 in Rajshahi Division³⁰ and in 1939 in Chittagong Hill Tracts³¹. In 1940 Monitor Lizards of all size, Pangolins and Pink-headed Ducks were included in the list of prohibited species³². The prohibition was extended in the same year to Pythons³³. The Act of 1912 was amended by the Wild Birds and Animals Protection (Amendment) Act, 1935 (No. 27 of 1935).

²³Not. No. 1361 P.L. dated 28.4.1911.

²⁴Not. No. 8337-For. dated 25.8.1914.

²⁵Not. No. 8338-For. dated 25.8.1914.

²⁶Not. No. 10479-For. dated 10.11.1914.

²⁷Not. No. 12246-For. dated 24.10.1930.

²⁸Not. No. 9911-For. dated 3.8.1932.

²⁹Not. No. 7562-For. dated 8.7.1939.

³⁰Not. No. 1345-For. dated 19.1.1938.

³¹Not. No. 11607-For. dated 7.11.1939.

³²Not. No. 996-For. dated 26.1.1940.

³³Not. No. 410T-For. dated 5.10.1940.

A Critique of the Wild Birds and Animals Protection Act, 1912

Application of the Act of 1912 in Bengal was involved in confusion right from the beginning. Although the Act stipulated that any one could file a complaint before the competent magistrate, yet in practice, it was nobody's baby. The C.F. commented in the annual report for 1916-17 that : "Administration of this Act (i.e., the Wild Birds and Animals Act, 1912) leaves much to be desired. —The Wild Birds and Animals Act is intended primarily to give protection in the much larger area lying outside the Reserved Forests and this is where Forest department officers can not, and others apparently will not, enforce it". He also recorded in the annual report for 1919-20 that : "...No cases appear to have been reported by the Police or outsiders during the year (1919-20)." and "No good can be done unless forest officers are given power of arrest." A dismal picture of protection of wildlife outside the R.Fs is presented in the annual report for 1929-30: "Outside Reserved Forests, we fear that the time is not far distant when all game will have been destroyed. The Wild Birds and Animals Protection Act is a complete failure."

The Courts also added to the confusion through some queer judgements. One such case is cited in the annual report for 1916-17 : "In Chittagong, in one case in which accused were acquitted, they produced the curious defence that they killed the deer out of kindness because it had been chased by wild dogs." Another interesting case is recorded in the report for 1937-38 : "One case of Darjeeling Division was sent up to Court under Wild Birds and Animals Protection Act for attempting to shoot a pheasant in Lingding 'khasmahal' during

the close season. The accused were acquitted on the ground that the complainant was absent. Owing to an oversight the complainant and witnesses in the case were not summoned by the trying magistrate."

The Act provided no deterrent against the illegal arms. The C.F. recorded in the report for 1916-17 that : "Manufacture of guns in Jalpaiguri and Bhutan has been brought to light. —In Buxa Division destruction of game by poachers continues both with licensed and unlicensed guns. These cases are extremely difficult to detect as in many cases the unlicensed guns are brought in from Bhutan and only remain a short time in British territory." He also pointed out the havoc caused by unrestricted supply of arms in the Sunderbans : "It is now certain that had guns never been allowed so freely (in Sunderbans) in former years, there would have been sufficient game to ensure that the Tigers did not take to man-eating and all the loss of human life and Government revenue of previous years would never had occurred." (Annual Report, 1918-19). Labourers of the Tea Estates proved themselves to be a great nuisance for wildlife in North Bengal. The C.F. reported about organised poaching by Tea Estate coolies by bows and arrows and recommended that : "... Only satisfactory method of combating the evil would be for the Government to make the carrying of bows and arrows illegal." (Annual Report, 1931-32). A much serious situation was reported the next year : "Tea Estate coolies are indulging in organised poaching. Forest subordinates have been fired at or threatened with bows and arrows." (Annual Report, 1932-33). In some cases the Deputy Commissioners stepped in to help the forest officers. Licences of undesirable persons

for guns were cancelled by the Deputy Commissioner of Jalpaiguri on the recommendation of D.F.O. Buxa Division (Annual Report, 1935-36).

The annual reports also record problems relating to protection of monitor Lizards and migratory birds : "If destruction (of minor Lizards) continues at this monitor these useful and inoffensive reptiles must soon cease to exist except in forest areas." and "Wholesale netting, particularly in the neighbourhood of Calcutta, is playing havoc with the migratory birds which visit Bengal. It is difficult to suggest any steps to check this" (Annual Report, 1929-30).

The Act of 1912 was also subjected to a detailed scrutiny by the All India Conference for the Preservation of Wildlife held at New Delhi from 28th January to 30th January, 1935 and it was found to be inadequate in many ways (Anon., 1935). But no attempt to replace the same was made in Bengal despite a recommendation to this effect by the said Conference.

The position regarding protection of wildlife in West Bengal worsened after the independence. S. Chaudhuri (1951), the Conservator General of Forests of West Bengal, wrote : "Protection and preservation of wildlife in West Bengal is, therefore, a problem. —It is most essential that there should be some legislation in this respect. The existing Wild Birds and Animals Protection Act, 1912 is hardly of any help in protecting wildlife outside the Reserve Forests inasmuch as the offences committed are non-cognisable." The Annual report for 1954-55 recorded that : "About wildlife in general, it is a pity to have to record that poaching is as rampant as ever, the number

of offences against game laws detected during the year being as high as 514."

It was obvious that the Act of 1912 was no longer capable of meeting the requirements of wildlife management in West Bengal and, therefore, it was repealed and replaced in West Bengal by the West Bengal Wildlife Preservation Act, 1959.

Special Wildlife Laws

(i) *Elephant Preservation Act, 1879 (Act VI of 1879)* : Elephant was the first animal to come under the purview of legislation in Bengal. Section 40 of the Bengal Act 2 of 1866 laid down a penalty of driving of Elephant, or leading it in streets of Calcutta or suburbs. Section 66 of the Bengal Act 4 of 1866 prohibited exposing of Elephants for show or training in Calcutta or suburbs. The Regulation 5 of 1873 sought to regulate capturing of Elephants in the Chittagong Hill Tract. Section 174 of the Bengal Act of 5 of 1898 provided for an enquiry into deaths caused by Elephants.

The Elephant Preservation Act, 1879 was enacted by the Government of India and was adopted by Bengal. According to this Act, no person could kill, injure or capture any wild Elephant except for protecting human life, or when such Elephant was found injuring houses or cultivation, or when it was found in the immediate vicinity of any main public road or any railway or canal, or when the person possessed a licence granted under the Act.

The Government of Bengal attached due importance to capturing of Elephants from forests as a source of revenue; but surprisingly, the Forest Department got no share in the revenue during the initial years. Reporting about a big catch of

Elephants in Buxa Division in 1894-95, the C.F. remarked : “— all things considered, the operations are on the whole beneficial to the Department, though it derives no pecuniary gain from them. Legally, of course, and rightly so, wild elephants are forest produce, but up to the present, this does not seem to have been acknowledged.” (Annual Report, 1894-95). The Government finally authorised the Forest Department in 1898 to levy a fixed royalty of Rs. 25 per head for Elephants excluding calves captured by the ‘khedda’ department in the R.Fs in the districts of Jalpaiguri and Angul³⁴. Similar royalty was fixed in 1902 for Elephants caught in the R.Fs in Darjeeling district³⁵.

Forest officers have always to face the dilemma of preserving Elephants against the backdrop of depredation caused by them. The C.F. reported in 1917-18 that : “Destruction of solitary male Elephants is a matter of urgency as they do not confine their attention to crops but also invade villages.” Poaching of Elephants for ivory was equally disturbing : “It has not yet been possible to make any attempt to cope with the wholesale destruction of Elephants for their tusks in the Chittagong and Chittagong Hill Tract Districts.” (Annual Report, 1919-20).

The Elephant Preservation (Bengal Amendment) Act, 1932 (Act V of 1932) came into force on 9.6.1932. It introduced Section 5A to the parent Act empowering the Deputy Commissioner to proclaim rogue Elephants to be killed. Government issued a notification under Section 6 of the Elephant Preservation Act in 1936 prescribing a form of licence to kill mature

male Elephants with a view to reduce their numbers³⁶. The Elephant Preservation Act, 1879 remained operational in West Bengal till 1973 when it was replaced by the WPA, 1972.

(ii) *Rhinoceros Preservation Act, 1932 (Act VIII of 1932)* : Rhinoceros was another animal in Bengal in the early years whose protection engaged the attention of the Government. The Government of Bengal issued a notification in 1899 under Section 25 (i) of the IFA, 1878 which made killing, capturing or injuring of Rhinoceros in the R.Fs of Darjeeling and Jalpaiguri districts penal except for self defence³⁷. The C.F. remarked in the annual report of 1899-1900 that : “...no further measures for the preservation of this animal are at present called for.” But the situation had become alarming during the next three decades as seen from the comments made by the C.F.: “The most serious offences reported are connected with the organised poaching of Rhinoceros near the Torsa river. The almost incredibly high prices realised by the horns of these animals, mostly for export to China as an aphrodisiac are responsible. Unless this poaching can be checked there is every possibility of the Great Indian Rhinoceros becoming extinct in Bengal” (Annual Report, 1930-31).

The Bengal Rhinoceros Preservation Act, 1932 came in to force on 23rd June, 1932. The Act prohibited killing of Rhinoceros without permission of the State Government. It was soon realised that without controlling the trade in respect of parts of the Rhinoceros, full legal protection to this species could not be ensured. The Act was, therefore, amended through the

³⁴Not. No. 3562-T.R. dated 29.11.1898.

³⁵Not. No. 8-T.R. dated 15.4.1902.

³⁶Not. No. 911-For. dated 23.7.1936.

³⁷Not. No. 843-T.R. dated 13.10.1899.

Bengal Rhinoceros Preservation (Amendment) Act, 1937 (Act II of 1938) which imposed a ban on selling, buying or possession of any part of Rhinoceros killed or captured without permission of the State Government.

The Rhinoceros Act remained in force in Bengal till 1973 when it was superseded by the WPA, 1972.

(iii) *Fishing Rules* : Fishing within the R.Fs and P.Fs, as stated earlier, is controlled by the Shooting, Hunting and Fishing Rules of 1940 issued under the IFA, 1927. Outside the forests, fishing is regulated by the Indian Fisheries Act, 1887 (Act IV of 1887). However, the forest officers serving in Darjeeling district were also authorised in 1900 under the provisions of the Indian Fisheries Act, 1887 to effect arrests outside the R.Fs without warrants for offences punishable under Sections 4 to 6 of the said Act or rules made thereunder³⁸. The same power was extended in 1902 to the forest officers serving in the district of Jalpaiguri³⁹.

Comprehensive Wildlife Laws

After Independence, wildlife management in India got a new impetus, thanks to the efforts of the Indian Board for Wildlife, Bombay Natural History Society and other wildlife enthusiasts. They all felt the need for a comprehensive legislation applicable over forests as well as non-forest areas, and covering all threatened wildlife, wildlife trade and other aspects of wildlife management. The following Acts came into existence in response to the aforesaid need.

(i) *The West Bengal Wildlife Preservation Act, 1959 (Act XXV of 1959)* : This Act, as stated earlier, was meant to remove the shortcomings of the Wild Birds and Animals Protection Act, 1912 which it repealed in its application to West Bengal. It got the assent of the President on 24.12.1959. This Act provided *inter alia* for appointing special wildlife officers, licensing the shooting of wild animals and birds outside the forests, protecting any wild animal or bird from shooting, killing or hunting either for a part of the year or throughout the year, regulating the trade in trophies and pets and establishing sanctuaries even outside R.Fs or P.Fs (Anon., 1960 a and 1960 b; Guhathakurta, 1966).

The provisions of the Act of 1959 could, however, not be implemented as neither the rules under the Act were formulated, nor the Chief Wildlife Preservation Officer and other authorities prescribed under Section 3 of the Act were Appointed.

(ii) *Wildlife (Protection) Act, 1972 (No. 53 of 1972)* : The Wildlife (Protection) Act, 1972 (WPA, 1972) came into force in West Bengal on 1.5.1973 and applied to forests and non-forest areas alike. It also superseded all other laws relating to wildlife in the State in view of the provisions of Section 66 (1). The original Act (Anon., 1972) provided for appointment of Director of Wildlife Preservation and other subordinate officers by the Central Government, and Chief Wildlife Warden (C.W.L.W.) and other subordinate authorities by the State Government to carry out the provisions of the Act (Sections 3-5) along with their privileges (Sections

³⁸Not. No. 254-For. dated 15.11.1900.

³⁹Not. No. 765-For. dated 3.2.1902, replaced by Not. No. 957-For. dated 17.8.1935.

59-60); constitution of the Wildlife Advisory Boards in the States and the Union Territories (Sections 6-8); regulation of hunting (Sections 9-17), establishment of Sanctuaries, National Parks, Game Reserves and Closed Areas (Sections 18-38); regulation of trade and commerce in wild animals, animal articles and trophies (Sections 39-49); prevention and detection of offences and penalties for the same (Sections 50-58); and the powers of the Central and the State Governments to make rules or modify the schedules of the Act (Sections 61-64). The Act divided the wildlife species into five schedules in accordance with the degree of threat faced by each and the importance of each as a game: Sch. I (banned for hunting), Sch. II (Special Game), Sch. III (Big Game), Sch. IV (Small Game) and Sch. V (Vermin having no protection except in Sanctuaries and National Parks).

The WPA, 1972 has undergone amendments four times since its inception. The amendment of 1982 (effective from 21.5.1982), *inter alia*, extended the scope of Section 12 to permit the hunting of wild animals for scientific management (i.e., translocation and population management) and made prior permission of the Central Government compulsory for hunting of the Schedule I animals under that Section. The amendment of 1986 (effect from 25.11.1986) sought to ban all trade and commerce in respect of wild animals included in Schedules I and II (part II) as well as trophies and articles derived from them (Section 49A, 49B and 49C) and brought imported ivory under the purview of licensing under Section 44. The amendment of 1991 (effective from 2.10.1991) brought about drastic changes

in the Act (Bist, 1991) by banning hunting of all animals included in Schedules I to IV except under Sections 11 (hunting for protection of life and property) and 12 (hunting for educational and scientific purposes). Two new Chapters viz., Chapter III A (Protection of Specified Plants) and Chapter VI A (Central Zoo Authority and Recognition of Zoos) were added to the Act. A new Schedule VI containing the list of specified plants was added to the Act. Penalties for wildlife offences under Section 51 were enhanced. Power of filing complaint before a Court under Section 55 was extended to the wildlife authorities of the Central Government and common persons. Power of the State Governments to amend the schedules under Section 61 was withdrawn. The amendment of 1993 (effective from 4.8.1992) was brought to replace the Ordinance dated 23.10.1992 promulgated by the President of India, and sought to extend the period given under Section 38H to old zoos to operate without recognition from the Central Zoo Authority from six months to eighteen months.

Schedules of the WPA, 1972 have also undergone amendments on 3.9.1977, 5.10.1977, 2.10.1980 and 24.11.1986. As a result of these amendments, number of entries in the schedules has increased from 159 to 796.

The post of C.W.L.W. was created for the first time in 1973 in West Bengal⁴⁰. All the sanctuaries in West Bengal created before 1972 were renotified under the provisions of the WPA, 1972.

Wildlife (Protection) Rules

The Wildlife (Protection) Rules, 1973

⁴⁰Not. No. 2945-For. dated 25.5.1973.

were framed and notified by the State Government in 1973 under Section 64 of the WPA, 1972⁴¹. These rules provide for constitution and working of the Wildlife Advisory Board; grant of licences for special game, big game and small game; acquisition of rights for establishment of a sanctuary; procedure for registration of arms in the vicinity of a sanctuary; grant of licences for trade and taxidermy in respect of permissible items; etc. The rules were amended in 1992 for revising the entry fees for visitors in sanctuaries⁴².

Some other rules framed by the Central Government under Section 63 (i) of the WPA, 1972 are also applicable to West Bengal : The Wildlife (Protection) Licensing (Additional Matters for Consideration) Rules, 1983 (effective from 13.4.1983), the Recognition of Zoo Rules, 1992 (effective from 4.8.1992), the Wildlife (Protection) Rules, 1995 (effective from 18.4.1995), Wildlife (Specified Plant Stock Declaration) Central Rules, 1995 (effective from 2.10.1991) and the Wildlife (Specified

Plants - Conditions for Possession by Licensee) Rules, 1995 (effective from 2.10.1991). (Anon., 1992a, 1992b and 1998).

Conclusion

It can be seen from the foregoing discussion that the wildlife laws and rules have been given due recognition in West Bengal. But most of these laws came up because of the initiative of the Central Government - the only notable exception being the *Rhinoceros Preservation Act*, 1932 which was enacted and enforced by the State Government. The hunting and fishing rules framed under the *IFA*, 1927 and the *WPA*, 1972 are quite outdated and have not taken cognisance of the amendments carried out in the *WPA*, 1972 in 1982, 1986, 1991 and 1993. Enforcement of wildlife laws in West Bengal also needs improvement as not many cases are booked under the *WPA*, 1972 even in the Protected Areas and the machinery for protecting wildlife outside forest areas is hardly adequate.

SUMMARY

Scientific forest management started in Bengal on August 3, 1864 when the forest Department was established. But wildlife management was not a priority with the foresters in the beginning the British looked upon wild animals, birds and fish as 'game' or 'source of revenue'. They framed their early laws to protect the interests of the 'sportsmen' and the 'exchequer'. Some of the wildlife laws extended to areas outside the forests. Experience gained in the enforcement of these laws led to their amendment or replacement from time to time. Over the years the philosophy of wildlife management has changed and now principles of conservation, rather than those of sport and economics, govern the management of wild animals. This change has also influenced the laws pertaining to wildlife. Although most of the wildlife laws were framed by the Central Government, yet a notable exception remains the *Rhinoceros Preservation Act* passed by the Bengal Government in 1932. Enforcement of wildlife laws, particularly in areas outside the forests, is still a problem in West Bengal. The hunting and fishing rules framed in West Bengal under the *Indian Forest Act*, 1927 and the *Wildlife (Protection) Act*, 1972 have not been updated.

⁴¹Not. No. 6886-For. dated 30.11.1973.

⁴²Not. No. 1386-For. dated 20.3.1992.

पश्चिम बंगाल में वन्यप्राणि कानूनों का इतिहास

एस०एस० बिष्ट

सारांश

बंगाल में वैज्ञानिक वन प्रबन्ध की शुरुआत 3 अगस्त 1864 को हुई जब वहां वन विभाग की स्थापना हुई। किन्तु आरम्भ में वानिकों के लिए वन्य प्राणियों का प्रबन्ध करना उनके पूर्वता-कार्यों में नहीं था। ब्रिटिश लोग वन्य पशुओं, पक्षियों और मछलियों को 'शिकार' या 'राजस्व स्रोत' ही समझते थे। अपने प्रारम्भिक कानून उन्होंने 'शिकारियों' और 'खजाने' के हितों की रक्षा करने के लिए ही बनाए। कुछ वन्यप्राणि कानूनों को वनों से बाहर के क्षेत्रों तक भी विस्तृत किया गया। इन कानूनों को लागू करने से मिले अनुभवों ने उनके संशोधन अथवा प्रतिस्थापन तक समय-समय पर पहुंचाया। इतने अधिक वर्षों में वन्यप्राणि प्रबन्ध का दर्शन भी बदल गया है और अब शिकार और अर्थशास्त्र की जगह संरक्षण के सिद्धान्त ही वन्य पशुओं के प्रबन्ध का नियमन कर रहे हैं। इस परिवर्तन ने वन्यप्राणियों से सम्बन्धित कानूनों को भी प्रभावित किया है। हालांकि अधिकांश वन्यप्राणि कानून केन्द्रीय सरकार के ही बनाए हुए हैं फिर भी इसका एक उल्लेख अपवाद गैण्डा संरक्षण अधिनियम है जिसे बंगाल सरकार ने 1932 में पारित किया। वन्यप्राणि कानूनों को लागू करना, विशेषतः वनों से बाहर के क्षेत्रों में, पश्चिम बंगाल में अब भी एक समस्या है। पश्चिम बंगाल में भारतीय वन अधिनियम 1927 और वन्य प्राणि (संरक्षण) अधिनियम 1972 के अधीन आखेट और मछली मारने विषयक बनाए नियम अभी तक अद्यतन नहीं बन पाए हैं।

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