The Wildlife Protection Act, 1972 of India: An Agenda for Reform

Introduction

A flurry of activity is being witnessed on the legislative front in India. It concerns the management of natural resources and of the environment. A draft Forest Bill in 1994, policy pronouncements at the national level on the resettlement and rehabilitation of project displaced persons in 1995, a cabinet note on biodiversity conservation in the same year and the establishment of an expert group to recast the Wildlife Protection Act of 1972 in 1997, are sufficient illustrations which indicate the keenness of the Government to effect changes in some of the laws relating to the environment. The major reasons advanced for the feverish pace at which changes in the laws are attempted here are the requirement to conform to India's international obligations, as well as the urgent need to change policies and laws in the wake of the inauguration of the New Economic Policy and as part of the Structural Adjustment Programme that helps India to raise the funds required for the various developmental activities from aid giving institutions. Close on the heels of the efforts of the State, there are "counter legislative measures" attempted by the activist groups and by some eminent ecologists. Legislative efforts at different levels, by different actors to restructure the Indian Forest Act of 1927, illustrate this development.[1]

The efforts of voluntary groups to prepare alternative draft bills are a recent phenomenon. Protests against what was considered as undesirable State action used to be in the form of agitation (violent or otherwise), processions, writing of letters to newspapers, expressing anger and anguish, and staging of *dharnas*, among other means of registering one's disenchantment. Now protests are manifesting themselves in the form of making alternative policy and law. The activists explain this phenomenon by claiming that the State's efforts take a "top-down approach" that is totally insensitive to the problems of the people and further claim that their alternatives are better able to take the laws closer to the people as they are intimately acquainted with the "grassroots". The manner in which some laws, such

1 The Ministry of Environment and Forests prepared a Draft Forest Bill in 1994. In response Dr Madhav Gadgil and Seshagiri Rao have drafted the Peoples' Nature, Health and Education Bill (1995) and the National campaign for Peoples' Resources has come with its own draft entitled Indian Forest Act 1995.

as those relating to forests, wildlife and pollution control are passed, appear to illustrate this point. A representative of India attends an international conference and affixes his or her signature to its decisions. Bound, thus, by an international obligation, thereafter inspiration is drawn from laws existing elsewhere and after consulting "experts" (economists, conservationists, technocrats) laws are drafted and enforced in India. No mechanism, worth the name, is evolved to either inform or consult the beneficiaries or those affected, about the proposed legislative efforts.[2] Even after the law is put into effect, no democratic process is built into the system to obtain any feedback as to its effectiveness, usefulness and whether it achieves its objectives. The increasing scepticism about every major legislative effort of the State is to be viewed in the light of this experience.

The Legislative Process

A closer examination of the entire legislative process brings into focus the following factors:

- legislative drafts are prepared by "irresponsible people"[3] and legislators have little role in their making;
- drafts remain hidden for very long periods of time, as very confidential documents, not made public or available for public scrutiny and response;
- a hiatus exists between policy pronouncements and drafts of laws; very little effort is being made to coalesce the latter with the former;
- an unmistakable tendency to strengthen the hands of bureaucracy, the proliferation of authorities and the conferment of wholly discretionary powers to the enforcement authorities are discernible;
- administrative processes and procedures which are evolved do not create the required space for popular participation in the management of resources; and
- legislative exercises are gone through in a great hurry without really making the required preparation and creating the necessary infrastructure to put the legislative intent into operation.[4]

2 The Draft Forest Bill 1994 (India) is a classic example of the reluctance of the State either to make public the effort or to elicit public opinion on it. While it was kept under wraps, some NGOs smuggled it out and gave wide publicity to it, resulting in the publication of a number of critiques by scholars. See Sharad Kulkarni "Proposed Forest Act: An Assessment" *Economic and Political Weekly* 23 July 1994 at 1909; Ramachandra Guha "Forestry Debated and Draft Forest Act – who wins, who loses?" *Economic and Political Weekly* 20 August 1994 at 2192.

3 That is the administrators people whose primary responsibility is not law making.

4 The Environment (Protection) Act 1982 (India) and the Public Liability Insurance Act 1991 (India), illustrate this point.

It is to be appreciated that the social activist groups have taken up the gauntlet of battling with the State over its commissions and omissions. They have also gone into the constructive act of proposing alternative drafts of policies and laws which, in their opinion act as palliative to the malaise that has set into the Indian system. At a time, when the lawmakers have abdicated their responsibility in favour of the bureaucracy and are being led by administrators from the stage of policy formulation to the actual making of the law, the developments occurring on the NGO front are quite significant. It is strange that the members of the legal-academic fraternity have not produced worthwhile suggestions to assist the process of better law making and enforcement.

Against this backdrop, the current effort of the Ministry of Environment and Forests in appointing a committee to review and recast the Wildlife Protection Act (WPA) of 1972, provides an excellent opportunity for proposing reforms in the law; reforms which would, hopefully, give to the WPA an orientation that is both pro-people and equitable. There are several other reasons which compel one to take a second look at the law. The WPA was enacted in 1972. Since then the Indian Constitution has undergone several changes. Of particular significance are the 42nd,[5] the 73rd[6] and the 74th[7] Amendments to the Constitution. While the 42nd Amendment moved wildlife and forests from the state list to the concurrent list,[8] the 73rd and the 74th Amendments heralded the process of democratic decentralisation of political power by giving constitutional status to local self-governmental institutions. The New Forest Policy Resolution of 1988 has significantly departed from the earlier policy of 1952 (from which the WPA drew inspiration) in creating a stake for local communities in the resources of the forests and in their management. Further, India is a party to the 1992 Convention on Biological Diversity[9] which it ratified on 18 February 1994. All these developments have a bearing upon the content and working of the WPA. It is now imperative to re-examine the WPA to see how it has absorbed constitutional aspirations and conformed to India's international commitments.

5 The Amendment inserted Art. 48A with effect from 3 January 1977, which reads "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". It also inserted Part IVA under the rubric "Fundamental Duties" with a single Art. 51A with effect from 3 January 1977. Clause (g) of that Article is of significance and reads: "It shall be the duty of every citizen of India, to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

6 Part IX of the Constitution under the heading "The Panchayats" inserted by this Amendment comprises 16 Articles (Arts. 243, 243A–243O). This part deals with the organisation and functioning of "panchayats", ie local self-government at the village level.

7 Part IXA was inserted by the Amendment. It comprises 18 Articles (Arts. 243P 243Z and 243ZA–243ZG) dealing with the organisation and working of "The Municipalities", ie local self-government at urban centres.

8 Entries 17A and 17B.

9 (1992) 31 ILM 818.

The Wildlife Protection Act Law and Practice

Statement of Objects, Reasons and the Scheme

Soon after the 1972 Stockholm Conference[10] India adopted the WPA. The Act came into existence:

- to arrest the rapid decline of and provide protection to the wildlife population;
- with the realisation that the Wild Birds and Animal Protection Act of 1912 and existing state laws on the subject were outmoded, outdated and narrow in outlook and approach; and
- to make the laws on the subject more stringent.[11]

The hunting of wild animals and birds was regulated,[12] the procedure for declaring areas as sanctuaries and national parks was prescribed,[13] and Wildlife Advisory Boards were constituted in each state to advise the Government on matters connected with the protection of wildlife.[14] The entire Act concentrated mainly on the protection of wild animals, the regulation of their hunting and the impositions of restrictions on trade in them. Curiously, it did not refer to the protection of plant life, either in its original form or in its amendment of 1982.[15] This anomaly in the law was removed by the amendment of 1991, which provided for the protection of certain species of plants by the insertion of a new chapter.[16] This measure was the result of India becoming a party to the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora.[17] What remains baffling is the inordinate delay of 18 years in the incorporation of the required provisions after its ratification. The WPA, except in the statement of objects and reasons in the 1991 amendment of the Act, does not pay attention to the protection of the rights of forest dwelling communities while enforcing the law. This is further discussed below.

10 United Nations Conference on the Human Environment, Stockholm, 5 June 1992. The principles evolved at this conference were confirmed by United Nations General Assembly Resolutions 2994 (XXXVII) and 3604 (XXVII).
11 Wildlife Protection Act 1972, Statement of Objects and Reasons (India).
12 Ibid ch III.
13 Ibid ch IV.
14 Ibid s. 68.
15 "Vegetation" is referred to in the Wildlife Protection Act 1972 (India) s. 2(15) and s. 37, but only with reference to the habitat of wild animals.
16 Wildlife Protection Act 1972 ch IIIA (India).
17 993 UNTS 243.

Strategy for the Protection of Wildlife

The WPA seeks to protect wildlife by creating sanctuaries, national parks and closed areas. Such a strategy is perhaps the most important method of conserving biological diversity the world over. This method has a very long history in India. There are records dating back to 700BC of open spaces and reserves being set aside to fulfil the recreational and hunting needs of royalty. Efforts to protect rich-green forest areas for aesthetic considerations date back to the latter part of the previous century (in the creation of Yosemite and Yellowstone Parks in the United States).[18] The emergence of the modern concept of conservation as the *raison d'être* for the creation of national parks and sanctuaries has been a post World War II phenomenon. It propounds protection of total biological diversity and natural ecosystems in their pristine forms.[19] While there were about 2,500 protected areas the world over in 1970, the following two decades witnessed a large increase in their numbers. It exceeded 3,500 sites in 136 countries and territories[20] occupying an area almost equivalent to the combined area of the SAARC countries.[21] Nearly half of these protected areas are in the developing countries, which account for more than 70 per cent of the world's population. Starting with the establishment of Corbett National Park in 1935, there has been a rapid increase in the number of protected areas in recent times in India. The protected areas in India cover 4.5 per cent of its territorial area including 496 national parks and sanctuaries. Constituting prime forestland, the protected areas occupy over 20 per cent of the forests of the country.[22]

What is to be noticed here is that while in western countries, there is very little human habitation in protected areas, in developing countries like India forests and protected areas do have human populations within them (especially tribal communities). These communities of people have been living in these areas since time immemorial, totally dependent on the ambience for their survival and sustenance. While in the last 100 years India has lost half its forest cover, no historical evidence exists to show these traditional communities as being responsible

18 For a detailed history see J. A. Dixon and P. B. Shreman *Economics of Protected Areas: A New Look at Benefits and Costs* (Earthscan Publications Ltd, London: 1990); H. Ramachandran, N. C. Saxena and N. Ramachandran "Resource Sharing in and around National Parks and Sanctuaries" Discussion Paper I for the Workshop on Issues in Resource Use and Institutional Structures in and around National Parks and Sanctuaries, 6–8 January 1994, Mussourie, India.

19 Nalin R. Jena "National Parks and Sanctuaries vs. Peoples' Rights Some issues of concern" in T. Gopal (ed) *Sustainable Development: Ecological and Socio-cultural Dimensions* (Vikas, New Delhi: 1996) 277–278.

20 Dixon and Shreman note 18; see also W. Reid and K. Miller Keeping Options Alive: The Scientific Basis for conserving Biodiversity (World Resources Institute, Washington: 1989).

21 SAARC, the South Asian Association for Regional Co-operation comprises the seven South Asian countries, namely, India, Sri Lanka, Pakistan, Nepal, Bangladesh, Bhutan and the Maldives.

22 See generally Kartik C. Roy, Clement A. Tisdell and Raj Kumar Sen (eds) *Economic Development and Environment: A Case Study of India* (Oxford University Press, Calcutta: 1992); O. P. Dwivedi *India's Environmental Policies, Programmes and Stewardship* (St Martin's Press, New York: 1997).

for the destruction and degradation of the forests. On the contrary, sufficient data is available to show that their lifestyle, practices and folklore contribute to the protection of the flora and fauna surrounding their habitation.[23] Viewing forests as a commercial proposition and creating a legal regime (by enacting the Indian Forest Act of 1927) to earn revenue out of them by India's colonial masters, continuing the same policy and laws in the post-independence era and the facilitation by the State of private resource exploiters to have a field day in the forests have been the major causes for the destruction of wildlife, report the experts.[24]

Categories of Protected Areas

In contemplation of the WPA, four categories of protected areas exist, namely, sanctuaries, national parks, closed areas and game reserves. An area is declared a sanctuary when the state government considers such an area to be of "adequate ecological, faunal, floral, geophorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment" and issues a notification to that effect.[25] Similar provision is made for the declaration of National Parks.[26] The Central Government too, upon transfer to it of any land by the state Government, and upon being satisfied similarly to the state Government of the existence of the required conditions, can declare such areas as sanctuaries or national parks.[27] The state Government is also empowered to declare, by notification, any area prohibited for hunting for a specified period of time.[28] The fourth category of protected areas Game Reserves where provision for hunting under a license was made under the law when enacted in 1972,[29] has been removed through an amendment in 1991.

23 M. Gadgil, F. Berkes and C. Folke "Indigenous Knowledge for Biodiversity Conservation" (1993) Vol 22 (May) *Ambio* 151; J. Deeny and W. Fernandes "Tribals: Their Dependence on Forests, their Traditions and Management Systems" in W. Fernandes (ed) *National Development and Tribal Deprivation* (Indian Social Institute, New Delhi: 1992).

24 See R. P. Tucker "The Depletion of India's Forests under British Imperialism" in D. Worster (ed) *The Ends of the Earth: Perspectives on Modern Environmental History* (Cambridge University Press, Cambridge: 1988); R. Guha "Forestry in British and Post-British India: A Historical Analysis" *Economic and Political Weekly* 29 November and 5–12 December 1983; M. Gadgil and R. Guha *The Fissured Land* (Oxford University Press, New Delhi; 1992); S. A. Shah "Silvicultural Management of our Forests" *Waste Lands News* November 1993 January 1994.

25 Wildlife Protection Act 1972 s. 18 (India).

26 Ibid s. 35.

27 Ibid s. 38.

28 Ibid s. 37.

29 Ibid s. 36.

National Parks and Sanctuaries

The WPA does not make any distinction in the creation of national parks and sanctuaries. No difference exists as to the reasons and procedures prescribed for their creation. The distinction lies with respect to the accommodation of the rights of the local people with the state government, setting in motion the process of the issuance of notices and the acquisition of land under the Land Acquisition Act 1894. All rights of the local people become extinguished in the case of national parks. But, in the case of sanctuaries, a discretionary power is given to the collector to allow, "in consultation with the Chief Wildlife Warden, the continuance of any right of any person in or over any land within the limits of the sanctuary".[30] No reason can be found for the lack of scope for the continuation of one's rights over national parks, while in the case of sanctuaries there is such a scope. The continuation of the right over sanctuaries is at the discretion of the collector, who may arrive at such a decision after consulting the Chief Wildlife Warden. Entry to a sanctuary is possible only when one has "any right over immovable property within the limits of the sanctuary".[31]

The "right" specified in sections 24 and 27 require clarification. The entire process of acquisition is as per the provisions of the Land Acquisition Act 1894, which does not recognise traditional rights over property.[32] Since community rights, that is rights not conforming to the "patta" system of land grants or registration evidencing one's ownership over land, over resources and rights over minor forest produce are traditionally enjoyed by the tribal communities in the forests entertaining their claims under the acquisition process as followed under the Land Acquisition Act would be problematic. The District Collector, who has otherwise nothing to do with forests, will be the authority to set in motion the process of acquisition and settlement of claims following it. In effect, the forest dwelling community will have to undergo a lot of hardship, with no assurance of success in establishing their claims to have access to and to continue to enjoy their traditional rights over those areas where the state proposes to establish a sanctuary. The gulf between the declared objective of the WPA, that "due regard has also been given to the rights of the local people" in making the Act more effective and stringent[33] and the operative part of the Act can thus be clearly experienced. While the objects of the Act entrust the Wildlife Advisory Board with the responsibility of "suggesting ways and means to harmonise the needs of the tribals and the protection of wildlife",[34] no role is really assigned to this body when the

30 Ibid s. 24(c). This clause was inserted through an amendment in 1991.
31 Ibid s. 27(1)(c).
32 Land Acquisition Act 1894 ss. 3(a), 3(b) (India).
33 Wildlife Protection Act 1972 Statement of Objects and Reasons (India), following the amendments effected in 1991.
34 Ibid.

collector (in consultation with Chief Wildlife Warden) goes about the process of settling claims during acquisition.

Role of Local Communities

The unmistakable impression one gets from the scheme which evolved in the establishment and management of the sanctuaries and national parks is that the underlying assumption is that the local communities are a hindrance and an obstacle to the protection of wildlife and the conservation of the rich biodiversity in these areas. Hence, by "settling" their claims and by making it difficult, if not impossible, for them to gain access into these areas, the lawmakers must have assumed the objects of the law could be achieved, The basic premise upon which the assumption rests, that the tribal existence within the forests is a threat to the flora and fauna there, has already been proved wrong and as a matter of fact, whatever remains of India's forests and wildlife has been largely attributed to the symbiotic relationship enjoyed by the tribal communities with them.[35] The dependence of the forest authorities on the local communities in controlling forest fires and managing the wildlife and collecting of minor forest produce by those communities to sustain themselves, clearly demonstrates that one cannot think of forests without their human inhabitants and vice versa.

The apparent conflict between securing tribal rights and protecting forests and wildlife appears as a kind of a subterfuge and a facade. In his brilliant exposition of the interplay among the various stakeholders the conservationists, the Forest Department, the industrial lobby and the forest dwelling communities, Ramachandra Guha[36] has been able to call the bluff of the arguments of the first three categories against the forest dwelling communities. In the last one and a half centuries the industrial lobby and the Forest Department, viewed forests as nothing more than a money spinning proposition, and had their way at every stage of policy and law making and their implementation. The very influential conservationist group appears to hold the upper hand now. The result is that the forest dwelling communities whose very survival and retention of identity and cultural life is entirely dependent on forests is literally left by the way side.

35 Notes 18 and 19. Similar conclusions have been drawn following field visits to the Rajiv Gandhi National Park over a one year period between February 1995 to February 1996.
36 Note 2.

Role of Conservationists

The conservationists' lobby has been influenced by the modern notion of "conservation" advocated by some of the developed countries. Based on the principle of "insulation and exclusion"[37] the lobby takes a "museum view" of forests and of wildlife an ambience without the presence of local communities. Advocating animal rights the conservationist pitches for the prior rights (as being earlier inhabitants of the forests) of other living beings, as superior to and to the exclusion of human rights in the forests. The current trend of thought for conservation in the west is the result of centuries of ruthless exploitation and appropriation of natural resources, primarily for industrial and economic growth, and the subsequent realisation of the need to save whatever that has remained for the sustainable development of human society.[38] To lure the developing countries into this way of thinking, substantial financial and technical assistance is being made available.[39] The proliferation of parks and sanctuaries and the changes brought about in the law governing them in recent years, arguably are mainly the result of this development. Unlike in the west, one can find in the developing countries (including India), human habitation in large numbers in the forests and these communities depend entirely on the sylvan surroundings for their very existence.[40] This singular fact is perhaps not taken into consideration in either the perception of conservationists or in the process of law making in India.

Limitations on Access

While the wildlife authorities (as protectors), the researchers (who desire to widen their horizons of knowledge), the tourists and the user of public ways passing though a sanctuary have access to the *sanctum sanctorum* of the forests, restricting access to sanctuaries and prohibiting such access in national parks to the local communities have serious legal implications. Such a restriction or denial would be tantamount to the denial of the right to livelihood, an important component of the right to life guaranteed under the Indian Constitution.[41] It also affects, very seriously, the fundamental component of the right to conserve the cultural identity of the tribals and the right to demand the protection of their economic interests

37 Note 19 at 279.
38 Note 36.
39 See K. B. Ghinire *Parks and People: Livelihood Issues in National Parks Management in Thailand and Madagascar* (United Nations Research Institute for Social Development, Geneva: 1991).
40 See Ashish Kothari, P. Pande, S. Singh and D. Variova *Management of National Parks and Sanctuaries in India: A Status Report* (Indian Institute of Public Administration, New Delhi: 1989).
41 Article 21 of the Constitution.

from the State, which is assured under the fundamental law of the land.[42] The 1972 Act with its amendments of 1991 clearly overlook the 1988 Forest Policy Resolution which in unmistakable terms requires the maintenance of the "the intrinsic relationship between forests and the tribal and other poor people living in and around forests by protecting their customary rights and concessions on the forests".

International Obligations

The current framework of the law also does not fulfil India's international obligations. To mention a few examples, the WPA is in derogation of India's commitment under the 1957 Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (I.L.O. No 107).[43] By excluding the local people from sanctuaries and national parks the objects of the Convention on Biological Diversity are also not realised.[44] The Convention expects the State to involve the local communities in strengthening the system of protected areas. The 1992 decision of the Australian High Court[45] is of persuasive authority for India to recognise the interests of traditional communities over resources and to protect those interests. The 1993 decision of the International Court of Justice in *Nauru* v. *Australia*[46] where references to the duty to protect the rights of tribal communities are made should guide the law and policy makers in recasting the WPA to conform to international law on the subject.

To add insult to injury, there is a move to transfer huge tracts of forest land by the state governments to private entrepreneurs for industrial purposes.[47] It is unthinkable how such measures would come in any way near the avowed purposes of either the forest law or the wildlife law.

Machinery for Protection

The machinery contemplated under the Act for the protection of wildlife leaves a lot to be desired. A two-tiered system is provided under the WPA. The Central

42 Articles 29 and 46.
43 328 UNTS 247.
44 The Convention, Art. 8(j) required the signatory states, subject to their national legislation, to: "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices."
45 *Mabo* v. *State of Queensland* (1992) 175 CLR (Commonwealth Law Reports) 1 (Australia).
46 *Case Concerning Certain Phosphate Lands in Nauru (Nauru* v. *Australia)* (1993) 32 ILM 46.
47 "Leasing of forests by Orissa Government questioned" *The Hindu* (Bangalore) 16 December 1995 at 16.

Government appoints a Director and Assistant Directors of Wildlife Preservation.[48] A Chief Wildlife Warden and a number of wildlife wardens would head the State machinery.[49] The appropriate government has the power of appointing any additional officer or supporting staff to the higher levels of administration. At the state and union territory level in India, a Wildlife Advisory Board is constituted.[50] The Board comprises the concerned Minister as the Chairperson, two members of the state legislature, the Secretary to the state government, the Chief Conservator of Forests, an officer nominated by the Director, the Chief Wildlife Warden and an additional set of officers (not more than five in number) and another ten members (maximum) interested in protecting wildlife who should include tribal representatives as well (whose number should not exceed three members). Does the last mentioned group include a trophy collector, a hunter, a photographer or a guide? This does not appear like a true representative body.

It is indeed an overwhelmingly bureaucratic structure having very little meaningful representation for the local communities. The Advisory Board is meant only to advise the state government:

- on the selection of areas to be declared as sanctuaries, national parks and other protected areas; and
- in formulating the policy for granting licenses and permits and on such other matters as are connected with the protection of wildlife.[51]

The 1991 amendment adds to this set of functions, the function of advising the state government on measures to be taken to harmonise tribal needs with the protection and conservation of wildlife. A huge body of "advisers" without any powers and without proper representation from local bodies and local communities is really a burden on the exchequer and of little consequence. The composition of the body so as to provide sufficient scope for the local communities to have a say, and the expansion of its functions to include the management of the sanctuaries and national parks and under whose authority the machinery of enforcement would function, is what is required to be achieved, if the Board is to have any meaningful existence. Such an overhaul would make the law come into conformity with the desired objects of the 73rd and 74th amendments to the Constitution that aspire to achieve democratic decentralisation of power.

Certain expressions, in currency in administrative parlance (such as "protected areas", "tiger reserves", "biosphere", "core zone" and "buffer zone") have not been defined. Lack of definition may lead to difficulties and administrative high-

48 Wildlife Protection Act 1972 s. 3 (India).
49 Ibid s. 4.
50 Ibid s. 6.
51 Ibid s. 8.

handedness in enforcing the relevant laws. A clearer definition of such expressions is thus a necessity to minimise arbitrariness.

Proposals for Reform

The dominant theme of "conservation" appears to have created an undesirable conflict between the interests of the local communities and those of wildlife. Forest and wildlife must be conserved. Conserving them by involving those who have lived amidst them down the ages, in their management is not only logical but also a fulfilment of constitutional commands to empower people at the grass roots. Thus, bringing conservation within the constitutional framework would mean a clear programme of action that satisfies the basic socio-economic needs of communities by creating personal stakes in the maintenance and sustainable use of plants and animals and genetic resources contained in the ecosystem. It connotes the rational use of resources in an equitable and sustainable manner.

Hence, instead of restricting and prohibiting the access of the local communities to sanctuaries and national parks, recognising their traditional rights to and in these areas and making them partners in their management appears to be an appropriate measure, and would be perfectly in consonance with constitutional dictates. It also fulfils India's international obligations concerning biodiversity conservation.

Wildlife Managing Committees in each state should replace the Advisory Boards and necessary changes should be effected with regard to the powers and functions of the authorities under the WPA. The Wildlife Managing Committees should be so composed as to ensure popular participation in a real and meaningful manner. It may be a body of 16 members comprising of representatives from administration (four members); local bodies (three members); NGOs (one member); and representatives of forest dwelling communities (six members); and presided over either by the Chief Wildlife Warden or the Chief Conservator of Forests. The body should have policy-making authority and the state functionaries should discharge their duties under its direction. In the event of any conflict between the state administration and the Wildlife Managing Committee as to policy formulation or implementation, the matter must be referred to an arbitral body for adjudication headed by a person not lower in rank than that of a High Court judge.[52]

52 A similar suggestion was made by the author and Francis Guntipilli in the Draft Amendment Bill they prepared to the existing Land Acquisition Act of 1894 in the Workshop on the Rehabilitation Bill and the Land Acquisition Act held under the auspices of the Indian Social Institute, New Delhi, 27–29 February 1996. The Draft Bill is in circulation among the various groups for comments and suggestions.

What prevails now under the WPA and as advocated by the "conservation" lobby is a clamour for and a philosophy of restoration. While a painting or an antique can be restored, culture, especially nature, cannot be restored. It has to be renewed. What needs to be practised is the ethic of renewal, an ethic that respects and protects the rights of all those who are a part of the environment they live in and which makes them responsible managers of that ecosystem.

Parks and sanctuaries must become an experiment in democracy. They must be an extension of our sacred groves rather than a western zoo or reservation. Reference to rights should not be confined to the right of nature as represented by a tree, flower or animal. It should extend to the very community that is part of the ecosystem.

A just legal order envisioned under the Indian Constitution requires decentralisation of powers; equitable distribution of resources; popular participation in the decision-making process and administrative accountability. Every forest law, including the WPA ought to conform to this constitutional vision facilitating the creation of people-oriented development organisations. In the absence of such a visionary approach we have nothing to lose, but our forests, wildlife and the communities of people who are dependent on them.

A legislative effort that ignores popular sentiments and fails to absorb within its scheme the constitutional spirit lacks legal validity and credibility and would be dumped in the ash cans of history.

M. K. RAMESH
Additional Professor, National Law of School of India University, Bangalore, India