

About WWF-India

The World Wide Fund for Nature - India (WWF-India), formerly known as the World Wildlife Fund-India, was established in 1969 as a Charitable Trust under the Bombay Public Trusts Act of 1950. Today, WWF-India is the country's largest conservation NGO with a network of State/ Divisional and Field Offices spread across the country. Its Secretariat is in New Delhi. The organization is part of the WWF family worldwide, with 25 independent WWF National Organizations. The coordinating international Secretariat, the WWF International, is located at Gland in Switzerland.

WWF-India has articulated its Mission as follows, to suit India's specific ecological and socio-cultural circumstances:

"The promotion of nature conservation and environmental protection as the basis for sustainable and equitable development".

The Mission has five broad *programme components*:

- Promoting India's ecological security: restoring the ecological balance
- Conserving biological diversity
- Ensuring sustainable use of the natural resource base
- Minimizing pollution and wasteful consumption
- Promoting sustainable lifestyles.

In achieving its Mission, WWF-India uses the following *main programme methods*: **field programmes** that serve as demonstration projects, **public policy analyses and debates** through independent research, consultation, and campaigns, **education** activities for key target groups including the youth, professionals and administrators, **communication** through multimedia approaches, **networking** and supporting the work of fellow NGOs in India, and **mobilizing** necessary financial, scientific and technical resources.



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Ban on Ivory, Fur and Snake Skin Trade in India



Compiled & Edited by
Raj Panjwani

Judgements of Delhi High Court

**Ban on Ivory, Fur
and
Snake Skin Trade**

Compiled & Edited by
Raj Panjwani
for

TRAFFIC INDIA

the wildlife trade monitoring division of WWF-India

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Mr. Raj Panjwani, Advocate, the Counsel for
WWF-India appeared and argued the case on its behalf.

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About TRAFFIC

(Trade Records and Analysis of Flora and Fauna in Commerce)

The TRAFFIC Network is the world's largest wildlife trade monitoring programme with offices covering most parts of the world. TRAFFIC is a programme of WWF (World Wide Fund for Nature) and IUCN (The World Conservation Union) to monitor trade in wild plants and animals. It works in close co-operation with the Secretariat of the Convention on International Trade in Endangered Species (CITES).

TRAFFIC-India is a programme division of World Wide Fund for Nature-India and forms part of the worldwide TRAFFIC Network, which is supported by WWF and IUCN to monitor trade and utilization of wild plants and animals, in cooperation with the CITES Secretariat.

Foreword

The mission of WWF-India is "the promotion of nature conservation and environmental protection as the basis for sustainable and equitable development". In furtherance of this mission, WWF-India has undertaken, over the years, a broad-based Conservation Programme, which includes monitoring of illegal trade in wildlife and environmental law. This has involved interventions in legal cases, when essential and unavoidable.

Two major cases in which the WWF-India has had to intervene relate to trade in ivory and trade in furs, skins and articles made therefrom. The intervention was successful in getting the court stay order vacated to facilitate implementation of the legal ban on trade of ivory and furs, skins etc. and then in getting a favourable verdict to seal all ivory stocks. More significantly, recently on 20 March 1997 the full bench of the Delhi High Court has dismissed the petitions of the traders, upholding the validity of the provisions of the Wildlife (Protection) Act and banning altogether trade in ivory and furs, snake skins and products therefrom. These judgements are significant also because this is the first time in India that the provisions of the Convention on International Trade in Endangered Species of Wild Fauna & Flora (CITES) have come under an indepth scrutiny by a Court of Law and have been relied on extensively.

These are really landmark judgements which need to be brought to the notice of all concerned organisations, institutions and individuals. This publication is an attempt in this direction and it is hoped that it will also serve the larger purpose of evoking greater support for the cause of conservation.



(Samar Singh)
Secretary-General
WWF-India

Background

The Parliament on 20 November, 1986, incorporated a complete new chapter in the Wildlife (Protection) Act. It imposed an absolute prohibition on trade or commerce in trophies and animal articles derived from protected scheduled species.

The skin traders within three weeks of the said provisions prohibiting trade in animal articles coming into operation, filed a writ petition in the High Court. The Court heard the arguments on the application for stay on January 23, 1987 and after hearing ordered that the traders "are authorized to manufacture, sell, or offer for sale or transfer to any authorized person, as the case may be." By the end of the day, over 700 traders had filed petitions and obtained a similar order in their favour.

The law makers had however for some reason omitted to prohibit trade in imported ivory. It took five long years to cement this breach through which trade in ivory proliferated. On October 2, 1991, trade in imported ivory and articles made therefrom was prohibited by the Parliament with effect from April 2, 1992. The Parliament finally plugged the loophole.

This piece of legislation was resented by the ivory traders. The traders as anticipated, rushed to the courts for the redressal of their grievances. There were over 500 ivory traders who had approached the court. They obtained on March 26, 1992 an interim judicial order suspending the operation of the provisions

prohibiting trade. The stay order was granted in favour of the traders just 7 days before the provision prohibiting trade and commerce in imported ivory articles were to come into operation, on April 2, 1994.

At this point in time, WWF-India entered the legal arena and filed an application praying that it may be made a party in opposition to the petition. On May 22, 1992 the Court, at the request of the counsel for WWF-India, first heard the arguments on the application of WWF-India. After hearing the arguments, the Court allowed the application and WWF-India was permitted to become a party in opposition to the petition. The Court then proceeded to take up the main issue—as to whether the interim order granted on March 26, suspending the provisions prohibiting trade should be confirmed or vacated.

Having concluded long arguments, the Court passed a very brief order on May 22, 1992, the relevant extract of which is reproduced:

“However, we find no ground to allow the interim order to continue and therefore vacate it.

Henceforth, the petitioners would not be entitled to deal in imported ivory.”

WWF-India, in a pre-emptive move had on May 4, 1992 filed an application for intervention in the leading petition of fur and skin traders — *GR Simon versus Union of India*. On August 17, 1992, WWF-India filed an application for vacating the said stay order. On

February 9, 1993 the Court after hearing protracted and emotional arguments announced in open court a short and crisp order.

“On consideration of the matter, we vacate the interim order dated January 23, 1987.”

Thus, WWF-India, within 6 months of stepping into the legal arena and after several well fought bouts, achieved the impossible — getting vacated a stay order granted on Jan 23, 1987 which was confirmed on January 18, 1988.

WWF-India waited for 16 long months to enable the law enforcement agencies to take concrete steps to prohibit the traders from displaying ivory and fur articles in their commercial premises, for which the Parliament had enacted specific mandatory statutory provisions. As the executive had omitted to move - WWF-India moved. On November 26, 1993, the Court on the submission of the counsel for WWF-India ordered that —

“We direct the chief wildlife warden to inspect the premises of all such dealers and after identifying the items of ivory be placed in a sealed almirah or in the premises as the dealer may provide to him.”

On subsequent proceedings, at the request of the chief wildlife warden, the Court ordered that, “in case the chief wildlife warden needs police assistance for opening some premises, the same be provided to him by the Station House Officer of the concerned police station.”

The entire ivory and fur articles in possession of the traders were sealed.

The petitions of the traders were subsequently referred to the Full Bench of the High Court which after long submissions and deliberations delivered its judgement on March 20, 1997. These land mark judgements run into 110 pages and cannot possibly be reproduced in its entirety; hence material extracts of the judgements are being reproduced in this publication.

The Ivory Case Judgement

In the High Court of Delhi

Date of Decision : March 20, 1997

M/s Ivory Traders and Manufacturers Association and others

versus

Union of India
and
World Wide Fund for Nature-India

CORAM:

Hon'ble Mr Justice M.Jagannadha Rao, CJ
Hon'ble Mr Justice Anil Dev Singh
Hon'ble Mr Justice Manmohan Sareen

"There are two set of writ petitions before us...

Writ Petition No 1016/92:

The writ petitioners in this writ petition are mainly aggrieved by the ban imposed by the Wildlife (Protection) Act, 1991, on trade in ivory derived from the African Elephant. It is asserted by them that they

only deal with ivory imported before the coming into operation of Amendment Act No 44 of 1991...

Writ Petition Nos 1303/92

It is claimed that the petitioner imported part of his stock of mammoth ivory from Russia and part of it from HongKong for the purposes of his business. It is further asserted that ivory derived from mammoth, an extinct species of wild animal, and ivory derived from elephants cannot be treated at par or on the same footing as both are different from each other and can be distinguished...

...Mr D.D.Thakur, learned Senior Counsel appearing for the petitioners in CWP No 1016/92 reiterated the challenge laid in the writ petitions to the constitutionality of the amendment effected in the Principal Act by the Wildlife (Protection) Amendment Act 1991 (Act No 44 of 1991) to the extent of the ban imposed on trade in imported ivory acquired prior to the Amendment Act No 44 of 1991. Learned Counsel contented that the restriction is unreasonable, unfair and arbitrary and violates the fundamental rights of the petitioners under Arts 14 and 19 (1) (g) of the Constitution. Besides, it was submitted that the Amendment Act extinguishes the title of the petitioner over the imported ivory lawfully acquired by them and articles made therefrom without making any provisions for compensation therefor. The point raised by the learned counsel with great emphasis was that the petitioners should be allowed to sell their stocks of ivory and products derived therefrom and the

government should buy the same. He also canvassed that reasons for not permitting the sale of imported ivory acquired prior to the ban has no nexus with the object sought to be achieved by the Act - He further submitted that there was no link between elephants in the remote forests of India and the sales of imported ivory or articles made therefrom in the show rooms of the petitioners in the cities...

...Dr Singhvi appearing in the writ Petition No 1303/92 contented that the Parliament is not competent to legislate in regard to remnants of ivory belonging to long extinct Mammoth imported from abroad - and actually the Act does not deal with this kind of ivory at all. In a nutshell, the submission of the learned counsel is that the mammoth ivory in the possession of the petitioner is free from the provisions and restraints of the Act...

...On the other hand, Mr.Madan Lokur, learned counsel for the respondent/Union of India, and Mr.Raj Panjwani, learned counsel for the World Wide Fund for Nature-India, submitted that the impugned legislation was enacted to provide protection to wildlife and it must be viewed in that perspective...

...According to the learned counsel trade in wildlife is akin to trade in liquor or any other noxious trade and does not have the protection of either Articles 14 or 19 (1) (g). According to the learned counsel, trade in wildlife is antithetic to conservation and, therefore, it is noxious and also threatens the very survival of human beings as existence of different life forms are dependent for their survival on each other...

...Learned counsel argued that the petitioners should have liquidated their stocks between 1989, when the African elephant was proposed to be brought in Appendix 1 of CITES, and within six months of the passing of the Amendment Act 44 of 1991...

...Whether the ban imposed on trade of imported ivory and articles made there from under Section 49B(1) (a) (ia) read with Section 49A(c)(iii) and Section 49C(7) of the impugned legislation violates Article 19(1) (g) of the Constitution

The basic point which has been urged before us by various counsel revolves around the question of whether the ban imposed on trade of imported ivory and articles made therefrom by Amendment Act 44 of 1991 is reasonable as envisaged by Article 19(6)... In order to do that it will be necessary to keep in view the purpose of the Principal Act and the Amendment Act No. 44 of 1991. As already noticed, the Act is meant to protect and safeguard wildlife...

...It is obvious that the object of the Principal Act was to arrest depletion of animal life so as to maintain the ecological balance which is necessary for welfare of humanity. Despite the coming into force of the principal Act, the provisions did not prove effective for the protection of elephants...

...On 3 March, 1973, a significant International Convention known as Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) took place. The Convention resulted in an

agreement between the member states, which was initially ratified by 10 countries, and came into operation on July 1, 1975. As the Asian elephant was a highly endangered species, it was placed in Appendix I of the CITES. Appendix I includes all species threatened with extinction or which are or may be affected by trade. Trade in specimens of these species is subject to strict regulations in order not to further endanger the survival of these species, and must be authorized in exceptional circumstances only. However, the African elephant was given place in Appendix III which, unlike Appendix I animals, did not enjoy immunity from being hunted and killed. The net effect of this was that while the hunting of the Asian elephant was banned and international trade in Asian ivory was virtually prohibited, the African elephant could still be hunted. India signed the Convention in July 1974 and deposited the instrument of ratification on 20 July, 1976. India became a party to the Convention from 18 October, 1976...

...On 24 October, 1986, keeping in view the depletion of elephant population and in accordance with CITES, the Central Government intervened under Section 61(1) of the Principal Act and transferred the Indian elephant to Schedule I and listed the same at Entry 12B thereof. This was a major step towards protecting the Indian elephant as Schedule I animals enjoy complete immunity from being hunted...

...The African elephant, like its Indian counterpart, was also endangered and threatened by man and in order to save the specie, in October 1989 at the Lusanne CITES Meet, the African elephant was upgraded and

included in Appendix 1 of the CITES, and after three months of its inclusion with effect from January 18, 1990 international trade in ivory was required to be banned. Almost all countries which are parties to the Convention have given effect to it. The result of this was that virtually all international trade in ivory was prohibited with effect from the aforesaid date. In this country in order to bring the Principal Act in tune with the aforesaid development, the Amendment Act 44 of 1991 inserted Sub-clause (ia) to Section 49B(1) (a) of the Principal Act as a result whereof trade in "imported ivory" and articles made therefrom was completely prohibited from the "specified date". It may be noted that the legislature has used the words ivory imported into India and not African ivory, thus enlarging the area of operation of the Act...

...The Union of India... has maintained that despite the ban on the killing of the Indian elephant its poaching continues, and traders are actually dealing in ivory extracted from the Indian elephant under the garb and facade of imported ivory, resulting in the depletion of its population. Therefore, in order to stop the killings of Indian elephants, it was necessary to ban all trade in imported ivory...

...It is pointed out that, unlike Africa, where both male and female elephants have tusks, in India only the male elephants possess tusks. It is also brought out that even among the males (bull elephants) all of them do not possess tusks. As per the affidavit there are only 1,500 tuskers in the country as against 5,000 a decade back. If this position were allowed to prevail, the

elephant would have become extinct in this part of the subcontinent...

...Environmentalists conception of ecological balance in nature being based on the fundamental concept that nature is a series of complex biotic communities of which man is interdependent part, and a part should not be allowed to diminish the whole. Relationship between nature and man is inextricably linked. They are co-existing entities that partake of each other. To preserve different species is to preserve human life. But this single fact of life is difficult to perceive by those who are living of and thriving on exploitation and destruction of nature. The elephant is no exception to depredations of man. *It is now an endangered species requiring not only protection from being hunted, but also a chance to recoup its depleting numbers.* In order to achieve this objective, drastic steps for the preservation of the elephant were undoubtedly required. Reviewing this situation Parliament determined to completely prohibit trade in imported ivory and ivory articles... Learned counsel for the petitioners submitted that the petitioners had lawfully acquired the ivory at the time when there was no ban...

...Assuming for the sake of argument that the petitioners acquired the imported ivory lawfully before the ban came into force, it still does not mean that Parliament in its wisdom, keeping in view the aforesaid background, could not impose a ban on the sale of such ivory or articles made therefrom after giving the dealers time for disposal of the stocks. In order to determine reasonableness of restriction, which

includes prohibition, regard must be had to the nature of the business, its capacity and potential to cause harm and damage to the collective interest and welfare of the community...

...The test of reasonableness is not to be applied in vacuum but it must be applied in the context of the stark realities of life. *The law must be directed to effectively remedy the problems and evils persisting in the society.* It may be that in the past a situation may not have arisen calling for the passing of a law to be enacted in contemporary times. March of law to make the life of people to be in harmony with environment, cannot be thwarted and faulted on the material considerations of a few. Reasonableness of law cannot be worked out by a mathematical formula. What may have been an unreasonable restriction yesterday, may be more than reasonable today. Therefore, the criteria for determining the degree of restriction which would be considered reasonable is by no means fixed or static, but must vary from age to age, and is relatable to adjustments necessary to eliminate the dangers facing the society. The test of reasonableness has to be viewed in the context of the enormity of the problem and the malady sought to be remedied by legislation...

...Therefore, in this scenario when virtually all international trade in ivory stood prohibited, and member States had given effect to the ban how trade in imported ivory could be permitted by India. The pressing need to preserve ecology and bio-diversity cannot be sacrificed to promote the self-interests of a few. Law enacted by parliament to protect the Indian

elephant, keeping in view the above international Convention, cannot be flawed as imposing unreasonable restraints. Surely, India cannot be a party to the decimation of the elephant. It is documented that some member countries have even burnt and destroyed tonnes of ivory in order to discourage ivory trade and to protect the elephant which is on the brink of extinction. If permission or exemption is given to traders to deal in pre-Convention ivory or ivory imported before the coming into force of Amendment Act 44 of 1991, the possibility of increased assault on Indian tuskers cannot be ruled out. In that event poached Indian ivory will enter the market masquerading as imported ivory, there being no visible distinction between the two...

...As a result of the high price of ivory in the market the work of poachers has been rendered highly lucrative. The magnitude of the problem would be evident from the fact that the tusker population in India has been reduced from 5,000 to 1,500 during the past one decade. This is proof enough of the fact that the Wildlife departments of the different states have not succeeded in tackling the problem. It is also common knowledge that the officials of the forest and wildlife departments of the States are not able to protect trees and wildlife because of strong criminal syndicates of poachers. The same is true for other countries...

...It is very important to sound a clear message that it will no longer be remunerative to deal in ivory, *not even for the purpose of one-time sale.* That is what the impugned legislation has done. It also needs to be

driven home that the beauty of ivory and things created therefrom should not be the reason for the destruction of its source. The elephant with the tusker stands out any day to ivory curios adorning the mantelpieces of a few who can afford to buy them at fabulous prices unmindful of the virtual disappearance of a remarkable animal — This is a very heavy price to pay for satiating the aesthetic sense of a few persons. *Trade and business at the cost of disrupting life forms and linkages necessary for the preservation of biodiversity and ecology cannot be permitted even once. We, therefore, reject the submission of the learned counsel for the petitioners that there was no proximity between the elephants in the remote forests of India, and the sales of imported ivory or articles made therefrom in the showrooms of the petitioners in the city...*

...Rights granted under article 19 (1) are not absolute rights but are qualified rights and restrictions including prohibition thereon can be imposed in public interest...

...A law designed to abate extinction of an animal species is *prima facie* one enacted for the protection of public interest as it was enacted to preserve and protect the elephant from extinction. It was not only the perception of Parliament, but of the world community as well, as reflected in the CITES, that the elephant must be protected from being wiped out from the face of the earth by excesses of man...

...The statistics pointed out above clearly indicate the danger which the elephant species faced at the hands of man for his easy gains. *Therefore, under the*

circumstances, it cannot be said that the restriction imposed by Amendment Act 44 of 1991 was unreasonable, arbitrary, unfair, or excessive. The state has the power to prohibit absolutely every form of activity in relation to killing or slaughtering of elephants, including the sale of tusks or articles made therefrom, as such form of activity is injurious to public interest...

...Whether trade in ivory is pernicious and not covered by Article 19(1) (g) of the Constitution:

The Trade in *ivory is dangerous, subversive and pernicious as it has the potential to deplete the elephant population and to ultimately extinguish the same. It is well established that trade which is pernicious can be totally banned without attracting Article 19(1)(g) of the Constitution...

...What was not considered harmful at an earlier point of time, may be discovered to be so later. Time has a way of changing norms. Several other activities being equally pernicious fall in this category too:

1. Gambling,
2. Prostitution,
3. Dealing in counterfeit coins or currency notes, etc...

...The state has the power to completely prohibit a trade or business which has an adverse impact on the

* The word ivory is used in comprehensive sense including indigenous as well as imported ivory.

preservation of a species of wildlife which are on the verge of extinction. When the legislature prohibits a pernicious, noxious or a dangerous trade or business, it is in recognition of society's right to self protection...

...The principle on the basis of which a restriction can be imposed on trade in intoxicating drugs or intoxicating liquors will also apply with equal force to trade in other pernicious and dangerous businesses and enterprises...

...Undoubtedly the business which the petitioners in the instant case are pursuing is attended with danger to the community. Its evil effect is manifested by the depletion of the elephant population. The possession of an article made from ivory has been declared as a crime. *There is no fundamental right to carry on business in crime.* The legislature has stepped in to eliminate the killing of the elephant. If the legislation in order to rectify the malady has made the possession of ivory or articles made therefrom an offence, it cannot be said that the legislation violates Articles 19(1)(g) of the Constitution to carry on trade and business. *Such a pernicious activity cannot be taken to be as business or trade in the sense in which it is used in Article 19(1)(g) of the Constitution...*

Once again we will assume for the sake of argument that trade in such animals is a fundamental right and the impugned legislation imposes fetters thereon but the fact remains that the impugned legislation is for effectuating the purpose of Article 48A. When the legislature imposes restriction or prohibition or a ban to fulfil the mandate of the directive principles of the State

policy, the restriction, prohibition or ban, is in the interests of the general public, as the expression 'interests of the general public' occurring in Art. 19(6) is of a wide import including matters covered in Part IV of the constitution...

...Thus, it is clear that the directive principles are fundamental in the governance of the country, and they can be effective if they are to prevail over fundamental rights in order to subserve the common good. While most cherished freedoms and rights have been guaranteed, the government has been laid under the solemn duty to give effect to the directive principles.

It was in fulfilment of this duty that the Principal Act and the Amendment Act 44 of 1991 have been enacted to conserve wildlife. The destruction or depletion of other forms of life would create ecological imbalances endangering human life. *No one can be given the privilege of endangering human life as that would violate Article 21 of the Constitution.* Basically, it is extremely essential for the survival of man to coexist with nature and to preserve and protect wildlife...

The protection of wild life has seeds in the history of time, and in the history of moral and ethical principles evolved by every society through various ages. A society which does not have ethical and moral values and fails to live in harmony with nature withers away and perishes. The sooner this truth is realized the better it would be for the welfare of all people. It has come to us through centuries to show compassion towards animals and birds as all are considered to have come from the same source. Lord Krishna in the

Bhagwad Geeta declared that, 'SARVE NISU AHAM BIJA PRADAHPIAH' which means "I am the father of all." The followers of the *Geeta* are steeped in the belief that even leaves of the trees, the petals and the flowers have life and God pervades in them...

...Apart from the beliefs which are personal to a person or society or people or section of people, it is now scientifically established that animals, trees, flora fauna, insects, birds and human beings are linked with each other for their survival. Each specie is indispensable for the preservation of ecology, which is necessary for our existence. Even a lowly earthworm in the soil has also a function to perform to help us survive. It makes the soil fertile which gives us our food and nourishment. The Trees were venerated in the past and are still venerated by some as being sacred. This is not without reason. The trees take carbon dioxide from the atmosphere and replace it by life giving oxygen. Man forgetting the grand design of nature in which every living organism or being has to do its bit, has assumed the role of plunderer and destroyer of ecology for greed. Man has been killing animals for his uncontrolled thirst for money or hunting animals for pleasure and sport. The addiction is so immense that he is not bothered even about their survival of his progeny on this planet. The earth is a trust in the hands of the present generation for the posterity. Man has over exploited nature. The largest land animal, the elephant, is no exception. It has been used as a beast of burden, for hauling logs, employed in temples for various errands and in circuses. For all these purposes it has been spiked and chained. Its

habitats are being destroyed. It has been hunted to the point of extinction. In our country, as already seen, the tusker population has dropped to a mere 1,500. When precepts lose their efficacy and are violated, legislation steps in for realizing the necessity to maintain orderly existence. It is in this context that the Amendment Act No.44 of 1991 assumes great importance for the survival of the elephants.

Having regard to the above discussion we hold that:

1. No citizen has a fundamental right to trade in ivory or ivory articles, whether indigenous or imported.
2. Assuming trade in ivory to be a fundamental right granted under Article 19(1)(g), the prohibition imposed thereon by the impugned Act is in public interest and in consonance with the moral claims embodied in Article 48A of the Constitution; and
3. The ban on trade in imported ivory and articles made therefrom is not violative of Article 14 of the Constitution, and does not suffer from any of the maladies, namely, unreasonableness, unfairness and arbitrariness.

Whether Sections 39(1)(c) and 49(C)(7) read with Section 51(2) of the impugned legislation are violative of Articles 300A of the Constitution:

The next question for consideration is whether Sections 39(1)(c) and 49(C)(7) read with Section 51(2) of the impugned legislation are void since they do not

provide for payment of compensation to the owners on account of extinguishment of their title in the imported ivory or articles made therefrom...

...The above legislation which provides for extinction of the ownership of a person in imported ivory is not a law for the purpose of acquisition and requisitioning of property by the state. Its primary objective is the preservation of the elephant, and not for utilization of property for public purpose. This being so, Article 300A is not attracted. At this stage, we may point out that the state had sufficient authority to enact the impugned law in exercise of its sovereign powers as distinguished from its police powers...

...It is not necessary for the state to pay compensation to the petitioners for extinguishment of title of the petitioners in imported ivory or articles made therefrom. Since the state is not under any obligation to buy the stocks of the petitioners in acceptance of the one-time sale proposition propounded by the petitioners, we cannot direct the state to either buy the same or pay compensation for it...

...Learned counsel for the petitioners further submitted that under Article VII(2) of the CITES, permission to export or re-export pre-Convention stocks of ivory or articles created therefrom can be granted in case the management authority of the state for export or re-export is satisfied that the specimen was acquired before the provisions of the present convention, and, therefore, the total ban imposed by the Amendment Act 44 of 1991 on the trade of imported ivory goes beyond the CITES agreement...

...We have given our earnest consideration to the submission of the learned counsel but we are unable to agree with the same for the reason that the export or re-export of the specimen is also controlled by the provisions of Articles VIII and XIV of the CITES. As per Article VIII, the parties to the Convention are required to take appropriate measures to enforce the provisions of the present Convention. The measures contemplated by Article VIII are as follows :-

1. to penalize trade in, or possession of such specimen, or both; and
2. to provide for the confiscation or return to the state of export of such specimen...

...At this stage, it will be convenient to set out Article XIV(1):

"1 The provisions of the present Convention shall in no way affect the right of parties to adopt :

- (a) stricter domestic measures regarding the conditions for trade, taking possession of transport of specimens of species included in Appendices I, II, and III, or the complete prohibition thereof; or
- (b) domestic measures restricting or prohibiting trade, taking possession, or transport of species not included in Appendices I, II or III."

As contemplated by the above Article, a member state to the Convention can completely prohibit the trade of

species included in Appendix I, II, & III of the CITES. This would depend upon the conditions prevailing in the countries of the respective parties...

...Besides, as per our reading of Article VII, *it does not permit a buyer to acquire a specimen after the provisions of the present Convention have come in force.* If a foreign tourist buys the specimen for personal or household use after the coming into force of Convention from a seller who may have acquired the specimen before coming into force of the Convention, the exemption under Article VII(2) will not apply in such a case... Under clause 3 of Article VII, exemption, *inter alia*, in given specimen that are *personal or household effects* but exemption is not to apply where the owner acquires specimen outside his state of usual residence and are then imported into that state. Therefore, the above submission of the learned counsel is not tenable and the same is rejected.

Mr. Thakur then submitted that Parliament was not authorized to make possession of the imported ivory which was lawfully acquired by the petitioners as an offence... Learned counsel submitted that this amounted to creation of an offence retroactively and is hit by Article 20(1) of the Constitution. We do not agree with the submission of the learned counsel, as the legislation has not created an offence retroactively. At this stage it will be important to mention that the elephant was included in Appendix I of the CITES in 1975, which meant that international trade in Asian ivory or articles made therefrom was prohibited, and as a consequence of it Indian ivory could be sold only in

the domestic market. India being a signatory to CITES was also bound to ban trade in Indian ivory. India actually banned the trade in Indian ivory only in 1986. The traders should have disposed of their stocks of Indian ivory from 1975 to 1986. As regards the African elephant it was proposed on October 18, 1989, to be included in Appendix-I of the CITES and was so included on January 18, 1990. Ivory traders were allowed to carry on domestic trade in imported ivory till the expiry of six months from the coming into force of the Amendment Act of 1991. Furthermore, as a result of the interim stay granted by this Court, the petitioners could dispose of their stocks by 7 July, 1992. From the above it is clear that ivory traders were under a notice of the intending ban since 1989 and had sufficient time to dispose of their stocks of ivory in the domestic market...

...It is significant note that Parliament has merely made the possession of imported ivory and articles made therefrom after the specified date an offence. The petitioners are not being subjected to a penal law on account of their having imported ivory during the period when there was no ban in existence...

...The contentions of the learned counsel for the petitioners... that the impugned legislation does not apply to Mammoth ivory as the same is not covered by the provisions thereof, and in any case Parliament was not competent to legislate with regard to the subject of Mammoth ivory, does not appeal to us...

...The legislation was intended to cover all descriptions of ivory imported into India, including Mammoth ivory. This was to prevent Indian ivory from entering into the market under the pretext of Mammoth ivory or African ivory. Once the Mammoth ivory is shaped into an article or curio, it looks exactly like an article made from elephant ivory. This we can say on the basis of the articles shown to us in Court — both of Mammoth ivory as well as elephant ivory...

...When a buyer intends to buy a curio, he is not interested in knowing whether it was created from elephant ivory or Mammoth ivory. An average buyer also does not have the expertise or knowledge to distinguish between articles made from Mammoth ivory and Indian ivory. To him the translucent whiteness of the ivory matters. He buys it purely on aesthetic considerations or as a status symbol. To give permission to trade in articles made from Mammoth Ivory would result in laundering of Indian ivory — a result which the legislation wants to prevent for the reasons already explained above...

...We are unable to accept the submission that Mammoth ivory is not ivory in the sense in which it is used in the Act. In case the legislation was not to applicable to Mammoth ivory, Parliament would have made an exception in this regard. We cannot attribute to the legislature that it was not aware of Mammoth ivory found as fossils in large parts of the world...

...Thus, the words 'ivory imported into India' occurring in Section 49B(1) (a)(ia) would include all descriptions

of imported ivory, whether elephant ivory or Mammoth ivory.

We are also of the view that the impugned legislation falls within the power and competence of the Parliament as the same is meant to protect the Indian elephant. In order to achieve that purpose, Parliament has undoubted power to deal with matters which effectuate the same. It can legislate with regard to all ancillary and subsidiary subjects including the imposition of a ban on trade in imported ivory of all descriptions, whether drawn from Mammoth or elephant, for the salutary purpose of the preservation of the Indian elephant.

For the foregoing reasons we do not find any merit in the writ petitions and the same are dismissed, but without any order as to costs.

Fur and Snake Skin Case Judgement

...In writ petition No 2750/86, petitioner Nos 1 to 13 claim themselves to be the dealers, while petitioner Nos 14 to 25 claim themselves to be manufacturers, and petitioner Nos 26 to 28 as wholesalers in tanned, cured and finished skins...

...The petitioners submit that animal articles in their trade are in two categories, namely, furs, which consist of coats, caps, gloves, blankets, stoles and snake skin items such as bags, shoes, wallets, brief cases, belts etc...

...The petitioners' case is that under the 1972 Act, animals mentioned in Schedule IV could be hunted and killed in accordance with the provisions of the licenses issued for the said purpose. A large number of animals were lawfully killed by holders of licenses, and the killing resulted in continued lawful availability of the animal skins as long a period of 13 years...

...The contention of the petitioners that protection and preservation of wildlife was not in the public interest was therefore devoid of all merit. Wild life forms part of our cultural heritage in the same manner as other archaeological monuments, painting, literature, etc. Each and every animal plays a role in maintaining the ecological balance and, therefore, the contention that certain animals have no role to play or that they are detrimental to human life is completely misconceived. Taking the case of even jackals, which are referred to by the petitioners as animals of no utility, these are

natural scavengers who feed on offal and dead animals, thereby keeping the environment clean. Snakes, which have been described by some petitioners as harmful and dangerous to human life, feed on rats. The mortality rate in the country due to snake bites is less than 0.0005 per cent, which is very low compared to the death and fatalities caused by other diseases and animal bites. Snakes are the natural killers of rats which cause loss of nearly 33 million tonnes of stored cereals, apart from spreading dreaded diseases such as plague. Russel vipers and Rats snakes are known to have a fascination for rats as food. The above would show that even the most maligned animals which apparently appear to be of no utility, have a role to play in retaining the ecological balance. Besides, it is only when human beings tread their natural habitat that animals react. The Wildlife (Protection) Act has provisions to deal with and eliminate those animals which become harmful to human lives or property. Thus, the argument that certain wild animals are harmful to life and serve no useful purpose is misconceived. It is to be recognized that Wildlife is an asset and heritage to be preserved for future generations...

...Undoubtedly, the preservation of wildlife has a strong nexus and is related to trade in Wildlife articles. Despite measures, such as the creation of sanctuaries and animal parks, where no hunting was permitted, and the amendments in the Schedule of Wildlife (Protection) Act, there has been a steady decline and depredation, and in some cases, extinction of numerous species of wild animals for exploitation in

trade. This necessitated the inclusion of endangered species of animals in Schedule I and Part-II of Schedule II. Ban on hunting and trapping of wild animals was also imposed. Despite these measures, the illegal poaching of wild animals continued for the purposes of trade, depleting the number of animals in several cases, and endangering the very existence of species of wildlife. The depletion in numbers of endangered species has a strong nexus with the large scale poaching of wildlife for the purposes of trade. Wild animals and snakes required for fur and skin trade are not killed for their meat or for any other purpose, but for their furs and skins which being used by fur and skin traders...

...Some of the petitioners had themselves been booked for offences under the Wildlife (Protection) Act, especially in the case of snake and other animal articles brought under Schedule I and Part-II of Schedule II, it was necessary to ensure liquidation of the present stock and stop further accumulation so as to discourage and prevent illegal poaching of wild animals...

...The petitioners also claimed that since there was hardly any domestic demand, they should be permitted to export their stocks by granting a one-time opportunity to them to export the skins...

...Learned counsel for the respondents opposed grant of any such opportunity... Learned counsel for the respondents submitted that past experience had clearly established that such opportunities had been

misused to accumulate stocks by illegal poaching and clandestine collections. The accumulated stock rose from the estimated figure of 5,00,000 snake skins to 50,00,000 snake skins in 1978. Large scale seizure of skins by Customs authorities that were sought to be smuggled, running into approximately 27,00,000, was detected during the years 1979 to 1983. The same was true of the fur trade. Ban was imposed on export of fur articles in 1979. Exemption was given to the fur traders of Jammu and Kashmir for export on receipt of numerous representations from traders. The Central Government permitted the traders to export and liquidate the stocks held by them. However, by the year 1983-84 the J&K traders had exported 60,259 articles, while the request for quota was only for 45,450. By this token their stocks should have been exhausted, but surprisingly the stock position as on 1.4.1984 comprised 4,41,361 skins and 64,171 articles, thereby registering an increase in the stock. The respondents, therefore, contended that the petitioners wanted to cling to their stocks, and accumulate more, to be used as a cover for smuggling of articles...

...It would be seen that from December 1986 up to 9.2.1993, the petitioners had all the opportunity for selling and disposing of their stocks to authorized persons...

...Accordingly, the petitioners cannot have any legitimate grievance of denial of opportunity in this regard. We are of the considered view that neither the state nor the Bharat Leather Corporation and the State Trading Corporation are under any legal obligation to

buy the stocks of the petitioners in acceptance of the one-time sale proposition advanced by the petitioners. The petitioners are also not entitled to any further time for disposal of stocks. The stocks of the petitioners would, therefore, be liable to be dealt with in accordance with the provisions of the Wildlife (Protection) Act, 1972.

We hold that the provisions of Chapter V (A), introduced by the Amending Act of 1986 to the Wildlife Act of 1972 are valid and *intra vires*.

For the aforesaid reasons the writ petitions are dismissed.”

Constitution of India

Fundamental Rights

Article 14:

Equality before law — The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 19 (1)(g):

All citizens shall have the right to practice any profession, or to carry on any occupations, trade or business.

Article 20(1):

No person shall be convicted of any offense except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

Article 21:

Protection of life and personal liberty — No person shall be deprived of his life or personal liberty except according to procedure established by law.

Directive Principles of State Policy

Article 37:

Application of the principles contained in this part. — The provisions contained in this part shall not be

enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.

Article 48A:

Protection and improvement of environment and safeguarding of forests and wildlife — The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

Right to Property

Article 300 A:

Persons not to be deprived of property save by authority of law — No person shall be deprived of his property save by authority of law.

Wildlife (Protection) Act, 1972

Chapter V

Section 39 Wild animals, etc to be government property

(1) (c) every **ivory** imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made there under has been committed.

Chapter V - A

Section 49 A (c) (iii) "Specified date" means in relation to ivory imported into India or an article made from such ivory, the date of expiry of 6 months from the commencement of the Wildlife (Protection), Act 1991.

Section 49 B: Prohibition of dealing in trophies, animal articles, etc. derived from Scheduled animals

1. Subject to the other provisions of this section, on and after the specified date, no person shall
 - (a) commence or carry on the business as
 - (i) a manufacturer of, or dealer in, scheduled animal articles; or
 - (ia) a dealer in **ivory** imported into India or articles made therefrom or a manufacturer of such articles, or

Section 49 C: Declaration by dealers

1. Every person carrying on the business or occupation referred to in sub-section (1) of Sec. 49-B shall, within thirty days from the specified date, declare to the Chief Wildlife Warden or the authorised officer.
 - (a) his stocks, if any, as at the end of the specified date of
 - (i) Scheduled animal articles;
 - (ii) Scheduled animals and parts thereof;
 - (iii) trophies and uncured trophies derived from scheduled animals;
 - (iv) captive animals, being Scheduled animals;
 - (v) **ivory** imported into India or article made therefrom.
 - (b) the place or places at which the stocks mentioned in the declaration are kept; and
 - (c) the description of such items, if any, of the stocks mentioned in the declaration which he desires to retain with himself for his bonafide personal use.
2. On receipt of a declaration under sub-section (1), the chief Wildlife Warden or the authorised office may take all or any of the measures specified in Sec.41 and for this purpose, the provisions of Sec.41 shall, so far as may be, apply.
3. Where, in a declaration made under sub-section (1), the person making the declaration expresses his desire to retain with himself any of the items of the stocks specified in the declaration for his

bonafide personal use, the Chief Wildlife Warden, with the prior approval of the Director, may, if he is satisfied that the person is in lawful possession of such items, issue certificates of ownership in favour of such person with respect to all, or as the case may be, such of the items as in the opinion of the Chief Wildlife Warden, are required for the bonafide personal use of such person and affix upon such items identification marks in such manner as may be prescribed.

Provided that no such item shall be kept in any commercial premises.

4. No person shall obliterate or counterfeit any identification mark referred to in sub-section (3)
5. An appeal shall lie against any refusal to grant certificate of ownership under sub-section (3), and the provisions of sub-sections (2), (3) and (4) of Sec.46 shall, so far as may be, apply in relation to appeals under this sub-section.
6. Where a person who has been issued a certificate of ownership under sub-section (3) in respect of any item.
 - (a) transfers such item to any person, whether by way of gift, sale or otherwise, or
 - (b) transfers or transports from the State in which he resides to another state any such item, he shall, within thirty days of such transfer or transport, report the transfer or transport to the Chief Wildlife Warden or the authorised officer within

whoes jurisdiction the transfer or transport is effected.

7. No person, other than a person who has been issued a certificate of ownership under sub-section (3) shall, or and after the specified date, keep under his control, sell or offer for sale or transfer to any person any scheduled animal or scheduled animal article or **ivory** imported into India or any article made therefrom.

Section 51: Penalties

(1-A) Any person who contravenes any provisions of Chapter V-A shall be punishable with Imprisonment for a term which shall not be less than one year but which may extend to seven years and also with fine which shall not be less than five thousand rupees.

Section 51 (2): When any person is convicted of any offence against this Act, the court trying the offence may order that any captive animal, wild animal, animal article, trophy, uncured trophy, meat, **ivory** imported into India or an article made from such **ivory**, any specified plant or part or derivative there of in respect of which the offence has been committed, any trap, tool, vehicle, vessel, or weapon used in the commission of the said offence be forfeited to the state government and that any licence or permit, held by such person under the provision of this Act, be cancelled.