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Advisory for Dealing with Import of Exotic Live Species in India and Declaration of Stock: A Boom or Bane for Illegal Wildlife Trade in India

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Opinion

COVID 19 pandemic has once again raised the issue of inter-species transfer of diseases as research initially suggest that pandemic started from wet market in Wuhan, China. In its wake, several countries issued advisories or banned wildlife consumption and trade including China [1], Vietnam [2], Bolivia [3], while many animal welfare and wildlife conservation organizations are calling for such bans worldwide [4,5]. Another country to join this list is India, when it issued an advisory for dealing with import of exotic live species in India and declaration of stock on 11th June, 2020 [6]. Presently umbrella legislation for wildlife protection in India is The Wild Life (Protection) Act, 1972 while The Customs Act, 1962 (Customs Act) and the Foreign Trade Policy of 2015-2020 (FTP) regulate Inter-country trade of native and CITES listed species. The advisory urges people to declare their possession of exotic live species protected under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). An online mechanism (Parivesh- A single window integrated system for environment, forest, wildlife and CRZ clearance developed under Ministry of Environment and Forest, Government of India) allowed individuals to declare their possession [7]. The same portal was suggested to be used to declare the births, deaths, trade, or change of possession of the animals in the future. The advisory further added that the declarer does not need to produce any documents for possession of CITES listed exotic species if declared within a timespan of approximately nine months (up to 15th March, 2021). While government is lauding itself for this step, many are against it [8]. As India ratified CITES in 1976, and this advisory is totally against the CITES. As the advisory literally means that, any individual who may have illegally imported any CITES listed species can apply for amnesty. He/she will then be given a certificate legitimizing their possession of said organism, and have no legal liability for flouting existing laws. The exemption from requirement of any documentation implies that the Indian government is not concerned if the exotic species is legally imported or smuggled which openly violating CITES. The advisory faces more criticism presently, when an investigation showed that a total of 43,693 applications for amnesty have been made under this advisory, including for some of the animals belonging to critically endangered species like the Black-and-White Ruffed Lemur (endemic to Madagascar) and the Besia (endemic to East Africa) [9]. The advisory bluntly goes against CITES (Article VIII, Paragraph 1) which obliges member countries to penalise wildlife trade in violation of its provisions and confiscate any such specimens illegally traded [10]. The advisory created a window of opportunity of approximately nine months for smugglers to bring CITES listed species to India and legally own them while freely violating CITES. Many have taken advantage of the well placed opportunity as shown by increase of more than double of smuggling in general [11] and through India's porous borders [12] as acknowledged by Traffic and Wildlife Crime Control Bureau, Government of India. The advisory has only one positive aspect that it may help India prepare a stock inventory of exotic species in India and to monitor their movement. Yet, it goes against CITES, Customs Act, 1962 and The Foreign Trade (Development and Regulation) Act, 1992 by giving a free hand to everyone who declare their possession of wildlife species. Some argue that Ministry of Environment, Forest and Climate Change has overstepped its boundaries with this advisory [8]. By having such influence, the advisory is against the law of land as an advisory is only suggestive in nature and cannot be imperative or conclusive. Yet, litigation against the advisory in high court and the Supreme Court of India further established that once immunity is granted, the government cannot investigate the ownership, possession, trade, transportation, breeding or keeping of disclosed exotic species. Moreover, the advisory is not passed under any parent statute. However, it clearly reveals that India has huge demand and market for wildlife trade and 43,693 applicants might have escaped from the clutches of the law while indulging in a lethal trade. There is little doubt that there must be a law governing exotic live animals in the country, but an advisory of this nature will only end up fueling the trade and put the country at more risk in the midst of a deadly pandemic.

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