



**LOADING**  
PLEASE WAIT...

*Search,  
Seizure &  
Confiscation:*

**LEGAL PROVISIONS &  
COURT PROCEDURES**

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# Legal Evolution



1927<sup>1972</sup>  
1972



1976<sup>1980</sup>  
1986<sup>1992</sup>  
1996<sup>2002</sup>  
2006<sup>2010</sup>  
2016  
2026?





# *Weapons*

## **SPECIALISTS**

- IFA,1927
  - WPA,1972
  - FCA,1980
  - EPA,1986
  - BDA,2002
  - FRA,2006
  - NGT,2010
- 

## **GENERALISTS**

- IPC
- CrPC
- CPC
- IEA
- GCA



- **Why Special Law Related to Forests ?**

- “The invaders of forest and wild life usually take care that their poaching techniques go unnoticed by others including wild animals.”

- **(Forest Range Officer v. Aboobacker, 1990 FLT 22 at 24(Ker)**

- **Special Law Overrides the General Law !**

- “ under section 5 of CrPC Special Act overrides the General Act” **(Jethnal Vs. Heeralal , 1957 Raj LW 522 )**

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# Jargons

- CONSTITUTION  
PART, Article 1(3)(a)(i); 2A,  
Schedule, List, Explanation IV?
- POLICY
- ACT  
CHAPTER,
  - Preamble, Section,  
Sub-section? 2(3)
  - Saving & Repeal
  - Schedule? Sub-schedule?
  - Form?
- RULES
- MANUALS

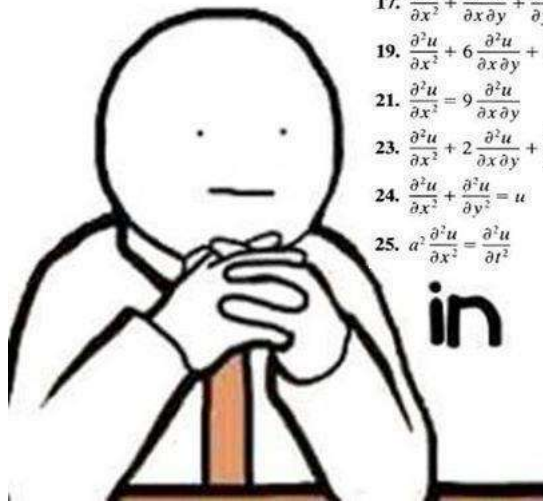
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- GO'S



# FEW TERMS (IPC)?

I'm still waiting for the  
day that I will actually use



17.  $\frac{\partial^2 u}{\partial x^2} + \frac{\partial^2 u}{\partial x \partial y} + \frac{\partial^2 u}{\partial y^2} = 0$
18.  $3 \frac{\partial^2 u}{\partial x^2} + 5 \frac{\partial^2 u}{\partial x \partial y} + \frac{\partial^2 u}{\partial y^2} = 0$
19.  $\frac{\partial^2 u}{\partial x^2} + 6 \frac{\partial^2 u}{\partial x \partial y} + 9 \frac{\partial^2 u}{\partial y^2} = 0$
20.  $\frac{\partial^2 u}{\partial x^2} - \frac{\partial^2 u}{\partial x \partial y} - 3 \frac{\partial^2 u}{\partial y^2} = 0$
21.  $\frac{\partial^2 u}{\partial x^2} = 9 \frac{\partial^2 u}{\partial x \partial y}$
22.  $\frac{\partial^2 u}{\partial x \partial y} - \frac{\partial^2 u}{\partial y^2} + 2 \frac{\partial u}{\partial x} = 0$
23.  $\frac{\partial^2 u}{\partial x^2} + 2 \frac{\partial^2 u}{\partial x \partial y} + \frac{\partial^2 u}{\partial y^2} + \frac{\partial u}{\partial x} - 6 \frac{\partial u}{\partial y} = 0$
24.  $\frac{\partial^2 u}{\partial x^2} + \frac{\partial^2 u}{\partial y^2} = u$
25.  $a^2 \frac{\partial^2 u}{\partial x^2} = \frac{\partial^2 u}{\partial t^2}$
26.  $k \frac{\partial^2 u}{\partial x^2} = \frac{\partial u}{\partial t}, k > 0$

in real life



- 8. **Gender**.—The pronoun "he" and its derivatives are used of any person, whether male or female.
- 9. **Number**.—Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.
- 10. **"Man". "Woman"**.--The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.
- 11. **"Person"**.—The word "person" includes any Company or Association or body of persons, whether incorporated or not.
- 14. **"Servant of Government"**.—The words "servant of Government" denote any officer or servant continued, appointed or employed in India by or under the authority of Government.
- 17. **"Government"**.--The word "Government" denotes the Central Government or the Government of a State.

- 19. **"Judge"**.—The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person,
  - who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or
  - a judgment which, if not appealed against, would be definitive, or
  - A judgment which, if confirmed by some other authority, would be definitive, or
  - who is one of a body of persons, which body of persons is empowered by law to give such a judgment.
  
- 20. **"Court of Justice"**.—The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

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- 21. **"Public servant"**.--The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:-

- Every person/officer who:-

- (7<sup>th</sup>) holds any office by virtue of which he is empowered **to place or keep any person in confinement;**
- (8<sup>th</sup>) of [the Government] whose duty it is, as such officer, **to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;**
- (9<sup>th</sup>) whose duty it is as such officer, **to take, receive, keep or expend any property on behalf of [the Government], or to make any survey, assessment or contract on behalf of [the Government],** or to execute any revenue- process, or to investigate, or to report, on any matter affecting the pecuniary interests of [the Government], or to make, authenticate or keep any document relating to the pecuniary interests of [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of [the Government] ;
- (12<sup>th</sup>)(a) **in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;**  
(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).]

- 24. "**Dishonestly**".—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".
- 25. "**Fraudulently**".—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.
- 26. "**Reason to believe**".—A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.
- 27. "**Property in possession of wife, clerk or servant**"--When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.
- 28. "**Counterfeit**".—A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

- 29. "**Document**".--The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.
- 39. "**Voluntarily**".—A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.
- 41. "**Special law**".--A "special law" is a law applicable to a particular subject.
- 42. "**Local law**".--A "local law" is a law applicable only to a particular part of India.
- 52. "**Good faith**".--Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

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# CHAPTER III OF PUNISHMENTS

- 53. Punishments.—The punishments to which offenders are liable under the provisions of this Code are—
  - First.--Death;
  - Secondly.--Imprisonment for life;
  - Fourthly.--Imprisonment, which is of two descriptions, namely:-
    - (1) Rigorous, that is with hard labour;
    - (2) Simple;
  - Fifthly.--Forfeiture of property;
  - Sixthly.--Fine.



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# *FEW CONCEPTS (IEA)?*



# Types of evidence:



- (a) **Oral** evidence (*saw, heard, senses, opinion, experts 45, std material*)-59,60 ; *Sequence 137 & leading que 141; Refreshing memory 159*
- (b) **Circumstantial** evidence (*presumptive, inferences*);
- (c) **Direct** evidence;
- (d) **Hearsay** evidence;
- (e) **Corroborative** evidence, -156,157 IEA;
- (f) **Documentary** evidence (*matter expressed upon any substance by means of letters, figures or marks, for the purpose of recording*) Public & Private -74,75 IEA;
- (g) **Primary and secondary** evidence, -61 to 65 IEA;
- (h) **Real** evidence (*If oral evidence refers to the existence of any material things other than a document*) -60(2) IEA.



4c) Expand

$$(a+b)^n$$

Very young Peter.

$$= (a + b)^n$$

$$= (a + b)^n$$

$$= (a + b)^n$$

etc...

***FEW  
PROCEDURES  
(CRPC)?***

# Arrest

- **Sec 64** of IFA, 1927. **Power to arrest without warrant**
- (1) Any Forest-officer or Police-officer may, *without orders from a Magistrate and **without a warrant***, arrest any person against whom a **reasonable suspicion** exists of his having been concerned in any forest-offence punishable with *imprisonment for one month or upwards*.
- (2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.
- (3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under *Chapter IV unless such act has been prohibited under clause (c) of section 30*.
- **(41-60 CrPC)**

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# CHAPTER V

## ARREST OF PERSONS

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- SECTION 41 WHEN POLICE MAY ARREST WITHOUT WARRANT
  - SECTION 42 ARREST ON REFUSAL TO GIVE NAME AND RESIDENCE
  - SECTION 46 ARREST HOW MADE
  - SECTION 47 SEARCH OF PLACE ENTERED BY PERSON SOUGHT TO BE ARRESTED
  - SECTION 48 PURSUIT OF OFFENDERS INTO OTHER JURISDICTIONS
  - SECTION 49 NO UNNECESSARY RESTRAINT
  - SECTION 50 PERSON ARRESTED TO BE INFORMED OF GROUNDS OF ARREST AND OF RIGHT TO BAIL
  - SECTION 51 SEARCH OF ARRESTED PERSONS
  - SECTION 52 POWER TO SEIZE OFFENSIVE WEAPONS
  - SECTION 53 EXAMINATION OF ACCUSED BY MEDICAL PRACTITIONER AT THE REQUEST OF POLICE OFFICER
  - SECTION 54 EXAMINATION OF ARRESTED PERSON BY MEDICAL PRACTITIONER AT THE REQUEST OF THE ARRESTED PERSON
  - SECTION 56 PERSON ARRESTED TO BE TAKEN BEFORE MAGISTRATE OR OFFICER IN CHARGE OF POLICE STATION
  - SECTION 57 PERSON ARRESTED NOT TO BE DETAINED MORE THAN TWENTY-FOUR HOURS
  - SECTION 59 DISCHARGE OF PERSON APPREHENDED
  - SECTION 60 POWERS, ON ESCAPE, TO PURSUE AND RE-TAKE
-

# *Arrest Procedure*

- PO/FO should bear an accurate, visible & clear identification of his **name**
- Prepare a **Memo** which shall be attested by at least one witness, who is the member of the family or a respectable member of the locality & countersigned by the person arrested.
- Inform the person arrested, that he has a right to have a relative or a friend named by him **to be informed of his arrest**
- When any person is arrested & interrogated, he shall be entitled to meet an **advocate** of his choice.
- In making an arrest the police officer or other person making the same shall actually **touch or confine the body** of the person to be arrested, unless there be a submission to the custody by word or action
- If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may **use all means necessary to effect the arrest**

- No **woman** shall be arrested after sunset and before sunrise; where exceptional circumstances exist, the woman police officer shall by making a written report, obtain prior permission of JM 1<sup>st</sup> class.
- Every police officer or other person arresting any person without warrant shall forthwith communicate to him **full particulars of the offence** for which he is arrested or other grounds for such arrest
- Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is **entitled to be released on bail** and that he may arrange for sureties on his behalf
- Every police officer or other person making any arrest shall forthwith give the **information regd such arrest & place** where the arrested person is being held to any of his friends, relatives or such other persons as may be nominated by the arrested (entry of informed)
- No detention in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed **twenty-four hours** exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court

# Witness, Real Evidence, Search Warrant

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Sec (72) of IFA 1927 – State Government may invest any Forest Officer with all or any of following power:-

- (1) a. Power to enter upon any land
  - b. Power of civil court to compel the attendance of witnesses (61-69 CrPC) & production of documents/ material objects (91 CrPC).
  - c. Power to issue a search warrant under Code of Criminal Procedure 1898. (93-105 CrPC)
  - d. Power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.
- (2) Any evidence recorded under clause (d) shall be admissible in any subsequent trial before a magistrate provided that it has been taken in the presence of the accused person.
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## CHAPTER VI

### PROCESSES TO COMPEL APPEARANCE

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#### CHAPTER VI A

#### SUMMONS

- SECTION 61 FORM OF SUMMONS
  - SECTION 62 SUMMONS HOW SERVED
  - SECTION 63 SERVICE OF SUMMONS ON CORPORATE BODIES AND SOCIETIES
  - SECTION 64 SERVICE WHEN PERSONS SUMMONED CANNOT BE FOUND
  - SECTION 65 PROCEDURE WHEN SERVICE CANNOT BE EFFECTED AS BEFORE PROVIDED
  - SECTION 66 SERVICE ON GOVERNMENT SERVANT
  - SECTION 67 SERVICE OF SUMMONS OUTSIDE LOCAL LIMITS
  - SECTION 68 PROOF OF SERVICE IN SUCH CASES AND WHEN SERVING OFFICER NOT PRESENT
  - SECTION 69 SERVICE OF SUMMONS ON WITNESS BY POST
- 

#### CHAPTER VI B

# Summons

- **in writing, in duplicate, signed** by the presiding officer of such Court and shall bear the seal of the Court.
- shall be **served by a police officer**, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.
- The summons shall, if practicable, be **served personally** on the person summoned, by delivering or tendering to him one of the duplicates of the summons.
- Every person on whom a summons is so served shall, **sign a receipt** therefore on the back of the other duplicate.
- Where the person summoned **cannot, by the exercise of due diligence, be found**,
  - the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, sign a receipt therefor on the back of the other duplicate
  - the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides



# Summons

- **Service of summons on witness by post** court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain

When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served

- **87. Issue of warrant in lieu of, or in addition to, summons**

A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure

# PROCESSES TO COMPEL THE PRODUCTION OF THINGS

## CHAPTER VII A

### SUMMONS TO PRODUCE

- SECTION 91 SUMMONS TO PRODUCE DOCUMENT OR OTHER THING

## CHAPTER VII B

### SEARCH-WARRANTS

- SECTION 93 WHEN SEARCH-WARRANT MAY BE ISSUED
- SECTION 94 SEARCH OF PLACE SUSPECTED TO CONTAIN STOLEN PROPERTY, FORGED DOCUMENTS, ETC

## CHAPTER VII C

### GENERAL PROVISIONS RELATING TO SEARCHES

- SECTION 99 DIRECTION, ETC, OF SEARCH-WARRANTS
- SECTION 100 PERSONS IN CHARGE OF CLOSED PLACE TO ALLOW SEARCH
- SECTION 101 DISPOSAL OF THINGS FOUND IN SEARCH BEYOND JURISDICTION

## CHAPTER VII D

### MISCELLANEOUS

- SECTION 102 POWER OF POLICE OFFICER TO SEIZE CERTAIN PROPERTY
- SECTION 103 MAGISTRATE MAY DIRECT SEARCH IN HIS PRESENCE
- SECTION 104 POWER TO IMPOUND DOCUMENT, ETC, PRODUCED
- SECTION 105 RECIPROCAL ARRANGEMENTS REGARDING PROCESSES

# *Search Warrant*

- If a DM, SDM or JM first class, upon information and after such inquiry as he thinks necessary, **has reason to believe** that **any place is used for the deposit or sale of stolen property**, he may by warrant authorise any police officer above the rank of a constable—
  - (a) to **enter**, with such assistance as may be required, such place,
  - (b) to **search** the same in the manner specified in the warrant,
  - (c) to **take possession** of any property or article therein found which he reasonably suspects to be stolen property
  - (d) to **convey such property** or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety,
  - (e) to **take into custody and carry** before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this section applies

# *Search Procedure*

- **Closed Place:** any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein
  - If ingress into such place cannot be so obtained, **to break open any outer or inner door or window** of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purposes, and demand of admittance duly made, he cannot otherwise obtain admittance
  - Provided that, if any such place is an apartment in the **actual occupancy of a female (not being the person to be arrested)** who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it
-

# *Search Procedure*

- Where any **person in or about such place is reasonably suspected** of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency. A list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.
- Before making a search, the officer or other person about to make it shall call upon **two or more independent and respectable inhabitants** of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do

# *Search Procedure*

- The search **shall be made in their presence, and a list of all things** seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it
- The **occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend** during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person
- Any person who, **without reasonable cause, refuses or neglects to attend and witness a search** under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860)



# *BREAD- BUTTER ACT? (IFA)*

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# ARRANGEMENT OF SECTIONS

**CHAPTER I** (PRELIMINARY) 1. & 2.

**CHAPTER II** (OF RESERVED FORESTS) 3. to 27.

**CHAPTER III** (OF VILLAGE-FORESTS) 28.

**CHAPTER IV** (OF PROTECTED FORESTS) 29. to 34.

**CHAPTER V** (OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY GOVERNMENT) 35. to 38.

**CHAPTER VI** (OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE) 39. & 40.

**CHAPTER VII** (OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT) 41. To 44.

**CHAPTER VIII** (OF THE COLLECTION OF DRIFT AND STRANDED TIMBER) 45. to 51.

**CHAPTER IX** (PENALTIES AND PROCEDURE) 52. to 69.

**CHAPTER X** (CATTLE-TRESPASS) 70. & 71.

**CHAPTER XI** (OF FOREST-OFFICERS) 72. to 75.

**CHAPTER XII** (SUBSIDIARY RULES) 76. To 78.

**CHAPTER XIII** (MISCELLANEOUS) 79. to 86.



# THE INDIAN FOREST ACT, 1927

(16 of 1927) (21st September, 1927)

## Preamble:

An Act to consolidate the law relating to *forests*, the *transit of forest-produce* and the *duty leviable on timber and other forest-produce*.

## CHAPTER I : INTERPRETATION CLAUSE

"Forest" ?

Sec:2 (3) "**Forest-offence**" means an offence punishable under this Act or under *any rule made thereunder*;

Sec:2(2) "**Forest-officer**" means any person whom <sup>(3)</sup>[\*\*\*] the State Government *or* any officer empowered by the State Government in this behalf, may appoint to carry out all *or* any of the purposes of this Act or to do anything required by this Act or any rule made thereunder to be done by a Forest-officer. (e.g. JFMC Pradhans)

Sec:2(6) "**Timber**" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose *or not*; (Movable)

**Sec:2(4) "forest-produce"** includes –

**(a)** the following *whether found in, or brought from, a forest or not*, that is to say - timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth<sup>(4)</sup> and myrabolams, and

**(b)** the following *when found in, or brought from a forest*, that is to say -  
(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,  
(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,  
(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and  
(iv) peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries);

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- 2(3) "**forest-offence**" means an offence punishable under this Act or under any rule made thereunder;
    - **Offences under IFA**
      - Related to Reserved Forests , Protected Forests
      - Forest–Produce in Transit
      - Altering boundary marks
      - Non-assistance to Forest-officers and Police-officers
  - 2(5) "**river**" includes any stream, canal, creek or other channels, natural or artificial;
  - 2(6) "**timber**" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose **or not**; and
  - 2(7) "**tree**" includes palms, bamboos, stumps, brush-wood and canes.
-

## **CHAPTER IX : PENALTIES & PROCEDURE**

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**Sec:69 Presumption that forest-produce belongs to Government** - When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce *shall be presumed* to be the property of the Government until the contrary is proved.

**Sec:58 Procedure as to perishable property seized under section 52.** - The Magistrate may, notwithstanding anything herein before contained, direct the sale of any property seized under section 52 and **subject to speedy and natural decay**, and may deal with the proceeds as he would have dealt with such property if it had not been sold.



## **CHAPTER VII : OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT**

**41. Power to make rules to regulate transit of forest produce** (1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce.

(2) *Routes; pass; examination and marking of timber or other forest-produce in transit; establishment and regulation of depots ; regulate the use of property marks for timber*

### **42. Penalty for breach of rules made under section 41**

(1) The State Government *may* by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

(2) Such rules *may* provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, **or** after preparation for resistance to lawful authority, **or** where the offender has been previously convicted of a like offence.

## **CHAPTER IX : PENALTIES AND PROCEDURE**

- 52.** Seizure of property liable to confiscation
- 53.** Power to release property seized under section 52
- 54.** Procedure thereupon
- 55.** Forest-produce, tools, etc., when liable to confiscation
- 56.** Disposal on conclusion of trial for forest-offence, of produce in respect of which it was committed
- 57.** Procedure when offender not known or cannot be found
- 58.** Procedure as to perishable property seized under section 52
- 59.** Appeal from orders under section 55, section 56 or section 57.
- 60.** Property when to vest in Government

# CHAPTER XI (OF FOREST-OFFICERS)

- 72. **State Government may invest Forest-officers with certain powers. –**
- (1) The State Government may invest any Forest-officer with all or of the following powers, that is to say:-
  - a) power to enter upon any land and to survey, demarcate and make a map of the same;
  - b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
  - c) power to issue a search-warrant under the Code of Criminal Procedure, 1898 (5 of 1898); and
  - d) power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.
- (2) Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.



- **73. Forest officers deemed public servants.-**

All Forest-officers shall be deemed be public servants within the meaning of the Indian Penal Code, 1860 (45 of 1860).

- **74. Indemnity for acts done in good faith.-**

No suit shall lie against any public servant for anything done by him in good faith under this Act.

- **75. Forest-officers not to trade.-**

Except with the permission in writing of the State Government, no Forest-officer shall, as principal or agent, trade in timber or other forest produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside 17[the territories to which this Act extends].

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- **Sec 68 of IFA,1927. Power to compound offences. –**
- (1) The State Government may, by notification in the Official Gazette, empower a Forest officer -
  - a) to accept from any person against whom a **reasonable suspicion exists that he has committed any forest-offence**, other than an offence specified in section 62 or section 63, ***a sum of money by way of compensation for the offence*** which such person is suspected to have committed, and
  - b) when any property has been seized as liable to confiscation, to release the same ***on payment of the value thereof*** as estimated by such officer.
- (2) On the payment of ***such sum of money, or such value, or both, as the case may be***, to such officer, the **suspected person**, if in custody, shall be discharged, **the property**, if any seized shall be released, and no further proceedings shall be taken against such person or property.
- (3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, **and *the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.***

## Sec. 52 Seizure of property liable to confiscation.

(1) When there is **reason to believe** that a **forest-offence** has been committed in respect of **any forest-produce**, such produce, together with all tools, boats, carts or cattle used in committing any such offence, **may be seized** by any Forest-officer or Police-officer.

# DFO's as Authorised Officers in HP

## Section 52.

“(2) Any Forest Officer or Police Officer may, if he **has reasons to believe** that a **vehicle** has been or is being used for the transport of timber (excluding fuelwood), resin, Khair wood and katha in respect of which a **forest offence has been or is being committed**, require the **driver or other person-in-charge** of such vehicle to stop the vehicle and cause it to remain stationary *as long as may reasonably be necessary* to examine the contents in the vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person-in-charge of the vehicle.

(3) Every Officer **seizing** any property under this section shall place on such property, a mark indicating that the same has been seized, and shall, **as soon as may be**, make a report of such seizure :-

- (a) where the offence, on account of which the seizure has been made is in respect of timber (excluding fuelwood), resin, khairwood and katha **which is the property of the State Government**, to the concerned authorized officer under sub-section (1) of section 52-A; and
- (b) in **other cases**, to the magistrate having jurisdiction to try the offence on account of which the seizure is made.”.

## “52-A. Confiscation by Forest Officers in certain cases.

(1) Notwithstanding anything contained in this Chapter, where a **forest offence** is believed to have been committed in respect of timber (excluding fuelwood) etc. **which is the property of the State Government**, the Officer seizing the property under sub-section (1) of section 52 shall **without any unreasonable delay** produce it, together with all tools, ropes, chain, boats or vehicle used in committing such offence before an officer, authorized by the State Government in this behalf by notification published in the Official Gazette, not below the rank of an Assistant Conservator of Forests hereinafter referred to as the **authorized officer**

(2) Where an **authorized officer seizes** under sub-section (1) of section 52 any timber (excluding fuelwood) etc., which is the property of the State Government or **where any such property is produced before an authorized officer** under sub-section (1), **once he is satisfied** that a forest offence has been committed in respect of such property, such authorized officer **may**, whether or not a prosecution is instituted for the commission of such offence, **order confiscation** of the property so seized together with all tools, ropes, chains, boats or vehicle used in committing such offence.

## 52A

(3) (a) Where the authorized officer, **after passing an order of confiscation** under sub-section (2), **is of the opinion** that it is **expedient in the public interest so to do**, he **may** order confiscated property or any part thereof to be sold by **public auction** .

(b) Where any confiscated property is sold as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses relating thereto, shall where the order of confiscation made under section 52-A is set aside or annulled by an order section 59 or section 59-A, be paid to the owner thereof or the person from whom it was seized as may be specified in such order.

## **52-B. Issue of show cause notice before confiscation under section 52-A-**

(1) No order confiscating any timber (excluding fuelwood), etc., ropes, chains, boats or vehicles shall be made under section 52-A **except after notice in writing to the person from whom it is seized and considering his objections, if any:**

Provided that no order confiscating a **motor vehicle** shall be made except, after giving notice in writing to the **registered owner thereof**, (*if in the opinion of the authorized officer it is practicable to do so*) and considering his objections, if any.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat or vehicle shall be made under section 52-A if the owner of the tool, rope, chain, boat or vehicle proves to the satisfaction of the authorized officer that it was used in carrying the timber (excluding fuelwood), etc. **without the knowledge or connivance of the owner himself, his agent**, if any, and the **person-in-charge** of the tool, rope, chain, boat or vehicle and that **each of them had taken all reasonable and necessary precaution against such use**".



27/4/2008



**In section 59 of the principal Act Sub sec (2) & (3) added:**

“(2) Any person aggrieved by any order passed under section 52-A or section 59-A may, within **thirty days** from the **date of communication to him** of such order, appeal to the **Sessions Judge** having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions judge shall, after giving an opportunity to the appellant and the authorized officer or the officer specially empowered under section 59-A, as the case may be, to be heard, pass such order as he may think fit **confirming, modifying or annulling the order appealed against.**

(3) The order of the Sessions judge under sub-section (2) shall be **final** and **shall not be questioned in any Court of law,**”

### **CrPC Sec.397. Calling for records to exercise powers of revision.**

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction **for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, -recorded or passed, and as to the regularity of any proceedings of such inferior Court,** and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

### **CrPC Sec.482. Saving of inherent powers of High Court.**

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, **or** to prevent abuse of the process of any Court **or** otherwise to secure the ends of justice.

- *can be used for both substantive & procedural matters*
- *to be exercised sparingly, carefully & with caution*
- *only when no other remedy is available to the litigant*
- *would not lead to an enquiry & take evidence*

## **59-B Bar of jurisdiction in certain cases:-**

Whenever any timber (excluding fuelwood) etc. together with any tool, rope, chain, boat or vehicle used in committing any forest offence is seized under section 52 the authorized officer under sub-section (1) of section 52-A or the officer specially empowered under section 59-A or Sessions judge hearing an appeal under sub-section (2) of section 59 shall have, **and notwithstanding anything to the contrary contained in this Act or in the Code of Criminal procedure, 1973(Central Act 2 of 1974) or in any other law for the time being in force, any other officer, Court, Tribunal of authority shall not have jurisdiction to make order with regard to custody, possession, delivery, disposal or distribution of such property."**

**For section 60** of the principal Act, the following shall be substituted, namely:-

**"Sec. 60.**

When an order for the confiscation of any property has been passed under section 52-A or section 55 or section 57, as the case may be, or where on revision application made under section 59-A such order for confiscation has not been set a side, and the period limited by section 59 for an appeal from such order **has elapsed, and no such appeal has been preferred or when, on such an appeal being preferred, the Appellate Court confirms such orders in respect of the property or a portion of such property ,** such property or such portion thereof, or if it has been **sold** under sub-section (3) of section 52-A the sale proceeds thereof, as the case may be, **shall vest in the State Government free from all encumbrances."**

# Seizure to Confiscation: Imperatives

- Presiding Officer/ Authorised Officer moves from *initial opinion* to *final satisfaction*
- *Personal inspection* of forest produce, implements and vehicle by the AO
- Initial opinion to be recorded *in writing* with grounds
- Application for *release of vehicle* under CrPC
- *Notice to the registered owner* of the vehicle
- *Interim orders* of trial court cannot be challenged
- Reasonable and necessary precautions by respondents individually

# **COURT PROCEDURES**

# Court work : stages

## • Pre-trial

- Ministerial staff (Reader);
- Preliminary scrutiny of plaint/petition/report; for initiation of proceedings. (Note date of presentation)
- In proper form: challan, Name of court.
- Name, description & place of residence of plaintiff/s & defendant/s (address for service)- no nonjoinder of parties, no misjoinder of parties: Opposing parties.
- Duly signed and verified with date
- Documents attached & lists in prescribed form
- Facts constituting the cause of action & subject in dispute

# Court work : stages

- Pre-trial contd..

- Relief sought
  - court/stamp fee, punching, deficiencies –personal responsibility
  - within prescribed time limit (when cause of action arose)
  - courts jurisdiction
  - Trial/case register entry
  - Transfer of cases from other courts
  - Case no., Title, under Act & Section, Date, Brief facts
  - Final decision of admissibility/ Institution with PO (*of the opinion*)– Suit OR Return/Rejected.
-



# Court work : stages

## • Trial

- Index with page no.
  - Show Cause Notice/Summon (Date of cause, complete address, metres & bounds-schedule, reasons-grounds): due service is mandatory requirement. All material facts to be stated but not the evidence by which they are to be proved. Personal (person or persons) or as per CPC.
  - Response by Party in person or Power of Attorney (DC) by recognized agent or qualified legal rep
  - Reply (by respondent/s or Defendants, point wise to the plaint/petition/report), written statement of defense along with documents in possession or not in possession. All admissions & denials of facts should be specific-precise and not evasive-ambiguous.
  - Rejoinder (by prosecution/plaintiff, point wise to the reply)
-

# Court work : stages

- Trial contd...

- A copy of Reply and Rejoinder circulated vice versa.
- Examination of parties by court (find matters of dispute)
- Plaint & WSD constitute the Pleadings
- If allegations of fact in plaint not denied by defence: Admitted
- Framing of issues (speaking order with reasons, Points of determination based on plaint, reply and rejoinder. “*Material propositions of law & facts which are in controversy between parties*”. Fix burden of proof. Follow IEA) If required fresh reply and rejoinder be got filed.
- Admission of additional document at a later stage- with caution & reasons

# Court work : stages

- Trial contd...

- Plaintiff's Evidence: Oral(witness), Documentary, Real (lead evidence on issues for plaintiff)
- Defendant,s Evidence: Oral(witness), Documentary, Real (lead evidence on issues for defence)
- Witness: Examination-in-chief, Cross-Exam (leading questions), Re-Exam
- Evidence: Direct or Circumstantial
- Expert Evidence
- Document: Primary, Secondary, Public
- Preponderance of evidence allowed in Civil cases. (not beyond reasonable doubt: criminal cases)
- Arguments (written or verbal) – no fresh grounds other than those in plaint-reply-rejoinder.
- Decision (based on pleadings)

# Court work : stages

- Adjournment not without sufficient & compelling ground is made- due application of mind
  - Witness in attendance must be examined; sufficient opportunity for cross-examination, re-examination if necessary and examination by court
  - Statement of witness- narrative or Que-Ans (IEA)
  - Contempt to be dealt firmly
  - Ordersheet to be written by PO himself
    - ❖ Date
    - ❖ Called for
    - ❖ Parties present
    - ❖ Document admitted or rejected in evidence & marked as exhibit
    - ❖ Proceedings
    - ❖ Who asked for adjournment & why
    - ❖ Next date of hearing & purpose
    - ❖ Signature and seal
-

# *Court work : stages*

- Documents filed be recorded on order sheet.
- Document admitted or rejected in evidence & marked as exhibit (P-1,2,3 or D-1,2,3)
- Summons (reason, date): through collectors if outside jurisdiction/  
Registered post
- Maintenance of court diary
- Cause list is duly maintained and published timely
- Dates of hearing are fixed by PO himself
- Afford reasonable opportunity to all parties of being heard
- Cases are brought to trail as per age
- Orders involving judicial determination are recorded by PO himself, no delegation
- Interlocutory orders (temp.) during pendency of suit

# *Court work : stages*

- *Post-trial*

- Decision on merit on each issue
- On the same date as fixed
- No long dates for decisions
- Not on the back of the respondent
- Final order to be mandatorily communicated to all; copying, register
- Operative part of judgement to be pronounced in open court in local language
- Speaking one, points of determination, appreciation of evidence, arguments advanced by parties, reasons for not agreeing a contention
- Records of decided cases be consigned to the Record room after expiry of prescribed period

# *Court work: Final order*

- Name of the court, Name of PO, u/s, case no., Title of case
- Date of institution, Date of Decision
- Cause of initiation
- Brief facts, Show cause notice, Service of summons, Hearings & Evidence
- Points of determination/ Issues, Findings
- Detailed, Well-reasoned, Speaking order based on facts & evidence during proceedings; not cryptic and based on conjectures & surmises.
- [Final order](#)

# *Court work: Essentials*

- Stamps & seals
- Summons are served and the service returns submitted to the court by the date fixed for the purpose
- Register of dates of hearing
- All cases listed for hearing on a particular day are actually taken up for hearing
- Witnesses in attendance should be examined (Medical/ Prisoners)
- TA & other allowances to witnesses without any delay, as per rules
- PW's given attendance roll
- Court to note when each party has closed his/her case. No more witness/evidence to produce



# *Court work: Essentials*

- Copies of documents applied for are supplied promptly to entitled parties
- All receipts in form of cash money entered in prescribed register & deposited into govt treasury, promptly.
- Money paid in pursuance to a court order is recvd by duly authorized officer & valid receipt is given
- No harassment of litigants/witnesses by court staff
- Funds for labour for effecting orders
- Ex-post facto proceedings (after due service of summons)

# CASE LAWS



CASE NO.: Special Leave Petition (Crl.) 233 of 2000 in Supreme Court of India  
STATE OF KARNATAKA

Vs.

K. KRISHNAN

DATE OF JUDGMENT: 17/08/2000

JUDGMENT: SETHI, J.

Leave granted.

- any forest produce and the tools, boats, vehicles, cattles, etc., used in the commission of the forest offence, which are liable to forfeiture, **should not be released.**
- We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any.
- No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come.



CRIMINAL APPEAL NO. 1834 OF 2008 (Arising out of SLP (Crl.) No. 3003 of 2006)

Mohd. Ashique ...Appellant

Versus

State of Maharashtra ...Respondent JUDGMENT

Dr. ARIJIT PASAYAT, J. 18.11.2008



- Statutes which provide for protection of forest to maintain ecological balance should receive liberal construction at the hands of the superior Courts.

Interpretive exercise of such power should be in consonance with the provisions of such statutes not only having regard to the principle of purposive construction so as to give effect to the aim and object of the legislature; keeping the principles contained in **Articles 48-A and 51-A (g)** of the Constitution of India in mind. The provisions for confiscation have been made as a deterrent object so that felling of trees and deforestation is not made."

- However, we make it clear that we have not expressed any opinion on the merits of the case which is stated to be pending. However, the truck which has been taken by the respondent pursuant to the High Court's order shall be sold in public auction and the money shall be deposited by the concerned Forest Officer in fixed deposit account. Whether the money is to be confiscated or to be returned to the appellant shall be decided in the proceedings.

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
CRL.A.No. 556 of 2001()

STATE OF KERALA ... Petitioner

Vs

BHARATH BHOOSHAN AGARWAL ... Respondent

The Hon'ble MR. Justice V.K.MOHANAN

Dated : 19/12/2008



- In the light of the above discussion, regarding the scope of **Section 69** of the Forest Act and the constitutional obligation of State to protect and preserve the forest, the lower appellate court was not justified in interfering with the order of conviction and the sentence.

- Having regard to the above statutory provisions and in view of the above decisions, I am of the view that the lower appellate court has miserably failed to realise the legislative intention behind the very enactment of the Forest Act, particularly Section 69 of the Forest Act, and thus the order of acquittal was passed upon a wrong understanding of the scope of Section 69 of the Act.

AIR 2004 SC 1851, 2004 (2) ALD Cri 258

**Bench:** D Raju, S Sinha

State Of West Bengal And Ors.

vs

Sujit Kumar Rana

on 20/1/2004

- The upshot of our aforementioned discussion is that once a confiscation proceeding is initiated the jurisdiction of the criminal court in terms of Section 59-G of the Act being barred, the High Court also cannot exercise its jurisdiction under Section 482 of the Code of Criminal Procedure for interim release of the property. The High Court can exercise such a power only in exercise of its power of judicial review.





CASE NO.:Appeal (crl.) 1228 of 1997

PETITIONER:State of Himachal Pradesh VS. RESPONDENT:Dhanwant Singh DATE OF JUDGMENT: 12/02/2004

BENCH:DORAISWAMY RAJU & ARIJIT PASAYAT.

Though in the light of the specific stipulation in Section 59 (3), not only mere finality has been accorded to the order passed under Section 59(2) but the legislative mandate also further stated that "shall not be questioned in any Court of Law", it may not be permissible to invoke Section 482 of the Code, the same cannot be an impediment to deal with the revision as one under Article 227 of the Constitution of India.

Accordingly, we set aside the judgment of the High Court so far as it relates to non-exercise of powers available under Article 227 of the Constitution. The High Court shall entertain the proceedings as a petition under Article 227 of the Constitution of India and **consider the question in the background of stand taken by the State about applicability of Section 69 of the Act**, and record its findings objectively on merits and in accordance with law after hearing both parties.



**It doesn't matter how many resources you have  
if you don't know how to use them, they will never be enough**





*Judicial  
activism*

**Is intervention (activism) of Supreme Court/NGT indicative of inefficiency of forest/environment department (executive)?**

**OR**

**failure of legislature?**

**OR**

**both?**

**OR**

**None of the above?**

**OR**

**Judiciary as *Amicus* environment ...filling the void?**

**OR All of us??**

---

*(Sariska case). Tarun Bharat Sangh, Alwar  
v Union of India Writ Petition (Civil) No. 509  
of 1991, SC*

*“The litigation concerns environment. A  
great American Judge emphasising the  
imperative issue of environment said that he  
placed Government above big business,  
individual liberty above Government and  
environment above all..... The issues of  
environment must and shall receive the  
highest attention from this court”.*

# *Indian Council for Enviro-Legal Action v. Union of India (1996) 5 SCC 281*

“If the mere enactment of the laws relating to protection of environment was to ensure a clean and pollution free environment, then **India would, perhaps, be the least polluted country in the world. But this is not so.**

There are stated to be over 200 Central and State statutes which have at least some concern with environment protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which on the contrary, has increased over the years.

The courts are ill – equipped and it is not their function to see day to day enforcement of law. This is an executive function which it is bound to discharge .... The effort of this court while dealing with PILs relating to environmental issues, is to see that the executive authorities take steps for implementation and enforcement of law.”

# *Fundamental Norms (Judiciary)*

- **Article 21: Right to wholesome environment within Right to life and personal liberty**
    - Dehradun quarrying case AIR **1988** SC 2187
- ↓
- Subhash Kumar vs State of Bihar AIR **1991** SC 420,424
- ↓
- Virender Gaur vs State of Haryana AIR **1995**(2) SCC 577
- Similar view by High Courts of AP (T.Damodar Rao v The Special Officer, Municipal Corporation of Hyderabad AIR 1987 AP 11,181), HP ( Kinkri Devi v State of HP AIR 1988 HP 4,9), MP, Rajasthan (L.K. Koolwal v State of Rajasthan AIR 1988 RAJ 2,4), Kerala (Madhavi v Tilakan 1988 (2) KER.L.T.z30, z31), Karnataka (V.Lakshmipathy v State of Karnataka AIR 1994 KAR 57,67)

# *Fundamental Norms (Judiciary)*

## □ **Article 21: Right to livelihood** within Right to life

Olga Tellis v Bombay Municipal Corporation AIR **1986** SC 180; Any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life.

Banawasi Seva Ashram v State of UP AIR **1987** SC 34; The tribals for generations had been using jungles around for collecting the requirements for their livelihood...

## □ **Article 21: Right to life includes Right to intergenerational equity**

State of HP v Ganesh Wood Products AIR **1996** SC 149,159,163 . Court held that decision making authority must give due weight and regard to ecological factors and environmental policy; obligation of the present generation to preserve natural resources for future generations

# *Fundamental Norms (Judiciary)*

- **Article 14 Right to equality.** Strikes at arbitrariness
- **Article 19(1)(g) Right to carry on any occupation, trade or business.** vis stringent norms and public health
- **Envntal laws are obligatory to be enforced**
- **“Polluter pays principle”**
- **“Precautionary principle”**
- **“Sustainable development”**
- **Statutes interpretation along with Policies (FCA in view of NFP,1988)**

# *Failure of Legislative ?*

**Legislative enacted the best laws.... Not failed.**

- *"Beneficient legislation"* advances DPSP, NFP
- To implement international agreements. Invoking Article 253 (BDA, 2002; EPA, 1986)
- State subjects and residual subjects. Invoking Article 252 on the basis of enabling resolutions of states. Central control.
- Movement in 1990's from judge-imposed penalties to administrative enforcements (EPA, 1986).
- *"Enabling laws"*. Delegates to the executive powers to frame necessary rules and regulations (e.g. Coast, Ecomark under EPA, 1986)
- Citizen's initiative in envt laws in 1990's.



# *Legislative provisions*

1. The Indian Forest Act,1927
2. The Mines and Minerals (regulation and development) act,1957
3. The Wildlife (Protection) Act, 1972; 1982 and 1991 amendments
4. The Water(Prevention and control of pollution) Act, 1974; 1988 amendment
5. The Water(Prevention and control of pollution) Cess Act, 1977
6. The Forest (Conservation) Act,1980
7. The Air (Prevention and control of pollution) Act, 1981; 1987 amendment
8. The Environment (Protection) Act, 1986
9. The Public Liability Insurance Act, 1991 etc.....

# *Delegated Legislation under EPA*

- Environment (Protection) Rules, 1986
- Noise Pollution (Regulation and Control) Rules, Feb 2000
- The Hazardous wastes (Management and Handling) Rules, July 1989
- The Manufacture, Storage and Import of Hazardous Chemicals Rules, Nov 1989
- Chemical Accidents (Emergency, Planning, Preparedness and Response) Rules, Aug 1996
- Bio-medical waste (Management and Handling) Rules, July 1998
- EIA Regulations, Jan 1994 (29 projects/industries)
- Coastal Zone Regulations, Feb 1991 (500mtrs)
- Ecomark labelling, 1991
- Recycled Plastic Manufacture and Usage Rules, 1999

# *Failure of Executive ?*

Executive failed/ faltered due to :-

- Lack of professionalism
- Political interference.....not too distant elections favour *status quoism*
- Lack of will to confront entrenched commercial interests
- lack of budgetary support
- lack of legal resources
- Inadequate technical staff and infrastructure.
- Let judiciary bell the cat
- Trivial penalties, no deterrence
- Corruption, Subjectivity,

# *Characteristics of Judiciary ?*

- “*Purposive interpretation*” advances the purpose which the legislature had in mind (even DPSP & NFP)
- Highly structured
- Judges are non-specialists, so have broader vision
- Are insulated from political processes, so can take unpopular decisions which are beneficial in the long run
- Respond to specific cases and can rarely effect systemic or society-wide sectoral changes
- In dealing with specialized field of nature conservation, the courts have resorted to piecemeal judgments
- Compels project proponents to bear more cost on pollution abatement
- Interpret International conventions & judgements

# *Judiciary: Green roles*

- **Public Educator**

MC Mehta vs UoI AIR1992 SC 382 Court direction to broadcast ecology programmes on electronic media and include environmental study in school and college curricula

- **Policy Maker**

MC Mehta vs UoI AIR1996(2) scale92 SC Court directions for the introduction of unleaded petrol vehicles

- **Super-administrator**

MC Mehta vs UoI AIR1992(Supp.2) SCC 633 Court directions in the Ganga Pollution Case to riparian industries, tanneries and distilleries regarding abatement of pollution

- **Tax man & Finances**

Court imposed penalties, NPV, Ecological classes, CAMPA

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# *Conservation Through Law*

## Supreme Court in 80's and 90's –

- ❖ Concentrated on issues of environmental pollution – Ganga Pollution case, Taj Trapezium.
- ❖ Dev of envtl. Law in 1990's is a story of India's judiciary responding to the complaints of its citizens against envtl. degradation and administrative sloth.
- ❖ High court at Mumbai, Kolkatta, Chennai and Gujarat have designated "green bench".
- ❖ T.N. Godavarman Case in 1996 – The court dealt with the issues related to Forest Conservation/management in a systemetic manner.
- ❖ Godavarman ushered in the second wave of environmental litigation in the country. The writ petition filed by Environmental Awareness Forum (w.p.171 of 1995) and the T.N. Godavarman Thirumulpad (w.p.202 of 1995) under Article 32 of Consti on limited and restricted issue of forest conservation was extended by the Supreme Court on 02.09.1996.

- ❖ T.N. Godavarman filed a petition in the Supreme Court to protect Nilgiris Forest land from deforestation.
- ❖ T.N. Godavarman Thirumulpad vs Union of India used as an umbrella for filling numerous Interventions/ Applications by expanding the petition to reform the entire forest policy.
- ❖ The case came to be popularly known as Godavarman case and comes up for hearing every Friday before the bench headed by the Chief Justice of India.
- ❖ The court assumed the roles of policy maker, administrator of policy and interpreter of law and for the first time addressed a range of issues related to Policy/ enforcement etc on a continuous basis.

- ❖ The court used its Writ Jurisdiction in interpreting the Forest (Conservation) Act, 1980 and vast assumption of powers concerning environmental laws has no past precedence in India nor in other developing countries.
  - ❖ To maintain control, the court excluded the Jurisdiction of all lower courts in matters concerning seized timber, choosing to micro manage such proceedings it self.
  - ❖ Assumed policing role of State Authorities by constituting its own committees to investigate and report on violations. On 12.12.1996 the court issued one of the most significant decisions on an issue related to Conservation of Forests. BENCH: J.S. VERMA, B.N. KIRPAL
-

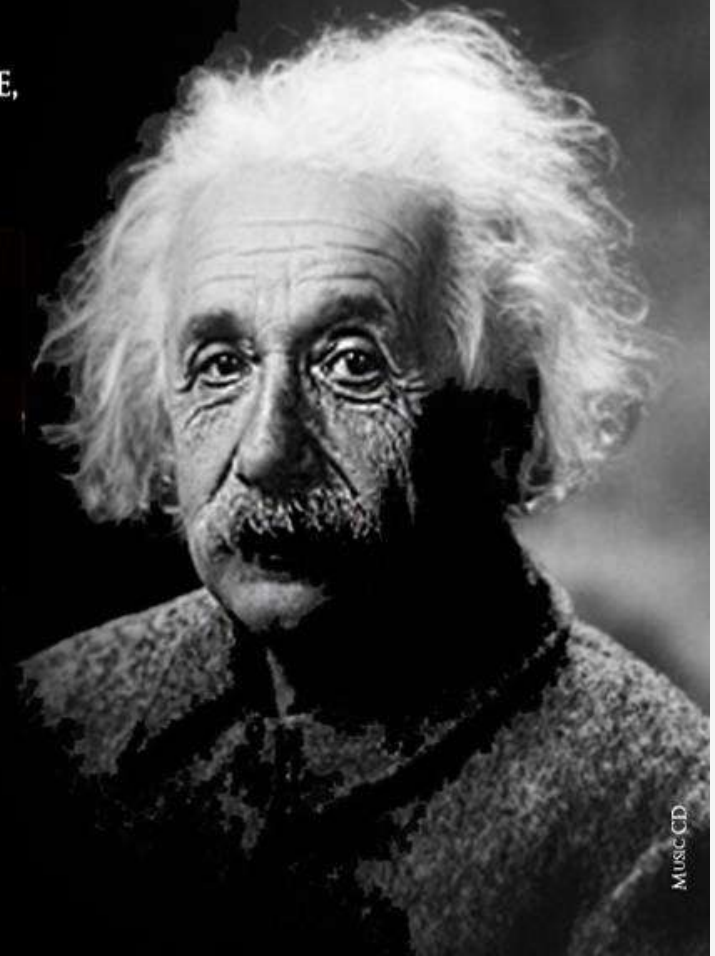


# *Continuing Mandamus*

- Micro managing the implementation of its orders by keeping the case open.
- Under the constitution, the writ of mandamus is restricted to compelling action with reference to previously existing and clearly defined duties. It is not a creative writ under the garb of which the court can assume the role of law making and policy formulation.

"EVERYTHING SHOULD BE AS SIMPLE AS POSSIBLE,  
BUT NOT SIMPLER."

- ALBERT EINSTEIN



# *Kudremukh National Park Case*

The court stopped mining by KIOCL and gave 5 years to wind up the operations and imposed series of conditions. The court observed :-

*"Before we part with the case, we note with concern that the State and the Central Government were not very consistent in their approach about the period for which the activities could be permitted. Reasons have been highlighted to justify the somersault. Whatever be the justification, it was but imperative that due application of mind should have been made before taking a particular stand and not to change colour like chameleon, and that too not infrequently."*

## The court also emphasised the need to implement the provisions of the Convention on Biological Diversity and observed:-

“Duty is cast upon the Government under Article 21 of the Constitution of India to protect the environment and the two salutary principles which govern the law of the environment are; (i) the principles of sustainable development and (ii) the precautionary principle. It needs to be highlighted that our country has acceded to the Convention on Biological Diversity and therefore, it has to implement the same. As was observed by this court in *Vishaka v. State of Rajasthan*, [1997 (6) SCC 241], **in the absence of any inconsistency between the domestic law and the international conventions, the rule of judicial construction is that regard must be had to international convention and norms even in constructing the domestic law.** It is, therefore, necessary for the government to keep in view the international obligations while exercising discretionary powers under the Conservation Act unless there are compelling reasons to depart there from.”

- Mining in and around Sariska Tiger reserve stopped.
- In Jamua Ramghar Wildlife Sanctuary the mining was ordered to be stopped.
- In Raptapani Wildlife Sanctuary, the court permitted the use of the forest land subject to deposit of 5% of the estimated cost of the project i.e. Rs.45.35 crores towards protection and Conservation of the Sanctuary against diversion of 9.8ha of forest land from the Sanctuary.
- In Rajaji National Park the court ordered Power Grid Corporation to deposit Rs.50.00 crores for conservation.

- Railways restrained from using wooden sleepers. Railway may use wooden sleepers manufactured only from imported wood from other countries. (IA 589, 680, 18.2.2002 SC)
- S.C. on recommendation of CEC dt 28<sup>th</sup> October 2003 directed MOEF to ensure that no mining lease inside any N.P or S is approved under F.C.Act without obtaining specific permission from S.C. (IA 993, 4.2.2005 SC)

# *Lafarge Order*

I.A. NOS. 1868, 2091, 2225-2227, 2380, 2568 and 2937

IN

WRIT PETITION (C) No. 202 OF 1995

**Lafarge Umiam Mining Pvt. Ltd. ... Applicant**

T.N. Godavarman Thirumulpad ... Petitioner(s)

versus

Union of India & Ors. ... Respondent(s)

CJI (S. H. Kapadia) J.(Aftab Alam) J.(K.S. Panicker Radhakrishnan)

July 06, 2011

- Constitutional “*doctrine of proportionality*” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review.
- Doctrine of “*margin of appreciation*”
- Various facets of the word “environment”
- Word “development” is a relative term.
- The “polluter pays principle”
- The “intergenerational equity principle”  
Fundamental rights of the unborn.



*Guidelines to be followed in future cases*

- 1) Time has come for this Court to declare and we hereby declare that **the National Forest Policy, 1988** which lays down far-reaching principles must necessarily govern the grant of permissions under Section 2 of the Forest (Conservation) Act, 1980 as the same provides the road map to ecological protection and improvement under the Environment (Protection) Act, 1986.

# *Noida Park Order*

(I.A. NOS.2609-2610 OF 2009 with I.A. NOS.2896/10 & 2900/10 IN I.A. NOS.2609-2610 OF

2009 and I.A. NO.2928/10 IN I.A. NOS.2609-2610/09

IN WRIT PETITION (CIVIL) NO.202 OF 1995

IN RE.: CONSTRUCTION OF PARK AT NOIDA NEAR OKHLA BIRD  
SANCTUARY

ANAND ARYA & ANR.

.....APPLICANTS/

T.N. GODAVARMAN THIRUMULPAD PETITIONER

Versus

UNION OF INDIA & ORS.

.....RESPONDENTS JUDGMENT: AFTAB

ALAM, J.

Date: 3<sup>rd</sup> Dec.2010

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*Kunal Satyarthi, IFS*

# *Kaziranga NP Order (NGT)*

BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI (PRINCIPAL BENCH)

APPLICATION NO. 38/2011

• IN THE MATTER OF

1. Rohit Choudhury, Golaghat, Assam

.... APPELLANT

**Versus**

1. Union of India & ors.

..... RESPONDENTS

PRESENT: Justice A.S. Naidu (Acting Chairperson)

Dr. G.K. Pandey (Expert Member)

Dated 7th September, 2012

# *Tiger Tourism Case*

- Petition(s) for Special Leave to Appeal (Civil) No(s).21339/2011
- (From the judgement and order dated 19/01/2011 in WP No.12351/2010 of The HIGH COURT OF M.P AT JABALPUR)

AJAY DUBEY

Petitioner(s)

VERSUS

NATIONAL TIGER CONSERVATION AUTH.& ORS.

Respondent(s)

CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

[Date: 24/07/2012](#)

# The National Green Tribunal Act, 2010

An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

Stockholm in June, 1972,

*Rio de Janeiro* in June, 1992,

AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution;

*For further curiosity, if any:-*

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