



Detection, Investigation and Prosecution of Wildlife Offences: Procedure and Legal Issues

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□The Indian Forest Act , 1927

□Forest Officer

"The plantation watcher is a "forest officer" within the meaning of Section 2(2) of the Indian Forest Act".

(Abdul Aziz Vs. Union Territory of Tripura, (1963))

□Offences under IFA

- Related to Reserved Forests , Protected Forests
- Forest-Produce in Transit
- Altering boundary marks
- Non-assistance to Forest-officers and Police-officers

Relevant Provisions of IPC applicable in Forest/WL Cases.....

□ "Public Servant"(Sec.21)

(Read with sec.26, 52, 72, 73 of The Indian Forest Act,1927 and 60 of WPA,1972)

□ in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government.

□ Section 74 of The Indian Forest Act,1927 and section 60 of The Wildlife (protection) Act,1972 provides protection for the acts done in good faith by forest officer.

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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)

Definitions

Wild life-

includes any animal, aquatic or land vegetation which forms part of any habitat.

Wild Animal-

any animal found wild in nature and specified in Schedule-I-II-III or IV.

Captive Animal-

any animal which is specified in Schedule-I,II,III or IV, which is captured/kept/bred in captivity.

◆ Hunting (Sec 9)

- Killing or poisoning of any wild animal or captive animal and every attempt to do so.
- Capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so.
- injuring or destroying or taking any part of the body of any such animal, or in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles.

Definitions contd.....

Protected Area-

means a National Park, a sanctuary, a conservation reserve or a community reserve notified under sections 18, 35, 36A and 36C of the Act;

Whether Tiger Reserve is a PA as per WPA ??

"Wildlife" *Vis a Vis* "Wild Animal" under
WLPA, 1972 !!!

□ Prevention and Detection of offences

- Entry, Search, Arrest, Detention by CWLW/AO/FO/PO(sub.Insp.) -Sec 50(1)

- Custody of wild animal /Article by ACF-50(3)

"The forest officer can give only the captive animal or wild animals and not vehicle for custody" (Ayyub Vs. State of Rajasthan, 2003 CRI, L. J. 2954)

- Detained person to be taken in front of Magistrate (intimation to CWLW/AO).

"Officers apart from Police Officer are given specific powers for the purpose of prevention and detection of offence under act"- (Moti Lal Vs. Central Bureau of Investigation (CBI) and Others, Supreme Court, 2002 CRI, L.J. 2060).

Power of using fire arms in self defense.. *section 96 to 106 of IPC.*

- forest officials can open fire for protecting forest property including wildlife and for protecting the lives of forest officials.
- Not liable for criminal prosecution..
- Subject to inquiry by an officer authorized by such state governments.
- Use their fire arms inside the RF only and not to disperse an unlawful assembly.
- Applicable in UK, TN states etc.

◆ Investigation

• Who can Investigate under WPA ?

ACF or AO officer under section 50(1)....

• Powers given to certain officer under sec. 50(1) for this purpose..

Though, officer of the rank, ACF and above are given special powers...

• search warrant, enforce attendance, receive & record evidence by ACF -50(8).

"Any evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in presence of the accused person-50(9)."

#Inserted by amendment Act 44 of 1991.

Why do we need help of General Laws ? Who can Investigate under WPA..?

- The Supreme Court held that S.50 of the Wild Life Act is not complete Code and, therefore, CBI would also have jurisdiction to investigate the offences under the said Act." Officers apart from Police Officer are given specific powers for the purpose of prevention and detection of offence under act"
- 'police officer' is not excluded for the purpose of investigation including inspection, search and seizure of the offending articles
- **(Moti Lal Vs. CBI, SC, 2002 CRI. L.J. 2060)**

Entry and Search

- may require any such person to produce for inspection captive animal, wild animal, animal article, meat, licence, permit or any other document
- conduct search and inquiry by stopping vehicle and entering upon and searching any premises/land.
- authorised officer may seize captive animal, wild animal, animal article, meat specified plant or part or derivative and any trap, tool, vehicle, vessel, or weapon used for committing any such offence .

Search (Person or Premises) ...

- Section 50 of The Wild Life (Protection) Act, 1972 also gives the powers of entry, search, arrest and detention to the forest officers against any offence under this Act.
- The presence of the witness is not required while 'searching a person' under section 51 of CrPC. On the contrary, while 'searching a premises' under section 100 of CrPC it is required to have the presence of a person.
State of Bihar Vs. Kapil AIR 1969 SC 53.

Search with a Warrant

- ✓ ACF/AD to issue a search warrant under clause (a) of sub Section 50(8) of Wild Life (Protection) Act, 1972 for making investigations.

power to issue a search warrant by the officers authorized under the Wild Life (Protection) Act, 1972 is similar to that conferred upon Magistrates of First Class and Courts under Sections 93 to 98 of CrPC. (**Moti Lal Vs. CBI (SC, 2002 CRI. L.J. 2060)**)

Arrest

- 'Arrest' is defined as the apprehension or detention of a person or stopping, seizing or apprehending him and restraining his liberty in order to bring him to book for an alleged or suspected crime, or to prevent the commission of a criminal offence.
- Person arrested to be informed of grounds of arrest and of right to bail (Sec 50 of CrP.C).
- Person arrested not to be detained for more than twenty-four hours (Sec 57).
- Examination of accused by Regd. Medical Practitioner on the request of the police officer and the arrested person (sec 53,54)

Arrest under WPA

- Section 50(1) empowers the following persons to arrest in relation to an offence under the Wild Life (Protection) Act, 1972
 - The Director of Wild Life Preservation or any other officer authorized by him on the matter.
 - CWLW or the authorised officer
 - Any forest officer
 - Any police officer not below the rank of sub-inspector.
- Guidelines to be followed during the Arrest, Custody and Detention (*Joginder Kumar Vs. State of Uttar Pradesh (1994) 2 Crimes 106 (SC)*)

Arrest under IFA

- Section 64(1) of the IFA empowers any forest officer to arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence without orders from a Magistrate and without a warrant.
- Guidelines to be followed during the Arrest, Custody and Detention (*Joginder Kumar Vs. State of Uttar Pradesh (1994) 2 Crimes 106 (SC)*)

Cognizance in case of forest and wildlife offense..

As arrest and detention is without warrant, all offences under the Wild Life (protection) Act 1972 can be treated as cognizable offence.

D.K. Basu Vs. State of West Bengal, 1997 SCCI Page 371

- accurate, visible and clear identification and name tags of police personnel carrying out the arrest and handling the interrogation
- memo of arrest at the time of arrest and such memo shall be attested by at least one witness.
- An arrestee entitled to have one friend or relative or other person known to him or having interest in his welfare being informed.
- The time, place of arrest and venue of custody of an arrestee must be notified by the police to friend/relative/ Legal Aid Org.

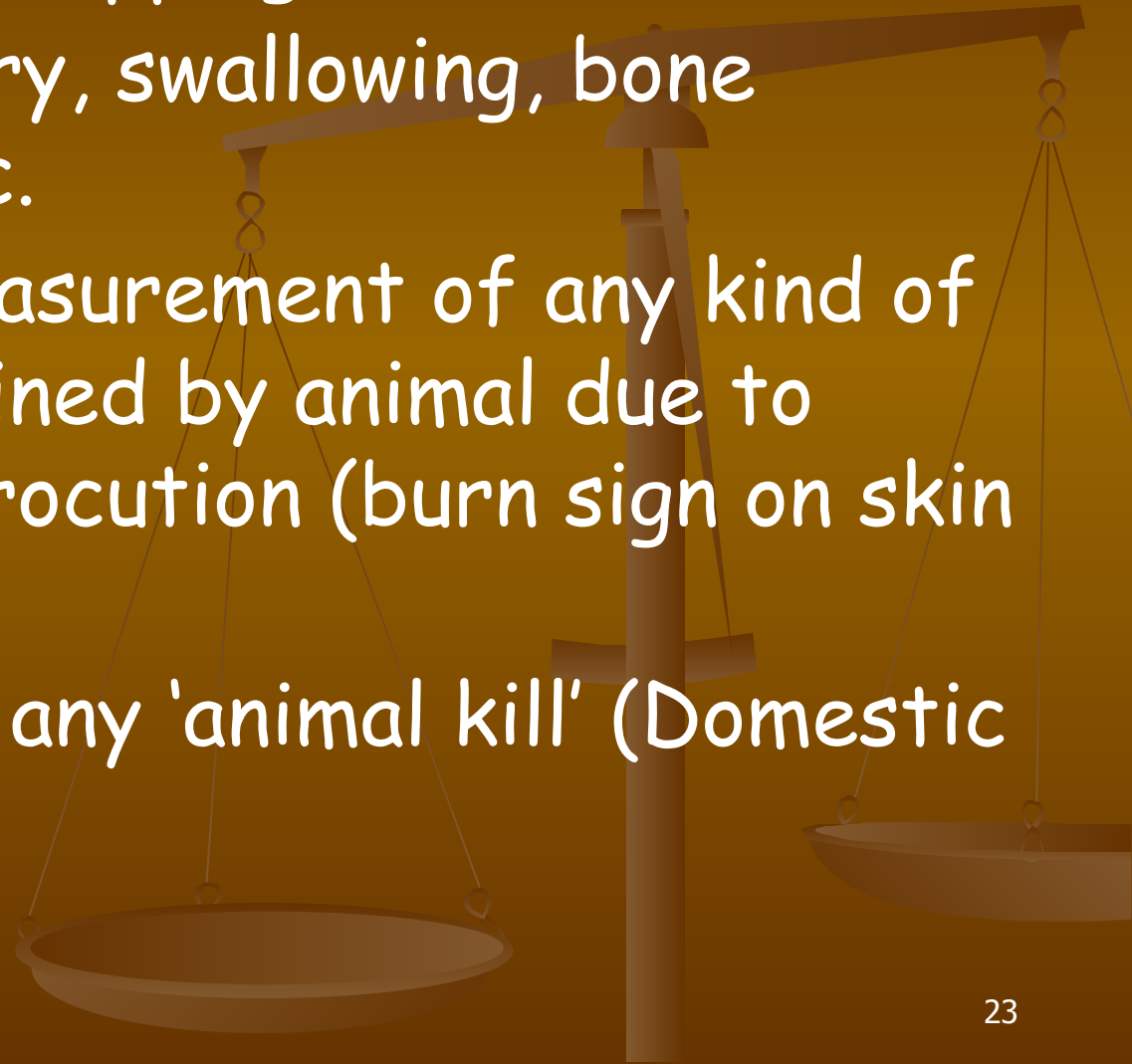
Contd.....

- "*Inspection Memo*" -examination of major injuries, if any present on his/her body at the time of his arrest must be recorded.
- medical examination by a trained doctor every 48 hours during his detention in custody.
- arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- within 12 hours of effecting the arrest , Information and display at the police control room at Disstt, and State HQ.

Site investigation procedures

- Immediate information to CWLW/ higher officials
- Area to be cordoned of (6-7 m)
- Detailed search of area for signs of human, vehicle, traps, empty cartridges.
- Photographs/ Video
- Rough sketch of area (Nazri Naksha)
- Measurements of animal body/ Parts (horns/ antlers/ elephant tail hair/ claws etc)

- Signs of infighting, blood stains, urine, scat, dung, droppings etc.
- sign of injury, swallowing, bone fracture etc.
- Size and measurement of any kind of injury sustained by animal due to traps, electrocution (burn sign on skin and hairs)
- presence of any 'animal kill' (Domestic or Wild)
- Why...?



Collection of animal tissue samples and animal body parts

- Hand gloves (or inverted plastic bags) and face masks
- knife razor, blade or scissor sterilized with 70% alcohol and dried out should be used
- meat/tissue samples may be collected from thigh or breast muscles of carcass
- vial is half filled with the silica gel and a layer of filter paper is placed between sample and silica gel.
- Samples such as fecal matter, bone, hair follicles and skin tissues can be collected for Genetic (DNA) Analysis

Procedure to be followed during seizure

- Things seized must be produced before a Magistrate with intimation to CWLW/Authorised Officer -50(4)
- No release by forest officer - sec 50(2).
- May grant custody of Wild Animal Seized-Sec 50(3A).
- Property seized under the provisions of Section 39 of the Act does not automatically become government property. (*Madhukar Rao Vs. State of M.P (2000) 1 Jab LJ 304*).
- Liberal approach should not be adopted in the matters with respect to the property (*State of Karnataka Vs. K Krishnan, AIR 2000 SC 2729; 2000 (7) SCC 80; 2000 SCC (Cri) 1289; JT 2000(9) SC 356*)

Disposal of property under 451/452 and 457 of Cr.P.C

- Section 457 of the Cr.P.C applies when the seizure of property by a police officer is reported to a Magistrate (and not produced) under the provisions of the code.
- There is a marked distinction between police officers and the officials under the Act as is evident from sub-section (1) of Section 50 of the 1972 Act.
- In view of the clear language of sub-section (1) of Section 50, Section 457 of the code has no application, but Section 451 of the code that relates to the order for custody and disposal of the property pending trial in certain cases is applicable.

(State of U.P & ANR Vs. Lalloo Singh, Criminal Appeal No. 963 of 2001, SC, (decided on 20.7.2007) Nainital Criminal Cases, Page 839-845)

- Sec 457 Cr.P.C has no application in the cases related to disposal of property seized under WPA. (*State of U.P & ANR Vs. Lalloo Singh, Criminal Appeal No. 963 of 2001, SC, (decided on 20.7.2007) Nainital Criminal Cases, Page 839-845*)
- If the offence has been compounded the vehicle, rifles etc. should be released (*J.K. Johnson & others Vs. Principal Chief Conservator of Forests, Hyderabad, 2006 CRI. L.J.1480*)
- Forest Officer can neither confiscate nor release the vehicle. the seized property has to be dealt with by the Magistrate under Section 50(4) of the 1972 Act. (*PCCF Vs. J. K. Johnson & others CIVIL APPEAL NO. 2534 OF 2011, 17 Oct, 2011*)

Confession and Proved Confession

- No confession made to a police officer, shall be proved as against a person accused of any offence. (Sec 25)
- Consideration of proved confession affecting person making it and others jointly under trial for same offence (Sec.30)

Forest Officer is not a Police Officer.....

Evidence Act 1872, Sections 25 and 30-Confession-Whether admissible in evidence-Confessional statement before Forest Officer-Held, such statement not admission under Section 25 of Evidence Act as Forest Officer is not police Officer.

**[Dr. Emerico D'Souza Vs. State, 1995
FLT 72(Bom)].**

Embargo contained in sec 25 is not applicable

- such a **confession is not open to doubt** since embargo contained in Section 25 of the Evidence Act is not applicable since confession has been made before a forest officer, who is not a police officer.
- it would be pedantic to insist on the **rule of corroboration** by independent evidence to prove offence relating to forest and wild life. **There is no rule of law that no evidence should be relied unless there is corroboration.**
- It was also held that there is no legal requirement, whenever a confession is made in writing, that another witness must also attest it.

***(Forest Range Officer Vs. Aboobacker and another
1990 F.L.T. 22 Kerala High Court)***

Evidence recorded /Confession to Forest Officer.....

- ✓ A statement made by an accused person before an **officer who is not a Magistrate** or a Judicial Officer, amounting to a confession, is an **extra judicial confession** and there being nothing in Section 72(1)(d) and Section 72(2) of the Act which would prevent its use in a subsequent trial of the maker along with other accused persons, the **statement would be admissible in evidence** against the maker as an extra-judicial confession and against the co-accused implicated under Section 30 of the Evidence Act.

[State Vs.. Bankulal Gokullal Shah, 1955 NUC (Bom) 4492]

Extra Judicial Confession...

There is no absolute rule that an extra judicial confession can never be the basis of a conviction, although ordinarily an extra judicial confession should be corroborated by some other material.....

In the present case, the extra judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act.

(Sansar Chand Vs. State of Rajasthan, CRIMINAL APPEAL NO. _2024 OF 2010 [Arising out of Special Leave Petition (Crl.) No.5599 of 2009] SC, dtd 20th Oct. 2010)

Remand

- A remand is an authorized detention by an order of a Magistrate. Remand can be judicial or Police or any other enforcement agency.
- The procedure for the remand is given in Section 167 of the CrPC During an investigation i.e. when an investigation cannot be completed in 24 hours while procedure to be followed regarding the remand during a stage between cognizance and trial is given in section 309.

Remand

As the powers and duties of state have increased and are increasing manifold, various Acts dealing with Customs, Excise, Forest, Taxes etc. have come to be passed and consequently the prevention, detention and investigation of offences as prescribed under those Acts have come to be entrusted to officers with different nomenclatures appropriate to the subject with reference to which they function. The honourable Court further held that the operation of section 4(2) of the Code is straightway attracted to the area of investigation, inquiry and trial of the offences under the special laws including FERA and Customs Act and consequently section 167 of the Code can be made applicable during the investigation or inquiry of an offence under the special Acts also inasmuch as there is no specific provision contrary to that excluding the operation of section 167.

In case of *Directorate of Enforcement Vs. Deepak Mahajan*,
1994 AIR 1775, 1994 SCR (1) 445, 31.01.1994

Trial of offences under the Indian penal code and other laws

Section 4 of Code of criminal procedure

All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions; but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

Cognizance of offences by Magistrates (sec.190)

- ✓ a. upon receiving a complaint of facts which constitute such offence;
- ✓ b. upon a police report of such facts;
- ✓ c. upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed

Complaint of Offences under WPA.. (Sec.55)

- Director/AO, Mem. Secy CZA & NTCA, Dir. Of a TR. , CWLW/AO, Person who has given notice < 60 days
- "Challan filed by a Station House Officer is not sufficient and a regular complaint should be filed as provided by Section 55" (Ashwini Kumar Bhardwaj Vs. State of Rajasthan, 2002 CRI. L.J. 179, (Raj.))
- "CBI (authorized officers of Delhi Special Police Establishment not below the rank of Deputy Superintendent of Police) is entitled to file a criminal complaint against accused" (Moti Lal Vs. CBI , SC, 2002 CRI. L.J. 2060)

- *Complaint filed after sanction is maintainable*

The Hon'ble Patna High Court observed that complaint was filed after obtaining sanction from the Divisional Forest Officer who was authorized to file the complaint. It may be relevant to mention here that sec.5(2) of the Wild Life (Protection) Act, 1972 also gives power to the authorities concerned to delegate his powers to any of his subordinate officer

(Jagdish Singh Vs. State of Bihar, 1985, Cr.L.J. 1314- 1316(pat.))

Appropriate court to file a complaint

- Sessions Judge (District Judge)- Any sentence
- Additional Sessions Judge- Same as Sessions Judge
- Chief Judicial/Metropolitan Magistrate (CJM)- upto 7 years and no upper limit for fine.
- Judicial Magistrate (First Class)- upto 3 years and fine not exceeding five thousand rupees.

The Period of Limitation to file a complaint under WPA

- Six months, if the offence is punishable with fine only.
- One year, if the offence is punishable with imprisonment (for a term not extending one year).
- Three years, if the offence is punishable with imprisonment for a term exceeding one year but not extending three years.
- No period of limitation is applicable, in relation to an offence punishable with imprisonment for a term exceeding three years.

Essential components of a complaint under WPA

■ Basic Information

- Details of authorized officer including name, designation, official address and proof of authorization
- before a court which has the jurisdiction
- provisions of different acts/rules/notifications empowering any officer must be mentioned
- complaint must be signed by the authorized officer/ complainant

■ Legal Provisions

- All the Acts and rules, along with the relevant amendments
- Relevant sections/provisions
- Special provisions with regard to quasi-judicial powers of forest officers
- Relevant section giving definition or interpretation of certain terms such as definition of hunting, forest officer, animal, scheduled animal
- Mention the Penalty (Why...?)
- bailable or non-bailable etc.

- **Information regarding the Offence**
 - Name, age, address of the offender.
 - Information regarding place (whether part of any national park or sanctuary etc.), time, date etc of offence.
 - Sequence of events
- **Details of animal, animal article, tools, weapons etc seized (Seizure Memo)**
 - Correct name of animal, animal article (Sc name, Schedule)
 - Details of seizure
 - Inventory of seized Articles signed by offender and witness.

- **Supporting documents and information for filing a complaint**
 - Complaint with all details of case including prayer
 - First Offence Report/Forest Offence Report (FOR)
 - Details of arrest warrant and arrest documents
 - *Panchnama* (with details made at the spot)
 - Statements/confession of the accused.
 - Statements of witnesses along with name and addresses.
 - Evidences including seizure report (search/seizure, warrant and seizure memo).

- Supporting documents and information for filing a complaint...contd...
 - Photographs of the location of offence, dead animal, animal article
 - Map of the crime spot i.e. basic map (*Nazari Naksha*) and/or survey map.
 - Details of legal status of area (*Gazette Notification*).
 - Relevant government orders (*GOs*) or Notification w.r.t delegation of powers
 - Post mortem, expert or forensic Reports etc.
 - Remand details, if remand is required.

Trial in Wildlife Offences

- A 'Trial' is a judicial proceeding which ends in conviction or acquittal
- The trial begins when the inquiry stops.
- The object of the inquiry is determination of the truth or falsehood of certain allegation
- In cognizable offence, police investigation is a normal preliminary to the accused being put up to for trial.

❖ Penalties (Sec 51)

- Offence related to Scheduled Animals / Hunting in NP/WLS or Trade in Animal Art. etc.

-3 to 7 yrs /fine > 10T

- Teasing , molesting etc. of any animal in a zoo
- <= 6 Months/ fine >10 T
- Contravention of other Provision - <= 3 Yrs./ <= 25T

❖ Conditions to apply while granting bail (Sec 51A)

The offence relating to Scheduled animals or hunting in Sanctuaries/ NP or alteration of park boundary still bailable offence ? (PP to be heard)

The Wildlife (Protection) Amendment Act , 2006

Penalties [51(1C)]

- Offence related to hunting in T.R.
- Altering boundaries of T.R.
- Imprisonment 3-7 yrs & fine 50T-2 Lacs.
- On Subsequent Conviction Not < than 7 Yrs. & fine 5 Lac. -50 Lac.
- Same punishment for abetment.

“We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect.”

Thanks....

■

Mock exercise: Wildlife Crime investigation

1. On the basis of an Information from an informer Durga (with whom the accused were settling a deal), staff of 'FRI Range' range of 'New Forest Wildlife Sanctaury' arrests three suspects Karamjit Singh alias Karma ,Md. Safi, Md. Alam with fresh tiger skin from village 'Bhagwanpur'.
2. During interrogation, it was revealed that bones and other body parts of tiger are still kept in house of Kuldeep alias Kallu of Dalanwala village who had worked as daily wager few years back in Tons beat of Sanctuary.

Prepare a case as below.....

1. detailed procedure to be followed after arrest of accused.
2. Investigate the case as per provisions of WPA.
3. Prepare a complaint under WPA to be filed with CJM court.

