

Implementation of WL Laws in India



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□ The Elephants Preservation Act, 1879 (Act No. 6 of 1879)

□ The Wild Birds Protection Act No. X of 1887.

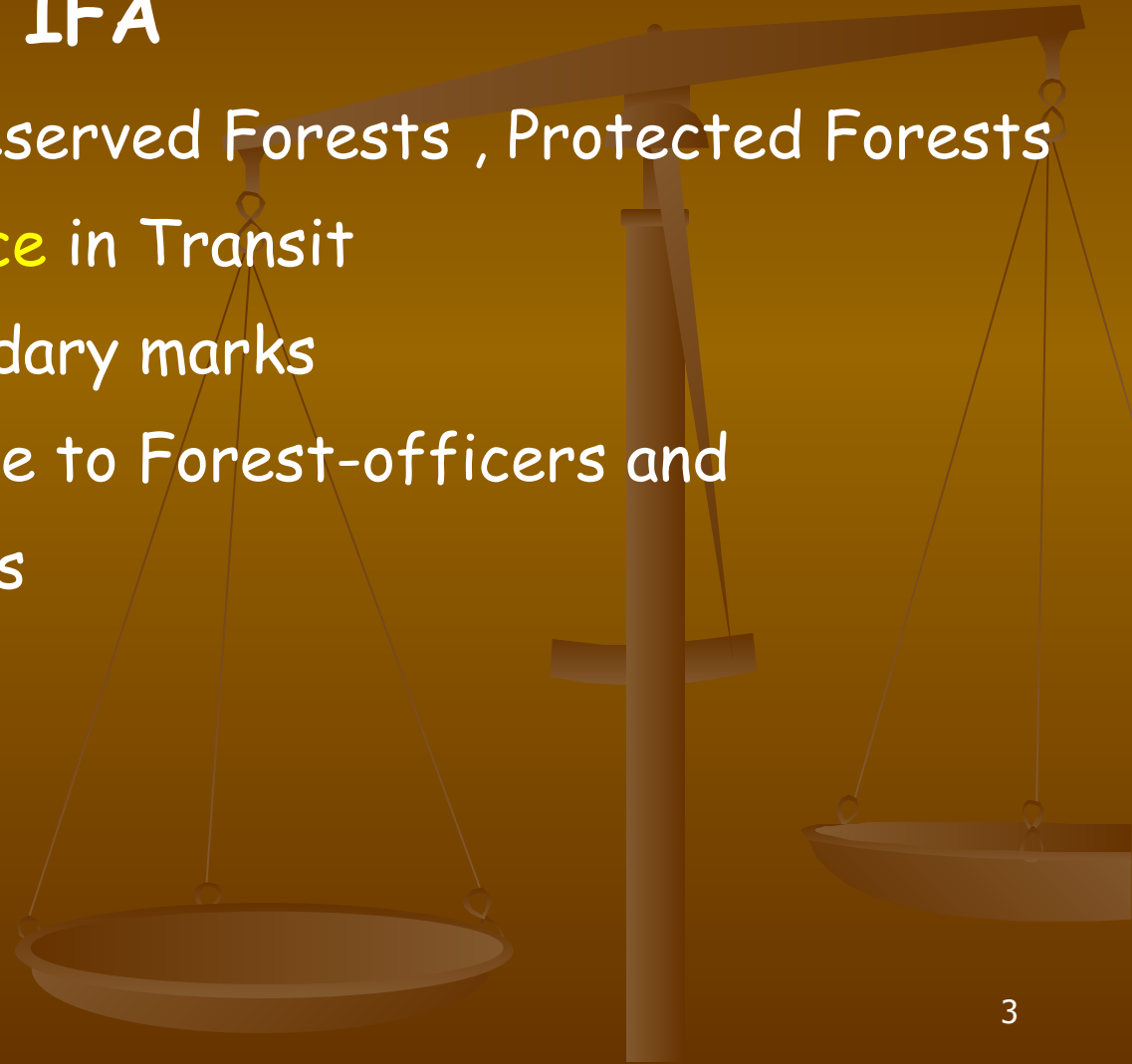
“This Act mainly prohibited the possession or sale of any kind of birds specified in it”

□ The Wild Birds and Animals Protection Act No. VIII of 1912

The Indian Forest Act , 1927

□ Offences under IFA

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



THE WILD LIFE (PROTECTION) ACT, 1972

*'An Act to provide for the **protection** of Wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the **ecological and environmental security** of the country'*

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.

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 !!!

□ Authorities Appointed/Constituted under WPA, 1972

- Director/ Chief Wildlife Warden/ Wildlife Warden
- Honorary Wildlife Wardens (CEL case ,Guidelines)
- such other officers and employees as may be necessary (Subordinate to the CWLW)
- National Board for Wild Life (Statutory Body-2006)
- Central Zoo Authority

◆ 2006 Amendment:

- National Tiger Conservation Authority
- Tiger and Endangered Species Crime Control Bureau

Honorary Wildlife Wardens

(The substitution of clause by 2002 Amendment under section 4 of the Act, now permits the state governments to appoint more than one Honorary Wildlife Wardens.)

- deem to be public servants within the meaning of section 21 of the Indian Penal Code.
- Power to inspect records of licences under section 47 (b) of the Act;
- Powers of entry, search, seizure, and detention under section 50 for prevention and detection of offences

Hon'ble SC directed that the concerned state / Union Territory shall take the necessary steps to appoint Honorary Wild Life Wardens for all the areas within a period of two months. *(Centre for Environmental Law Vs. Union of India and Others, I.A No. 2 in W.P. (C) No. 337 of 1995 dated 7.11.1997)*

□ Offences Under WPA....

◆ Hunting (Sec 9)

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- 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.

Hunting Permitted under sec.11

(a) CWLW may permit for hunting of Sch-I

* animal dangerous to human life

* disabled or diseased beyond recovery

#CWLW is satisfied that such animal cannot be captured, tranquilised or translocated.

#animal shall be kept in captivity unless the CWLW is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same are recorded in writing.

(b) CWLW or AO may permit Sch II, III or IV for (1)(a) reason and also for property (including crop).

#animal or group of animals in a specified area

□ Regulation of National Park and Sanctuary

(i) Restriction on entry

CWLW may permit to enter or reside in a sanctuary for to enter or reside in a sanctuary for study, tourism; scientific research, photography etc.

(ii) No Destruction

No person shall destroy, exploit or remove any Wild Life including forest produce or destroy or damage or divert the habitat of any wild animal or divert, stop or enhance the flow of water into or outside WLS w/o permit of CWLW

with satisfaction of State Govt. after consultation with SBWL in case of WLS and NBWL for N.P. that such activity is necessary for the improvement and better management of wild life

Regulation contd.....

(iii) Causing **fire** prohibited

(iv) Ban on **use of injurious substances**

(v) Prohibition of **entry** into sanctuary with weapon

(vi) for **immunisation** of livestock within five km of WLS/N.P

(vii) **Registration of arms** - with CWLW in case of existing and prior approval in case of new licence within 10 KM. under Arms Act, 1959 (54 of 1959)

❖ Trade or Commerce in Trophies, Animal Articles, etc. derived from Certain Animals

• Declarations (Sec 40)

(1) Declare captive animals, articles, trophies, skins, musk, rhino horn in respect of Sch-I & Sch- II (II)

(2) No person to acquire, sell, transfer, transport Sch animal/ prod. (permission of CWLW/ AO)

(2A) except by inheritance - Doesn't apply to live elephant

• Regulation of transfer of animal etc. (Sec 43)

No transfer by sale in respect of captive animal/ article/trophy/uncured trophy with ownership certificate.

Acquiring any wild animal, article etc prohibited...!! (Sec 49)

❖ Declaration is required under section 40 and that the Act of dealing in the trophies by the appellant without licence is punishable (*Pyarelal, Appellant Vs. The State (Delhi Admn.) Criminal Appeal No. 622 of 1988, AIR 1995 Supreme Court 1159*)

❖ The accused is guilty of illegal possession, custody and control of the animal articles unless and until he disproves the same (*Sansar Chand Vs. State 1994 (28) DRJ 281; 1 (1994) AD 13*)

❖ Prohibition of dealing in trophies, animal articles under section 49B applies to mammoth ivory also. (*M/S Ivory Traders & Manufacturers Association and others Vs. Union of India and Others. AIR 1997*)

Prevention and Detection of offences

- Entry, Search, Arrest, Detention by CWLW/AO/FO/PO (sub.Insp.) -Sec 50(1)
- require any such person to produce for inspection any captive animal, wild animal, animal article, meat, trophy, uncured trophy, or any specified plant or part or derivative, or any licence, permit or any other document granted to him.
- stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle, or vessel.

Prevention and Detection of offences

- seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel, or weapon.
- Stop/ detain/ Arrest (w/o warrant) any person, whom he sees doing any act for which a licence or permit is required.

Prevention and Detection of offences

•Custody of wild animal/ Captive Animal by AD/ACF-50(3A)

- custody on the execution by any person of a bond for the production of such animal if and when so required, before the magistrate having jurisdiction to try the offence on account of which the seizure has been made.

"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](#)
[2060\).](#)

Prevention and Detection of offences

- Any person detained, or things seized under the foregoing power, shall forthwith be taken before a 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).

❖ Investigation.

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.

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)**)

Investigation Powers- Other than Forest Officers

"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." *(Moti Lal Vs. CBI, SC, 2002 CRI. L.J. 2060)*

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. 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.

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

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.
- 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.....

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- ✓ 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]

No Bail (sec 51A by WLPA, 2002 amendment).....

- No Bail
 - Any offence relating to animals of Schedule I or part II of Schedule II.
 - hunting inside the boundaries of a National Park, Wild Life Sanctuary or Tiger Reserve
 - offence in relation to core area of a Tiger Reserve
 - alteration of the boundaries of such National Parks, Wild Life Sanctuary or Tiger Reserve.
- Provided public prosecutor has been given an opportunity of opposing the release on bail court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

◆ Wild Animal, etc. to be Government property (Sec 39)

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- wild animal, other than vermin, which is hunted under Sec. 11 or sec.29 or sub-sec (6) of sec 35 or kept or bred in captivity or hunted in Contravention of the Act.
- animal article, trophy or uncured trophy or meat derived
- ivory imported into India and an article made from such ivory
- vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provision of this Act.
- **Government Property w/o Judicial or Quasi Judicial Process ??**

❖ **Section 51 provides that....**

on proof of commission of the offence, the properties including vehicle, vessel, or weapon used in the commission of offence would be forfeited to the state government.

❖ ***Whether there is conflict or dichotomy in provisions of sub-section 39(1) (d) and section 51 (2) of the Act ?***

❖ If the seizure of a property was enough to declare it as the property of the government, there was no necessity to provide under sub-section (2) of section 51 that on proof of commission of the offence, the properties including vehicle, vessel, or weapon used in the commission of offence would be forfeited to the state government.

[Madhukar Rao Vs. State of M.P (2000) 1 Jab LJ 304]²⁹

◆ Power to compound offences

- Director/AO, CWLW/AO (DCF & above)
- accept money by way of composition of offence (sec. 54)
- not to exceed Rs. 25000 for sec. 54(1) .
- Offences with minimum imprisonment u/s 51(1) not to be compounded.

"District Forest Officer has been empowered to compound the offences under Section 54"

(M. Muthuramalingam Vs. DFO, Dindigul, CRI.L.J, 420(Madras)

- If the offence has been compounded without there being any trial either in the departmental proceedings or in the criminal proceedings the vehicle, rifles etc. cannot be forfeited:

"if the offence has been compounded by an enforcement agency under the provisions of the Act, without there being any trial either in the departmental proceedings or in the criminal proceedings the vehicle, rifles etc. cannot be forfeited and all the seized articles which are not the government property should be released."

Admittedly, there is no trial or conviction that has been made in the instant case. The respondents have liberally compounded the offence. Since the offence has been compounded without there being any trial either in the departmental proceedings or in the criminal proceedings, the said vehicle and rifles cannot be forfeited.

(J. K. Johnson & others Vs. Principal Chief Conservator of Forests, Hyderabad, 2006 CRI. L.J.1480).

❖ 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)

❖ Penalties (Sec 51)

- Offence related to Scheduled Animals /Hunting in NP & WLS / 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

❖ Penalties [51(1C)]

- Offence related to Core Area of T.R., 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.

❖Penalty of Forfeiture..!

By the Wildlife Protection (Amendment) Act, 2002 the punishment has been increased vide Section 51 as amended, and the property derived from illegal hunting and trade is liable to forfeiture vide Chapter VIA.

(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)



Thanks...