



WILDLIFE LAW

A READY RECKONER



Wildlife Trust of India

WILDLIFE LAW : A READY RECKONER

A GUIDE TO THE WILDLIFE (PROTECTION) ACT 1972,
AS AMENDED IN 2002

RITWICK DUTTA

Dr. Rakesh Kr. Singh
Aniruddha Mookerjee

Advisors
Ashok Kumar
Samir Sinha

© Wildlife Trust of India 2004

Disclaimer : This is only a users' guide to the Wildlife (Protection) Act, 1972 and is not the full text of the Act.

The Wildlife (Protection) Act, 1972 is not applicable to the State of Jammu and Kashmir which has its own Wildlife (Protection) Act, 1976.

NOTE: Unless it is specifically mentioned, all sections referred to relate to the Wildlife (Protection) Act, 1972.

ACKNOWLEDGMENTS

The difficulty faced by those implementing the Wildlife (Protection) Act, 1972, in understanding and interpreting it, led us to develop this manual. We are first of all thankful to Ashok Kumar, Senior Advisor and Trustee, WTI, for all his useful suggestions at all stages of the preparation of this manual. Our special thanks to Samir Sinha, Director, Rajaji National Park for carefully going through the draft and giving us an insight into the practical problems of implementing the WPA. His suggestions to make it more “field oriented” rather than an academic piece of work proved invaluable. We are thankful to Vivek Menon, Executive Director of WTI, for his suggestions and support.

Our thanks go to Sudhir Mishra, Legal Advisor, WTI, who started WTI’s module on practical wildlife law, which over time has become a much sought after course.

This work has benefited a lot from the contribution of Saurabh Sharma, Advocate, Delhi High Court. He has made valuable contributions to the section on offences, search, arrest, detention, etc. based on his experience in the criminal Courts.

We are also grateful to Bhupender Yadav, Advocate, Supreme Court, for his advice as well as giving access to his collection of books. His office was an invaluable source of information.

Finally, we would like to thank all the frontline forest staff and officers for their encouragement, support and for giving us the opportunity to hone our skills on their home ground.

Contents

	Page
1. WHAT IS WILDLIFE ?	8
2. IMPORTANT DEFINITIONS.	10
3. OFFENCES UNDER WILDLIFE PROTECTION ACT.	11
4. NATURE OF OFFENCE.	14
5. WHO CAN TAKE ACTION FOR OFFENCES ?	17
6. THE POWERS OF FOREST OFFICERS & AUTHORISED PERSONNEL.	18
7. SEARCH & SEIZURE.	20
8. RECEIVING & RECORDING EVIDENCE.	25
9. ARREST.	27
10. COGNIZANCE OF AN OFFENCE : FILING A COMPLANT.	30
11. SAMPLE COMPLAINT FORMAT.	33
12. PENALTY PROVISIONS.	35
13. APPROPRIATE COURT.	38
14. OTHER IMPORTANT PROVISION : PRESUMPTIONS; BURDEN OF PROOF; POWER TO REMOVE ENCROACHMENTS.	39
15. SUPREME COURT GUIDELINES TO BE FOLLOWED DURING ARREST & DETENTION (D. K. BASU V/s STATE)	40
16. CONTROL, CUSTODY AND POSSESSION MEANING AND IMPLICATIONS.	41

GLOSSARY

AIR	All India Reporter
CrPC	Criminal Procedural Code 1973
CrL J	Criminal Law Journal
WPA	Wildlife (Protection) Act, 1972 as amended by Amendment Act of 2002
CWLW	Chief Wildlife Warden
ACF	Assistant Conservator Forests
SCC	Supreme Court Cases
IPC	Indian Penal Code

INTRODUCTION

The need to protect India's natural heritage motivated the Parliament to enact the Wildlife (Protection) Act, 1972 (WPA) which is a pioneering piece of legislation with many facets. While, for example, it is a criminal law that provides ways to deal with offences related to wildlife, it is also a land-acquisition law, instituted to facilitate the creation of protected areas. At the same time, WPA is also a natural resources management law controlling land and resource usage patterns in the Protected areas which relates, in turn, to the conservation and protection of endangered species.

The uniqueness of WPA lies in the many procedural norms it has laid down to deal with matters related to the management of wildlife. However, in spite of its many self-contained provisions, the Act is not a comprehensive code in itself. For instance, basic procedures such as arrest, search, detention, etc., depend on the policing system and provisions of the Criminal Code of Procedure 1973 (CrPC). Similarly, even where the management of the protected areas is concerned, respective state forest laws and regulations at the local level are in force. Thus, the meaning of 'Forest Officer' and 'Reserved Forests' is based on how they are defined in the Indian Forest Act, 1927 or any other state law. The question as to whether WPA is a special Act and is exempted from the operation of the CrPC has been dealt with in the case of *Moti Lal vs CBI*¹. What emerges from it was that despite its many rigorous provisions, WPA is not a special law and, hence, the provisions of CrPC cannot be excluded from it.

The present manual has been prepared keeping this legal reality in mind. The provisions of WPA, together with CrPC and the Indian Evidence Act, have been incorporated so that the reader has a complete idea of the steps involved in dealing with wildlife offences. Existing literature on wildlife laws tends to concentrate only on the text of WPA, 1972 and makes no, or only minor, reference to the provisions of other relevant laws.

Detailed provisions relating to arrest, search, collection and recording of evidence have been provided in this manual along with guidelines on rights of the arrested or detained person. Since WPA does not provide for the procedure, the relevant provisions of CrPC are relied upon for easy reference by field-level enforcement staff. Case laws have been cited to illustrate the exact application of the provisions of law. Also, since this is not a commentary of the complete Wildlife Act, it is pertinent that the reader also refers to the original text of WPA, 1972.

It is important to mention that the present work is not the complete WPA. It is intended only to serve the immediate needs of the enforcement staff in dealing with wildlife offences. Therefore the provisions relating to creation of protected areas, settlement of rights etc., have not been covered.

¹ 2002 Cri.L.J. 2060 SC



There have been important changes after the passing of the Wildlife (Protection) Amendment Act, 2002. The object of the WPA has been amended to incorporate the environmental and ecological security of the country. It is to be kept in mind that the WPA is to be read in totality and no section must be read in isolation. It would be of interest to mention here the observations of the Supreme Court with respect to the scope of the recent amendments:

“The provisions of the said Act (WPA) must be construed having regard to the purport and object it seeks to achieve. Not only inter alia wild animal is to be protected but all other steps which are necessary therefore so as to ensure ecological and environmental security of the country must be enforced. The interpretation provisions as regard ‘wild animal’ employs the word ‘includes’ and thus, must be assigned a broad meaning. The Amending Acts must be viewed in that perspective. Protection and conservation of wild animal is essential for very existence of human life. A trade in wild animal which is sought to be prohibited with an object to oversee survival of human beings must be given its full effect.”²

The WPA unlike many other statutes has not been subjected to much judicial interpretation. Lack of clarity still exists about the interpretation of many of its provisions. It has been our sincere effort to contribute towards a greater understanding, as well as better implementation of this unique piece of legislation.

² Indian Handicrafts Emporium and Others Vs Union of India. SC, 2003

1

WHAT IS WILDLIFE ?

Generally, the term 'wildlife' encompasses all uncultivated flora and undomesticated fauna.³ Section 2 (37) of WPA defines wildlife as "any animal, aquatic or land vegetation, which forms part of any habitat".

"Animal"⁴ includes mammals, birds, reptiles, amphibians, fish, other vertebrates and invertebrates and also includes their young and eggs.

"Habitat"⁵ includes land, water or vegetation which is the natural home of any wild animal.

"Wild animal"⁶ means any animal specified in Schedules I to IV and found wild in nature.

"Land"⁷ includes canals, creeks and other water channels, reservoirs, rivers, streams and lakes, whether artificial or natural [marshes and wetlands and also includes boulders and rocks].

NOTE:-

The definition of 'wildlife' is very broad. There are six schedules appended to the text of WPA, containing a list of species protected by it. Schedule I and II include most of the endangered or threatened animals of India. Therefore, it is important that the enforcement staff keep the above broad definitions and following guidelines in mind.

- The definition of wildlife extends to both flora and fauna.
- As per the provisions of WPA, it is essential that for any animal to be categorised as 'wild animal', it has to satisfy two criteria:

firstly, that the animal is listed in Schedule I to IV of the WPA, and

secondly, the said listed animal is found wild in nature.

³ National Wildlife Action Plan, 2002 –2016 pg 5, Ministry of Environment and Forests, Government of India, 2002.

⁴ Sec. 2 (1)

⁵ Sec 2 (15)

⁶ Sec. 2 (36)

⁷ Sec. 2 (17)

- 'Wildlife' includes wild animals but all animals may not be wildlife.
- Wild animals are provided protection under WPA.
- All 'wildlife' is protected only in National Parks and Sanctuaries..

Illustration:

- A mongoose found in a city is wildlife since it is listed in Part II of Schedule II of the Act and also because it is an animal found wild in nature.
- A domestic dog found in a forest (including a Protected Area) is not wildlife since it is neither listed in Schedule I to IV of the Act, nor is it found wild in nature.
- In National Parks and Sanctuaries. all 'wildlife', irrespective of whether they are mentioned in Schedule I to IV or not, are protected.
- A domestic elephant falls in the wildlife category since it is an animal listed in the Schedule and is an animal found in nature. An elephant, which has been born in captivity, is also wildlife within the meaning of the Act.

IMPORTANT DEFINITIONS

ANIMAL ARTICLE⁸: This refers to an article made from any captive animal or wild animal in a schedule other than a vermin and includes an article or object in which the whole or any part of such an animal has been used. It also includes ivory imported into India and ivory articles.

FOREST OFFICER⁹: The officer appointed under clause (2) of section 2 of the Indian Forest Act, 1927 or under any other act for the time being in force in a state eg. the Village Forest Committee under the Uttranchal Joint Forest Management Rules, 2001 is a “Forest Officer” within the meaning of the Indian Forest Act, 1927. Similarly “Forest Officers” are also defined in the forest acts of the District Councils of the North Eastern States.

MEAT¹⁰: This includes blood, bones, sinew, eggs, shell or carapace, fat and flesh with or without skin, whether raw or cooked, of any wild or captive animal, other than vermin.

TROPHY¹¹: The whole or any part of any captive animal or wild animal, other than vermin, which has been kept or preserved by any means, whether artificial or natural.

UNCURED TROPHY¹²: The whole or any part of any captive or wild animal, other than vermin, which has not undergone a process of taxidermy, and includes freshly-killed wild animal, ambergris, musk and other animal products.

VEHICLE¹³: Any conveyance used for movement on land, water or air and includes buffalo, bull, bullock, camel, donkey, elephant, horse and mule.

WEAPON¹⁴: Includes ammunition, bows and arrows, explosives, firearms, hooks, knives, nets, poison, snares and traps and any instrument or apparatus capable of anaesthetising, decoying, destroying, injuring, capturing or killing an animal.

⁸ Sec 2 (2)

⁹ Sec 2 (12 A). The meaning of Forest Officer has been expanded through the new amendment made in the WPA.

¹⁰ Sec 2 (20)

¹¹ sec 2 (31)

¹² Sec 2 (32)

¹³ Sec 2 (33)

¹⁴ Sec 2 (35)

OFFENCES UNDER WILDLIFE (PROTECTION) ACT, 1972

An 'Offence' means any action or omission made punishable by WPA.

Under the provisions of WPA the following constitutes an offence:

1. HUNTING IS AN OFFENCE

'Hunting' of any wild animal specified in Schedule I, II, III and IV is an Offence.¹⁵

WHAT IS HUNTING?

As per the provisions of the Act, hunting¹⁶ includes:

- (a) Killing or poisoning of any wild animal or captive animal and every attempt to do so.
- (b) Capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so.
- (c) 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.

EXCEPTIONS: SPECIAL CIRCUMSTANCES IN WHICH HUNTING MAY BE PERMITTED¹⁷

It is not an offence if a wild animal is hunted in the following circumstances:

- Hunting of wildlife by scheduled tribes of the Andaman and Nicobar islands¹⁸ is allowed. This hunting rights are conferred on the Great Andamanese, Jarawas, Onges, Sentilinese, Nicobarese and the Shompen
- If the said animal was hunted with the prior written permission of the Chief Wildlife Warden (CWLW) or authorised officer with respect to Schedule I, II, III and IV under the following circumstances:
 - (i) When the animal listed in Schedule I has become dangerous to human life or is disabled or diseased beyond recovery. However, no such order can be passed unless

¹⁵ Section 9 of the Act.

¹⁶ Section 2 (16) of the Act

¹⁷ Sections 11 and 12 of the Act

¹⁸ By notification of the Andaman and Nicobar Administration No. 40/67/F, No. G635, Vol. III, dated the 28th April, 1967.

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

- (ii) In respect to animals listed in Schedule II, III or IV besides the above circumstances, and also in situations where the animal or group of animals in the specified area has become dangerous to property, standing crops, or any land.
- (iii) When the animal is killed or wounded in defence of the person concerned or any other person.
- (iv) When a permit to hunt has been granted by an order in writing by the CWLW, with the prior permission of the central government (in respect to animals listed in Schedule I) and the state (in respect to any other wild animal) for the following purposes
 - education
 - scientific research
 - scientific management
 - collection of specimens for recognised zoos and museums
 - activities related to collection of snake venom for life saving drugs

ILLUSTRATIONS:

- If a person keeps a parakeet in a cage, he is guilty of the offence of hunting unless he has a valid permit to do so.
- Chasing a wild animal in a vehicle, even if it is not caught, is hunting since it involves an attempt to do so.
- An elephant that has destroyed houses and crops, or a carnivore which has lifted livestock, cannot be hunted by the CWLW as it falls under Schedule I. Only if it has taken human life and done so repeatedly can the CWLW permit the animal to be hunted. However, such permission can be granted only after the warden is satisfied that such an animal cannot be captured, tranquilized or translocated. The power of the CWLW is discretionary and not mandatory.
- If a person kills a chital, and pleads that the act was committed in self-defence, it may not be admissible. The nature and ferocity of the animal will be the deciding factor in determining whether the person acted in self-defence or not. Setting up a net to trap birds, even though no birds were caught, is still an offence since it is an 'attempt' to hunt.

2. PICKING OR UPROOTING OF SPECIFIED PLANTS OR ITS DERIVATIVES WITHOUT A PERMIT IS AN OFFENCE¹⁹.

The protection of plants under the provision of WPA is afforded under two circumstances:

- Certain plants are protected, irrespective of where they are found, provided they are mentioned in Schedule VI of the Act, and also found in the wild, i.e uncultivated.
- All plants are protected in specified areas i.e., National Parks, Sanctuaries. and other protected areas. However, this is subject to local laws and regulations.

EXCEPTIONS: Picking of specified plants by members of scheduled tribes for bona fide personal use is allowed. However, this is subject to the restrictions as applicable to protected areas such as National Parks and Sanctuaries..

3. BREACH OF CONDITIONS OF LICENCE IS AN OFFENCE

- Breach of any of the conditions of a permit granted under Sections 28, 29, 11, 12, 17 B of the Act is an offence.
- Further, breach of any of the conditions of a licence granted under Sections 17C, 17D, 17 F, 44 is also an offence.

4. ALTERATION OF THE BOUNDARIES OF NATIONAL PARKS AND SANCTUARIES. IS AN OFFENCE²⁰

Alteration of the boundary refers to the increase as well as decrease in the size of the National Park or Sanctuary. According to the provision of the WPA, any alteration of the boundary of a Sanctuary or National Park can be made only by the State Government on the recommendation of the National Board for Wildlife.

¹⁹ Section 17 A of the Act.

²⁰ Sec. 27 (3) with respect to both Sanctuaries. and National Parks



NATURE OF OFFENCE

The following categories of offences exist according to the provisions of the CrPC:

- Cognizable and non-cognizable offence.
- Bailable and non-bailable offence.

COGNIZABLE AND NON-COGNIZABLE OFFENCES

A cognizable offence is one for which any authorised officer may carry out an arrest without a warrant.

A non-cognizable offence is one for which a police officer or any other officer has no authority to arrest without a warrant.

Given the nature of wildlife offences and reading the provisions of Section 50 (1), authorised officers (refer to the relevant section on arrest) can arrest or detain any person who is believed to have committed an offence against this Act. Therefore, the authorised officers, while arresting or detaining any offender, have no need for a warrant and so all offences under WPA are cognizable.

BAILABLE AND NON BAILABLE OFFENCE

In the case of a bailable offence the person arrested has a right to be released on bail, subject to such conditions as the Court/investigating officer may impose. In a non-bailable offence, the person arrested has no right to be released on bail but that does not mean he cannot be granted bail. A person arrested for a non-bailable offence can be released on bail by Court in exercise of judicial discretion and subject to such conditions as the Court may impose. In other words, the distinction between the two is that in the former, bail is a right while in a non-bailable offence it is not a right but is granted at the Court's discretion.

A non-bailable offence is cognizable and punishable with imprisonment for three years or upwards. Offences which are non-cognizable and punishable with imprisonment of less than three years, are usually bailable offences.

CONDITIONS FOR BAIL IN WPA:

Section 51A²¹ of WPA states that no bail shall be given to a person who has been previously

²¹ Inserted by the Wildlife (Protection) Amendment Act, 2003, 16 of 2003, Sec. 31



convicted of an offence under the Act and has, in the present instance, been held for the following offence or offences:

- Any offence related to Schedule I and Part II of Schedule II.
- Offences relating to hunting inside the boundaries of National Parks or wildlife Sanctuaries..
- Altering the boundaries of such National Parks and Sanctuaries..

However, bail may be given only after the following procedures have been followed:

- The Public Prosecutor (PP) has been given an opportunity to oppose the release on bail.
- Where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he/she may not be guilty of such an offence and that he/she is not likely to commit any offence while on bail.

NOTE:

- The above provisions aim at ensuring that repeat offenders cannot secure bail easily. Unfortunately, the Forest Departments rarely maintains records of offenders. Therefore, if wildlife offenders have to be prosecuted effectively, the following suggestions should be considered:
 - (i) Each wildlife division should maintain records of offenders.
 - (ii) Whenever an offender is to be produced before a Magistrate, records of that particular division as well as other divisions must be checked to ascertain if the accused has been previously convicted of an offence under WPA.

COMPOUNDABLE AND NON-COMPOUNDABLE OFFENCE

An offence is compoundable when the authorised officer can acquit the accused on payment of a sum of money or on any other condition. Generally, offences which are not of a serious nature are compoundable. Non-compoundable offences, on the other hand, are of relatively serious nature and the accused cannot be acquitted on any of the above conditions. It is therefore necessary to specify which are the offences that fall under either category.

OFFENCES IN WPA THAT CAN BE COMPOUNDABLE

Section 54 of WPA grants authority to the central government or the state government, as the case may be, to empower certain categories of officers. They are empowered to

compound an offence after payment of a sum of money decided by way of composition of the offence that such a person is suspected to have committed.²²

On payment of such a sum of money to the concerned officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect to the offence shall be taken against the person.²³

The officer compounding any offence may order the cancellation of any licence or permit granted under this Act to the offender, or if not empowered to do so, may approach an officer so empowered, for the cancellation of such a licence or permit.²⁴

IMPORTANT

- Under WPA, the power to compound an offence has been conferred at the very initial stage, right from the time when a reasonable suspicion exists that a person has committed an offence against the Act. However, this comes with a rider attached, as given in proviso to section 54, wherein it is stated that if the offence is such for which a minimum period of imprisonment is prescribed under sub-section (1) of section 51, it shall not be compounded.
- The Director of Wildlife Preservation and any officer not below the rank of Assistant Director of Wildlife Preservation can compound a wildlife offence if they have been empowered after a notification issued by the central government.
- Similarly, the state government, by notification, can empower the CWLW or any officer not below the rank of Deputy Conservator of Forests to compound an offence.

²² Section 54 (1)

²³ Section 54 (2)

²⁴ Section 54 (3)

WHO CAN TAKE ACTION AGAINST OFFENCES?

POWER OF ENTRY, SEARCH, ARREST AND DETENTION²⁵

The above powers are conferred on the following officers:

- Director of Wildlife Preservation, Government of India.
- Any officer authorised by the Director of Wildlife Preservation.
- CWLW of the state.
- Any officer authorised by the CWLW (refer to the notification and order of the State Government).
- The Honorary Wildlife Warden, where the powers under Section 50 have been conferred in any state²⁶ on the person.
- Any Forest Officer: A Forest Officer is the person appointed under clause (2), section 2 of the Indian Forest Act, 1927 or under any other Act for the time being in force in a state. It is, therefore, important to refer to the respective state Forest Act, which defines a Forest Officer of the respective state.
- Police Officer of the rank of Sub-Inspector and above.

NOTE

The powers of entry, search, seizure and detention, besides others, are conferred on the above officers. It is clear that the bulk of the power is concentrated in forest officers. Thus while 'any' forest officer can take action for an offence against the Act, only a police officer of the rank of sub-inspector and above is authorised to take action. Further, the new amendment in WPA 2002 has broadened the definition of forest officer by including not only forest officer as defined in the Indian Forest Act, 1927 but also in any other law.

²⁵ Sec. 50 (1)

²⁶ Refer to the Notification of the State Government.

THE POWERS OF FOREST OFFICERS AND OTHER AUTHORISED PERSONNEL

The following powers are conferred on the above mentioned officers by virtue of Section 50 of the Act, when reasonable grounds exist for believing that an offence has been committed:

POWER TO INSPECT

- This requires that any or more of the following is produced for inspection on demand, provided that the same is under the control, custody or possession of the alleged offender:
 - (i) captive animal²⁷
 - (ii) wild animal²⁸
 - (iii) animal article²⁹
 - (iv) meat³⁰
 - (v) trophy³¹
 - (vi) uncured trophy³²
 - (vii) specified plant or its part or derivative³³
- Additionally, the following can be inspected at any time
 - (i) Any Licence granted to such a person or required to be kept by such a person under this Act.
 - (ii) Any Permit granted to such a person or required to be kept by such a person under this Act.
 - (iii) Any other document granted to such a person or any other document required to be kept by such a person under this Act.

POWER TO CONDUCT SEARCH OR INQUIRY:

- (i) This includes the power to stop, enter and search any vehicle and vessel. The term 'vehicle' has been given a wide definition to include any conveyance used for movement on land, water or air and includes buffalo, bull, bullock, camel, donkey, elephant, horse and mule [section 2 (33)]³⁴.

²⁷ Section 2(5)

²⁸ Section 2(36)

²⁹ section 2(2)

³⁰ (section 2(20)

³¹ (section 2(31))

³² (section 2(32))

³³ (section 2(27))

³⁴ This is only an illustrative and not a comprehensive listing.'

- (ii) Any premises and land³⁵, by entering and searching the said land or premises.
- (iii) Any baggage or other articles in possession of the offender.

POWER TO SEIZE:

The authorised officer may seize

- captive animal, Section 2(5)
- wild animal, Section 2(36)
- animal article, Section 2(2)
- meat, Section 2(20)
- trophy, Section 2(31)
- uncured trophy, Section 2(32)
- specified plant or its part or derivative, Section 2(27)
- any trap, tool, vehicle, vessel and weapon used for committing an offence.

IMPORTANT

- It is necessary to remember that any detained person, or articles seized in exercise of the above powers, shall be produced before a Magistrate to be dealt with in accordance with the law. Also, by virtue of the amendment in 2002, it is essential that the CWLW or the officer authorised by him in this regard is informed Section 50 (4).

³⁵ Land as defined in Section 2(17) of the Act as including canals, creeks and other water channels, reservoirs, rivers, streams and lakes whether artificial or natural, marshes and wetlands and also includes boulders and rocks.

SEARCH, SEIZURE AND INVESTIGATION

Search is a process whereby for the purpose of any investigation, inquiry or trial, the investigating officer is empowered to demand that relevant materials and documents be furnished. The process may be used for:

- The investigation, inquiry or trial in respect of any offence.
- For any other proceedings generally taken as a preventive or precautionary measure.

Generally speaking, Courts have taken the view that violation of the search procedure will not vitiate the trial or make the search evidence inadmissible though it may affect the weight of evidence in support of the search and recovery. The provisions relating to search procedures are considered to be directive in nature. The Supreme Court³⁶ has expressed the view that even if the search is illegal, it will not affect the validity of the seizure and further investigation or validity of the trial.

However, for the successful prosecution of an offender, it is important to follow the procedures for carrying out a search as provided by law.

HOW TO SEARCH

The WPA does not lay down any procedures for search. However, the procedures as stipulated in CrPC have to be followed.

SEARCHING WITH A WARRANT

Generally, a search warrant is a written authority given to a police officer or any other person by a competent Magistrate or Court for the search of any place, either generally or for specified items or documents. As per the provisions of section 50 (8) of WPA, the following authorities are authorised to issue search warrants:

- Any officer not below the rank of Assistant Director of Wildlife Preservation, Government of India
- An officer not below the rank of Assistant Conservator of Forests, authorised by the state government on its behalf.

The above officers can issue a search warrant to any of the officers as mentioned in Section 50 (1) of WPA.

³⁶ State of Maharashtra Vs Natwarlal Damodardas Soni, 1981 SCC (Cri) 98

The power to issue a search warrant by the above officers is similar to that conferred upon Magistrates of First Class and Courts under Section 93 to 98 of CrPC.³⁷

SEARCHING WITHOUT A WARRANT

When there is no time to obtain a search warrant and immediate search of a place (which includes premises, land, vehicle or vessel) or the presence of a person is necessary for the purposes of investigation or inquiry, the authorised officers (as mentioned in section 50 (1) can conduct a search without a warrant.

The following general guidelines should be kept in mind before starting on a search without warrant:

- The power to search without a warrant can be exercised only by the authorized officers as mentioned in Section 50 (1) of WPA.
- It should not be a general search but must be one for particular articles, documents or specified materials necessary for investigation.
- The authorised officers should be aware of their jurisdiction while conducting the search.
- The authorised officers making the search must have reasonable grounds for believing that:
 - (i) any specific article necessary for investigation may be found in the place, and
 - (ii) such articles, in their opinion, cannot otherwise be obtained without undue delay i.e., as per their opinion, it would be too late before a search warrant is obtained from any officer as mentioned in Section 50 (8) of WPA.

SEARCHING A PERSON

Authorised officers may search the suspect and place in safe custody all articles, including the articles seized other than clothes, found upon the suspect. A receipt of such articles has to be prepared by the officer and given to the suspect (section 51 of CrPC).

The body of the person conducting the search or search witnesses should also be searched so that there is no suspicion that anything has been planted.

³⁷ Moti Lal vs CBI (AIR 2002 SC 1691)

Note:

- Presence of a witness is not required for search under section 51 of CrPC unlike section 100 of CrPC, which relates to searching of a premise.³⁸
 - Search of members of the search party though not required by the CrPC is done in practice.³⁹
 - Section 51 of CrPC does not require that when search of an arrested person is made, signature of the person searched shall be taken on the memo of recovery or that its copy should be given to him.
 - Private persons may arrest but cannot search. By virtue of section 43 of CrPC every private person can arrest without a warrant if any person has committed a nonbailable and cognizable offence in his presence or any proclaimed offender.

SEARCHING A PREMISE

The procedure for searching a premise is contained in section 100 of CrPC:

- The officer conducting the search should first inform the person in charge of the premise about his authority and purpose of the search.
- The person in charge of the premise shall allow free entry to the premises as well as afford all reasonable facilities for the search.
- If such free entry is denied, the officer conducting the search can forcibly enter the place.
- If the person in charge of the premise is also suspected of concealing any illegal article, the procedure with respect to 'searching a person' should be followed.
- The search of the premise is to be made in the presence of at least two independent and respectable residents of the locality as the key witnesses to the search.
- If the designated witness neglects or refuses without a reasonable cause to attend or witness the search, he/she shall be held to have committed an offence under section 187 of IPC.
- The search witnesses should actually accompany the officer conducting the search and be the actual witnesses to the finding of the property. It is not sufficient that the witnesses are merely summoned and kept outside the premises while the search is being carried out within.
- The occupant of the place of search, or his nominee, shall in every case be permitted to be present during the search.
- A list of all articles seized in the course of the search and of the places in which they

³⁸ State of Bihar Vs Kapil AIR 1969 SC 53

³⁹ See State of Bihar Vs Kapur Singh AIR 1969 SC, 53, State Vs Mohan (1961) CrLJ 828 (Orissa)

have been respectively found, shall be prepared at the place of the search by the person conducting the search and shall be signed by the witnesses.

- A copy of the list of articles seized from the premises of such a person should also be given to the person or his nominee in whose presence the search was made.
- The recovery of the articles in such a search can be proved at the trial by producing the person who has conducted the search. However, it is not always necessary to summon a search witness to court for such a purpose. The court may do so if it considers it absolutely necessary.

SEIZURE

The authorised officer may seize:

- captive animal, Section 2(5)
- wild animal, Section 2(36)
- animal article, Section 2(2)
- meat, Section 2(20)
- trophy, Section 2(31)
- uncured trophy, Section 2(32)
- specified plant or its part or derivative, Section 2(27)
- any trap, tool, vehicle, vessel and weapon used for committing an offence

NOTE:

- When a vehicle is seized on the allegation that it was used to commit a forest offence, it will not be returned to the owner till the conclusion of all the proceedings pertaining to such an offence.⁴⁰
- If found guilty, the vehicle shall become the property of the government.⁴¹

⁴⁰ State of UP vs Ranveer Singh, Criminal Appeal No 737 of 2000

⁴¹ Section 39 of WPA

INVESTIGATION

The WPA confers powers similar to that of a Court or Tribunal upon a forest officer of the rank of Assistant Director of Wildlife Preservation or Wildlife Warden and above to investigate any offence committed under this Act. The powers of investigation include:

- Issuing of a search warrant
- Enforcing the attendance of a witness or witnesses
- Compelling the discovery and furnishing of documents and material objects; and
- Receiving and recording of evidence⁴²

IMPORTANT

Any evidence received and recorded by the above officers is admissible in any subsequent trial before a magistrate. However, the same should be done in the presence of the accused person.⁴³

NOTE

Despite the specific provisions in WPA, the power to investigate is however not limited exclusively to the above-mentioned officers. It also extends to other enforcement officers. Thus, in one particular case, the power to investigate an offence under WPA had been extended to the Central Bureau of Investigation (CBI) since the Delhi Special Police Establishment Act (DSPE Act, which governs the CBI) provides that the central government, with the consent of the state government, can empower CBI officials to extend the area for investigation of offences or classes of offences, specified in a notification under the DSPE Act⁴⁴.

Enforcement staff has to thus check whether a notification to this effect or similar notification has been issued in the respective state relating to investigation of wildlife offences.

⁴² Section 50 (8) of WPA

⁴³ Section 50 (9) of WPA

⁴⁴ 2002 Cr.L.J. 2060 SC

RECEIVING AND RECORDING EVIDENCE

WHAT IS EVIDENCE ?

Evidence is the means by which an inference may logically be drawn as to the existence of a fact. It consists of proof by testimony of witnesses, on oath or by writing or records.⁴⁵ The word 'evidence' signifies only the instruments by means of which relevant facts are brought before the Court, viz., witnesses and documents, and by means of which the Court is convinced of these facts.

According to the Indian Evidence Act, 1872, 'evidence' comprises statements made by a witness or contained in a document.

- If it is a case of oral evidence, the Act requires that only that person who has actually physically perceived something through his senses, should make a statement and no one else.
- If it is a case of documentary evidence, the Act requires that the original should be produced, because a copy may contain omissions or mistakes of a deliberate or accidental nature.

RECEIVING AND RECORDING EVIDENCE UNDER WPA

According to section 50 (8), any officer not below the rank of Assistant Director of Wildlife Preservation or an officer not below the rank of Assistant Conservator of Forests, authorised by the state government, has the following powers besides others:

- To enforce the attendance of witnesses.
- To receive and record evidence. Such evidence as recorded is admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person. It is pertinent to mention that such a power is not conferred on either police officers or CBI officers, who are otherwise empowered to take action against offences violating WPA.

WHO MAY TESTIFY AS WITNESS

According to section 118 of the Indian Evidence Act, 1872, all persons are eligible to testify unless the Court considers them unfit. This may be because they are either unable

⁴⁵ Tomlins Law dictionary in The Law Lexicon, 2002



to understand the questions put to them or cannot provide rational answers to those questions because they are too young, very old, ill - whether in body or mind, or any other cause.

NOTE:

- A mentally ill person is not incapable of testifying, unless his illness prevents him from understanding the question put to him and giving a rational answer.
- A witness who is unable to speak may give his evidence in any other manner in which he can make it clear, such as in writing or by sign language. Evidence so given is considered oral evidence.

ARREST

A person is 'arrested' when he/she is restrained from exercising his/her rights of liberty. As applied to criminal proceedings, the word 'arrest' signifies 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 criminal offence.⁴⁶

WHO CAN ARREST ?

Under section 50 (1) of WPA, the following officers are empowered to arrest with or without a warrant:

- (i) The Director of Wildlife Preservation or any other officer authorised by him on the matter.
- (ii) CWLW or the authorised officer.
- (iii) Any forest officer.
- (iv) Any police officer not below the rank of sub-inspector.

RENDERING ASSISTANCE IN ARRESTING AN OFFENDER

Under section 50 (7) of WPA, an authorised officer can obtain assistance from any person in apprehending the offender charged with the violation of any provision of the Act.

ARREST BY PRIVATE PERSON UNDER CrPC

Section 43 of CrPC confers the power on every private person to arrest or cause to be arrested, any person who has committed a non-bailable or cognizable offence. The only condition precedent is that such an offence should have been committed in the presence of the arresting person.

A private person arresting another shall hand over the person either to a police officer or take him to the nearest police station and the police officer may re-arrest such a person.

HOW TO ARREST

The WPA does not lay down any procedures for arrest. However, the process for making an arrest is prescribed in CrPC.

⁴⁶ Black's Law Dictionary in Law Lexicon, Aiyer, 2003 Wadwa & Co.



The Officer making the arrest has to observe the following steps:

- In making an arrest, the authorised officer should actually touch or confine the person to be arrested, unless there is a submission to the custody by word or action (section 46 of CrPC). An arrest of any person, by a duly authorised officer, is accomplished if the officer lawfully touches him; the power of affecting actual capture is not essential.
- An oral declaration of arrest without actual contact or submission to custody will not amount to arrest.
- If such a person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, the police officer or any other authorised person may use all means necessary to effect the arrest.
- The authorised officer shall inform the arrested person of the full particulars of the offence for which he is being arrested or other grounds for such arrest (Section 50 of WPA).
- The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.
- An occupier of a house is legally bound to afford to the police, or to any of the authorised officers, all the facilities to search the house for the purpose of making an arrest. If such facilities are denied or the search is obstructed, the authorised officer shall have the power to use force to gain entry into the house and also for the purpose of liberating himself in case he is detained in the house.
- The person arrested shall not be detained for more than 24 hours and shall be produced before the concerned Magistrate within this time. However, this will NOT include the travel time i.e., the time required to travel from the place where the accused has been arrested to the Magistrate's Court (section 57, CrPC).



EXCEPTIONAL PROVISIONS

After Arrest Procedures

- Search of the arrested person: The authorised officer may search the arrested person and place in safe custody all articles, other than the clothes, found upon him. A receipt showing the articles so seized shall be given to such a person.
- Seizure of offensive weapons: The officer making the arrest shall take from the arrested person any offensive weapons and shall deposit all weapons apprehended to the Court or with the officer to whom the arrested person is to be produced.
- Medical examination of the accused: If the offence with which the arrested person is charged is of such a nature that evidence relating to the offence would be afforded by medical examination of the arrested person, then such an examination can be made by a registered medical practitioner. For the purposes of medical examination, such force as is reasonably necessary could also be used. If the person to be so examined is a woman, the examination shall be made by, or under the supervision of a registered lady medical practitioner.

Precautions to be Taken for Making an Arrest

- The power to use necessary force for making an arrest shall not extend to causing the death of a person who is not accused of an offence punishable with death or with imprisonment for life.⁴⁷
- If the arrested person is a woman, the search must be carried out by another woman with strict adherence to decency (Section 51 of CrPC).
- In every case of arrest with or without a warrant, the authority shall communicate to the arrested person, without delay, the grounds for his/her arrest.
- For a detailed after-arrest procedure, refer to the Supreme Court guidelines in D.K Basu vs State of West Bengal (see Chapter 15 of this manual)

⁴⁷ Section 46(3) of CrPC

COGNIZANCE OF AN OFFENCE : FILING OF A COMPLAINT

Taking cognizance of an offence is the first and foremost step towards trial. Cognizance literally means knowledge or notice, and taking cognizance means taking notice, or becoming aware of the alleged commission of an offence. Taking cognizance does not involve any formal action or action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence for the purpose of proceeding to take subsequent steps.

According to the provisions of CrPC, a Magistrate may take cognizance of any offence in the following instances:

- (i) Upon receiving a Complaint of facts which constitute such an offence.
- (ii) Upon a police report of such a fact.
- (iii) Upon information received from any person other than a police officer, or upon his own knowledge, that such an offence has been committed [section 190 (1)] of CrPC.

The power to take cognizance is thus conferred only up on a Magistrate.

WHAT IS A COMPLAINT?

A Complaint is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the CrPC, that some person, whether known or unknown, has committed an offence⁴⁸.

One who makes an allegation or an accusation or a charge in order to prosecute a person is a complainant.

COMPLAINT AND CHARGESHEET

Section 190 of CrPC provides inter-alia that a Magistrate can take cognizance of an offence firstly, upon receiving a Complaint of facts which constitutes such offence and secondly, upon a police report of such facts. A police report is submitted before a Magistrate empowered to take cognizance of the offence by the officer-in-charge of the police station once the investigation is over. Usually an FIR recorded under Section 154 of CrPC culminates in a report under Section 173 of CrPC. If the report alleges a commission of a crime by an

⁴⁸ Section 2(d) of CRPC as cited in Kelkar, 1997

accused person, the report is commonly called the 'charge sheet' or 'challan' and it has to be submitted in the form prescribed by the state government (which differs among the States).

A charge sheet submitted by the police with regard to a cognizable offence cannot be held to be a Complaint.⁴⁹

WHO CAN FILE A COMPLAINT UNDER WPA ?

A Complaint against a person accused of committing an offence under WPA can be filed by the following categories of people (Section 55 of WPA):

- (a) Director of Wildlife Preservation or any other officer authorised on his behalf by the Central Government.
- (b) Member Secretary, Central Zoo Authority in matters relating to the violation of the provisions of Chapter IV-A.
- (c) CWLW, or any other officer authorised by the state government, subject to such conditions as may be specified by the government.
- (d) The officer-in-charge of the zoo in respect to violation of provisions of Section 38 J.
- (e) Any person who has given a notice of not less than 60 days, in the manner prescribed, of the alleged offence and of his intention to make a Complaint to the central government or the state government or the officer authorised as aforesaid.

IMPORTANT

- Under WPA, it is important to keep in view the fact that only a Complaint can be filed.

CONTENTS OF A COMPLAINT

Although no particular format is provided, it is essential that the Complaint must be well drafted. The following points must be taken into consideration while drafting a Complaint:

- It is expected that the complainant must state all the pertinent facts constituting the alleged offence.
- The Complaint should ideally provide a detailed description of events, the source of the information, the enquiries made, along with names of persons, places and details of evidence collected and the instrument/weapon used.
- However, it is not essential that the names of the accused be given.
- The Complaint must clearly state provisions of WPA, which have been violated.
- The Complaint must clearly specify the schedule and section to which the animal,

⁴⁹ Surajmani; 1980 CrLJ 363 (Or)

plant, animal article or trophy belongs. For this, it is essential to attach a certificate of a zoologist or botanist, identifying the particular species. Besides, it is also important that, whenever possible, the assistance of recognised government institutions such as the Wildlife Institute of India, the Zoological Survey of India, the Botanical Survey of India and others be sought to further authenticate the species.

- In naming the particular species, although it is not essential, it is highly advisable to mention both the common name as well as the scientific name of the species.
- In specifying the exact details of the skins, animal articles and trophies seized, it is essential to keep in mind the fact that these articles are subject to changes in their size, texture and colour due to a variety of reasons. Therefore, while specifying the size of the article, it is important that the word 'approximately' or 'approx.' is used.
- A Complaint by any officer other than the officers mentioned in section 55 of WPA, must be accompanied by a written order or notification authorising such an officer to file a Complaint.
- The complainant must sign the Complaint.
- The Complaint need not be presented in person. A letter to a Magistrate stating facts constituting an offence and a request to take action is a Complaint.
- An allegation in writing cannot be regarded as a 'Complaint' if there is no prayer that the Magistrate must take action under WPA.

SAMPLE COMPLAINT FORMAT

- The Complaint must be before the Appropriate Court.(Refer to the Chapter on Appropriate Court).
- Mention that the Complaint is under Section 55 of the wildlife (Protection) Act, 1972.
- Name and designation of the officer making the Complaint, with description of his duties.
- Authorization :Statement that officer is authorized to file this Complaint.
- Mention the relevant sections of the WPA and other Acts that have been violated. Relevant Sections of the WPA and other acts such as if there is criminal conspiracy then mention Section 120 B of the Indian Penal Code and if there is abetment then Section 102 of India Penal Code.
- Generally it is necessary to mention one (or more) of the following sections in all wildlife offences related to scheduled species: 2, 9, 39, 40, 42, 44, 44A, 48, 49A, 50, 51, 52, 54, 55 and 57.
- Name, age and other relevant information of the accused.
- An accurate chronological description of events.
- Date, time and place of the crime.
- Type of offence committed.
- Correct identification of the species, its parts or derivatives.
- Schedule in which the species or its derivative is mentioned.
- Scientific name of the species or derivative.
- Details of the weapons, tools, and vehicles used in the offence.
- If the crime has been committed within the area of a National Park or Sanctuary, the name of that Park or Sanctuary. This is important since if an offence against wildlife is committed in a Sanctuary or National Park all offence becomes non-compoundable irrespective of the Schedule in which the Species is listed.
- The Complaint must be supported by other forms of evidence, such as statements by the accused, statement of witnesses, forensic reports, etc.
- List of witness along with name and address.
- Nature of offence and the punishments for the same. Mention relevant sections stipulating the punishment. This is important since the Magistrates are generally unaware of the provisions of the WPA.
- The Complainant must sign the Complaint.

OTHER IMPORTANT POINTS WHILE FILING A COMPLAINT

PERIOD OF LIMITATION:

Although the Complaint has to be filed within the shortest possible time, the CrPC prescribes the time period within which a Complaint can be filed (termed as “Limitation Period”).

According to Section 468 (2) of the CrPC the following period of limitation is prescribed:

- 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.

COMMENCEMENT OF THE PERIOD OF LIMITATION

According to Section 469 (1) of the CrPC, the period of limitation shall commence:

- On the date of the offence; or
- Where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
- Where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.
- In computing the period of limitation, the day from which such period is to be computed shall be excluded.

NOTE: The word “police officer” would also include Authorised officers as mentioned in the WPA.

EXTENSION OF PERIOD OF LIMITATION

The Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied in accordance with Section 473 of CrPC, on the facts and in the circumstances of the case that:

- that the delay has been properly explained; or
- that it is necessary in the interest of justice.

PENALTY PROVISIONS

The penalties for offences under the provisions of WPA are provided in Section 51:
The maximum punishment is provided for :

- offences related to animals specified in Schedule I or Part II of Schedule II which includes the meat, animal article and trophy, including uncured trophy, derived from the animal.
- hunting within a Sanctuary or National Park.
- altering the boundaries of a National Park or Sanctuary.

SPECIFIC PENALTIES FOR OFFENCES UNDER THE WPA

Nature of Offence	Relevant Section	Penalty
1. Offence in relation to any animal specified in Schedule I and Part II of Schedule II including the meat, animal article, trophy and uncured trophy from such an animal	Section 51 (1)	<ul style="list-style-type: none"> • Punishable with imprisonment for a term which shall not be less than three years but may extend to seven years <i>and</i> also with a fine which shall not be less than Rs 10,000. • In case of second and subsequent offence, the term of imprisonment shall not be less than three years but may extend to seven years along with a fine which shall not be less than Rs 25,000.
2. Hunting in a Sanctuary and National Park	Section 51 (1); Section 51 (5)	Penalties are the same as above with the rider that the provisions of Section 360 of the CrPC, which relate to release of the offender on probation of good conduct or after admonition or the provisions of the Probation of Offenders Act, 1958, shall not apply unless such an offender is below 18 years of age.
3. Altering the boundaries of a Sanctuary or National Park	Section 51 (1); Section 51 (5)	In Case of second and subsequent offence, the term of imprisonment shall not be less than three years but may extend to seven years along with a fine which shall not be less than Rs. 25,000.

4. Contravention of the provision of Chapter V A, which deals with the prohibition on trade or commerce in trophies, animal articles, etc., derived from scheduled animals	Section 51 (1A); Section 51 (5)	Imprisonment for a term which shall not be less than three years but which may extend to seven years along with a fine which shall not be less than Rs. 10,000.
5. Contravention of the provisions of Section 38 J which prohibits teasing, molesting etc., of any animal in a zoo.	Section 51 (1 B)	Punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 2,000 or with both.
6. Breach of any of the conditions of any license or permit granted under WPA.	Section 51 (1)	Punishable with imprisonment which may extend to six months, or with a fine which may extend to Rs 2,000 or both. In case of second and subsequent offence, the term of imprisonment may extend to one year or a fine which may be up to Rs 5,000.
7. Contravention of any other provision of WPA.	Section 51 (1)	Punishable with imprisonment for a term which may extend to three years or a fine of up to Rs 25,000 or both. For second or subsequent offence the term of imprisonment may extend to one year or with fine of upto Rs. 5,000.

GENERAL PENALTY PROVISIONS

- On conviction of a person for an offence against WPA, the Court may order that any captive animal, wild animal, animal, animal article and trophy as specified in Section 51 (c) of WPA be forfeited to the state government.
- On conviction of a person for an offence against WPA, the Court may order that any trap, tool, vehicle, vessel or weapon, used in the commission of the said offence, be forfeited to the state government.
- Further, on such conviction the Court may order that any license or permit held by such person under the provision of this Act be cancelled. Such cancellation of licence or permit shall be in addition to any other punishment that may be awarded for such offences.

- On conviction for any offence against WPA for which a licensed arm has been used, the Court may direct that a license granted under the Arms Act, 1959 be cancelled and that such a person not be granted a fresh licence for a period of five years after conviction.⁵¹

FORFEITURE OF PROPERTY DERIVED FROM ILLEGAL HUNTING AND TRADE

Chapter VI A provides for the forfeiture of property of every person who has been convicted of an offence punishable under this Act with imprisonment for a term of three years or more.⁵²

⁵⁰ Section 51(4)

⁵¹ Refer to the text of the Act for detailed reference.

APPROPRIATE COURT

The offences under different laws such as WPA are classified into cognizable/non- cognizable and bailable/non-bailable under Section 511 of CrPC.

NATURE OF PENALTY	Cognizable or Non-cognizable	Bailable or Non-bailable	Appropriate Court
If punishable with imprisonment but not more than 7 years	Cognizable	Non-bailable	Magistrate for three years and upwards of the First Class
If punishable with imprisonment for less than three years or with fine only	Non-cognizable	Bailable	Any Magistrate

OTHER IMPORTANT PROVISIONS

PRESUMPTION AND BURDEN OF PROOF:

Where it is established that a person is in possession, custody or control of any captive animal, animal article or meat, it shall be presumed that such a person is in unlawful possession, custody or control of such a trophy unless the contrary is proved by the accused. As such the burden of proof is not on the prosecuting authority but on the accused. (section 57 as interpreted in the Babu Lal case, 1982 Cr. LJ 41).

OFFENCE BY COMPANIES

Where an offence relates to a company, every person who was in charge at the time of the offence being committed and was responsible for the conduct of the business of the company shall be guilty of the offence.

POWER TO REMOVE ENCROACHMENT AND CONFISCATION

Section 34 A empowers an officer not below the rank of Assistant Conservator of Forests to the following:

- Evict any person from a Sanctuary or National Park on the grounds of unauthorisedly occupying government land in violation of WPA.
- Remove any unauthorised structures, building, or construction erected on government land in a Sanctuary or National Park.
- Confiscate all things — tools and effects — belonging to such a person by an order of an officer not below the rank of Deputy Conservator of Forests.

NOTE:

Such an order by the Deputy Conservator of Forests shall be passed only after the affected person is given the opportunity of being heard.

SUPREME COURT GUIDELINES TO BE FOLLOWED DURING ARREST AND DETENTION

D.K BASU VS STATE OF WEST BENGAL

(1997) 1 Supreme Court Cases 416

In the D. K Basu vs State of West Bengal & the Supreme Court laid down mandatory directions in the shape of 'requirements' for compliance by police personnel while arresting or detaining any person. By necessary implication, this is must be followed by all other governmental agencies making arrests and detention. The following are some of the preventive measures that are to be followed; for purpose of WPA, the police officer would also include the authorised officers under Section 50 (1).

It is important to point out that failure to comply with the "requirement" mentioned shall render the official concerned liable for departmental action as punishment for contempt of Court which may be instituted in any High Court.

It is therefore necessary that:

- The police personnel, carrying out the arrest and handling the interrogation of the arrestee, should bear accurate, visible and clear identification and name tags with their designation. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- At the time of the arrest, the concerned police officer must prepare a memo of the arrest which should be attested by at least one witness, who may either be a member of the family or a respectable person of the locality from where the arrest has been made. It should also be countersigned by the arrestee and shall contain the time and date of the arrest.
- The time, place of arrest and venue of custody of an arrestee must be notified by the police to the next in kin or relative of the arrestee through the legal aid organisation in the district and the police station of the area concerned, telegraphically within a period of eight to 12 hours after the arrest:
- The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- The arrestee, should, where he so requests, also be examined at the time for minor or major injuries, if any present on his/her body. These must be recorded at that time
- The arrestee must undergo medical examination by a trained doctor every 48 hours during his detention.
- The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation

CONTROL, CUSTODY AND POSSESSION

The words 'Control, Custody and Possion' finds frequent mentions in the WPA. It is therefore imperative to understand the legal meaning and implications of the same.

Custody: This means keeping under care. It refers to the actual, physical or corporeal holding of an article or document, regardless of the right of possession e.g, holding of an article by a party as a servant or agent of the true owner.

Illustration:

- It cannot be denied that when drivers are given buses to be plied, the buses are in their care. When the buses are being plied, they are obviously in the care of the driver. In this sense, the buses are in the custody of the driver (State of Madras Vs Ramaswami AIR 1958 Mad 585)
- Thus on parity, if a wild animal is in the care of X although he is not the owner of the same, he will be said to be in custody of the wild animal.

CONTROL: This would generally mean that the accused must have such power over the item that he can direct the custody, production, use or disposal in some manner (Norendranath Vs State, 1951 Cal 140).

POSSESSION: The word possession implies a physical capacity to deal with the article as we like to the exclusion of everyone and a determination to exercise that physical power on one's behalf (AIR 1953 Mad 534).

CUSTODY OR POSSESSION of any matter includes not only having it in personal custody or possession but also knowingly and wilfully having it in possession of any other person and also knowingly and wilfully having it in any dwelling house or other building, lodge, apartment or other places, open or enclosed, whether belonging to or occupied by the person or not, and whether such matter shall be so had for his own use or the benefit of any other person.

POSSESSION AND CUSTODY are usefully differentiated in criminal law. A person who takes a dead animal to a taxidermist may leave the dead animal for some time for the work to be completed; in that event the taxidermist takes possession. A taxidermist who can do the assigned task on the spot when the customer waits, takes custody only.

WILDLIFE LAW

A READY RECKONER

A GUIDE TO THE WILDLIFE (PROTECTION) ACT 1972

As India's swelling population exerts myriad pressures on its shrinking natural heritage, the character of forest management and governance is rapidly changing. It is therefore important that the guardians of the wild are better equipped to deal with the changing realities. This Ready Reckoner is a part of a series of manuals being brought out by the Wildlife Trust of India's Van Rakshak Programme to enhance the skills of the forest staff, and others concerned with enforcement.

It simplifies and explains the nuances of the Wildlife (Protection) Act 1972, as amended till 2003, in conjunction with other relevant and connected Acts like the Code of Criminal Procedure 1973, Evidence Act 1872, The Limitation Act 1963 and others, along with relevant case laws. Written by lawyers and communicators with the help of on-ground forest officers, this book is organized as a quick and ready reference.



IFAW

INTERNATIONAL FUND FOR ANIMAL WELFARE

WWW.IFAW.ORG

The Rufford

**Maurice Laing
Foundation**

