



CRIMINAL JUSTICE AND
POLICE ACCOUNTABILITY
PROJECT

WILDLIFE POLICING:
THE REIGN OF CRIMINALISATION
IN FORESTS OF MADHYA PRADESH



Concerns around the Wildlife Protection Act (1972) and Amendment Bill (2021)

This brief has been prepared by the Criminal Justice and Police Accountability Project, a Bhopal-based research and litigation intervention committed to ending the disproportionate criminalisation of marginalised communities. It draws from findings of research in Madhya Pradesh, into the implementation and consequences of prosecuting under the Wild Life (Protection) Act, 1972, and is the first public study of its kind.





Context to the Act

The Wild Life (Protection) Act, 1972 (WPA) provides for the protection and conservation of wild animals, birds and plants. This act enabled the setting up of National Parks and Wildlife Sanctuaries and also banned hunting and possession of certain species of endangered wildlife. This law has its roots in pre-colonial and colonial laws which sought to create inviolate areas called 'Protected Areas' (PAs) which were in most of the cases created without any consultation with the local communities traditionally dependent on these forest areas for their livelihoods. This so called 'scientific' approach to conservation through criminal law provisions has led to relocation, criminalisation of oppressed communities, harassment at the hands of forest department officials, human wildlife conflict and so on.

Pattern of criminalisation

Offences under the WPA were designed to be absolute, with no exceptions in order to tackle the problem of illegal wildlife trade and to protect the (then) dwindling population of tigers in India. However, the bulk of prosecution is not in relation to trade.

- ◆ CPA Project in its upcoming study has analysed data from Police as well as the Forest Department to look at patterns of criminalisation. It looked at FIRs registered by the Police in MP between 2016 and 2020 for the offence of hunting (34 FIRS) and found that over 32% of the accused persons were from the ST, over 12.5% from the SC and about 12% were other from oppressed caste communities.



- ✦ Arrest data for MP for offences under the WPA from 2011-2020 (780 arrests) found that about 30% persons arrested belonged to one marginalised caste community or another. The police used a wide variety of combinations of offences in making arrests. It particularly relied on the Environment Protection Act, the Indian Forests Act, Indian Penal Code, Mines and Minerals Act in tandem with WPA. The study also found the Representation of Peoples Act, Protection of Children from Sexual Offences Act, Motor Vehicle Act and Excise Act also being used in combination with WPA in trace amounts.
- ✦ CPA Project also looked at the Forest Department's hunting wildlife crime data for 2016-2020 (1414 offence records). Close to 40% of all persons accused of hunting are from Scheduled Tribes and overall 75% of all persons accused belonged to marginalised caste communities.
- ✦ Overall high representation of persons belonging to the ST was anticipated as both the Police and the Forest Department, the study concluded, targeted forest dwelling communities.



Criminalising self-defence and livelihood

The three trends that have clearly emerged from our qualitative and quantitative data analysis are:

In most of our interviews across stakeholders this was a recurring issue that wild boars (*jungli suar*), *chital* and *sambar* (deer) destroy their crops. In multiple cases, accused persons, living on the borders of the Kanha National Park, used fencing around their farm/field to protect their crops, which a wild boar would get caught in. This finding is supplemented by our quantitative data which shows that 363 cases (over 24% of the data set) registered under the WPA by the Forest Department are related to wild boars. It is crucial to address this issue as people in this area majorly practice rain-fed agriculture and are dependent on their *kharif* crop for their food and income both. The right to defend and protect crops is criminalised through the WPA.

The other trend shown through qualitative data collected is that cases are routinely registered for collecting forest produce (like bamboo and honey) from PAs. In one case, an offence was registered against an *Adivasi Gond* person for collecting dry wood from the core area of the tiger reserve. This case was registered in the year 2012 and is still pending 10 years later. The Forest Rights Act, 2006 (FRA) recognizes the rights of forest dwelling communities to access the forest for their basic needs and livelihoods. And this right is meant to extend to PAs. Recently, State governments in Odisha and Chhattisgarh have



recognized Community Forest Rights in national parks. These traditional rights should be formally recognized and any cases filed in its violation should be withdrawn by the government. Access to forest in national parks and sanctuaries for bonafide livelihood activities should not be criminalised.

The Forest department in MP have also registered 57 cases of fishing under the WPA in between 2016-2020 and field data corresponds this with the presence of cases outside of this time period. Under Section 3(1)(d) of the FRA, catching fish and other marine life from local water bodies have been recognized as a community right. Such cases under the WPA are patently illegal as they criminalise already recognized rights of forest dwelling communities. Many of these cases are still pending and they go on for 3-4 years at trial. These cases also deserve national attention and should be reviewed by the government.

Patterns in prosecuting wildlife crimes

The Act envisages an all-encompassing scheme for penalties under Section 51 for the breach of any provisions and punishes the offender with a sentence of up to 3 years and/or a fine of upto twenty-five thousand rupees. Where the offence pertains to an animal under Schedules I or II, or of hunting (Section 9) or altering boundaries in a sanctuary or national park (Section 27), the offender is punished with imprisonment of three to seven years and a fine of upto ten thousand



rupees. The Bill seeks to increase the amount of fine, thereby increasing the cost of criminalisation of forest-dwelling communities.

Sentencing is not graded on the basis of varying levels of protection accorded to wildlife in different Schedules, unlike other special criminal laws or usually availed at the Magistrate level which requires our attention. Particular problems in relation to prosecution of wildlife crimes are listed below:

Pendency

In the data set comprising 1414 cases filed by the Forest Department from 2016-2020, more than 95% cases were still undecided. 727 cases (51%) were pending in court and 627 cases (44.3%) were under departmental proceedings. 35 cases (2.4%) were closed without further proceedings, likely as a result of offences registered against unknown persons who were not caught.

From interviews with persons accused of hunting animals (varying from Schedule I to Schedule V), the trends from the quantitative data are supported in that out of 16 cases we reviewed, most had been pending for 4-5 years. A few cases were ongoing for 7-8 years and 1 case had been ongoing for 16 years with one of the accused persons having passed away during the course of the trial.

Despite not requiring arrest as per *Arnesh Kumar v State of Bihar* guidelines, data studying FIRs registered by the police and Preliminary Offence Reports registered by the Forest Department show that arrest



of the accused person is the rule. Field work reflects that bail is usually rejected by the Magistrate, and interviews with lawyers who prosecute as well defend wildlife crimes, show that bail is usually only secured from the High Court at great cost.

Costs borne by accused persons

Once an accused person is apprehended, the costs for continuing legal proceedings borne by him/her are excessive.

At the bail stage, the average cost incurred is between fifteen to twenty thousand rupees in MP. Every appearance in court during trial adds onto this expense with each accused person incurring a cost of five hundred rupees for lawyer's fees and two to three hundred rupees to travel to the Magistrate court from their village.

Given the high nature of the costs, while in some villages, it was noticed that community members lend each other money to keep up the cost of mandatory peshis, most persons take on loans from local money lenders, sometimes with high rates of interest, thereby entering a vicious cycle of debt for years.

Outcome of cases filed

The quantitative data tracking the trend of cases filed by the Forest Department shows that only seven accused were convicted with a fine. In the five cases where a fine amount was available, they ranged between two hundred to five lakh rupees.



The imprisonment period also displayed wide variation, ranging between less than a month to more than 5 years, with one accused ordered to less than 1 month of imprisonment, two convicted for 1-3 months, three convicted for a year, 4 years and more than 5 years respectively.

The rate of compounding was 3.1%, i.e., only 13 cases were compounded of over 1400. Despite the possibility of compounding offences where animals are categorized under lower Schedules (III-V) and given lesser protection, our field work supports the quantitative data that the Forest Department officials are unwilling to close proceedings with a small fine to drive the continued fear of criminalisation for tribal communities.



Recommendations

- ✦ The population explosion of wild boars needs to be addressed since it is responsible for large amounts of crop losses, rarely compensated by the Revenue Department, and also causes danger to human life. Self-defence in such situations are treated as cases of hunting and involve lengthy criminal prosecution. We recommend that this species be marked for culling, or be treated as vermin species under Schedule V of the WPA.
- ✦ Despite fish being categorised under Schedule V of the WPA as vermin species, there is criminal prosecution of livelihoods dependent on fishing in protected areas. This is in violation of the FRA and the state should consider withdrawing such cases.
- ✦ The process of settlement of rights involved in marking a Protected Area currently does not recognize the Community Forest Rights (CFR) of forest-dwelling communities even as individual forest rights are recognized. Following the examples of Orissa, Karnataka and Chhattisgarh, steps should be taken in following these precedents by the Forest departments in all states in PAs to roll back the rejection of these rights.