WILDLIFE POLICING

The reign of criminalization in the forests of Madhya Pradesh

CRIMINAL JUSTICE AND POLICE ACCOUNTABILITY PROJECT

EXECUTIVE SUMMARY

Our research is aimed at uncovering patterns of criminality and policing by the police and the forest department in the name of wildlife conservation in the state of Madhya Pradesh (MP). Madhya Pradesh is significant for two reasons — firstly, it is the second-largest state in India with regards to forested areas and has some of the largest Protected Areas in the country, and secondly, it has the highest tribal population in the country, i.e. over one in five people belong to a Scheduled Tribes community. Given this overlap, forest governance laws have long been administered with its attendant criminal law in a manner not publicly known.

We have studied who is criminalised, what kind of activities are sought to be prohibited under the Wild Life Protection Act, 1972 (WPA) and the impact of such criminalisation. Such a study is especially relevant given that the 'relocation' of forest-dwelling communities under the forest governance framework is well known but the cost of criminal prosecution in such areas has not been studied before. Since December 2021, the Parliament has sought to amend this legislation to introduce newer animal species as protected, redefine categories of crime to exclude certain good faith practices that may impact wildlife (such as for research or education purposes) and increase the scope of punishment.

To this end, we analysed data sets belonging to both the police and the Forest Department.

- *We studied 780 arrest records in 38 districts between 2011 and 2020. Along with this, 129 First Information Reports (FIRs) were recorded between 2016 and 2020 (34 of which pertained to hunting and allied offences under the WPA) by the police department.*
- *In addition to this, we examined 1,414 records of offences registered by the Forest Department across 24 circles between 2016 and 2020 along with 8 chargesheets in offences filed by the Forest Department.*
- *To supplement our quantitative findings, a qualitative study documenting the experiences of criminalisation faced by communities from the villages in the districts of Balaghat and Mandla adjoining the Kanha National Park (the oldest Protected Area in MP also accounting for the highest number of offences in a Protected Area). Between March-September, 2022, we conducted 45 interviews with accused persons and their families, forest bureaucracy and its field officials, police officers, lawyers that represent both the State and accused persons, activists, conservationists and local civil society organisations.*

Our findings revealed a covert criminalisation of forest-dependent livelihoods apart from large-scale displacement caused due to the demarcation of 'Protected Areas'. The WPA has its roots in precolonial and colonial laws which sought to create inviolate areas called 'Protected Areas', which were created without consultation with the local communities traditionally dependent on these forest areas for their livelihoods.[1] Despite the onset of recognition of forest rights, communities remain under the control of the Forest Department in accessing forests, whether protected or territorial. Regardless of legislation, the extent of individual and community forest rights recognised are limited to buffer zones of Protected Areas. Due to this, the routine collection of forest produce, like dry wood or mushrooms is criminalised as violating the "sanctity" of the Protected Area. Animals constrained within the core area of a national park often wander into human settlements, causing harm to human life, agriculture and livestock. The same is not adequately compensated by the Forest Department, nor addressed by the Tehsildar, and any self-defence is quickly criminalised.

The report is an attempt to penetrate the opacity in the exercise of Forest Department's control over forests and illustrate the casteist nature of policing that has pervaded through the strain of environmentalism and conservation strategies in national parks. This so-called 'scientific' approach to conservation through criminal law provisions has led to relocation, criminalisation of oppressed communities, and harassment at the hands of the Forest Department. This report offers a glimpse into the farce of 'law and order' extended over forest-dwelling communities and the socio-economic impact to criminalisation.

SUMMARY OF FINDINGS

I. NATURE OF CRIMINALISATION

Over 29% of the accused persons (that could be identified as a caste category[2]) arrested by the police between 2011 and 2020 belonged to an oppressed caste group. Even within this seemingly low number, groups like Scheduled Tribes and Scheduled Castes were overrepresented in the data set in comparison to their district-wise population.[3] In the FIRs studied, people belonging to the Scheduled Castes, Scheduled Tribes, Denotified Tribes, Other Backward Classes and Possibly Marginalised communities[4] formed 66.6% of the 29 offences that pertained to hunting and allied offences, and a majority of those that related to sand mining. Within the offences recorded by the Forest Department, close to 78% of the accused persons (totalling 2,790 across 1,414 offences) belonged to an oppressed caste community.

1 Abhay Xaxa terms this mode of environmentalism where caste Hindus determine ideas of conservation, environmental protection without considering the Adivasi centrality of forests as 'Brahminical'. See Abhay Flavian Xaxa, 'Brahmin NGOs and the Brahminical environmentalism are behind the attack on the Forest Rights Act say' (4 March 2019) <https://youtu.be/SZ_9L97sjnE?t=1074> accessed on 13 Oct 2022.

2 Close to 34.3% of the data set was not classified due to last name being absent or lack of information on the caste name.

3 This was true in at least 6 of the top 10 districts where arrests occurred in relation to Scheduled Caste or Scheduled Tribe populations.

4 Where the last name occurring is found in more than one oppressed caste community.

The police employed the tactic of using other Acts[5] in conjunction with the WPA which treats offences as bailable, so as to render arrest compulsory. In only 32% of the arrest data the police recorded, were there offences under the WPA alone. The FIR data reveals that arrests were made in 72% of the cases related to hunting where the offences were bailable and there is no information given in relation to bail in cases of sand mining. This is likely in violation of guidelines set by *Arnesh Kumar v State of Bihar*[6] which mandate that arrest is not automatic in cases that are punishable by less than seven years of imprisonment.

The most hunted animals were wild pig *(jungli suar)*, parrot *(tota)*,[7] peacock *(mor)* and fish *(machli)*, comprising 17.47%, 12.%, 9.26% and 8.26% of the animals hunted respectively. Parrot is currently in Schedule IV of the WPA, wild pig in Schedule III, peacock in Schedule I (Part-III) (presumably due to its importance as the national bird) and fish *(machli)* is not under any of the protected lists of animals under WPA. Nearly two-thirds of all animals hunted were part of Schedule III or IV of the Act rather than Schedule I or II which are more endangered and at the risk of being hunted for wildlife trade.

II. CONCERNS AROUND POLICING

Narratives of how offences are made out by the actions of accused persons were vague in the FIRs registered. The police relied on information from *mukhbirs* or informants (whose identity remains undisclosed) to investigate a crime in 86% of the FIRs. In registering the offence, the police uses standard narratives suggesting that any and every action in a restricted/forested area is a 'threat to ecological security and animal habitats',[8] without specific allegations.

No narrative of how offences were made out is present in the Forest Department's records, though they too rely on *mukhbirs* to investigate. We found that the narrative is only recorded for the first time when investigation is completed and a private complaint is filed before a Magistrate to take cognisance. Both the Preliminary Offence Report (POR) and the Forest Offence Case Register (FOCR) do not record any narrative. Both these tactics of the police and forest departments show the discretionary power exercised in determining an offence, especially when no clear allegations are recorded.

In the records of the Forest Department, around 41.44%[9] of the cases did not mention the method of hunting a protected animal. There is no standard practice in how this is to be recorded as part

5 *This includes the Arms Act 1959, varying provisions of the Indian Penal Code 1860, Mines and Minerals Act 1957, Environment (Protection) Act 1986, and the Indian Forest Act 1927.*
6 *Arnesh Kumar v State of Bihar (2014) 8 SCC 273.*
7 *It is to be noted that 220 of 265 parrots hunted are attributable to 2 cases alone.*
8 *English translation of terms from FIRs.*
9 *These were recorded as Unknown or Other.*

of the Wildlife Crime Investigation Manual.[10] In 51.27% cases, no recoveries were reported and, in several cases, where the method of hunting is known the cases are made out without seizure of weapon, which is not procedurally sound.

We also found in their records that there was a lack of a standard practice in recording the '*ghatna sthal*' (site of the alleged offence), and the description for the same was mostly vague. Often there was a mention of the name of a village in which an incident occurred without denoting the location of the village with respect to the forest area. In addition to this, particular local physical indicators were merely noted as *talaab* (lake), *nadi* (river), *ghat* (mountain range), or near the bridge, school or market. Because of this practice, there is no way to know where the offence occurred.

III. DISRUPTING LIVELIHOOD AND FOREST RIGHTS

As mentioned above, in the interviews we conducted with persons accused of a crime and their families and forest-dependent communities, some common themes emerged: the large discretionary power exercised by the Forest Department impacting material conditions of people's lives, precarity from the forests as well as the criminal architecture and criminalisation of self-defence.

a. Crop loss and self-defence

Across Mandla and Balaghat, in the areas adjoining the core areas of the park, we found complaints of the damage caused by an increasing wild boar population.[11] Even in territorial forest land of Mawai and Narayanganj, it was seen that wild boars tend to travel in packs, move at night and damage crops by stampeding through most and eating uneven parts of the crop land. We recorded instances where people too were injured by these animals but they were unable to access medical care from the Forest Department or the Tehsildar (who oversees claims of crop compensation for damages).

Where people tried to put a *phanda* (fence) around their farmland, wild boars often tore through the fencing and attacked crops anyway, or they were caught in the fence and died. Despite this act of self-defence, this triggers criminal prosecution of hunting by the Forest Department. This is further supplemented by a perusal of the department data, which records *phanda lagakar* (using a fence) as being the most frequent method of 'hunting' and forms 14.5% of all cases. This suggests that a fair share of accidental deaths are flagged as hunting, disturbing the sacred

10 Wildlife Crime Control Bureau, Ministry of Environment and Forest- Government of India, Wildlife Crime Investigation Manual (WCCB 2013) <http://wccb.gov.in/WriteReadData/userfiles/file/Wildlife%20Crime%20Investigation%20Manual.pdf> accessed 18 October 2022.

11 NBT Agency, 'MP Forest Department Wants Permission To Hunt Nilgai And Wild Boars' Nav Bharat Times (Bhopal, 30 January 2022) <https://navbharattimes.indiatimes.com/state/madhya-pradesh/bhopal/mp-forest-department-wants-permission-to-hunt-nilgai-and-wild-boars/articleshow/89219927.cms> accessed on 13 Oct 2022.

habitat of animals in Protected Area, theft of government property (a dead animal is considered as property of the State, whereas communities have lived in a symbiotic manner with animals and consume them for subsistence to supplant their agriculture).

Compensation for crop loss is hard to come by. One reason for this is that while administration of a buffer zone in a national park is carried out by the Forest Department, the villages themselves have been converted to revenue villages (from earlier status as forest villages) and therefore come under the jurisdiction of the Tehsildar. The Forest Department is present in all aspects of life in such a village — for medical camps, managing education through schools, sanctioning the use of forest produce and any construction of canals, etc, in a village, as a middleman for sale of *mahua/tendu,* and for criminal prosecution. Yet, while they handle injuries to human life and cattle by predatory animals in the forest, they are not the ones to sanction compensation for crop loss. For this, a *patwari* from the tehsil is to evaluate the wasted crop and estimate damages: this remains far from being a regular practice, though crop loss due to animals like wild boar, *chital* and *sambhar* is seasonally regular. This model does not work, triggers criminal prosecution and requires villagers to travel to a far-off tehsildar office for an unguaranteed result.

b. Criminalising activities guaranteed as part of FRA

The Forest Department has registered cases of fishing as part of the WPA, and named these species as being under Schedule V. While the categorisation is not statutorily valid, it must be noticed that in the data set from 2016-20, 57 cases have been registered and 134 in the period between 2010-20. Though Section 9 pertaining to hunting is incorrectly applied in a few cases, most have additional charges under the Indian Forest Act (IFA), or within the WPA — they pertain to barred entry in a national park or of disturbing wildlife habitats. No clarity was given on how fishing has disrupted animal habitats in Kanha, though some Forest Department officials remarked that cases that are criminalised pertain to poisoning of river bed (with sulphur *golas or balls*). However, no related recovery was made in the cases that appear in the data set, only fishing nets were recovered.

Similarly, there are also cases of dry wood, mushroom, honey and other forest produce that predominate the area relegated as the national park. Officials have differed in recounting what activities are permissible between the core and the buffer, where the core area begins, and what sanctions are allowed as part of forest rights. Under Section 3(1)(d) of the Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 [FRA], rights over fish and other products from local water bodies have been recognised as a community right. Therefore, such cases under the WPA criminalise the already recognised rights of these forest-dwelling communities.

IV. COSTS OF PROSECUTION

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 three years and/or a fine of up to 25,000 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 up to 10,000 rupees. Offences committed in violation of conditions of licence or for trade of wildlife parts are punished differently.

Such offences are tried by the Judicial Magistrates of the First Class (JMFC) / Chief Judicial Magistrates (CJM) and not at the sessions court level. Unlike other offences tried at the magistrate level, the WPA (Section 51(5)) restricts the release on probation for good conduct (power given under Section 360 of the CrPC) on the basis of age, character, lack of criminal antecedents and the circumstances under which the offence was committed where it pertains to hunting in a Protected Area or engaging in wildlife trade. Sentencing is not graded on the basis of varying levels of protection accorded to wildlife in different schedules. Our field work also revealed the ease with which offenders in cases of wildlife crimes are relegated as history-sheeters or habitual offenders, regardless of the circumstances of the crime.

This scheme of prosecution, read with the untrammelled powers of investigation accorded to the Forest Department as discussed below, has resulted in the prolonged and frequent criminalisation of forest-dwelling communities. Other procedural aspects relating to burden of proof, compounding of minor cases, independence of investigation are further examined in the report.

a. Pendency

In our data set comprising 1,414 cases filed by the Forest Department from 2016 to 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 four-five years. A few cases were ongoing for seven-eight years and one case had been ongoing for 16 years with one of the accused persons having already died. Our fieldwork reflects that bail is usually rejected by the Magistrate, and the interviews with lawyers who prosecute as well defend wildlife crimes, show that bail is usually only secured from the High Court.

b. Costs borne by accused persons

Once an accused person is apprehended, the costs for continuing legal proceedings borne by them are excessive. At the stage of bail, the average cost incurred is between 15,000 to 20,000 rupees. During the interviews it was stated that every subsequent court appearance adds onto this expense with each accused person incurring an average cost of 200 to 300 rupees for lawyer's fees, bribes to court staff and travel to the court from their village. Given the high nature of the costs, while in some villages we noticed that community members lend each other money to keep up the cost of mandatory *peshis* (attendance), most persons take on loans from local moneylenders, sometimes with high rates of interest. Chronic pendency and the attached high monetary costs drain accused persons of their meagre financial resources by putting them in debt cycles.