

# WILDLIFE POLICING



**The reign of criminalization  
in the forests of Madhya Pradesh**



CRIMINAL JUSTICE AND  
POLICE ACCOUNTABILITY  
PROJECT

## **Authors**

1. Mrinalini Ravindranath
2. Sanjana Meshram
3. Nikita Sonavane
4. Harsh Kinger
5. Garima Sidar
6. Afrah Asif
7. Aditi Pradhan
8. Mukesh Tomar
9. Vikas Yadav
10. Aditya Rawat
11. Shreyas Dhamapurkar
12. Siddharth Lamba
13. Prashant Bhaware

## **Additional research:**

1. Manisha Arya
2. Anurag Tirpude
3. Pallavi Diwakar
4. Kanishka Singh
5. Shreya Gajbhiye
6. Poojitha Sirimalla
7. Mukul Raj
8. Yashi Verma
9. Sandesh Gangurde

## **Illustrations:**

Uma Ketha

## **Cover design**

Mia Jose

## **Layout:**

Aanchal Agarwal, Aayushi Khandelwal

## **Infographics:**

1. Mohammed Sami
2. Shubhangi Krishnan

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## NOTE ON TERMINOLOGY

- Adivasi: The term 'adivasis' translates to 'original inhabitants' who are designated as Scheduled Tribes under the Constitution of India. It also means 'indigenous', deriving its origin as a form of resistance against the violent dispossession of communities from their histories and resources.<sup>1</sup>
- Bahujan: This term was coined by Manyavar Kanshi Ram, founder of Bahujan Samaj Party. He used the Pali word 'Bahujan' meaning 'Majority' to unite and mobilise Indian minorities under one banner<sup>2</sup> including marginalised caste, tribes, other backward class, Muslims and other religious minorities.
- Dalit: Literally means 'broken'. The term Dalit is a term of self-assertion used by groups formerly classified as 'untouchable'.
- Denotified Tribes: These are the communities that were 'notified' as being 'born criminal' during the period of colonial government under the 'Criminal Tribes Act', 1871. The act was later repealed in 1952 and the tribes were given the status of Denotified Tribes.
- Jati: Jati is used interchangeably for the word caste. However, jatis are not fixed units and may be divided into 'sub-castes', which are the socially significant identities and status groups. Unlike varna, the concept of jati is not connected to any one religious grouping, but is found in all the major South Asian religious communities.<sup>3</sup>
- National Park: Whenever it appears to the State Government that an area, whether within a sanctuary or not, is, by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park.<sup>4</sup>
- Possibly Marginalised: For the purpose of the present study, we have classified last names as belonging to the following groups - 'General', 'SC', 'ST', 'OBC', 'DNTs', 'Maybe General', 'Possibly Marginalised', 'Unclassified' and 'Zero' (0) based on the official lists and documents of the state of MP. The term 'Possibly Marginalised' is used for all such last names that are used by different groups of marginalised communities and not any of the oppressor castes.
- Protected Areas: It means National Parks, a sanctuary, Conservation Reserves or a Community Reserve notified under sections 18, 35, 36 A, and 36 C of the WPA.<sup>5</sup>
- May be general : All last names that are used by both the oppressor castes and the oppressed castes
- Unclassified: Such last names whose caste location, we were unable to determine despite our

1 Virginus Xaxa, 'Decolonising Tribal Studies in India' (RAIOT, 2 July 2021) <<https://raiot.in/decolonising-tribal-studies-in-india-prof-virginus-xaxa/>> accessed 17 October 2022.

2 Pragati Kalive, 'Bahujan Movement: Meaning and History of Bahujan Samaj Party' (Sociology Group) <<https://www.sociologygroup.com/bahujan-movement/>> accessed 16 November 2009.

3 Meenda Dhanda, Annapurna Waughray, David Keane, David Mosse, Roger Green and Stephen Whittle, 'Caste in Britain: Socio-legal Review' (Equality and Human Rights Commission Research Report 91, 2014) <<https://www.equalityhumanrights.com/sites/default/files/research-report-91-caste-in-britain-socio-legal-review.pdf>> accessed 16 November 2022.

4 The Wildlife (Protection) Act 1972, s35 (1).

5 The Wildlife (Protection) Act 1972, s24 (A).

fairly extensive search in the official documents prepared by the state of MP.

- Zero: The arrest records and FIRs that did not contain any last name in the records that we checked for the purpose of our study.

## GLOSSARY

- **Agyat:** Unknown
- **Baiga:** Baiga tribe is a tribe listed as a Scheduled Tribe under the Constitution of India. The tribe is found mainly in Central India and is also listed as the Particularly Vulnerable Tribal Group in the state of Chhattisgarh, based on their low levels of literacy, high levels of poverty and the extent of their marginalisation.
- **Balam:** A short spear
- **Barchi:** A type of lance, a weapon
- **Bhala:** Spear
- **Bhedki:** Barking deer
- **Bichakar:** By laying down
- **Bijli ke taar:** Electric wire
- **Buffer zone:** The buffer zone is the region that surrounds the core area or is immediately next to the core. To safeguard the core area's conservation goals, activities are structured in a way that does not interfere with them.
- **Core area:** Core or Critical Tiger Habitat areas of National Parks and sanctuaries are areas demarcated on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers, and notified as such by the State Government in consultation with an Expert Committee constituted for the purpose.<sup>6</sup>
- **Chaku:** Knife
- **Chausingha:** Four-horned antelope
- **Chital:** Spotted deer
- **Dagni:** A type of dagger
- **First Information Report:** As per Section 154 of the Code of Criminal Procedure, every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf is reduced to a written format after getting signed by the person giving information and entered in a book kept by the officer in a prescribed format of the respective state government.<sup>7</sup>
- **Other forest dwelling-communities:** The communities living in and around the forest other than the Scheduled Tribes and recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
- **Gada:** Club/mace

<sup>6</sup> The Wildlife (Protection) Amendment Act 2006, s38(v)(4)(i).

<sup>7</sup> The Code of Criminal Procedure 1972, s154(1).

- **Gadasa:** A long-handle axe
- **General Category:** After the identification of 'Other Backward Class' by Mandal Commission, the term 'General Category' can be seen as an euphemism for so-called 'upper-caste' people.<sup>8</sup>
- **Ghar:** Home
- **Ghat:** Pier
- **Ghatna Sthal:** Place of the incident
- **Gola:** Ammunition
- **Gond:** A tribe placed in the Scheduled Tribe category under the Constitution of India. They are mainly found in Central India, including the state of MP, Chhattisgarh, Maharashtra and Andhra Pradesh.
- **Grameen:** Village
- **Hathiyar:** Weapon
- **Jungli Murgi** - Wild hen
- **Jungli Suar:** Wild boar
- **Kabar Bijju:** Honey badger
- **Khet:** Farm
- **Khunti:** Soil digger
- **Kulha:** Blade of an axe.
- **Mahua:** Mahua is a tree commonly found in mixed deciduous forests of Asian and Australian Continents, often growing on rocky and sandy soils.<sup>9</sup> The Mahua flower has cultural significance in the lives of tribal communities. It is used in making home-made liquor, which is a major source of income for them.
- **Mor:** Peacock
- **Mukhbirs:** Informants.
- **Nadi:** River
- **Nilgai:** Indian antelope
- **Other Backward Class (OBC):** The Mandal Commission appointed under Article 340 of the Constitution while undertaking Socio-Educational Survey identified a large number of 'classes', essentially castes, as backwards (who were akin to SCs and STs) in each state and categorised such social and educational backward classes under the category of Other Backward Class (OBC).
- **Parivad:** Charge sheet
- **Patvaar:** Rudder
- **Patwari:** An administrative post under the MP Land Revenue Code, 1959. The primary role of patwari is to keep land records of village areas and maintain them.
- **Peshi:** Appearance (often in-person) of an accused in Court

8 Satish Deshpande, 'Browsing Through 51 Years of EPW| Caste and Castelessness: Towards a Biography of the "General Category"' (EPW Engage, 19 August 2017) <<https://www.epw.in/engage/article/51-years-epw-caste-and-castelessness-towards-biography-%E2%80%99general-category%E2%80%99-6>> accessed 16 November 2022.

9 Shuvashish Behera and others, 'Traditional and Current Knowledge on the Utilization of Mahua (L) Flowers Madhuca latifolia by the Santhal Tribe in Similipal Biosphere Reserve, Odisha, India' [2016] 38(1) Annals of Tropical Research <[https://www.researchgate.net/publication/304691565\\_Traditional\\_and\\_Current\\_Knowledge\\_on\\_the\\_Utilization\\_of\\_Mahua\\_L\\_Flowers\\_Madhuca\\_latifolia\\_by\\_the\\_Santhal\\_Tribe\\_in\\_Similipal\\_Biosphere\\_Reserve\\_Odisha\\_India](https://www.researchgate.net/publication/304691565_Traditional_and_Current_Knowledge_on_the_Utilization_of_Mahua_L_Flowers_Madhuca_latifolia_by_the_Santhal_Tribe_in_Similipal_Biosphere_Reserve_Odisha_India)> accessed 23 November 2022.

- **Phanda lagakar:** A technique where villagers use a rope to tie a noose and catch animals, usually birds.
- **Scheduled Castes (SCs):** The caste groups in India which are extremely social, educational and economic backward arising out of traditional practice of untouchability<sup>10</sup> are defined as 'Scheduled Caste' under Article 366 (24) and are deemed under Article 341 to be declared so for the purposes of this Constitution.<sup>11</sup>
- **Scheduled Tribes (STs):** Tribes with indication of primitive traits, distinctive culture, geographical isolation, shyness of contact with community at large and backwardness<sup>12</sup> have been defined under Article 366 (25) as 'Scheduled Tribe' and are deemed under Article 342 to be declared so for the purposes of this constitution.<sup>13</sup>
- **Talaab:** Pond
- **Tehsil:** Each Indian district is divided into sub-districts, which are known differently in different parts of the country, for eg., Tehsil, Taluka, Mandals and Block.<sup>14</sup> It is an administrative unit created for the rural development department and Panchayati Raj Institutions to govern the administrative matters of the region effectively.
- **Tehsildar:** An official appointed at the Block Level or Tehsil under the Revenue Department.
- **Tota:** Parrot
- **Upyog Vidhi:** Usage/ Method
- **Vanrakshak:** Beat guards
- **Vidyut Line Bichakar:** Electricity-line

<sup>10</sup> Press Information Bureau India, 'Inclusion into SC List' (Press Information Bureau of India , 24 February 2015) (<<https://pib.gov.in/newsite/PrintRelease.aspx?relid=115783>> last accessed 21 November 2022.

<sup>11</sup> The Constitution of India 1950, Art 366 (24).

<sup>12</sup> Press Information Bureau India (n 10).

<sup>13</sup> The Constitution of India 1950, Art 366 (25).

<sup>14</sup> Indiastat Official Website <<https://www.indiastat.com/data/administrative-units/sub-districts-tahsils-talukas>> last accessed 16 November 2022.

## EXECUTIVE SUMMARY

Madhya Pradesh (MP) is significant in two aspects — one, it is the second-largest state in India with regard to forested areas and has some of the largest PAs (PAs) in the country, and two, it has the highest tribal population in the country, i.e. more than one in five people belong to Scheduled Tribes. Given this overlap, forest governance laws have long been administered with its attendant criminal law in a manner not publicly known.

Our research sought to uncover patterns of criminality and policing by the police and Forest Departments in the name of wildlife conservation. We study who is criminalised, what 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, 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 PA in MP also accounting for the highest number of offences in a PA). 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 hidden criminalisation of forest-dependent livelihoods apart from large-scale displacement caused by the demarcation of PAs. 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 PAs. Due to this, the routine collection of forest produce like dry wood or mushrooms is criminalised as violating the sanctity of the PA. Animals constrained within the core area of a national park often wander into human settlements, causing harm to human life, agriculture and livestock. This harm is not adequately compensated by the Forest Department, nor addressed by the tehsildar (a collector for, or official of, the revenue department), and any self-defence is quickly criminalised.

Our report is an attempt to shine light on the opaque mechanisms through which the Forest Department exercises control over forests, and to illustrate the casteist nature of policing that has pervaded in the region under the guise of environmentalism and conservation in national parks. The WPA has its roots in precolonial and colonial laws, which sought to create inviolate areas called PAs, which were created without consultation with the local communities traditionally dependent on these forest areas for their livelihoods.<sup>15</sup> This so-called 'scientific' approach to conservation through criminal law provisions has led to the relocation and criminalisation of oppressed communities, and their harassment at the hands of the Forest Department. We hope this report offers a glimpse into the farce of 'law and order' extended over forest-dwelling communities and the socio-economic impact of criminalisation.

## **SUMMARY OF FINDINGS**

### **I. NATURE OF CRIMINALISATION**

The nature of criminalisation under WPA is disproportionate too. Over 29.5% of the accused persons (who could be identified as belonging to a particular caste category<sup>16</sup>) arrested by the police between 2011 and 2020 belonged to an oppressed caste group. Even within this seemingly low number, groups such as Scheduled Tribes (ST) and Scheduled Castes (SC) were overrepresented in the data set in comparison to their district-wise population.<sup>17</sup> In the 34 FIRs studied, people belonging to the SC, ST, Denotified Tribes (DNT), Other Backward Classes (OBC) and Possibly Marginalised<sup>18</sup> formed 61.2% of the 34 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.

<sup>15</sup> 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'. Abhay Flavian Xaxa, 'Brahmin NGOs and the Brahminical environmentalism are behind the attack on the Forest Rights Act say' (Youtube, 4 March 2019) <[https://youtu.be/SZ\\_9L97sjnE?t=1074](https://youtu.be/SZ_9L97sjnE?t=1074)> accessed on 13 October 2022.

<sup>16</sup> 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.

<sup>17</sup> This was true in at least 6 of the top 10 districts where arrests occurred in relation to Scheduled Caste or Scheduled Tribe populations.

<sup>18</sup> Where the last name occurring is found in more than one oppressed caste community.

The police employed the tactic of using other Acts<sup>19</sup> 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 *Armesh Kumar v State of Bihar*<sup>20</sup> 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*),<sup>21</sup> 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 certain acts constituted an offence by the persons involved were vague in the FIRs registered. The police relied on information from mukhbirs or informants (who are not revealed) to investigate a crime in 86% of the FIRs. In registering the offence, the police use stock language suggesting that any and every action in a restricted/forested area is a 'threat to ecological security and animal habitats',<sup>22</sup> 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 an investigation is completed and a private complaint is filed before a magistrate to take cognisance. Both the Preliminary Offence Report and the Forest Offence Case Register 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%<sup>23</sup> 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 of the Wildlife Crime Investigation Manual.<sup>24</sup> In 51.27% cases, no recoveries were reported

<sup>19</sup> 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.

<sup>20</sup> *Armesh Kumar v State of Bihar* (2014) 8 SCC 273.

<sup>21</sup> It is to be noted that 220 of 265 parrots hunted are attributable to 2 cases alone.

<sup>22</sup> English translation of terms from FIRs.

<sup>23</sup> These were recorded as Unknown or Other.

<sup>24</sup> 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.

and, in several cases, where the method of hunting is known, the cases are made out without seizure of weapon, a practice that is not procedurally sound.

We also found in their records that there was no standard practice for denoting the 'ghatna sthal' (site of the alleged offence), and descriptions of these sites were largely vague. Often there was a mention of the name of a village in which an incident took place, without detailing the location of the village with respect to the forest area. In addition to this, particular local physical indicators were merely noted as talaab (pond), nadi (river), ghat (wharf), 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.<sup>25</sup> 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 fanda (fence) around their farmland, wild boars often tore through the fencing and attacked crops anyway, or they were caught in the fence and died. Though this fencing was an act of self-defence, this triggers criminal prosecution as a hunting offence. Department data shows that fanda lagakar (using a fence) was the most frequent method of 'hunting', at 14.5% of all cases. This suggests that a fair share of accidental deaths are flagged as hunting, disturbing the sacred habitat of animals in PAs, theft of government property (a dead animal is considered property of the State, though forest-dwelling communities have historically lived in a symbiotic manner with these animals and consumed them for subsistence to supplant their agriculture).

25 NBT Agency, 'MP Forest Department Wants Permission To Hunt Nilgai And Wild Boars' (Nav Bharat Times, 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.

Compensation for crop loss is hard to come by. One reason for this is that while the administration of a buffer zone in a national park is carried out by the Forest Department, the villages themselves have been made revenue villages (from their previous status as forest villages) and therefore come under the jurisdiction of the *tehsildar*. The Forest Department is present in every aspect of life in this 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*<sup>26</sup> from the tehsil has 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, and instead triggers criminal prosecution, requiring villagers to travel to far-off tehsildar offices for an unpredictable 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 2010-2020. 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 *balls* 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.

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<sup>26</sup> Patwari is an administrative post in the Revenue Department of Madhya Pradesh. The role of patwari is to maintain land records of the designated village.

## 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 PA 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* (appearance in court), 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.



# 1

## INTRODUCTION



The Wildlife Protection Act (WPA), 1972 aims to maintain ecological security through the protection of flora and fauna of the country. The origin of the Act is associated with the Indian Forest Act (IFA), 1865, which was last amended in 1927 and still forms the core of forest governance laws in post-Independence India.<sup>27</sup> While the earlier legislation allowed for seasonal hunting with permits for the use of modern weapons like guns, the 1972 Act was the first to move towards a ban on all hunting, in its successive amendments. The law was brought into existence under the conservation norm of wildlife species influenced by the views of wildlife enthusiasts and international developments taking place during the 1970s.<sup>28</sup> The livelihood of forest-dwelling communities and their coexistence with the forest and wildlife were not taken into consideration. The recent Wildlife (Protection) Amendment Bill 2021, another regressive move, has proposed to increase the number of protected species in consonance with the Convention on International Trade in Endangered Species (CITES), and hike penalties for violations of the law without undertaking any impact assessment of the law over the local population living near the forest.<sup>29</sup>

Forest governance laws continue to embody the logic of coloniality as is reflected on the ground in the creation of PAs (PAs). The colonial forest laws were rooted in police bureaucracy without sufficient checks over policing power and allowed the colonial government to declare any forestland as protected forest, leading to displacement of forest-dwelling communities.<sup>30</sup> Its remnants continue to reflect in the legislation of the WPA when the PAs are demarcated in a similar pattern.

Forest governance laws nestled within a criminal legal framework continue to exercise an all-encompassing control over the lives of forest-dwelling communities ranging from restricting their movement even in the periphery of the forest to searching their person without authority. This report is an attempt to empirically document this architecture of criminalisation and its impact on forest-dwelling communities.

The research also documents the tension between the criminal laws with legislations like the Panchayats (Extension to Scheduled Areas) Act, 1996 ('PESA') and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) that are rooted in ethos of self-governance and participatory democracy. Wide-ranging rights guaranteed under the FRA, including the rights of self-cultivation, individual rights, community rights and habitat rights in forests<sup>31</sup> cannot be exercised freely because of the undue influence of forest officials reducing the law to being a paper relic. The FRA is being further whittled down through

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27 Shiba Desor and Milind Wani, 'Forest Governance at the Interface of Laws Related to Forest, Wildlife & Biodiversity' (March 2015).

28 Madhu Sarin, N M Singh, N Sundar and R K Bhogal, 'Devolution as a Threat to Democratic Decision-making in Forestry? Findings from Three States in India' Overseas Development Institute Working Paper 197 2/2003 <<https://www.files.ethz.ch/isn/100555/wp197.pdf>> accessed 29 October 2022.

29 Nikita Sonavane, Harsh Kinger and Mrinalini Ravindranath, 'How the discussion on Wildlife Conservation has sidelined the rights of forest dwelling communities' (Scroll.in, 1 October 2022) <<https://scroll.in/article/1034054/how-the-discussion-on-wildlife-conservation-has-sidelined-the-rights-of-forest-dwelling-communities>> accessed on 9 November 2022.

30 Desor et al (n 27).

31 The Forest Rights Act 2006.



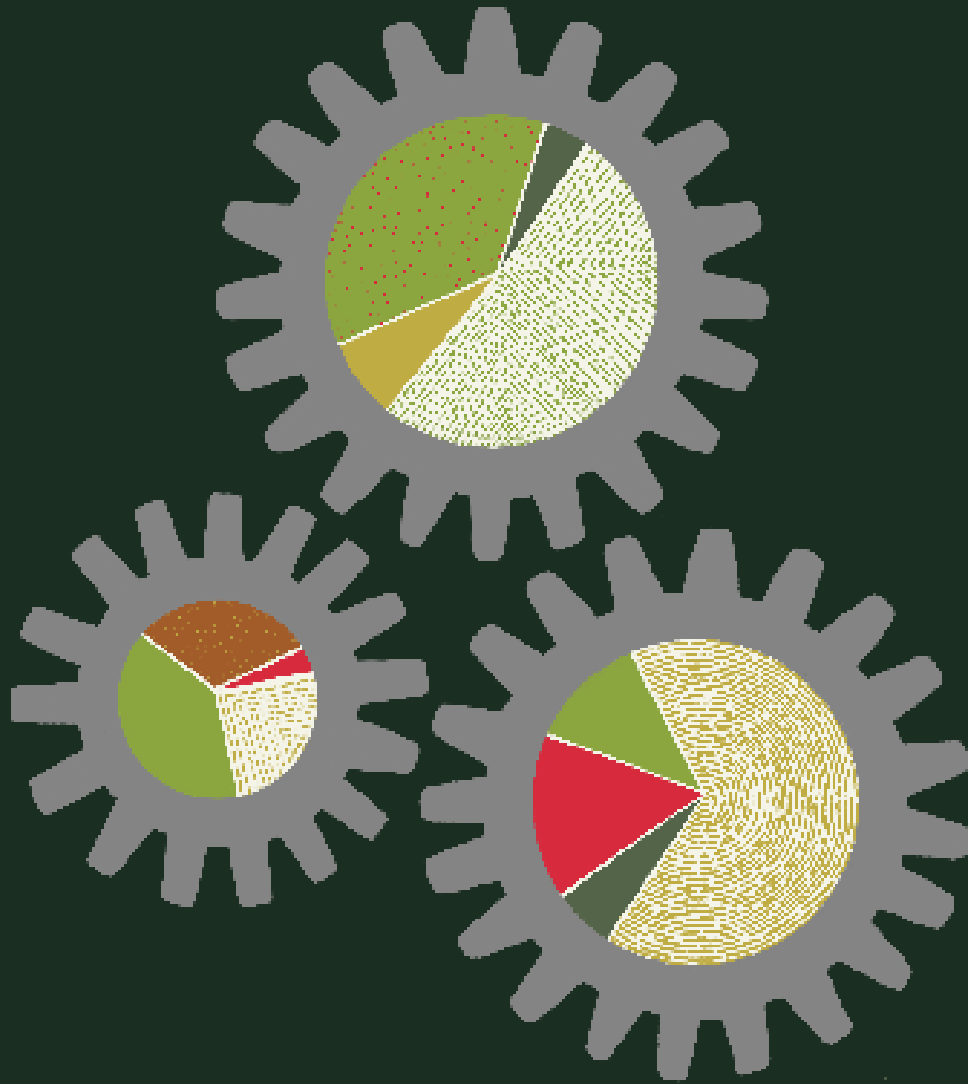
the recent amendment to the Forest Conservation Act (FCA) 2022, which empowers the Union government to permit clearance of a forest even before taking consent and settling rights of the forest-dwelling communities under the FRA, by the state government.<sup>32</sup>

Despite this complex web of criminality surrounding forest governance in India, limited work has been done to unpack the matrix of criminalisation that forms the basis of forest governance in India. Our research on the WPA in Madhya Pradesh (MP) is significant to understand how the relationship between forest-dwelling communities, wildlife conservation and forest governance is mediated through criminal law and brought to life through policing carried out by the police department and the forest department in MP. MP accounts for the highest number of PAs in the country and is home to the largest tiger population (it holds the distinction for being the 'tiger state') due to sustained conservation efforts. The true unfolding of the WPA as a law, in tune with dominant ideas of conservation and wildlife tourism, is evident in MP. Further, given that everyday policing is the primary vehicle for the implementation of laws, deconstructing the mechanisms of wildlife policing becomes crucial. Studying wildlife policing is also valuable to understand the modes of functioning of colonial institutions such as the police and the forest department, particularly in terms of its entrenchment within the casteist structure of Indian society.

In order to analyse both broader patterns of criminalisation along with their contextual nuances, the study relies on a combination of quantitative and qualitative methods that help uncover the *modus operandi* of wildlife policing. Quantitative analysis of arrest records, First Information Reports (FIRs) and the Forest Department's register of offences has been relied on to demonstrate broad patterns of criminalisation. This has been complemented with field research undertaken over a period of five months in the districts of Balaghat and Mandla, which are part of Kanha National Park, one of the oldest PAs, in MP. This entails interviews with personnel from the police and the forest department, persons accused under the WPA, lawyers representing such accused persons and activists engaging with the issues of wildlife conservation and forest governance. While the study is limited to MP, its findings speak to the larger discourse on criminalisation of the rights of forest-dwelling communities. We hope that this research will invoke much-needed discussions on the far-reaching impacts of criminalisation.

<sup>32</sup> Mukta Joshi and Nitin Sethi, 'Government to approve cutting down of forests without consent from tribals and forest dwellers' (Newslandry, 7 July 2022)

<https://www.newslandry.com/2022/07/07/government-to-approve-cutting-down-of-forests-without-consent-from-tribals-and-forest-dwellers> accessed 23 November 2022.



## 2 RESEARCHER'S NOTE

## I. DISPELLING THE RESEARCHER-RESEARCH SUBJECT BINARY

As an organisation rooted in an anti-caste ethos, the CPA Project is cognisant of the violence inherent to the Brahminical modes of knowledge production that have been synonymous with the misappropriation of the lived experiences of oppressed caste and ethnic communities. While undertaking actionable measures rooted within a distributive framework of justice, CPA Project's knowledge production policy is derived from the principle that knowledge production should be a collective endeavour. We take the lived experiences of heterogeneous marginalised communities as the basis of knowledge systems and theorising in opposition to the Brahminical academy, in order to challenge the epistemic violence<sup>33</sup> and decentralise systems of knowledge theorising as it originates in the (Brahmin) mind. Gopal Guru attempts to highlight the unequal terrain of the Social Sciences in India, especially in terms of 'theorising', which remains the domain of the twice born Brahmins.<sup>34</sup> Guru explains the conditions that lead to the binary of 'theoretical Brahmins' and 'empirical Shudras' and postulates that these inequalities are responsible for the dismal state of the social sciences, which is hegemonised by Twice-Born Brahmins who keep regurgitating the same ideas.

CPA Project's knowledge production principles seek to break the binary of the experiential research subject and the meritorious researcher/knowledge producers by centring the voices of Bahujans.<sup>35</sup> In this light, we have taken steps such as supporting Bahujan members to take the lead on writings of the CPA Project and being credited as first authors.<sup>36</sup> These steps have been undertaken to debrahminise, and create anti-caste modes of producing knowledge through the centring of the voices of the oppressed caste communities who have been relegated to being 'data points'<sup>37</sup>, instead taking them to be creators of knowledge. Therefore, all forms of knowledge production, namely articles, videos, comics, etc, are accredited to all members (full time, voluntary, interns and other collaborators) who have contributed to the process.

As a group comprising primarily of researchers belonging to oppressed caste communities, including Dalits, STs, Pasmanda Muslim and other backward castes (including dominant and non-dominant castes) along with two oppressor caste researchers seeking to undertake anti-caste research, we draw from a range of scholarship and research praxis emerging from anti-caste studies and indigenous and ST scholarships to highlight the Brahmanical ethos of criminalisation in India. In addition to creating and foregrounding Bahujan<sup>38</sup> scholarship, an important aim of our research praxis is to underscore the casteless-ness of the 'general category' (oppressor or so-

33 Vishal Jamkar, 'Inventing A Bahujan Grammar: In Memory Of Abhay Xaxa' (AGITATE!, 26 May 2022) <<https://agitatejournal.org/article/inventing-a-bahujan-grammar-in-memory-of-abhay-xaxa/>> accessed 19 October 2022.

34 Gopal Guru, 'How Egalitarian are the Social Sciences in India?' [2002] 37(50) EPW <<https://www.epw.in/journal/2002/50/perspectives/how-egalitarian-are-social-sciences-india.html>> accessed 11 October 2022.

35 Kanshiram's definition of Bahujan- all oppressed communities - The term Bahujan refers to present day Scheduled Castes (Dalits), Scheduled Tribes (Adivasis/indigenous) and Shudra (peasant) castes — cutting across religion, ethnicities and geographies.

36 CPA Project, Knowledge Production Policy, on file with author.

37 Abhay Flavian Xaxa, 'I am not your data', (Adivasi Resurgence, 13 Jan 2016) <<http://adivasi resurgence.com/2016/01/13/i-am-not-your-data/>> accessed 11 October 2022.

38 Jamkar (n 33)

called upper caste) researchers dominant within Indian academia. In forging Bahujan scholarship, we are also cognisant of the heterogeneity of oppressed caste/subaltern voices. We see the project of knowledge production as being crucial to building solidarities of the oppressed while engaging with the system of graded inequality and the complex power dynamics emerging from an evolving caste order. Linda Tuhiwai Smith in her paradigmatic book *Decolonising Research* grapples with the complexities of the idea of 'researching back' such that the 'inside-out/outside-in research'<sup>39</sup> becomes a reimagination of what research must look like i.e. what research must grapple with and what it must involve, how it must tread, and so on. Thus, this becomes an ambitious reclamation of research by attempting to challenge the oppressive power dynamics that have come to characterise research. Our position as Bahujan researchers working on caste is an exposition in developing scholarship from within. A significant part of the process of developing perspectives from within is envisioning a participatory action research model of doing 'non-extractive' action-oriented research, which involves working with communities as stakeholders in the process of challenging the status quo.

CPA Project predominantly works alongside De-Notified Tribes (DNTs) including nomadic, semi-nomadic, and settled tribes, among others, who were termed 'criminals by birth' in the Criminal Tribes Act (CTA). Given the violent history of research on DNT and ST communities and as researchers sharing the same history of violence inflicted by a Brahmanical system, we have been undertaking active (but evolving) measures to not reify the same structures of violence. Efforts are also being made to involve mentor researchers from the DNT and ST communities. It is in this context that we situate our current research on wildlife policing through a primary focus on the Wild Life (Protection) Act (WPA), 1972.

## **II. WILDLIFE RESEARCH: BUILDING PERSPECTIVES FROM WITHIN**

Our present research on examining the criminalisation of forest-dwelling communities under the WPA stems from the routine criminalisation of forest and non-forest dwelling communities in wildlife policing. The CPA Project's experience of legally representing members of these communities has seen the WPA being used as a common tool for prosecution of the DNTs by the police for practising their traditional occupations. It is to unpack the nuances of this criminalisation and policing under the WPA that we undertook this research. Therefore, given our advocacy with the community, we occupy the unique position of "insiders-outsiders". Any potential conflict of interest situations that might emerge were addressed through oversight by the Ethics Committee.

As mentioned above, while our entry point into this research was our engagement with the DNTs, as we proceeded further with this research, we discovered that the historical context of the criminalisation of the DNTs differs from the criminalisation of forest-dwelling tribes. Therefore, we decided to separate the two research endeavours and proceeded with the current research that focuses on forest-dwelling communities.

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<sup>39</sup> Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (2nd edn, Zed Books 2012) 5.

Further, to address the heterogeneity among the tribes, we have relied on different terms such as tribes and Scheduled Tribes throughout this report. The etymology of these terms differs across various contexts in India. The term adivasi (meaning original inhabitants) is predominantly used as a term of self-assertion by the tribes of mainland India. The term ST, while used by various social movements, emerges from a specific socio-political context of the violent severing of the access of these communities to land and their natural surroundings by the Brahminical State.

While communities residing within the Sixth Schedule areas of the north-eastern states of India ascribe to the notion of identifying as tribes, several members of the communities we interacted with during the course of the fieldwork preferred to identify themselves either as Scheduled Tribes (the constitutional term) or through the name of their particular tribe, for instance, Baiga or Gond. A senior leader and panchayat member from the Gond community was offended when one of the interviewers used the term adivasi. He said that his community was constitutionally recognised as STs and should therefore be addressed as the same. The term ST here could be seen as a form assertion of constitutional rights through a reliance on a constitutional category. Our 'perspective from within'<sup>40</sup> does not limit its inquiry to positionality of tribes but attempts to address the conflict within the tribes through decoding various power dynamics that exist among them.

As Virginus Xaxa argues, the term adivasi, also far from its etymological roots, meaning 'indigenous' derives its origins as resistance against the violent dispossession of communities from their histories and resources.<sup>41</sup> The usage of these varying terms of self-assertion is also a way for us to underscore the heterogeneity among forest-dwelling communities. This heterogeneity manifests across tribes, gendered lines, systems of knowledge and particularly in the disparate modes of criminalisation of different forest-dwelling communities and their resistance against/negotiations with structures of power. For instance, the Gond community, for various reasons, including their political mobilisation, display greater assertion in navigating their relationship with the Forest Department than the Baiga community (which has a larger population residing in the same region).

This heterogeneity also speaks to the specific forms of oppression that have been directed towards severing the access of these communities to forest, land, water and allied natural resources. As researchers from non-forest-dwelling communities, we also needed to be cognisant of the erasure and appropriation of the traditional systems of knowledge of the forest-dwelling communities. Therefore, researchers on the team were put through a rigorous research workshop, a significant portion of which involved thinking through both the historicity and power dynamics of research with these communities.

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<sup>40</sup> Dr. bodhi s.r., *Social Work In India: Tribal And Adivasi Studies Perspectives From Within* (Adivaani 2016).

<sup>41</sup> Xaxa (n 3).

### III. SAFEGUARDS AND ACCOUNTABILITY MEASURES

To ensure that a system of checks and balances existed with regards to the actions of researchers, an Ethics Committee, comprising scholars from tribal, ST and Bahun communities were involved in the process of reviewing all steps of the report, starting from the research design and including a risk-assessment, to ensure that measures were undertaken to prevent harm to members of forest-dwelling communities.

Accountability mechanisms have been undertaken particularly with regard to the positionality of upper-caste researchers in the field who were required to offer a complete disclosure of their caste locations, while undertaking accountability measures in terms of ceding space both in terms of authorship and throughout the span of the research in line with our knowledge production policy.

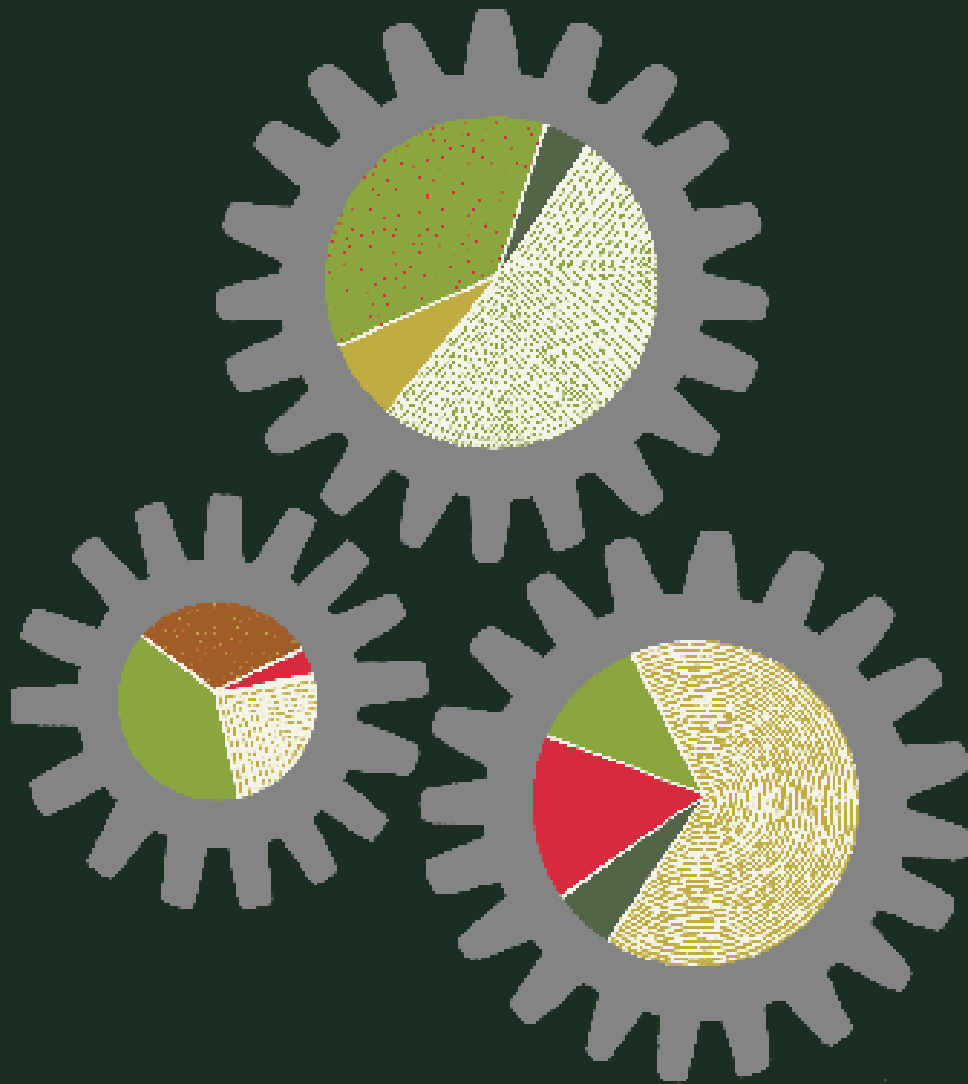
Safeguarding measures were adopted in terms of separating researchers who interacted with forest-dwelling communities and those that interacted with State authorities to ensure that harm to already at-risk communities was not caused or exacerbated in any way. This measure followed the lead of community interlocutors about being aware of local customs and traditions in terms of bringing to life the process of on-field interactions. We have made efforts to ensure that conversations with State authorities were led by the researchers from the CPA Project and were carried out following interviews with accused persons to prevent any backlash to our interviewees and interlocutors.

### IV. TAKING BACK

As mentioned above, as lawyers working with forest-dwelling and other criminalised communities, our entry point into this research was to unpack the policing and subsequent criminalisation of these communities under the WPA. Thus, the findings of this research are geared towards driving efforts to challenge the status quo for criminalised communities. Following the collection and writing of research, a series of conversations were carried out in the areas of our research to share findings and discuss next steps with people. We intend to continue this process following the publication of this study geared toward advocacy efforts. Tuhiwai Smith refers to this as 'reporting back' and 'sharing knowledge' as imperatives that researchers must value as a part of the process of researching, thus advocating for expanding the meaning of research as a whole.<sup>42</sup> What Smith sees as the process of taking back perhaps could also be understood as the process of redistribution of power and resources through research, which is a fundamental tenet of the project of annihilation of caste.

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<sup>42</sup> Smith (n 39).



# 3

## METHODOLOGY

*A mix of qualitative and quantitative methods were used, primarily based on the nature of inquiry and the objectives of the research.*

This research seeks to understand the extent and nature of disproportionate targeting of communities through the WPA by the Forest Department and also to understand the impact of criminalisation on certain communities through the selective choice of qualitative methods. It also seeks to question and problematise the idea of the category of 'criminal' and its casteist underpinnings under the WPA. In order to understand the extent of criminalisation, it is important to analyse various sets of quantitative data of the police and the Forest Department, which includes FIRs, arrest data and Forest Offences Case Register. This data shows the trends related to the animals hunted, number of arrests, castes/communities being criminalised/targeted and so on. However, this data is sufficient to understand the context of criminalisation of certain communities over the others.

In the context of this research, the quantitative data is limited in certain ways without the use of qualitative data, as it does not answer questions pertaining to the hunting of particular animals, irregularities in arrest, custodial violence, the detection of crime by the Forest Department and other such factors. Patterns of criminalisation can thus be understood more clearly with the use of qualitative methods, including why a particular animal is being hunted, the irregularities in the arrest, custodial violence and how the Forest Department detects a 'crime'.

## **I. USING QUANTITATIVE DATA TO EXTRACT PATTERNS IN POLICING**

Carrie Menkel Meadow, in her article "Uses and Abuses of Socio Legal Studies" explains that analysis driven by quantitative data directly contributes to making theories, concepts, testable hypotheses and robust empirical findings.<sup>43</sup> Further, statistical measurements of legal phenomena can help in documenting how the law and its institutions operate in reality.<sup>44</sup>

Hidden biases often not accepted by society are brought to light by data-driven research. For example, a collection of work by multiple scientists<sup>45</sup> speaks about cognitive errors in human reasoning, which shows how cognitive errors interact with legal phenomena, exploring implicit biases in all legal reasoning, behaviour and decision-making with attention to racial and gender biases among judges, lawyers, police and other decision-makers.<sup>46</sup> The institution of policing is one that has remained out of the scope of study, apart from the use of internal indicators to judge the efficiency of the criminal justice system in reports such as the National Crime Records Bureau.

<sup>43</sup> Carrie Menkel-Meadow, 'Uses and Abuses of Socio-Legal Studies' in N. Creutzfeldt, M. Mason & K. McConnachie (eds), *Routledge Handbook on Socio-legal Theory and Methods* (Routledge 2019) 38.

<sup>44</sup> *ibid* 38.

<sup>45</sup> Daniel Kahneman and Amos Tversky, 'Judgement Under Uncertainty: Heuristics and Biases' [1974] 185(4157) *Science* <<http://links.jstor.org/sici?sici=0036-8075%2819740927%293%3A185%3A4157%3C1124%3AJUUHAB%3E2.0.CO%3B2-M>> accessed 18 October 2022; Daniel Kahneman, *Thinking, Fast and Slow* (Farrar, Starux and Giroux 2011).

<sup>46</sup> Menkel-Meadow (n 43) 42.



While such reports record the 'workings' of the system through statistical data, little attention is given to the use of discretionary power wielded by authorities in the course of daily functioning. Our data looks at public sources to uncover patterns of policing within information recorded by them and reverses the gaze of policing: instead of focusing on those who are routinely policed, our study examines the system that allows for power to be wielded unchecked. For the purpose of this study, we have relied on arrest records (from 2010 to 2020) and First Information Reports (FIRs) (from 2016 to 2020) from the police department and the compiled Forest Offences Case Register (2016 to 2020) from the Forest Department for the state of Madhya Pradesh. Further patterns are arrived at through a district/circle-wise analysis and the narratives recorded by the police in marking out an offence.

## II. LIMITATIONS OF QUANTITATIVE RESEARCH FINDINGS

Data-driven policies or forms of evidence do not necessarily attend to the contingencies of everyday life. They do not pay attention to the detail, the situatedness, and the contexts of how and where data are made, interpreted, used, and made meaningful. Thus, they do not have a situated ethics that seeks to understand the circumstances and actions as they play out<sup>47</sup> Experts place high value on numerical data as a form of knowledge and as a basis for making decisions. This perspective includes a pragmatic acceptance of imperfect measurement and scepticism about politics. It assumes that all things can be measured and those measures provide an ideal guide to decision-making. In this regime, the use of evidence organised by guidelines, standards, metrics, and performance evaluations is essential to decision-making.<sup>48</sup>

To mitigate the limitations of historical quantitative data, we employed a mix of qualitative methods, where we framed our research questions and tested these with others who have undertaken similar work and interviewed multiple stakeholders within the legal system to arrive at our findings suited to local contexts. Our conclusions and recommendations have been drawn from the same method of speaking to both local contexts and quantitative data.

In addition to this, our data has been sourced from the websites of the Madhya Pradesh Police and the Forest Department. Though these websites are to be maintained regularly, individual police stations or forest circles vary in their compliance. Hence, our data is limited by the information that we were able to scrape. We notice this gap most in the scraping of FIRs, where despite ample arrest records to show activity by the police in filing cases under the WPA, very few corresponding FIRs were found. Despite our initial foray into research around the question of the criminalisation of hunting, we found that most FIRs pertain to the offence of sand mining, which we have relegated as outside of the scope of this study. It is seen that the Forest Department is the primary office that prosecutes hunting offences, regardless of whether they occur in PAs or Territorial Areas.

47 S. Pink and D. Lanzeni, 'Future Anthropology Ethics and Datafication: Temporality and Responsibility in Research' (Sage Journals, 2 May 2018) <<https://journals.sagepub.com/doi/full/10.1177/2056305118768298>> accessed 11 October 2022.

48 Sally Engle Merry, *Seduction of Quantification* (The University of Chicago Press, 2016).

## A. THE METHODOLOGY AND CHALLENGES OF MAPPING INDIVIDUALS' SOCIAL LOCATIONS AND WHY WE CHOSE THESE METHODS.

A key purpose of our study is to determine the caste locations of the individuals arrested and implicated under the WPA through arrest records and First Information Reports (FIRs) of the Madhya Pradesh (MP) police department as well as the compiled Forest Offences Case Register from the Forest Department, which require the full names of the individuals to be documented by the police and Forest Department respectively. The Forest Department in its data on wildlife also recorded the jāti<sup>49</sup> (caste) of accused persons in several instances. The department has followed a pattern of recording the details of the accused person in the following manner: Full name, village name, jāti name. We sought to examine individuals' caste locations from the last names, region and jāti listed in these forest department records. On the other hand the police department has only recorded the names and addresses of the individuals implicated under the wildlife crimes.

Last names and the region-specific last names are a visible marker of one's caste location in Indian society. Journalist Jeya Rani argues that last names are 'oral caste certificates.'<sup>50</sup> Last names have been worn as virtual badges of superiority by the oppressor caste groups and they are an immediate marker of one's inferiority for individuals belonging to the oppressed castes. They have also featured prominently in anti-caste reformist movements. For instance, anti-caste leader Periyar EV Ramasamy dropped his last name at the first Tamil Provincial Self Respect Conference at Chengalpet in 1929. He argued that the abolition of casteist last names was crucial to undermining the caste system itself. Similarly, many Dalits<sup>51</sup> have adopted the last name Gautam in an act of self-assertion against the brutally oppressive caste system.

However, ascertaining the caste location of an individual from their last name is beset with challenges, due to state policies and the hyper-localised interrelations of the caste system itself. The biggest methodological challenge in this endeavour is carrying out caste disaggregation in the absence of a caste census data carried out by the Indian government. Caste census means inclusion of caste-wise tabulation of India's population in the census exercise held every decade, which has only been done for Scheduled Castes (SCs) and Scheduled Tribes (STs) communities thus far. The lack of enumeration of the Other Backward Classes (OBCs), a category comprising over 5,000 caste groups<sup>52</sup> with varying histories of oppression, in the census, results in being unable to underscore their representation within the criminal justice system.

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49 The caste system, as it actually works in India, is called jati. The term jati appears in almost all Indian languages and is related to the idea of lineage or kinship group; Donald Johnson and Jean Johnson, 'Jati: The Caste System in India' (Asia Society, 18 October 2015) <<https://asiasociety.org/education/jati-caste-system-india>> accessed 19 October 2022.

50 Jeya Rani, 'So the Term 'Dalit' Can't Be Used But 'Brahmin' and 6,000 Other Caste Names Can' (The Wire, 14 September 2018) <<https://thewire.in/caste/dalit-brahmin-caste-names>> accessed 19 October 2022.

51 Dalit refers to the most oppressed castes that fall outside the fourfold varna system but are nonetheless subjected to the caste system's systemic oppression.

52 MD Gupta, 'Less than 1% of OBC castes corner 50% reservation benefits, 20% get none, govt panel finds' (The Print, 11 July 2020) <<https://theprint.in/india/governance/less-than-1-of-obc-castes-corner-50-reservation-benefits-20-get-none-govt-panel-finds/458860/>> accessed 19 October 2022.

**First,** the administrative categories of 'General, SC, ST and OBC completely invisibilises and subsumes communities such as the Denotified Tribes (DNTs)<sup>53</sup> who have distinct socio-cultural histories and unique experiences of caste oppression, falling entirely outside the caste system as nomadic or semi-nomadic communities. As a result, some DNT communities are considered by the state (on paper) to belong to the General category, others as Scheduled Castes and still others as Scheduled Tribes. The Renke Commission and the Idate Commission, established by the Union government, were tasked with identifying the nomadic, semi-nomadic and DNT communities across India. However, these commissions' recommendations and findings have not yet been formalised to recognise these communities as a distinct group in state categories. Another challenge to ascertaining caste from last names arises in the case of oppressed caste communities belonging to non-Hindu caste groups. The stateist pigeonholing of oppressed caste communities to Hinduism has led to the exclusion of these communities from the SCs and STs categories, despite demands from Dalit Christians and Dalit Muslims.<sup>54</sup> The inclusion of these communities in the OBC category is also impeded due to the dated nature of OBC classification in the absence of caste census data. Therefore, given the state's lack of recognition of caste beyond the fold of Hinduism, our (and any such) exercise is limited in its inability to ascertain caste among non-Hindu groups.

**Second,** the classification of communities in these state categories is itself fraught with inaccuracies and contestations. For example, dominant caste communities have exercised their political powers to demand inclusion in lists of OBCs, SCs or STs to benefit from affirmative actions of the state and the reservation policy in education and employment. The Kapus of Andhra Pradesh and the Marathas of Maharashtra offer prominent examples of communities making such demands (and even succeeding sometimes) in the recent past. On the other hand, some ST<sup>55</sup> and Dalit communities find themselves categorised as General or OBCs despite suffering the full oppression of the caste system.

**Third,** the relationship between last names and the caste locations differs from state to state or even one district to another, in order to account for local intricacies. Here, it must also be noted that several marginalised communities migrate across state borders i.e. they may be considered as belonging to a specific marginalised community in one state's official categories, but may not find a space in the other state's categories at all on account of being considered migrants or non-locals, although caste follows one everywhere and caste certificates are also eligible across state boundaries. However, official enumeration in state lists isn't a given.

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<sup>53</sup> DNT's refers to the communities that were branded hereditary criminals under the colonial Criminal Tribes Act 1871, which was repealed in 1952 and the erstwhile 'criminal' tribes 'denotified'.

<sup>54</sup> 'Pasmanda', a Persian word, means the 'ones left behind', and is used to describe depressed classes among the Muslims. Pasmandas are estimated to make up 80-85% of India's Muslims; Saurabh Kapoor, 'Explained: Who are Pasmanda Muslims, focus of BJP outreach?' (The Indian Express, 12 July 2022) <<https://indianexpress.com/article/explained/explained-who-are-pasmanda-muslims-bjp-pm-modi-8017276/>> accessed 19 October 2022.

<sup>55</sup> 'Adivasis' are the indigenous people of India who are designated as Scheduled Tribes under the Constitution. However, there is some political conflict around the term. Hailing from the Hindi language, this term is not accepted by all Indian tribes; Xaxa (n 3).

**Fourth**, state lists of SC and ST communities may be comprehensive, but are not exhaustive.

**Fifth**, certain last names (such as Thakur, Rathore and Kumar) are ambiguous. They are the last names claimed by both the oppressor and oppressed caste groups and therefore it is difficult to ascertain whether an individual with such a last name belongs to the oppressor caste group or the oppressed caste group from a perusal of the FIRs of the police department, which provide no further information. It is also not unheard of for some marginalised community members to adopt a last name usually/generally associated with an uppercaste group to pass off as upper caste and avoid at least some of the caste stigma from their oppressed caste status.

**Sixth**, the State maintains lists of groups belonging only to the SCs, STs and OBCs. There is no State list of communities belonging to the General category. As Deshpande argues,<sup>56</sup> the lack of enumeration of castes in the General category, which predominantly comprises oppressor castes, is also evidence of how State categories are used to bolster the 'castelessness' of the General category.

Despite these challenges, we have persevered by scouring through:

1. Central and MP state SC and ST lists
2. Central and MP state OBC lists
3. Idate and Renke Commission lists
4. Land record documents from various districts across xyz
5. MP merit lists for national scholarships and fellowships (eg. National Talent Search Examination)
6. MP scholarship portals and merit lists for competitive exams
7. Oral histories of marginalised Vimukta community members about their caste oppression and unique criminalisation

We have classified last names as belonging to the following groups — 'General', 'SC', 'ST', 'OBC', 'DNTs', 'Maybe General', 'Possibly Marginalised', 'Unclassified' and 'Zero' (0). For the police department data, we classified the last names with the help of the seven above-mentioned sources. However, for the data of the forest department, we classified the last names as belonging to the above-mentioned groups with the help of the names of the jātis. For example, the word 'Adivasi' and 'Gond' (both used to indicate the administrative category of ST) was most often used to indicate the caste of the accused.

'General' indicates such last names that belong to the oppressor or so-called upper castes. 'SCs' includes the names of Dalit communities. 'STs' includes the names of ST communities. 'Other Backward Classes' is derived from the enumeration in official state documents. DNT communities include all denotified, nomadic and semi-nomadic communities and are primarily derived from

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<sup>56</sup> Deshpande (n 3).

oral histories and classifications in the Idate and Renke Commissions. 'Maybe General' includes all last names that are used by both the oppressor castes and the oppressed castes. For instance, the last names 'Arya' and 'Thakur' in MP are used by both oppressor caste and ST communities. Therefore, our classification 'Maybe General' errs on the side of undercounting marginalised individuals. 'Possibly Marginalised' includes all last names that are used by different groups of marginalised communities and not any of the oppressor castes. For instance, 'Shah' and 'Sonkar' are last names that are used by the SC, ST and OBC communities. Therefore, for last names that are classified as 'Possibly Marginalised', we have been unable to classify which specific marginalised group the last name belongs to, but have sufficient evidence to indicate that the last name is claimed by at least two groups of marginalised communities. 'Unclassified' includes such last names whose caste location we were unable to determine despite our fairly extensive search. 'Zero' includes the arrest records and FIRs that did not contain any last name.

We do not claim that our methodology is perfect, especially given the state's failure in adequately and uniformly recognising communities or enumerating them and the caste system's hyperlocal intricacies. However, we do claim that our categorisations are reasonably indicative of one's caste location, when determined solely by their last name.

It is also important to note that the 2011 Madhya Pradesh State Census contains data for the district-wise population of only SC and ST communities. The population of OBC communities in the districts of Madhya Pradesh has been enumerated, but is not published in the public domain. DNT populations are not counted in any state census. Therefore, we have been able to contextualise the proportions of individuals arrested or implicated in our data sets with respect to their overall proportion in the population of the specific district only for SC and ST communities. For other communities i.e. the General category, OBC and the Vimukta communities, our findings on over-representation are situated in the context of the state-wise proportion of these communities in the total state population.

### **III. USING QUALITATIVE DATA TO UNDERSTAND THE NATURE OF CRIMINALISATION:**

As has been stated in the objectives of the research, the study also seeks to examine the impact of criminalisation on the lives and livelihoods of the tribal and other traditional forest-dwelling communities of Mandla and Balaghat.

**We have interviewed four categories of actors within the WPA system:**

1. *Accused persons and their families*
2. *Their lawyers*
3. *Forest Department officials (at different bureaucratic levels- beat/range officers, up to the DFO)*
4. *Police officials who are also involved in prosecuting hunting.*

**This has been carried out through multi-sited field visits in two districts in Madhya Pradesh**

1. *Mandla (high number of arrests in police data, forest dept data)*
2. *Balaghat (highest number of arrests, close access to national parks)*

To use the following stakeholder-specific questionnaires for semi-structured interviews to reconstruct the chronological life cycle of a hunting offence — from the initial discovery of animal parts to registration of offence to judicial outcomes. We wanted to be able to trace the impact of targeting of oppressed communities that exist in an unequal relationship with the Forest Department (and police), given their history of control over forests. In order to capture accounts shared with us while ensuring that the dignity of the individuals is maintained, we have axed minor factual inconsistencies for the sake of uncovering the overarching narrative of dispossession due to policing excesses in the name of conservation.

We are providing the questionnaire for all the stakeholders as annexure. This questionnaire and its drafts have been rigorously reviewed by the Ethics Committee, discussed during the research workshop and has been put together after inputs from resource persons with varying insights about the subject matter.

In order to study both the nature and multifaceted impact of criminalisation, it is imperative to engage with multiple stakeholders and conduct an in-depth inquiry about the various aspects of criminalisation.

Jane Ritchie et. al, in their book on qualitative research methods, have highlighted that the choice of methodology depends on the complexity and sensitive nature of the inquiry.<sup>57</sup> The nature of criminalisation is complex because it involves understanding the interactions between various forest laws and forest-dwelling people and tracing the life of the law. Moreover, the nature of this inquiry is such that it involves sharing the information about the 'offences', incidents of violence and history of conflicts with the Forest Department and about cultural practices of the communities related to hunting, which are seen adversely by 'outsiders', including researchers. Making this information public can also put them at risk of targeting by the Forest Department.

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<sup>57</sup> Jane Ritchie and Jane Lewis, *Qualitative Research Practice* (Sage Publications 2003) 97.



This requires informed consent of the participant, active measures for ensuring anonymity, and also building a relationship of trust which qualitative research methods allow. Qualitative research also allows a rich and in-depth understanding of particular patterns. It allows the researcher to understand the context better through the engagement with the participant. This makes the analysis more grounded and comprehensive. For instance, in this research, through in-depth interviews, we could understand the multifaceted impact of displacement because of WPA through detailed interviews with the people in the village. Therefore, the choice of this method makes our research more holistic and in-depth.

## **A. STUDY OF OFFICIAL DOCUMENTS**

Other than the study of quantitative data and qualitative research, we analysed charge sheets of particular cases to understand the narratives of criminalisation under the WPA. Charge sheets provide information about the 'offence' committed and the processes followed during the investigation, including details related to arrest and seizure. The analysis of these official documents helps in understanding the narrative of the prosecution and lapses, if any, in the procedure and so on. These documents give details about the place of offence, nature of offence, animals hunted, method of hunting and also about the procedure of seizure and arrest followed by the Forest Department. For example, in the charge sheets where an offence has been registered for 'illegally' accessing a particular part of forest, the Forest Department has also attributed motives of hunting without any basis or evidence to back it up. Narratives like this can help us understand how the Forest Department weaponises the law to criminalise the livelihoods of the forest-dwelling communities. Therefore, it is very important to study these documents.

## **IV. SAMPLING METHODS AND THEIR BASIS**

There are two approaches to sampling when it comes to qualitative research: i) probability sampling and ii) purposive sampling. In this approach we used the purposive sampling method where the participants are chosen strategically keeping in mind the goal/objective of research.<sup>58</sup> Criteria for the inclusion or exclusion of the participants were fixed based on the objectives of the research. Also, given that the nature of inquiry in this research involves sensitive information and it is difficult to engage without building a relationship of trust, snowball sampling allows access to people who are part of an already established network. The initial visits to field areas were made to establish contacts with interlocutors who already have a relationship of trust specifically with the people accused under the WPA. Through these visits we also met lawyers dealing with WPA matters who helped us with references of other lawyers. This method of sampling also allowed us to understand the life cycle of an offence from registration to disposal in the criminal justice system by interviewing all the relevant stakeholders, including 'accused' persons, lawyers, Forest Department officials, conservationists and social activists.

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<sup>58</sup> Alan Bryman, *Social Research Methods* (4th edn, OUP 2012) 418.

## **A. SAMPLE SIZE**

There is no consensus among scholars of research methodology about the ideal sample size in qualitative research. The principle that emerges from the literature on this subject is that the study/enquiry should achieve theoretical saturation/data saturation for it to be considered conclusive. In other words, no new dimension or data should emerge from the interviews done subsequently.

We conducted a total of 45 interviews. During this research, we tried to follow the principle of data saturation by covering all dimensions of criminalisation across different categories of participants/respondents. For example, with the group of participants in the category of 'accused' persons we tried to capture the voices of people belonging to different communities, offences involving different animals, different kinds of forest areas administratively and so on. Similarly, for Forest Department officials, we interviewed people across the hierarchy of the department to understand the different understandings and interpretations of the law and its impact. We interviewed the beat guards, range officers, sub-divisional officers, divisional forest officers and the field director of the Kanha National Park. Therefore, by interviewing different stakeholders, we were able to arrive at a holistic and an in-depth understanding about the forms and effects of criminalisation of the traditional forest-dwelling communities. Our rigorous approach to interviews, which covered all the important voices that are often left out in quantitative samples, makes our data appropriate, conclusive and generalisable.

## **B. LIMITATIONS OF QUALITATIVE DATA**

It is important to understand the limitations associated with qualitative methods. These limitations can be related to gaining access to certain groups of participants or it can be about the extent to which the evidence collected can be generalised. These challenges were encountered/understood at various stages of the research. One of the limitations of the evidence collected during this research was that it can only be generalised to a certain extent. The evidence collected about the patterns of criminalisation and the impact and experiences of specific oppressed communities is based in a distinct ecological setting. Therefore, only 'inferential generalisations' can be drawn for other settings where similar conditions may exist. The other limitation is about the selection of participants for interviews. Snowball sampling, as has been explained above, was the most suitable method for this research. Even though active measures were taken to check the bias of interlocutors in selection of participants, it is difficult to completely rule out bias.





# 4

## LITERATURE REVIEW

HISTORICAL FRAMEWORKS OF  
FOREST GOVERNANCE

This chapter discusses the framework and conflicts of wildlife conservation in India, drawing upon how these efforts have run parallel to the practices, faith and conservation efforts of tribal communities. It traces the trajectory of the legislative enactments around forest and wildlife governance in India, and specifically spotlights the WPA. In outlining the top-down approach of conservation and forest governance, it reflects on the imposition of complicated legal regimes on forest-dwelling communities and documents their resistance and negotiation to enforce rights.

## I. TRACING HUNTING PRACTICES IN COLONIAL TIMES

Most academic histories of hunting in India have documented the hunting sports of the colonial regime and Indian royalty.<sup>59</sup> In our study, however, we seek to understand the hunting patterns of the Gonds and other forest-dwelling and ST communities as they relate to, and the construction of tribal identities in, the early 19th and 20th century. Since the precolonial period, forest-dwelling and other ST communities have engaged in hunting and gathering for various purposes based on the landscape of the area, including for livelihoods, for traditional and cultural purposes including during religious festivals. This approach to hunting was different from those used by British hunters. Records from the early 19th century show that native *shikaris* (hunters) caught birds and played other hunting games to earn livelihoods. Further the many folks belonging to forest dwelling communities used traditional weapons including bows, arrows, nets, traps and other similar weapons, while the British used modern weapons such as guns.

Baigas used to eat *garra* meat (leftovers from tigers: prey) which was a significant part of their tradition.<sup>60</sup> During the colonial regime, the British accessed and navigated forests with the help of local hunters, using their expertise and knowledge to guide them. Hunting or *shikar*, therefore, became a central feature in colonial ethnological representations of the Gonds. The Gonds were understood to be natural-born hunters and woodsmen<sup>61</sup>, and British accounts constructed them as essentially 'hunting tribes' of the past<sup>62</sup>. Further, the Gonds were portrayed as service-oriented individuals who were employed by the British as guides, trackers, beaters, porters, and servants<sup>63</sup>

During the colonial period, other hunting practices persisted. According to Vijay Mandla's book *Shooting a Tiger*, forest-dwelling hunters supplied meat to markets in Calcutta for their livelihood in the early 19th century<sup>64</sup>. It notes, 'there were communities with a strong tradition of hunting, such as the Koitoors and Durwas of central India, marking their territories with specific

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59 Ezra D Rashkow, 'Making subaltern shikaris: histories of the hunted in colonial central India' (2014) 5(3) *South Asian History and Culture* <<https://doi.org/10.1080/19472498.2014.905324>> accessed 25 October 2022

60 Outlines of Field Chapter.

61 Rashkow (n 59).

62 *ibid*.

63 *ibid*.

64 Vijay Ramdas Mandla, *Shooting a Tiger: Big- Game Hunting and Conservation in Colonial India* (Oxford University Press 2019) 161.

hunting routes.<sup>65</sup> Tribal communities also practised hunting for worship and other religious practices. For example, in a village named Dhaba in the state of MP, the Bibri festival involved sacrificing animals such as boar, goats or hens for the local goddess.<sup>66</sup> The Pardhis, a nomadic tribe living in the states of Maharashtra, MP and Rajasthan hunted and sold wildlife derivatives, including meat, and provided their hunting skills to local rulers during their royal hunting expeditions.<sup>67</sup> Pardhis used their skills to coax animals to move towards the kings' hunting grounds. Their hunting expeditions called '*hakas*' provided meat to royal kitchens, in return for a reward. Farmers also hired Pardhis to guard their crops against wild animals. In return, they were provided with temporary shelters to live around the villages and allowed to retain the hunted meat, which they consumed and also sold. Pardhis, who still rely on traditional instruments to hunt, have honed these hunting skills over centuries, many of which continue to this day.<sup>68</sup> Based on the development of different schools of hunting technique, a number of caste groups were formed within the community. For example, the Phandiya Pardhis hunt with a rope noose. On the other hand, Teliya Pardhis capture reptiles and sell their meat and the oil extracted from them. Pardhis have not adopted modern equipment such as guns.<sup>69</sup>

In contrast to the hunting techniques of forest-dwellers, that colonial officials used modern firearms to hunt and began the more widespread commercialisation of wildlife. Forest-dwelling hunters, for instance, were against hunting certain species and over-hunting big animals. Their hunting activities were carried out with the intent of meeting the basic necessities of life rather than for pleasure or commercial needs. The use of firearms, the extensive commercialisation of hunting by the colonial government, as well as their practice of hunting for sport and recreation created resentment among the forest-dwelling communities as this went against their conservatory ethos.<sup>70</sup>

In retaliation, forest-dwelling communities adopted several measures to express their dissent towards the activities of the colonial government. From outright refusing to hunt certain species, such as the tiger, which was seen as totem and sacred, to keeping the whereabouts of other dangerous animals a secret, the subaltern *shikaris* expressed their resistance in creative ways. At the same time, the colonial government instituted several changes to exercise more control over forest resources and surveil forest-dwelling hunters, painting a picture of them as poachers and ultimately responsible for forest degradation, after taking advantage of their hunting skills.<sup>71</sup>

65 Madhu Ramnath, 'Surviving the Forest Rights Act: Between Scylla and Charybdis' (2008) 43(9) EPW <<https://www.jstor.org/stable/40277205>> accessed 18 October 2022.

66 Outlines of Field Chapter.

67 WWF-India, 'Pardis - hunters in need of help' (WWF, 14 April 2010) <<https://www.wwfindia.org/?4280/Pardis-hunters-in-need-of-help>> accessed 25 October 2022.

68 *ibid.*

69 *ibid.*

70 Rashkow (n 59).

71 Rashkow (n 59).

## II. FOREST GOVERNANCE LAWS

### A. Pre Colonial forest governance

To understand the discussion above, it is important for us to look at pre colonial forest governance in India. In 'Colonialism and Environment in India: A Comparative Perspective,' Jacques Pouchepadass notes that 'societies which lived in and from the forest before the Europeans arrived were not isolated communities preserved from all outside influence from the beginnings of history.'<sup>72</sup> This indicates that there was a dynamic relationship between the communities that resided within the forests and the communities living in sedentary plains. The historical reduction of their lives and their relationship with nature as simply being symbiotic and in 'equilibrium' would be inaccurate. This flawed perspective on pre colonial forest governance further fails to account for the fact that not only was access to forest resources inequitable in nature, but was further aggravated by existing social hierarchies, which were more or less a direct consequence of the caste system in India. This is an important area that needs to be explored through further research. Practices of shifting cultivation, hunting and gathering were not necessarily primitive ways of subsistence, but responses to changing conditions that were dictated by factors like the market, land ownership and taxation structures. More importantly, the aforementioned article rightly points out that the western myth of the 'virgin forest' carried with it, in the colonial context, important legal and economic implications. Since by definition the untouched primordial forest belonged to no one, it seemed only logical that its control should vest in the colonial government.<sup>73</sup>

### B. Colonial approach towards forest governance

There is a large body of literature on colonial hunting and by many accounts, hunting in colonial times began as a leisure activity for colonial masters, as an event to display machismo and establish dominance amongst the local forest dwelling communities. This form of hunting further developed into an act of territorialisation, and colonial masters established themselves as owners and lords of the forests and the lands. Big game hunting, especially, concretised this position. This development of forests, from hunting grounds to a land ruled by overlords, laid the foundation for the commercialisation of forests in postcolonial India. Colonial legislation played a large part in this shift in the use and ownership of forest lands.

It is also important to understand how colonists understood hunting and the relationship of forest dwelling communities with the forests and the animals. While forest dwelling communities were and are still living in coexistence with forests and animals, the colonists saw the tigers they hunted as equals, creatures who shared their ethics, their food preferences, and their habitat. This identification entwined with their sense of political power over the Indian people with a new self-definition as predators. According to Heather Schell, The British hunters' sense of kinship with the

<sup>72</sup> Jacques Pouchepadass, 'Colonialism and Environment in India - Comparative Perspective' [1995] 30(33) EPW <<https://www.epw.in/journal/1995/33/special-articles/colonialism-and-environment-india-comparative-perspective.html>> accessed 18 October 2022.

<sup>73</sup> *ibid.*

tiger was infused with a nascent conviction that masculinity itself was essentially predatory.<sup>74</sup>

At the same time, the British merged a lot of Mughal hunting traditions and forest-dwellers' hunting practices with their own hunting tactics, and also adopted the term '*shikar*'. Thus, hunting represented a historic form of cultural interaction through which the British were able to build social bridges with Indians, particularly the Indian aristocracy.<sup>75</sup>

The colonists viewed indigenous hunting as 'mindless'<sup>76</sup> killing as the methods they used were not as modern as the British. The British brought modern guns to the game and showcased their killings as ethical, clean and causing no pain to the animals. After the 1857 mutiny, more restrictions were placed on hunting, game laws were codified and arms were seized, moreover, facing a large number of revolts from forest-dwelling regions, the British pushed back in the form of restrictions on hunting and access to forests.<sup>77</sup>

With regard to bigger animals such as elephants, the colonists' view in the early days of the East India Company's rule was 'they were seen much as tigers were, as pests whose elimination was to be encouraged with monetary incentives.'

Some hunting associations and clubs were formed to restrict the right to hunting. 'The aim of the monopoly was not protection per se but a means to garner and keep alive a critical resource.' Scholars claim that the primary motive behind any sort of forest governance was to encourage the efficient exploitation of forest resources to maximise revenues.<sup>78</sup> To this effect, the Governor-general of India passed the IFA of 1865. The objective of the Act was to manage and preserve government forests. This law gave the colonial government the power to declare any forestland or waste land as 'reserved', 'protected' or 'village forest', which would then be governed by the State accordingly. This meant that all the rights that existed or were recognised were extinguished, barring a few.<sup>79</sup> The subsequent amendment in 1878 further strengthened the control of the state over the forests. Notably, the customary rights of the local communities were always treated by colonial officials as undue privileges, which should never be recognised as rights. Moreover, the Act also gave greater power and discretion to forest settlement officers to settle the rights of the communities. The last amendment to the Act was made in 1927 and forms the basis of forest governance in independent India to this date. This forest governance framework laid the grounding for subsequent wildlife laws.

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74 Heather Schell, 'Tiger Tales' in Deborah Morse and Martin Danahay (eds), *Victorian Animal Dreams: Representations of Animals in Victorian Literature* (Ashgate Publishing 2007).

75 John M. Mackenzie, *The Empire of Nature* (Manchester University Press 1997).

76 Mandla (n 64).

77 *ibid*.

78 Sharachchandra Lele, 'Forest Governance' [2017] 52(25) EPW <<https://www.epw.in/journal/2017/25-26/forest-rights-act/forest-governance.html>> accessed 18 October 2022.

79 Desor et.al (n 27).

### C. Post-independence models and policies

Laws and policies in independent India have largely continued colonial traditions of forest governance. The national forest policy ranks forests as having greater 'national interest' than the interests of local communities. This essentially means that the interests of local communities can be overlooked and traded in the name of 'national interest'. Initially, forests were placed under the state list, but after the implementation of a new policy in 1976, they were brought under the concurrent list (Sharma & Kohli, n.d., #). In the early stages, emphasis was given to timber-based forestry through large-scale plantations of commercial trees like teak and eucalyptus. In fact, in 1966-67, out of the 670 million that was spent on afforestation, almost 560 million was spent on 'production forestry' alone. However, in the mid-1970s, a gradual shift began wherein the emphasis of forest policies shifted from 'production-oriented forestry' to 'social forestry' programmes.<sup>80</sup> It was in 1972, under the Indira Gandhi government, that the Wild Life (Protection) Act was passed. The literature shows that this law was brought in primarily owing to the influence wielded by many wildlife enthusiasts among other international factors, which played an important role in putting pressure on the government. The legislation also resulted in the creation of PAs across India. Currently, the land area classified as protected by the government is around 4.5% of India's total land mass.<sup>81</sup> The process of creating PAs resulted in the displacement of many ST communities as well as various other forest-dwelling communities. The Union government also asserted itself through the Forest Conservation Act (FCA), which was passed in 1980 and limited the power of the states to de-reserve forests or use them for non-forestry purposes. The Act further recognised the social and ecological importance of forests, but the concerns and conflicts of the local communities were hardly addressed. The only thing that remained intact amidst this shift from a commercial forestry approach to conservation-based forestry was the state's control over the forest land and resources.

Furthermore, the Forest Policy of 1988 brought about a shift from the 'old approach' and finally led to the recognition of the importance of local participation in forest governance. Following this, the government of India started the Joint Forest Management initiative in 1990. However,

research on these initiatives shows that rather than promoting local forest management, the forest department has controlled and dictated the objectives of the committees formed under the initiative.<sup>82</sup> In 1996, a more radical legislation was brought about with the intent of devolving more powers to Panchayati Raj Institutions in Schedule V areas. The PESA mandates community-

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80 JV Sharma and P Kohli, 'Forest governance and implementation of REDD+ in India - A Policy Brief' (TERI - The Energy and Resources Institute, 4 October 2012) <[https://www.teriin.org/projects/nfa/2008-2013/pdf/Policy\\_Brief\\_Forest\\_Governance.pdf](https://www.teriin.org/projects/nfa/2008-2013/pdf/Policy_Brief_Forest_Governance.pdf)> accessed 31 October 2022.

81 Sarin (n 28).

82 *ibid*



based forest management, which is in stark contrast with the JFM, which emphasises on the creation of a committee under the control of the Forest Department. But the states, except a few, have effectively made this law redundant by not making rules to implement this law. After a lot of pressure from various ST communities, the government of India passed the FRA in 2006. This Act represents a landmark change as it recognises the 'historical injustice' that has been committed against forest dwellers and lays down the procedure through which these communities can have their rights over forests and its resources recognised. Despite this, the states have evaded their responsibility either by not implementing the rules or doing so only selectively, thereby neutralising the potential of this landmark legislation.<sup>83</sup>

From this discussion, one thing is abundantly clear: right from the colonial period to up until now, local forest dwelling communities in India, specifically the forest dwelling ST communities, have rebelled and resisted against the attempts of the governments (both colonial and independent) to wrest control over forests either by displacing them and disenfranchising them of their rights over the forests. Even though this resistance has, in some capacity, helped shape contemporary forest governance in this country, the lack of initiative taken by states and the central government to implement the FRA, shows that we still have a long way to go.

### III. LEGISLATIVE HISTORY OF THE WPA

#### A. Background of the WPA

The colonial apparatus established its control over forests with the help of the forest-dwelling communities. The first law which was passed by the colonial rulers to protect wildlife was the Wild Bird Protection Act, 1887 that prohibited the possession and sale of specified wild birds. During the same period of the late nineteenth century, these communities were used as navigators by the colonial establishment. These communities were, simultaneously, highly dependent on the forest and its resources for their livelihoods. Attempts were made by the British government to regulate these dependencies. To solidify this purpose, the Act of 1887 was replaced by the Wild Birds and Animals Protection Act, 1912, which added prohibitions on the killing, possessing or selling of wild animals. Both these laws classified birds and animals for protection through prohibitions under a schedule based on the local government's opinion that such birds or animals need to be protected or preserved. It also provided for a licence mechanism 'in the interest of scientific research' to allow the prohibited acts on such birds and animals. There were two exceptions to the prohibitions: self-defence and bonafide defence of property.<sup>84</sup> This graphical shift assigned 25 years to the colonial apparatus to advance their purpose of commercial exploitation of forest

<sup>83</sup> M. Aggarwal, 'Forest Rights Act: A Decade Old but Implementation Remains Incomplete' (Mongabay, 13 December 2018) <<https://india.mongabay.com/2018/12/forest-rights-act-a-decade-old-but-implementation-remains-incomplete/#:~:text=Forest%20Rights%20Act%3A%20A%20decade%20old%20but%20implementation%20remains%20incomplete,-by%20Mayank%20Aggarwal&text=Indian%20government%20enacted%20the%20Forest,has%20been%20far%20from%20satisfactory.>> accessed October 31, 2022.

<sup>84</sup> Wild Birds and Animal Protection Act 1912, s 8.

resources and hunting, as it was developed into a sport, unlike the tribal dependency on forest for livelihood.

Thereafter the concept of setting aside an area for the protection and preservation of wildlife was introduced in the 1935 Act, called the Wild Birds and Animals Protection Amendment Act 1935. Through this Act, the protection of wild birds and animals was put in the state list.

In 1952, the regime of having a central or national body to advise and determine the issues of wildlife protection/conservation was introduced by setting up the Central Board of Wildlife. This marked the shifting of wildlife governance from the local to the central level. The first chairman of the Board, Maharaja Jayachamaraja Wadiyar, speaking at its inaugural meeting in 1952 said that because wildlife conservation is an issue of 'long-range policy' and to keep it well above the 'whims and fancies of party politics' it needs to be handled on a 'national rather than local footing.' Later the Stockholm Declaration acted as a founding stone for the Wild Life (Protection) Act, 1972.

### ***B. Understanding the WPA***

The WPA was passed in 1972 to provide uniform legislation for the protection of wildlife throughout the country, to prevent hunting of and trading in wildlife or any product thereof and to set the parameters for the establishment and maintenance of PAs such as national parks and sanctuaries.<sup>85</sup> It was adopted in the aftermath of the 1972 United Nations Conference of Human Environment (Stockholm Declaration) and was passed under Article 252 of the Constitution as management of forests is in the state list.

The Act of 1972 sets out a goal for the protection and conservation of wild animals, birds and plants. Further, it provides inter alia, for the management of their habitats and regulation and control of trade or commerce. In order to manage, regularise and control the Act, it was extended to prohibiting hunting in forests with certain exceptions. Hunting is permitted only for the purpose of education or scientific research and in the case of defence of a person or property. Further, certain kinds of animals are protected from hunting, while others are not, subject to procuring a mandatory licence. Thus, the scheme of the 1972 Act is indistinguishable to the colonial legislation of 1912. The WPA has six schedules that provide varying degrees of protection. Schedule I and part II of Schedule II provide absolute protection — offences under these are prescribed the highest penalties. Species listed in Schedule III and Schedule IV are also protected, but the penalties are much lower. Animals under Schedule V, for example, common crows, fruit bats, rats and mice, are legally considered vermin and may be hunted freely. The specified endemic plants in Schedule VI are prohibited from cultivation and planting. And lastly

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<sup>85</sup> Nalin Ranjan Jena, "People, Wildlife and Wildlife Protection Act' (1994) 29(42) EPW <<https://www.epw.in/journal/1994/42/discussion/people-wildlife-and-wildlife-protection-act.html>> accessed 11 October 2022.



the Act empowers the state government to declare any area a sanctuary or a national park if it considers that it is of suitable ecological, faunal, floral, geomorphological, natural or zoological significance for protecting, or developing wildlife and the environment.

### *C. Categorisation of Wildlife Under the WPA*

The WPA defines wildlife as 'any animal, aquatic or land vegetation.' Schedule VI provides different categories of protections to wildlife. The hunting of any wild animal specified in Schedule I to IV is prohibited unless it is in self-defence or it is done with the permission of the Chief Wildlife Warden. Animals that are deceased or dangerous to human life are hunted. However, self-defence is not an exemption if at the time of such defence becoming necessary, any other act in contravention of any provisions of the WPA is committed. Thus the WPA leaves a wide room to prosecute and to claim self-defence as a legal defence is simply not enough. The WPA prohibits the hunting of specific wildlife as enumerated in the schedules, at any location and prohibits the hunting of any wildlife in the PAs designated as a national park, sanctuary, conservation reserve or community reserve.

The Act strictly prohibits human activities in national parks and tiger reserves, except those that are in the interest of wildlife conservation. Limited activities with the permission of the Chief Wildlife Warden can be conducted in sanctuaries, conservation reserves and community reserves.

The hunting of wildlife specified in Schedule I to IV is prohibited and is considered a punishable offence. Schedule V contains a list of vermin species that are not subject to hunting prohibitions. Schedule VI contains a list of plant species that are prohibited for possession or sale or transport and any cultivation of such plant species can only be done with the permission of the Chief Wildlife Warden.

### *D. Amendments to the WPA*

The Act has undergone six amendments, in the years 1982, 1986, 1991, 1993, 2003 and 2006. Before the 1982 amendment Bill was passed, there had been an excessive intervention of human activity, including industrial development led by large-scale poaching. This caused a rapid decline in wildlife conservation efforts. This was acknowledged by a Lok Sabha representative from Tripura, who remarked that there would be a loss of livelihood and rights over the land for tribal people who practised Jhum cultivation and demanded lump sum compensation<sup>86</sup> for them and protection from prosecution. It was also brought to the notice of the House that tribal settlements within and on the outskirts of sanctuaries are more likely to face oppression in the form of criminal prosecution at the hands of the Forest Department. However, such a protection did not find its place in the amendment of 1982.

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<sup>86</sup> Lok Sabha Debates, 'Oral Answers to Question of Poaching of Wild Animals' (26 August 1991) <<https://parliamentofindia.nic.in/ls/lsdeb/ls10/ses1/0126089101.htm>> accessed 29 October 2022.

In 1991, plant species were also covered under the ambit of wildlife protection. During the discussions for the 1991 Amendment Act, the provisions for wildlife governance did not recognise the rights of affected communities as one of the inherent contradictions, and therefore did not provide compensation for the loss of habitat caused as a result of the WPA. At the same time, it allowed the exploitation of forests by commercial and political interest groups. The question of compensating the communities affected by conservationist governance was raised, but it did not lead to statutory mechanisms for just compensation.

The most radical shifts were brought in by the 2003 amendment, going so far as to change the very objectives of the Act. The 2003 amendment brought traditional hunting practices such as capturing, ensnaring or trapping wild animals, under the Act. One such suggestion that was worthy of deliberation was put forward by Mr. Digvijay Singh. Singh raised valid concerns about the overpopulation of blackbuck and its impact on human populations. Other concerns, especially from MP, included the problem of protecting human habitats from the harms caused by the increasing population of wildlife, and damage to the life and property of communities living near sanctuaries and reserved/protected forests.

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The 2003 amendment, however, included community participation in forest conservation governance, by creating two new categories of PAs — Conservation Reserves and Community Reserves, which were to be managed by members of village panchayats, NGOs and other experts. However, it also named specific tribal communities as communities that engaged in organised crime against wildlife, effectively bringing back the colonial wildlife governance approach of designating some tribes as 'born criminals'. This undoes the efforts towards inclusion, and instead leads to greater mechanisms of exclusion for forest-dwelling communities.

### *E. The Exclusionary Design of the WPA*

The WPA seeks to protect wildlife despite the Indian Parliament having changed its philosophy from imperialism to socialism, and including human beings dependent on forests (like the wildlife) as a category deserving of protection and preservation. In contrast, wildlife protection legislation in India has not only excluded communities dependent on forests, but also denied

them the right to livelihood and paved the way to their persecution<sup>87</sup> by criminalising their daily activities of food gathering.

The Delhi High Court in *World Wild Fund For Nature India v Union Of India And Ors*<sup>88</sup> observed that a survey of the parliamentary debates before the passing of the WPA would reveal that it was 'uniformly welcomed from each quarter.' This is far from the ground reality. During those discussions, the Forest Ministry had sent a letter to all the states inquiring about communal hunting activities that could be legalised. The tribes of the Andaman islands were the only ones to respond, and as a result, their hunting rights were acknowledged. This clearly shows the ignorance on the part of the law-making body behind the WPA, because in an ideal setting the forest dwelling communities, people who will bear the brunt of all the resettlement and wildlife governance, should have been consulted prior to the passing of the act. The line of argument behind the passage of WPA in 1972 not only exclusively focused on addressing the rapid decline of wildlife, but also re-enforced the narrative of finding accountability in tribal communities.<sup>89</sup>

The legislative background of the WPA and its amendments, including the latest amendment Bill of 2021, reflects a complete exclusion of the interests of forest-dwelling communities and other communities either dependent or living close to reserved forest areas. The WPA regime has no framework to recognise tribal communities' traditional rights over forests, a framework which could serve as a source for a participatory conservation regime that has its basis in the communities' traditional regulations<sup>90</sup> governing their rights to forest resources.

The exclusion was not just limited to the legislation alone. The National Commission on Agriculture (1976) also fixed the responsibility of forest degradation on tribal communities while undermining their sustenance on the forests.<sup>91</sup> This was problematic because not only were there clear restrictions on usage of the forests but now the blame for degradation and the added responsibility of taking care of forests was on the forest dwelling communities. Local communities that have a demonstrable culture and tradition of interdependence on the forests and its wildlife have been considered a threat to wildlife conservation, a notion that has perpetuated unabated since colonial rule to the contemporary wildlife governance in India.<sup>92</sup> The Idade Commission which was established in January 2015 for a three-year temporary term, with the aim of providing

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87 Dr. M. Velmurugan, 'HISTORICAL DEVELOPMENT OF WILDLIFE PROTECTION IN INDIA' [2017] 2(2) IJCRME <<https://core.ac.uk/download/pdf/144879266.pdf>> accessed 11 October 2022.

88 *World Wild Fund For Nature India v Union Of India And Ors* 54 (1994) DLT 286.

89 In the *Rajya Sabha*, the representative from MP, Sayed Ahmed significantly spoke to the need of sanctuaries to protect forested areas in the state and highlighted the need to look at declining snake populations due to the practices of native snake-charmers. He also spoke to the need of protecting indigenous populations that are most vulnerable to dangers from man-eating leopards and tigers due to increased man-animal conflict.

90 Sharad Kulkarni, 'Forest Legislation and Tribals: Comments on Forest Policy Resolution' [1987] 50(22) EPW <<http://www.jstor.org/stable/4377847>> accessed 3 November 2022.

91 Jena (n 80).

92 Maneka Gandhi: 'The last thing I would like to talk about is the Madaris or Kalandars. There is a mistaken belief here that these are very poor people with a traditional trade. We have done a two-year survey on this aspect. It is not a traditional trade but a well organised crime against animals such as bear. Now, there is a government initiative to make a rescue centre and the first rescue centre has come up in Agra. I would like to request the Minister and the Government to take this far more seriously. There are fewer bears left in this country than there are tigers. If we want to save this species, then we should start picking up the Madaris.'

a report outlining the Denotified Nomadic and Semi-Nomadic Tribes by state, evaluating where they are in terms of development, and making suggestions for how to improve them. In their report they noted that 'despite 65 years elapsed since the repeal of the colonial era CTA, the authorities still view many of these communities with suspicion.'<sup>93</sup>

#### IV. TRIBAL RESISTANCE AND FOREST DEPARTMENT EXCESSES OVER CONTESTED LAND UNDER WPA

Forest-dwelling communities have regularly resisted the colonial regime and the continuance of injustices meted out against them in post-independence India.<sup>94</sup> Legal instruments used by colonial agencies alienated communities from their land, forest and culture. Communities retaliated against the colonial regime through insurgencies and rebellions in addition to keeping secrets about the location of dangerous animals. The latter half of the 19th century was marked by several insurgencies in forest areas, which seriously threatened the British administration and its survival as a hegemonic force in the region.<sup>95</sup> The colonial regime responded by systematically eliminating chances of any future rebellion and insurgencies.

##### A. Tribal Resistance to the Colonial Regime

During the colonial period, the government started invading forests for resources and for sport, by employing local hunters to help them navigate the forest. The colonial forces started exploiting the flora and fauna of the forests to meet their commercial needs and started using modern weapons to kill animals by building the narrative that this was a painless method of killing. On the contrary, the subaltern *shikaris* resisted this practice outright, refusing to kill certain species of animals such as the tiger, which was seen as totem and sacred. Many forest dwelling communities also started keeping secrets about the location of other dangerous animals, fearing for their lives.<sup>96</sup>

93 National Commission for Denotified Nomadic and Semi Nomadic Tribes, Ministry of Social Justice and Empowerment-Government of India, Report (December 2017) <<https://socialjustice.gov.in/writereaddata/UploadFile/Idate%20Commission.pdf>> accessed 24 October 2022.

94 Indigenous Peoples Rights International, Criminalisation of Adivasis and the Indian Legal System (November 2021) <[https://www.academia.edu/77845507/Criminalisation\\_of\\_Adivasis\\_and\\_the\\_Indian\\_Legal\\_System](https://www.academia.edu/77845507/Criminalisation_of_Adivasis_and_the_Indian_Legal_System)> accessed 19 October 2022

95 Ranjit Guha, 'The Prose of Counter Insurgency' in Ranjit Guha and Gayatri Chakravorty Spivak (eds) *Selected Subaltern Studies* (Oxford University Press, New York, 2011) 45-84.

96 Rashkow (n 59).

Meanwhile, the Santhals<sup>97</sup>, Mundas<sup>98</sup> and Kols<sup>99</sup> revolted against the colonial regime and Dikus (outsiders) in the Santhal Pargana, Chota Nagpur Plateau and Kolahan regions, respectively.<sup>100</sup> They declared Hul and Ulgulan slogans of retaliation against colonial power and masters. They perceived British restrictions over forest resources as cultural alienation, believing they would suffer an identity crisis if they were not allowed to associate themselves with the forest.

After every insurgency, the colonial administration handled this resistance with a combination of pragmatism and force.<sup>101</sup> Pragmatically, the colonial regime addressed the concerns of tribals and enacted special laws to safeguard their own interests in having the state monopoly over the forests. While on the other hand, it kept its role as administrators in the socio-economic affairs to continue its hold over forest resources. This meant that the colonial administration continued its hold over these areas through the office of Deputy Commissioner.<sup>102</sup>

## **B. Colonial Tactics to Counter Resistance**

In order to further their goal of achieving total control over the forests, the colonial regime did not only use the legislature and wildlife officials to displace and disenfranchise the forest-dwelling communities, but also engaged in a great deal of narrative building, both prior to and subsequently, to justify this exploitation. These narratives often portrayed tribal folks as bloodthirsty insurgents who lacked any political consciousness or rational thinking.<sup>103</sup> The communities who took up arms against the colonial regime were routinely delegitimised as 'insurgents, defying the authority of the state merely on the basis of their impulse'.<sup>104</sup> The rationalisation of these narratives, which presented these folks as bloodthirsty, wild, and savage, further legitimised the criminalisation of such forest dwelling communities. The use of brute force was rampant and many local rebellions of Hul in Santhal Pargana (1855), Ulgulan in Chota Nagpur (1899-1900), Bhumkaal in Bastar (1910), the Bhil uprising (1857-66) and the Santhal insurrection in Purnea (1938-1942) were suppressed without any due remedies being provided to the communities.<sup>105</sup>

The enactment of the CTA was an important move towards criminalising the livelihood of the forest dwelling communities. It was also passed at the outset of the active resistance efforts being undertaken by many ST communities and was a tool used to crush the said resistance movements offered by the communities in hunting certain species and locating their position in the forest and also to maintain ecological balance.

97 A dominant ST community living primarily in the States of Jharkhand, Bihar and Odisha.

98 Munda community is also a dominant ST community living primarily in the Chota Nagpur region of Jharkhand. However, they are also found in other parts of Jharkhand, Odisha, West Bengal, and adjacent areas of Chhattisgarh.

99 One of the ST communities living in the Kolhan region, which is part of the State of Jharkhand and covers districts including East Singhbhum, Seraikela Kharsawan and West Singhbhum.

100 IPRI (n 94).

101 Somnath Ghosal, 'Pre-colonial and colonial forest culture in the presidency of Bengal' (2011) 5(1) Human Geographies - JSRHG <[http://humangeographies.org.ro/articles/51/5\\_1\\_11\\_8\\_ghosal.pdf](http://humangeographies.org.ro/articles/51/5_1_11_8_ghosal.pdf)> accessed 19 October 2022.

102 IPRI (n 94).

103 *ibid.*

104 This discourse informs the discussion about these Adivasi insurgencies even today as there is a widespread belief in the academia that Adivasis resort to bloody resistance and opposition against the colonial and post-colonial state. This view originates in imperialist discourse, which refuses to acknowledge the 'calculated conscious' decision of the Adivasi society to resist their subjugation.

105 IPRI (n 94).

Later, forest laws were introduced to command more control over forest resources and dispossess those communities who had been living inside the forest for ages. The communities were ignorant of the new laws and were regularly found violating them because of their movements inside the forest, which were crucial to their livelihoods. Moreover, throughout the 19th century, the British government cleared massive areas of forests for commercial use, and ordered the forest communities to provide labour for the newly established plantations. The communities that resisted these projects were declared criminal.<sup>106</sup>

The colonial strategy of forest conservation did not end after independence. The same attitudes and perceptions have pervaded many post-independence policies and even the new laws that govern forests. Thus, forest laws have led to many forest-dwelling communities being subjected to intense hunger for the following reasons:

- a. Lack of access to small game, like fowl, rabbits, deer and monkeys, which used to be staple foods for a large number of hunting communities.*
- b. Lack of access to bark, roots, tubers, corns, leaves, flowers, seeds, fruits, sap, honey, toddy and other forest products, which were a regular source of nutrition for gathering communities.*
- c. Lack of access to fish in ponds and streams in the forest that used to be a traditional source of protein.*
- d. Lack of access to pasture land for grazing animals has led to a decline in the population of cattle, which used to be the main source of milk and meat for some hunting gathering communities<sup>107</sup>*

The colonial government started viewing forests as an asset and making changes around it accordingly. The changes included using forests as a source of wood for developmental purposes such as railways, ships, etc. The effect of forests on rain patterns, conflicts between the revenue and forest departments, as agriculture and industry was prioritised and access of communities to the forest — both of people living within the forest and outside of it.<sup>108</sup> It was initially opposed by the Madras government, though their hesitation came not from concerns around forest conservation, but from the fear of the revenue department losing control over forest resources. The concept of community-owned forest was overpowered by Forest Department-led protection measures. Further, under the Madras Act of 1882 forests of the Madras Presidency

<sup>106</sup> National Commission for Denotified, Nomadic, and Semi-Nomadic Tribes, *National Commission for Denotified, Nomadic, and Semi-Nomadic Tribes: REPORT (PARI 2008)*, vol 1 <<https://ruralindiaonline.org/en/library/resource/national-commission-for-denotified-nomadic-and-semi-nomadic-tribes-report--volume-i/>> accessed 3 November 2022.

<sup>107</sup> *ibid.*

<sup>108</sup> *ibid.*



were categorised as reserved forests, reserved lands and private forests. The land, therefore, could be used to provide fuel and fodder, but had no element of community ownership. There were oppositions to these steps but these concerns were circumvented by providing safety to zamindars and revenue departments. Additionally, forest resources were exploited for the railway and plywood industry, which caused further forest degradation. The Act caused rifts between local communities and the Forest Department over issues such as the over-consumption of fuel wood. Eventually, a compromise was reached between the Joint Forest Management and the local people from the forest dwelling communities, wherein these communities were expected to protect the commercial crops of the forest in return for the use of forest produce.

### **C. Postcolonial Government**

The postcolonial Indian government aimed to have state ownership over forest resources by acquiring private forests as a matter of 'paramount national need'. Legislation such as the WPA enabled officials to build on the colonial legacy of surveilling tribes, curtailing their hunting rights and preventing them from carrying out their traditional occupations and cultural practices. The communities' struggles against this legacy continues in contemporary times. Forest-dwelling communities in Jharkhand were forced to hold a protest in 2008 to celebrate the festival of Sendra, which is associated with hunting and worshipping trees. Sendra is considered a religious practice, and is celebrated in the months of April-May after Sarna Puja.<sup>109</sup> It is a week-long festival where deities, ancestors, traditional weapons, the Jaher and the Sal trees are worshipped (popularly known as Baha or Sarhul). Jharkhand Raksha Sang in 2008 had organised the Adivasi Moolvansi Sendra Sanskritik Maha rally to protest against the curtailment of cultural rights in the Dalma region. Exemplifying the differences between the conservation and the people-centred approach, the practice of Sendra is misunderstood by mainstream society and has not been acknowledged either. The denial of the right to practise one's culture and tradition directly contravenes the fundamental rights of these tribal communities, which is guaranteed by the Indian Constitution.<sup>110</sup> Article 25 empowers citizens to profess, practise and propagate their religion.

Forest officials invoke Section 144 of the CrPC to prevent movement and entry into forests, which further result in arrest, detention and punishment for practising their culture. The Jharkhand Raksha Sang has been demanding a solution so that they can celebrate their festival peacefully<sup>111</sup>. The state still exercised control over the forests and its produce and over the years, it gave

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<sup>109</sup> Sarna are sacred groves in the Indian religious traditions of the Chota Nagpur Plateau region in the states of Jharkhand, Bihar, Assam, and Chhattisgarh. According to local belief, a Gram deoti or village deity resides in the sarna, where sacrifice is offered twice a year, specially during the Sarna Puja.

<sup>110</sup> Correspondent, 'Tribals rally for hunting rights - Jharkhand Raksha Sangh members submit memorandum, threaten legal action' (The Telegraph Online, 20 December 2008) <<https://www.telegraphindia.com/jharkhand/tribals-rally-for-hunting-rights-jharkhand-raksha-sangh-members-submit-memorandum-threaten-legal-action/cid/516986>> accessed 11 October 2022.

<sup>111</sup> *ibid.*

permission to a lot of commercial industries, permission to set up shop and actively exploit the forest resources. The state control over forest continues for forest produce which were transferred to mills and commercially viable ventures based on forest resources. Between 1980-1990, joint forest management and increasing democratisation of forest resources was given importance in order to dismantle the practices which had colonial origins but were ironically once again a clear push towards the commercialisation of forest resources.<sup>112</sup>

There has been a constant tussle between certain legislations and regulatory authorities that tend to favour wildlife protection and conservation over the rights of forest-dwelling communities. An example of such a tussle is the struggle between the National Tiger Conservation Authority (NTCA) and the Forest Rights Act, 2006, in which the NTCA issued a circular in 2017 debarring forest rights in tiger habitations. Similarly, the WPA legislation that keeps surveillance intact and maintains the colonial legacy.

## CONCLUSION

The literature reviewed shows that ST and other forest-dwelling communities have been dependent on hunting and forest-based livelihoods for centuries. They negotiated a relationship with other non-forest dwelling communities, which was sustained till the advent of Europeans. The literature also shows that the relationship between the communities and the forest was of interdependence and need-based unlike what the British suggested. And these communities have had traditions, both cultural and religious, which governed their relationship with the forest and wildlife. The colonial government changed this relationship through laws, which sought to control and generate revenue from the forests. This affected the lives and livelihoods of the communities who governed and were dependent on these forests. Because of this the communities resisted and rebelled against the British in various parts of India. The Britishers responded not just by committing atrocities, but also ascribing criminality to these tribes by passing legislations such as the CTA. This was followed by the implementation of the IFA, through which the government virtually took control over all the forestlands in the country. After which, the resistance by the local communities was further aggravated and many communities were able to get their rights recognised by the colonial government.

The IFA was last amended in 1927 and forms the basis of forest governance in the country to this date. Post-independence governments for the first few years continued the colonial policies. The shift from production-oriented forestry to 'conservation' came after 25 years with the passage of the WPA. In between these years, the literature shows that there was a tussle between the state and the central governments over the control of forests and resistance movements for protection and access to forest. But one thing which remained constant was that the communities dependent on forest were sidelined consistently and their rights were trampled upon. The passage of the

112 M. Arivalagan, 'Beyond Colonialism Towards A New Environmental History of India' (2008) MIDS WORKING PAPER NO. 203 <[https://www.mids.ac.in/assets/doc/WP\\_203.pdf](https://www.mids.ac.in/assets/doc/WP_203.pdf)> accessed 28 November 2022.



WPA created inviolate areas for wildlife and put a blanket ban on hunting of animals. This Act, as the literature shows, criminalised the livelihoods of communities without taking into account the long history of hunting and forest-based livelihoods. The resistance towards governments that controlled their lives and livelihoods through the forests continued. This was reflected in the policy shift to Joint Forest Management in 1990 and subsequently with the passage of PESA in 1996. The struggle and resistance of the ST and other traditional forest-dwelling communities culminated with the passage of the FRA in 2006. Through these laws the state recognised the 'historical injustices' and also that traditional forest-dwelling communities are primary custodians of the forest. With the passage of the FRA, it was assumed that the criminalisation of communities through the WPA would come to a halt. But even 16 years since its implementation, rights of these communities have not been recognised and instead the State has found ways to neutralise this law by rendering it a mere paper tiger. Owing to which the reach of the Forest Department through the WPA through the criminalisation of forest-dwelling communities continues unabated.



# 5 POLICING OF WILDLIFE CONSERVATION

State police forces hold the primary burden of crime investigation and prevention, and maintaining law and order. Official records such as the National Crime Records Bureau's (NCRB) 'Crime in India' show the breadth of order maintenance that forms the bulk of police work. The WPA is not the highest prosecuted under environment-related offences, it is often either the Indian Forest Act, 1927 (IFA), the Noise Pollution legislations or the the Cigarettes and Tobacco Products Act (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution), 2003 that drive most of the prosecution. In 2021, MP (where 25.14% geographical area is forested)<sup>113</sup> accounted for 12 out of the 579 cases filed under the WPA.<sup>114</sup> Cases filed by the Forest department are not accounted for, in this count. Yet this chapter examines the arrest trends to interrogate police action that has remained present both as a supplement and an alternative to the prosecution by the Forest Department.

The analysis is based on records made publicly available by the MP Police Department for the entire state for a period of 10 years starting from 2011 till 2020. This chapter looks at where the arrests occurred, for what offences, and to which communities arrested persons belonged

## I. ABOUT THE DATA

Between 2011 and 2020, a total of 780 arrests were recorded in 38 districts of MP. This chapter shows that there is a great disparity in arresting practices between districts and police stations while arresting persons for alleged violations of the WPA. Arrests are unequal across the years studied i.e. that some years make up the bulk of the record. The years 2015-2016 account for less than 5% of the data and the year 2018 recorded 20% of the arrests in this period. Additionally, as seen below, the years 2017-2020 account for more than half (53.6%) of the data set.

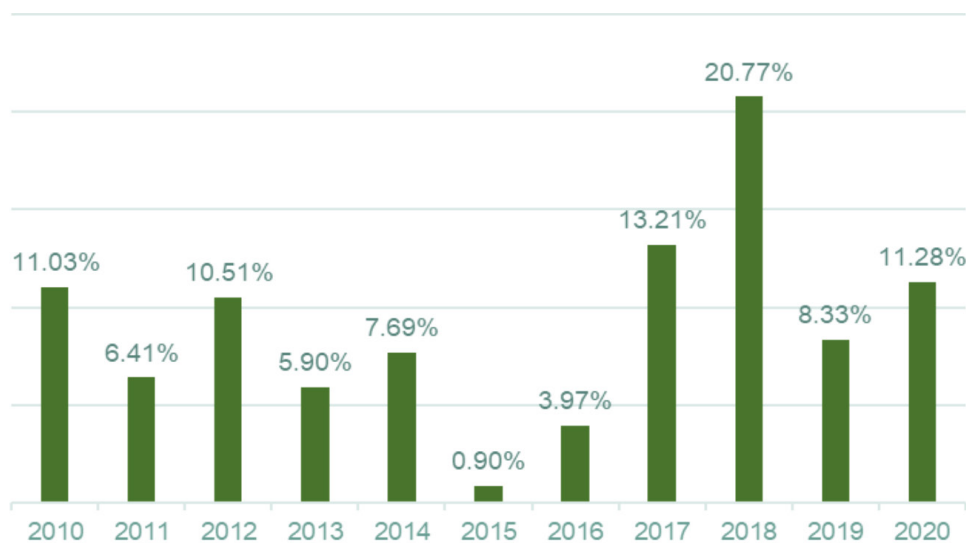


Figure 1.A: Total number of arrests from 2010 to 2020 under the Wild Life Protection Act in 38 districts of Madhya Pradesh.

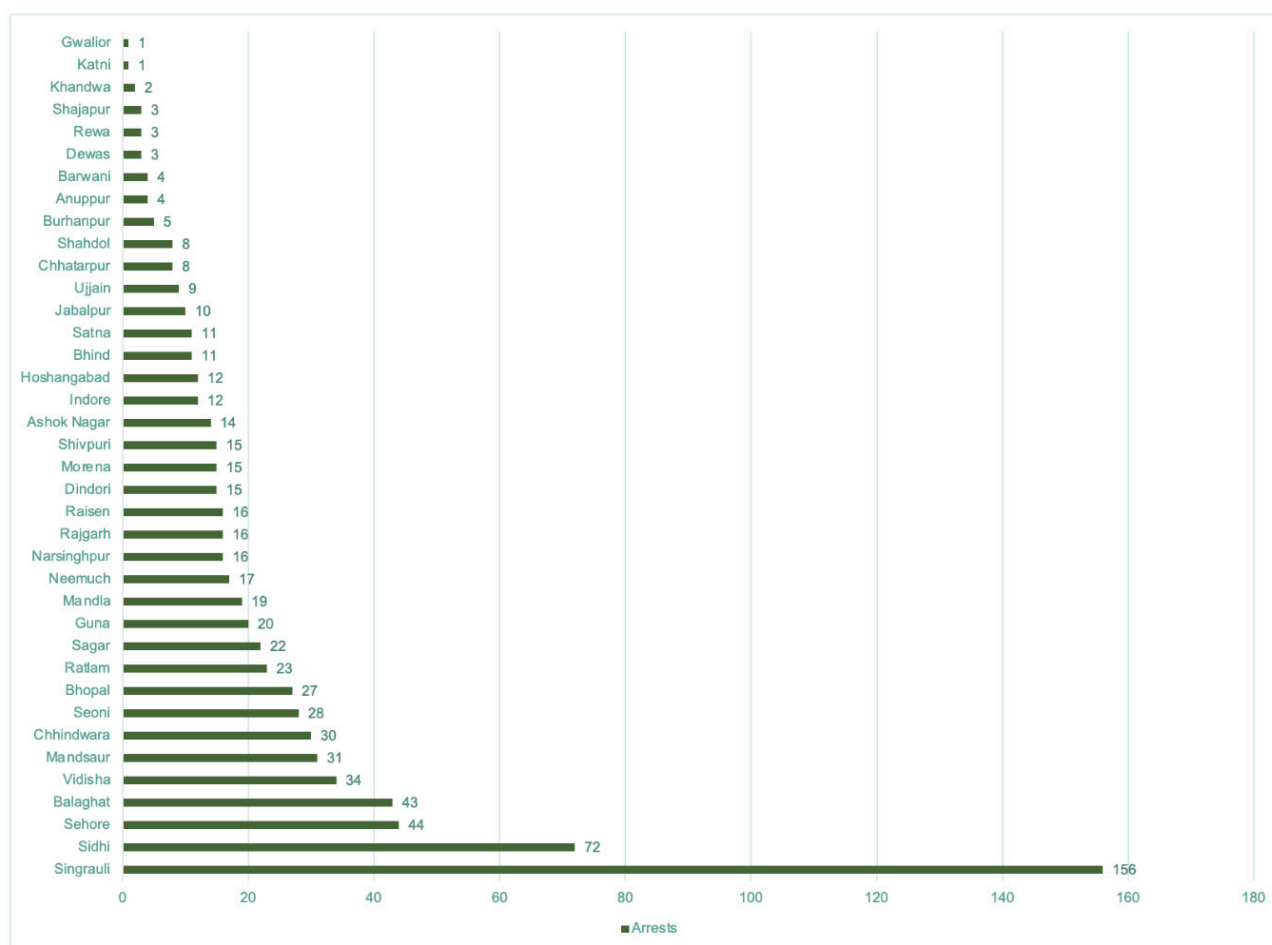
113 TNN, 'Madhya Pradesh Has the Largest Forest Cover in India, Says Report' (The Times of India, 31 December 2019 <<https://timesofindia.indiatimes.com/city/bhopal/mp-has-the-largest-forest-cover-in-india-isfr-2019/articleshow-w/73037541.cms>> accessed September 24, 2022.

114 NCRB Table 11.3, Crime in India 2021.

Even within the districts studied, the discrepancy exists. While some districts use the WPA liberally, others do not. Singrauli (20%) and Sidhi (9.23%) districts make up the lion's share in the number of arrests in this data set. These districts are followed by Sehore (5.64%), Balaghat (5.51%) and Vidisha (4.36%). Upon a closer look within the districts, this disparity in use of WPA for making arrests continues at the level of police stations.

## II. CLOSE LOOK AT DISTRICT WISE ARREST

*The close study of these data shows that there was unequal policing in the district, and in some districts police seemed to have abused their discretionary power while arresting people.*



### A. Police Station wise arrest data

This pattern of unequal use of WPA continued at the level of the police stations. Some police stations recorded arrests in a single time period (within a month or a year) in the entire data set. In Singrauli, where the number of arrests were very high, only two police stations accounted for all arrests. For instance, the Gadwa police station alone had the highest number of arrests which

115 First Information Reports registered in these two districts primarily refer to the offences of sand mining. See following Chapter on analysis of FIRs.

were 123 (out of 780) and equal to 15.59% of the total arrest made between 2011 and 2020. Chitrangi police station within the same district, on the other hand, recorded only 33 arrests between 2011 and 2020, constituting 4.18% of total arrests.

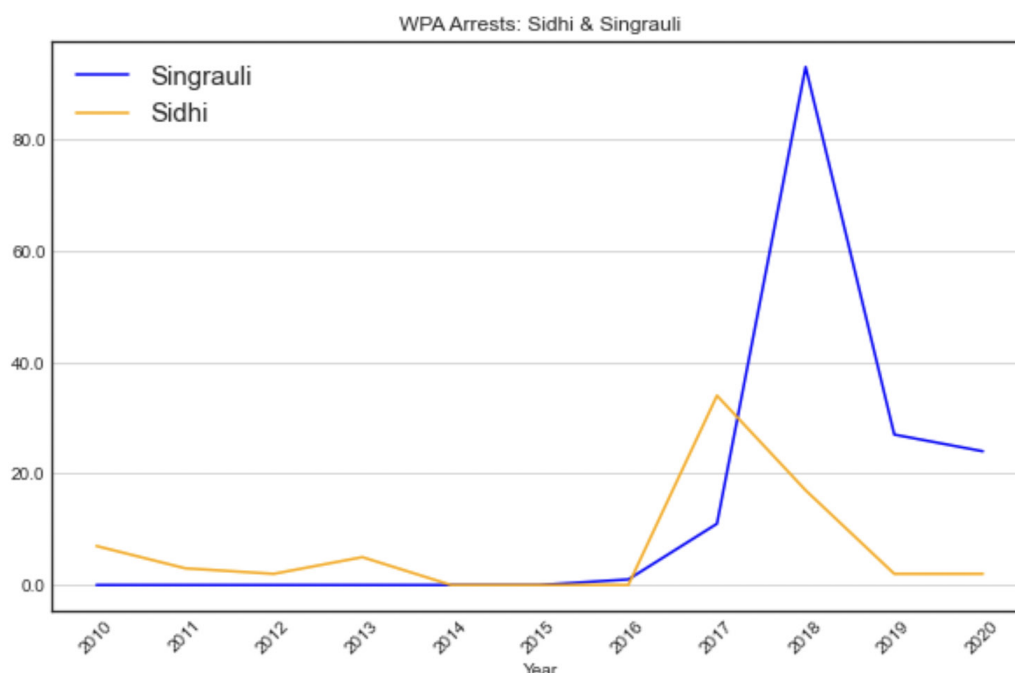


Figure 1.B: Number of Arrests between 2010 to 2020 in Singrauli and Sidhi District

It is possible that Gadwa may have a larger area of the Son Gharial Wildlife Sanctuary under its jurisdiction. However, geographical distinctions aside, we noticed a big jump in these arrest figures in 2018. Gadwa had its highest number of arrests in 2018 (73), followed by 2019 (26); Chitrangi too had its highest numbers in 2018 (20) but only 1 arrest in 2019. Without access to more information about these police stations, at present, this data just highlights the unequal nature of policing even within the same district.

In Sidhi, which accounted for the second highest number of arrests, eight police stations

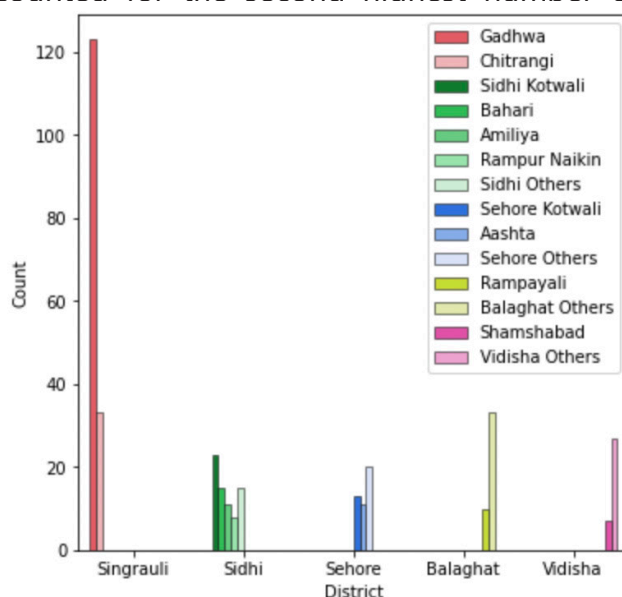


Figure 1.E: Count of Arrests in the above mentioned districts

contributed to arrests in the 10-year period. However, Sidhi Kotwali police station, which arrested 23 persons (highest within police stations), did so mainly in 2017-18, where 21 persons were arrested. The next two police stations that arrested the most persons Bahri (15 persons) and Amiliya (11 persons) also contributed these in 2017 and 2018.

### III. OFFENCES UNDER WPA ACT 1972 AND OTHER RELEVANT ACTS

After we analysed the data, we saw that in addition to the WPA, the police frequently used various provisions of Environment Protection Act (EPA), 1986; IFA; Indian Penal Code, 1860 (IPC); and Mines and Minerals (Regulation of Development) Act, 1957 (MMA), while making arrests. These combinations of laws used alongside WPA were seen in 67.5% of the arrests made. Apart

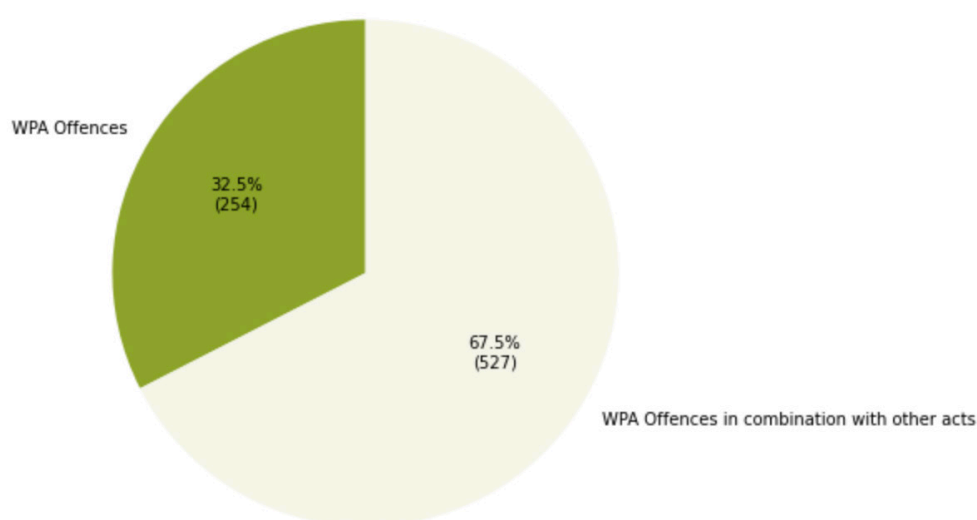


Figure 1.F: Pie Chart depicting percentage of arrests under WPA only and percentage of arrest using WPA in combination with other acts from this, we studied the combination of offences framed by the police at the time of arrests.

#### A. WPA Specifically

Under the WPA, Sections 9 and 51 were used most frequently. Combined, a total of 45 arrests (5.77%) were made under these two sections. Section 9 of the WPA prohibits hunting of wild animals listed in the Act's four schedules. Section 51 prescribes varying degrees of punishments for contravention of the provisions of the Act. When used together, they prohibit and prescribe the penalty for hunting.

The next most frequently used combination of the WPA offences included Section 39 alongside Sections 9 and 51. A total of 18 arrests (2.31%) were recorded using this combination. According to Section 39, any dead or killed wild animal is government property. This section aims to prevent trade and commerce in wild animals, animal articles and trophies.

In 1.92% of arrests (15 instances), the police used a combination of Sections 9, 39, 48A, 51(1),

52, and 57. Section 48A restricts transportation of wildlife; Section 52 prescribes the penalties for attempt and abetment; and Section 57 places the burden of proof on the accused when they are found in “possession, custody or control of any captive animal, animal article, meat, trophy, uncured trophy, specified plant, or part or derivative thereof.” The addition of Section 57 at the stage of arrest is dubious since it is not a penal provision, but part of the criminal procedure in prosecution of wildlife offences.

In 1.79% of arrests (14 instances), the police used a combination of Sections 5, 9 and 51. Use of Section 5 of the WPA at the time of arrests is incorrect as it merely identifies the authorities with delegating powers under the Act, and does not outline a criminal offence.

The police also solely used Section 51 in 12 instances (1.54%), making it the most frequently used provision of the WPA. This is in line with a reading of the WPA where Section 51 prescribes penalties for a broad range of offences under the Act but encompasses a wide variety of punishments. In fact, in only 23 instances of the usage of Section 51 in the entire data set, the police make mention of a sub-clause (either 51(1) or 51(1A)). Even Section 51(1) which punishes anyone who ‘contravenes any provision of the Act’ is worded vaguely; the proviso to the Section only enhance punishment in National Parks and further encompass three gradations for punishment. The blanket usage of Section 51 leaves room for ambiguity and leaves a great amount of discretion to the police to decide on the exact act that is allegedly criminal.

### ***B. WPA in combination with other Acts***

There were a considerable number of records where the WPA was combined with the IPC and other Acts to make the allegation look more serious. We saw that 8.33% (or 65 arrests) of the total arrests were made in combination of the WPA offences with Section 15 of the Environment Protection Act, 1986; Sections 2, 41 and 52 of the IFA, 1927; Sections 34, 379 and 414 of the IPC, 1860; and Sections 4 and 21 of the Mines and Minerals (Regulation of Development) Act, 1957. Section 2 of the IFA is the interpretation clause and does not constitute an offence or prescribe a penalty. There is no clarity on why the police invoked this provision for arrests.

We found that 1.41% (11 instances) of arrests were made under Sections 201, 304 (II) IPC and Sections 9 and 52 WPA. Similarly, Sections 25 and 27 of the Arms Act were also used in another 1.41% of arrests along with Sections 9 and 51 WPA.

Additionally, we saw that many cases were registered under the Representation of Peoples Act (RPA), Protection of Children from Sexual Offences Act (POCSO), Motor Vehicles Act (MVA), MP Excise Act and several other smaller legislations. Several of these enactments, including the RPA and POCSO are not, at first blush, logically connected to wildlife crime and therefore it is not

possible to comment on these arrest records without more information. The said acts were put together to make particular offences look more serious and non-bailable.

Section 51 of the WPA falls under the ambit of arrest guidelines laid down by the Supreme Court in *Arnesh Kumar v State of Bihar*<sup>116</sup> whereby the police have been directed to not arrest individuals where the maximum punishment prescribed is equal to or less than seven years. Generally speaking, unchecked use of various Acts and provisions at the time of arrest allows the police to circumvent these guidelines through the use of offences that have higher punishments.

#### IV. CASTE OR COMMUNITY PROFILES OF ARRESTED PERSONS

It may be said that the significant representation of persons belonging to the Scheduled Tribes in the arrest records was anticipated as they have primarily comprised those described as forest-dwelling communities. Yet there is no clarity on whether arrests were carried out singularly in forested areas and therefore, drive the arrest trends. We found that about 29.5% of the people arrested belonged to one oppressed caste community or another. As per our analysis, 11% accused from total arrests were made against people belonging to Scheduled Tribes, 3.6% as Scheduled Castes, 9.5% as Other Backward Classes (including OBC Muslims), 2.3% as belonging to Nomadic Tribes-Denotified Tribes and 3% arrests of persons that are classified as Possibly Marginalised communities (last names used exclusively by at least two oppressed caste communities and no oppressor castes).

A high portion (29%) of this data set could not be assigned a community categorisation as the police in its records did not provide the last names or caste details of the arrested person and 3% of the data remained Unclassified due to last names like Kumar and Bharti that have not yet been traced to a single category. Over 31% were found belonging to the Maybe General category (i.e. last names used by both oppressed and oppressor caste communities) and 7% to the General category.

Singh, Yadav, Kol, Khan, Kewat, and Shah were the most commonly found last names in the records, occurring 46, 32, 31, 29, 15 and 10 times respectively. Of these names, Singh, Khan and Shah are all used by persons from different caste categories.

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<sup>116</sup> *Arnesh Kumar* (n 20).



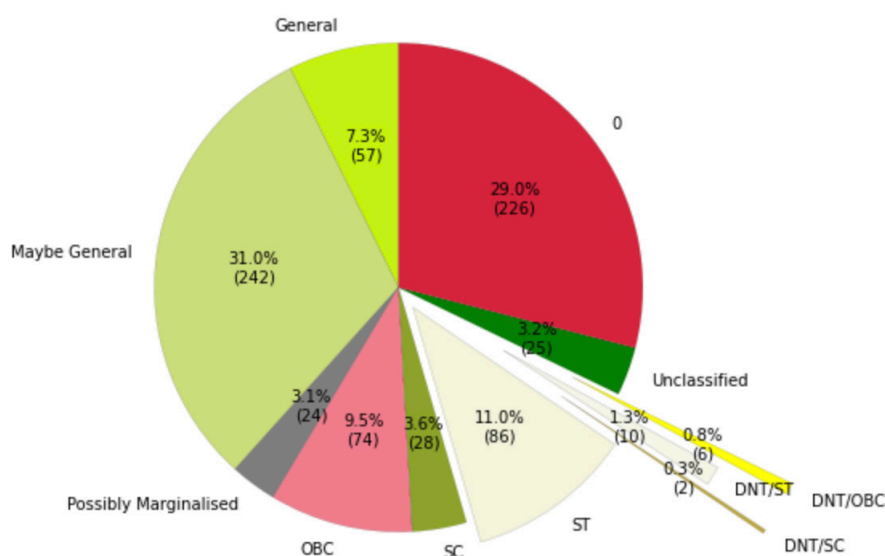


Figure 1.G: Percentage wise data of the caste of arrested persons

Census data, which shows a breakdown of the district-wise SC and ST population for the state can help contextualise the data more. According to the 2011 census data, the top five districts to have high population of SC persons, viz Ujjain, Datia, Tikamgarh, Shajapur and Chhatarpur<sup>117</sup> were not represented in our data set. In comparison to the overall population and the SC population in other districts, we observed an overrepresentation of SC arrested persons in Dindori, Gwalior, Anuppur and Bhopal as the percentage of arrests from the community formed 26.6%, 100%, 25% and 18.52% of all arrests in these districts<sup>118</sup>

Similarly, Alirajpur, Jhabua, Barwani, Dindori and Mandla make the top five districts of MP in terms of percentage of ST population to total population of the districts.<sup>119</sup> In Mandla, though ST form 57.9% of the population, arrested persons belonging to these communities formed 68.4% of total arrests there.<sup>120</sup> Additionally, we noted that 62.5% of arrested persons (five persons) from Shahdol were ST while the ST population is only 44.7%, suggesting an overrepresentation of ST persons in the arrest data set.

In addition, we noted that 70% of the persons arrested (seven persons) in Jabalpur belonged to the Possibly Marginalised category. 66.67% of those arrested in Hoshangabad (eight persons) were categorised as Maybe General. In Satna district, 54.55% of those arrested were OBC (six persons). Ujjain was the only district to record a high percentage of arrests in any DNT category. Of the overall nine arrests from that district under this Act, four were from DNT/ST communities (44.4%) and 1 was from a DNT/SC community (11.1%).

<sup>117</sup> Directorate of Census Operations, Madhya Pradesh, 'Census of India 2011, Analytical Report on Primary Census Abstract, Madhya Pradesh' (Series 24, 2014) available at <<https://censusmp.gov.in/censusmp/english/pdf/census2011/PCA%20report.pdf>> accessed on 24 September 2022.

<sup>118</sup> Percentage of SC in Gwalior: 19.3%, in Anuppur: 9.9%, in Bhopal: 15.1% and in Dindori: 5.6% as stated in Office of the Registrar General & Census Commissioner, India, 2011 Census Data, District wise scheduled caste population (Appendix), Madhya Pradesh - 2011.

<sup>119</sup> Directorate of Census Operations(n 117), 368.

<sup>120</sup> There were no arrests from two districts of Alirajpur and Jhabua; in Dindori, arrested persons belonging to ST communities made up 20% of the data and in Barwani, 0%.

## CONCLUSION

The arrest records, though not high in numbers overall as against the total arrest records in the state and also varying across years and districts, point some interesting trends. Certain districts and certain police stations tend to prosecute under the WPA more than others post 2017. The use of other laws alongside WPA point to a worrying trend in the discretionary power of the police, with consequences for bail and other remedies. Even so, where charges were punishable with less than 7 years, compliance with guidelines on arrest is poor. Since a large part of the data set could not be classified as belonging to a particular community, within the ones that were classified, overrepresentation of accused persons from oppressed communities in 6 such districts is telling of larger trends in policing under the WPA. A further inquiry into the local contexts of police stations and districts is likely to illustrate these findings clearly.



# 6

## FIRS AND NARRATIVES OF CRIMINALISATION

This chapter studies the FIR filed in MP under the WPA to analyse the mode and manner of recording/registering cases filed. This analysis can show whether extrajudicial (beyond authority) methods were being adopted by the police in implementation of procedures under the above-mentioned laws and whether there was an excessive criminalisation of particular oppressed communities.

Through the analysis of FIR data sets and records maintained by the Forest Department, it can be seen that Mukhbirs have become provisional agency to the department in furthering their procedure pertaining to the alleged cases.

## I. HUNTING

### A. Who is being criminalised?

The 34 FIRs that were studied as part of this section were made out against 111 accused persons. In 26 FIRs, the number of accused persons in a single case ranged from two to five people. There are some FIRs where a single accused person is arrested, but there is only one case where the number of accused persons was more than 10.

34 accused persons belonged to the ST and 13 persons belonged to the SC. 5 persons belonged to the General Category, 9 people belonged to the OBC, and 3 belonged to Denotified Tribes. Caste location of some of the accused persons was not clear: 31 of them likely belonged to the General Category, nine others possibly belonged to a marginalised category, and 5 individuals could not be placed within a particular community.

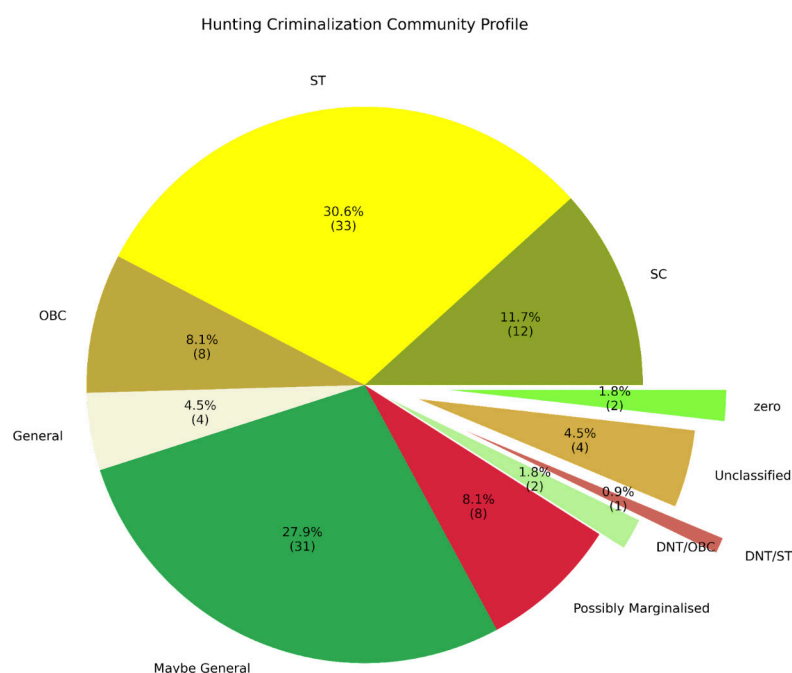


Figure 2.A: Percentage wise depiction of caste of persons against whom the FIR were registered

## B. About the offence

Out of 34 FIRs that we studied, the majority of the offences deal with the hunting and trading of wild animals. The police lodged 22 FIRs under six hours from the occurrence of offence and 12 FIRs under six-12 hours from the occurrence of offence.

Out of 34 FIRs studied, 20 alleged incidents took place in public spaces, 9 took place in restricted forest areas and 5 took place in home or private spaces. In Guna, all three cases took place in the restricted forest area.

The police invoked a combination of Sections 9 and 51 in 23 cases out of 34 and a combination of Sections 9 and 39 in 18 cases out of 34.

The police got to know about the alleged incidents from varied sources. The police found two cases while patrolling, three cases from complaints received through the forest department, three cases from private citizen complaints, and one from police complaints. But the majority of the cases, i.e. 25 out of 34, which is 73% of our sample, come from the information received from *Mukhbirs*.

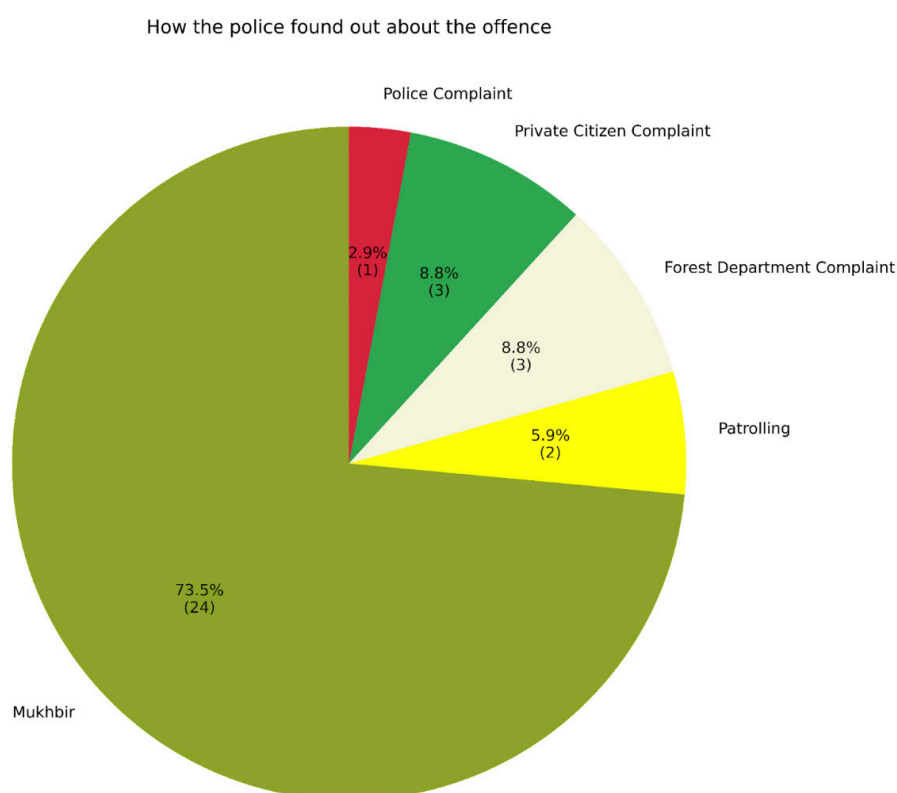


Figure 2.B: Percentage wise division of source of information received for the offences related to hunting and trading

### C. Consequences

Out of 111 accused persons, 79 persons were arrested and 13 persons have fled from the police custody. No information was clearly available about the remaining 19 individuals — whether they were arrested or not. The FIRs did not make any explicit mention of bail being granted to the accused persons. Further, out of 34 hunting cases in total, the forest department was involved in nine cases.

The police have seized a variety of animals under the WPA, both in whole and in parts, adding up to 29 instances in total. Eighteen animals seized were from Schedule 1; two animals were from Schedule III; and one was from Schedule IV. In the current set of FIRs, there were 9 instances of *tendua*, five instances of pangolin, and four instances of *mor*, which are protected under Schedule I of the Act; four instances of *saanp*; three instances of *hiran*; one instance of *bhedki*, and one instance of *chital* protected under Schedule III; one instance of *jalmurgi*; one instance of *kachua*, which are protected under Schedule IV.

FIRs show that the police also seized other items apart from animal parts — 35 weapons, 14 vehicles, 9 phones, 1 driving licence and cash from one person.

### D. Recurrent witnesses

Law requires that an arrest or seizure should be made in the presence of a relative or well-wisher of the accused or in the presence of two independent witnesses. In our research, 19 out of 56 witnesses were police witnesses, which means that every third witness was a police witness. We studied two FIRs from Shahdol — one witness was recurring in both the FIRs. Recurring witnesses indicate the usage of ‘stock witnesses’ by a police station to help in investigation, which vitiates the independence of these witnesses.

Witnesses are from varied social backgrounds. It is not possible to tell the exact social location of every witness. But in some FIRs, police have categorically mentioned the caste location of witnesses while the caste locations of other witnesses can be determined from their last name or surname. 10 belonged to the General Category i.e. from oppressed-caste backgrounds and others from Maybe General category each. Two witnesses belonged to the ST, 4 witnesses were from the SC, 6 belonged to the OBC and 1 witness was from the DNT.

### **E. Women accused of hunting**

Out of 111 accused in 34 FIRs, 3 were women. These three women were involved in two FIRs. Out of these three women, two were accused in an FIR lodged in Shahdol and one in the Crime Branch Police Station, Bhopal. Two of them belonged to the ST and one belonged to the General Category. Two were from the age group of 26 to 35 and one was from the age group of 56 and more. These two cases have been analysed below:

#### **Case Study #1 P.S. Kotwali Shadol (Shahdol)**

*The police got information from an unknown mukhbir that a woman near a banyan tree in Shahdol had in her possession the nails and bones of wild animals and was attempting to sell them. The police went to the place and found two women (aged 30 and 56 years old) with bags, speaking in a different language. The sub-inspector searched and seized six nails and 15 chatta (upper part of skin) of an animal, probably a pangolin, from the bags of these women. The police noted that no legal documents or licences were produced by the accused women regarding the possession of the animal parts. R41 Jagrup Singh returned some time later with a certificate that stated that the items seized were pangolin parts. Then, the police formally arrested the women under Sections 51, 52 and 57 of the WPA. In this FIR, the constable R41 assigned to identify the animal was named Gajrup Singh, and when he came back from identification, he was named Jagrup Singh.*

#### **Case Study #2 P.S. Crime Branch (Bhopal)**

*Information was received from a mukhbir that some persons near Bhanpur, one of them a woman, were in possession of a protected two-mouth snake. Details of the vehicle numbers were also shared with the police. The police apprised the information to state-level tiger strike force and received two forest officials, and proceeded to the spot with a witness. The police surrounded them and seized a two-mouth snake and the mobiles and vehicles of the four accused persons. According to the forest officials, the seized snake is an animal protected under Schedule IV of the WPA. The police arrested all the accused persons for hunting, possession and transportation of a scheduled animal under Sections 9, 38, 48A, 51(1), 52 and 57 of the WPA and prepared an arrest memo and panchnama of the seized material.*

## F. Additional laws

The police invoked a combination of Sections 25 and 27 of the Arms Act in six FIRs. Section 25 of the Arms Act, 1959 was invoked nine times. Section 30 of the Arms Act was invoked only once. Two FIRs stated violation of Section 52 of the IFA. Section 33(1) of the IFA was invoked only once. The police lodged an FIR under Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984. Section 429 of the IPC was invoked twice by the police. Sections 188, 201, 294, 304, 332, 353, 435, and 506 of IPC were invoked once. Section 34 of IPC was invoked three times.

Additional laws	Allegation	# of cases
25 AA	Covers a variety of punishments for a range of offences relating to manufacture, transfer, sale and possession of prohibited arms, without licence. The police does not invoke a specific subsection in its FIRs.	9
27 AA	Punishes usage of firearms or ammunition under various sections under the Arms Act. The police does not invoke a specific subsection in its FIRs.	6
30 AA	Punishes the contravention of licensing provisions for arms.	1
33(1) IFA	Punishes a range of activities in a protected forest. The police does not invoke a specific subsection in its FIR.	1
52 IFA	Seizure of property and confiscation for its usage in committing a forest offence. Civil proceeding to determine if property seized is to become the property of the government. Unclear why it is used here.	2
429 IPC	Punishes mischief by maiming cattle or an animal of more than 50 rupees in value. Punished greater than imprisonment under the WPA offences.	1
201 IPC 332 IPC 353 IPC 506 IPC	Causing disappearance of evidence Causing hurt to public servant from duty Criminal assault to public servant to deter duty Criminal intimidation	1
294 IPC 304 IPC	Committing an obscene act in public. Unclear why used here. Committing culpable homicide not amounting to murder. Unclear why used here as facts of such FIR do not mention death of any person.	1
3, 4 PDPP 435 IPC	Causing damage to public property like building, oil line, mine, factory and means of public transportation, or damage with fire or explosive substance. Unclear why this was invoked in relation to a hunting offence. Mischief by using fire or explosive substance	1



## G. Forest department involvement

The Forest Department was involved in nine out of 34 FIRs in our study. In two cases, a Forest Department official was the complainant in an FIR.

In one case, the Wildlife Crime Control Bureau (WCCB) inspector got the information from a *mukhbir* about the incident and then the WCCB inspector informed the police officials who acted on the information and arrested the accused persons and seized the articles of the prohibited wild animal.

In one case, an identification certificate of a wild animal was requested by the police from the Forest Department. In two cases, Forest Department officials were informed by the police about the *mukhbir*'s information and taken to the site of the offence. In one case, police took a forest guard and a forest caretaker to search for people who had come to hunt in the Forest Department area. In one case, police along with forest department officials raided two accused persons' homes. In one case, the Forest Department officials were informed and taken to the site for seizure and identification of the wild animal.

## II. SAND-MINING

Out of the 129 FIRs that were retrieved from the MP Police website, 95 (73.6%) related to the offence of sand-mining. They were primarily from two districts — Singrauli and Sidhi. The Son river passes through both Singrauli and Sidhi, and these activities were found to be taking place on the riverbeds. Specifically, these activities were being carried out in or near the Son Gharial Wildlife Sanctuary, which was created under the Project Crocodile for Gharial conservation and which is why the Wildlife Protection Act was invoked in these FIRs.

Out of these 95 sand-mining FIRs, 64 were from Singrauli, 30 from Sidhi and 1 FIR from Hoshangabad. They have been separated from the rest of the data set because of their unique nature. The primary allegations against the accused persons in this 95-FIR dataset were registered under the MMA, for sand-mining.. The WPA was invoked as a secondary offence because of the kind of effect these activities have on wildlife conservation. A total of 94 of these FIRs invoked Section 27 of the WPA, which restricts entry of persons into a sanctuary to the lawful purposes defined therein.

The police have received the first information for about 92% of these FIRs from their *mukhbirs*. The source for the remaining 8% of FIRs were police patrolling, private citizen complaints and complaints made by the Forest Department.

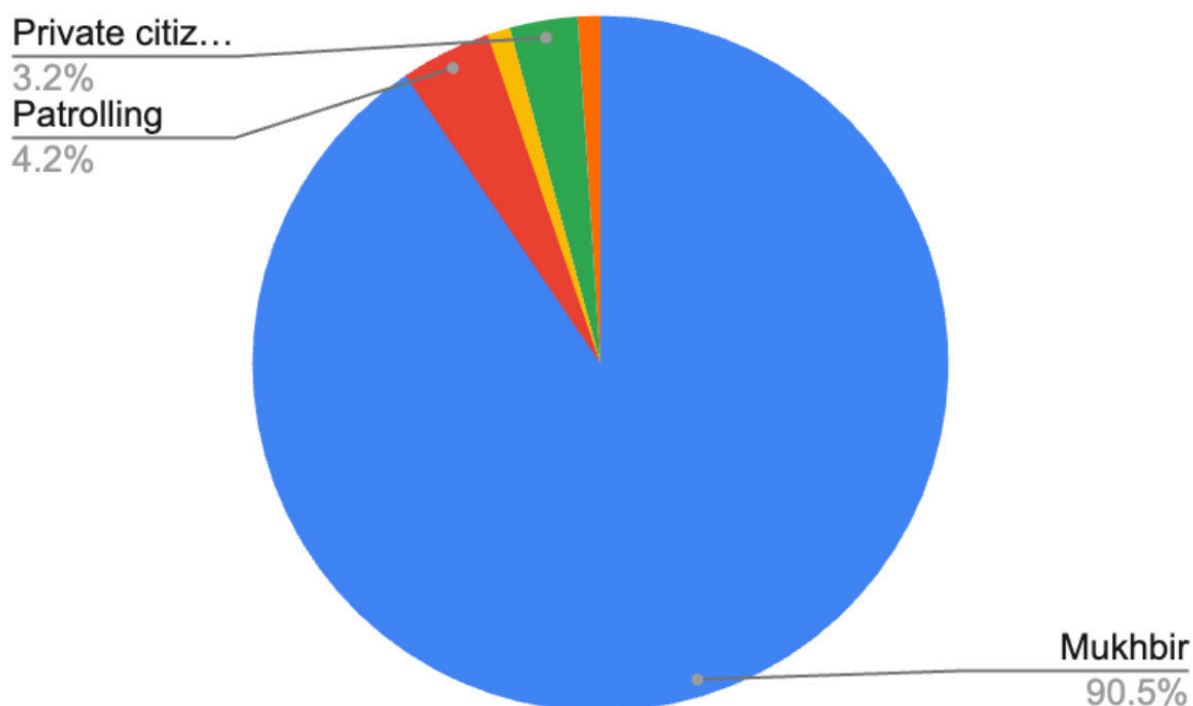


Figure 2.C: Percentage wise division of source of information received for the offences related to Sand Mining

A total of 62% of these offences (59 FIRs) were caught in *pratibandhit kshetra* (by or near the riverbed), whereas the rest 38% (36 FIRs) occurred in public non-commercial spaces (on the road after having received tip-off of trucks carrying illegally mined sand).

Site of the offence	FIR specific
Forest Department area/pratibandhit kshetra	59
Public space (non-commercial)	36

These FIRs were usually registered against the truck driver, the assistant and/or the owner of the truck. About 41% (39 FIRs) were registered against only one person; 44% (44 FIRs) were registered against two persons; and the remaining 11 FIRs were registered against three or more persons. Of these 11, one FIR was registered against 13 persons and another against 29 persons, of whom 20 accused persons were unlisted.

While there were 95 FIRs, due to multiple persons being accused in over half of these FIRs, the total number of accused persons stood at 203. A total of 151 persons were accused in Singrauli, 50 in Sidhi and two in Hoshangabad. Of these 203 accused persons, over half (51.7%, 105 FIRs) had not been caught by the police at the time of registration of the FIR. They were able to do so only in 30.5% of the FIRs registered (62 FIRs). In approximately 17.7% cases (36 FIRs), the police did not specify whether they were able to apprehend the accused person at all. Overall, a large

number of accused managed to flee because when the police approached the trucks carrying illegally mined sand, the driver of the truck would jump off and run away, leaving the illegally mined sand behind. This is also clear from the fact that 40.1% of the persons listed as accused in the FIRs (83 out of the 203 persons) were not identified by name, but as a combination of *agyaat* (unknown), *vahan chaalak* (vehicle driver) or *vahan swami* (vehicle owner). In the two FIRs with the largest number of accused persons, 13 and 29 respectively, the persons accused got into physical/verbal altercations with the authorities, threatening them with violence and then fled.

There was no recorded information of bail being given to any accused in this data set. The primary allegation against the accused persons for sand-mining was made under Sections 20 or 21 of the MMA. Act, 1957. Both of these are bailable offences. However, the FIRs were registered using a combination of acts, including the IPC, IFA, Environment (Protection) Act, The Prevention of Damage to Public Property Act, 1984 and the WPA. This resulted in 71 FIRs that had a combination that made these offences non-bailable.

In all 95 FIRs, the police seized the sand that was found. However, vehicles were recorded to be seized only in 79 of these FIRs. Additionally, the Forest Department was not involved in a vast majority of these cases. Of the total 95 FIRs registered by the police, officials of the Forest Department featured in only two FIRs, and both times as complainant. Since both the police department and the Forest Department have powers of investigation under the WPA, they both investigate and prosecute in their separate silos. This is something we were able to observe in greater detail in our analysis of hunting offences.

We note that while the investigation of illegal sand-mining constitutes a big portion of offences registered by the police under the WPA, these offences are occurring in a hyper-localised region of M.P. A well-defined and exclusive study of sand-mining activities is needed to analyse these kinds of FIRs in greater detail. This currently falls outside the scope of our study, which aims to study hunting.

## CONCLUSION

The data derived from the FIRs show that there is irregularity in recording FIRs, where, in certain years there have been sporadic FIRs and arrests and no FIRs or arrests in other years. Further, there is no set of procedures being followed by the police in registration and investigation of the FIRs and complaints.

One of the similarities found in the records is 'how the information of occurrence of offence has been received' and in 86% of the cases it has been through *mukhbirs* who are police men and often trained by them to report and be witnesses in the trial. This trend has been seen both in the FIRs registered under sand-mining and for hunting and trade of wildlife.

In addition, a clear intent of excessive criminalisation of the offences can be seen in the actions of the police, where the offences that do not have excessive punishment under the WPA, are registered along with provisions from other laws to make the offence a more serious one. This results in the accused person having to go through a more stringent trial and being awarded extra punishment.

The FIR data shows that the majority of the FIRs have been registered against the people from oppressed communities, neglecting the fact that the daily life and livelihood of people of these communities depends on the forest. In many cases, no clear recovery has been made to show whether the offence has actually been committed and with the intent to commit the offence.



7

**VAN VIBHAG RAJ**  
**ANALYSIS OF FOREST**  
**DEPARTMENTS' CASE RECORDS**

This chapter presents an analysis of a total of 1,414 cases of hunting reported by the MP Forest Department from a total of 48 districts comprising 24 circles under the WPA. It documents the patterns in the reported location of the alleged offences, identifies communities of the persons charged or made accused and shows the status of these cases as on 16 February 2022. The analysis is based on records made publicly available by the M.P Forest Department for the entire state for a period of five years starting from 2016 till 2020 in their D-1 Register, which is a part of the Forest Offences Case Register (FOCR) database.

In these records a careful note is kept of the circle, sub-division, beat and sub-beat of how forested areas are divided. Among the total 24 circles in M.P, 5 circles, namely; Balaghat (10.3% of total cases), Shahdol (9.1% of total cases), Jabalpur (8.1% of total cases), Chhatarpur (7.5% of total cases) and Gwalior (7.5% of total cases) account for 42.5% of the total cases registered in the state by the forest department. The circles that account for the least number of cases are Indore (18 cases), Khandwa (16 cases), Kuno National Park (13 cases), Bandhavgarh National Park (11 cases) and Satpura National Park (9 cases).

In constituting an offence and to frame any criminal charges, the different components of the offence are made out with the help from the *situs* of the offence and with the help of recoveries made, i.e. items seized from the accused person or their surroundings. Every investigating authority is required to record these and the Forest Department officials are no different. Both these factors play an important role in revealing the patterns of policing and prosecution employed by forest guards and range officers.

## **I. WHO IS BEING CRIMINALISED?**

### ***A. Number of accused persons***

We studied the case details from the D1 register of the Forest Department to categorise the cases by the number of accused persons added to each case. This analysis shows us how many people are accused in what proportions out of the total 1,414 cases.

There were no accused persons for 332 (23.5%) of the 1,414 cases in our data set. In 1,082 of the cases, 437(31%) of the cases pertained to a singular accused person. 536 cases (38%) of offences under the WPA were filed against two-five accused persons. Less than 8% of the cases were charges against groups of 6-15 people. Only a single case pertained to 16 accused persons arrested for an offence of hunting. Thus, our data indicates the practice of registering cases against large groups of people and also the department's negligence in registering cases without determining accused persons (as is observed from the large number of cases with no accused).

## B. What communities do these persons belong to?

In this section, we analysed the classification of communities represented in the list of total accused persons in 1,414 cases registered by the forest department in the five-year duration

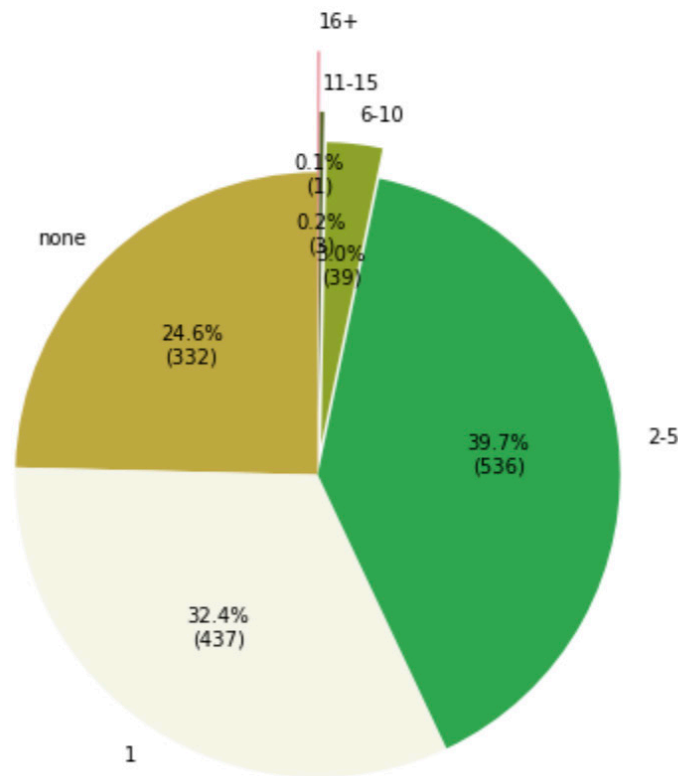


Figure 3.A: Overall count showing the no. of accused persons caught in a single case (ranges of 0, 1, 2-5, 6-10, 11-15, 16+)

from 2016 to 2020. It reveals the extent of criminalisation of the marginalised communities who face prosecution under the provisions of WPA and other forest governance laws.

In the 1,414 records, 383 records did not have any information regarding any accused person. These 383 records do not include instances where accused person information was marked as unknown (*agyat*). In the remaining 1,031 records with information regarding accused persons, the total number of accused persons was 2,790. This is because several offences were reported to have been committed by multiple accused persons.

A marked difference between the police's data and the Forest Department's data on wildlife crime was that the Forest Department also recorded the *jati* of accused persons in several instances. Using this information where given and applying our community classification methodology we analysed the administrative communities that these accused persons belonged to.

We found that in these records, over 44% of all persons accused of hunting belonged to the ST whereas ST forms only 21.04% of the total population in the state as per the 2011 Census data. 13.55% belonged to OBC, 7.74% to SC, 8.46% to Nomadic Tribes/ Denotified Tribes (NT-DNTs) and 3.66% were classified as Possibly Marginalised (last names used exclusively by at least two



oppressed caste communities and no oppressor castes). 9.71% were classified as Maybe General (last names used by both oppressed and oppressor caste communities), 1.36% as belonging to the General category and 2.76% names could not be classified. Additionally 8.67% names did not have enough information (last name) for our analysis and were classified as 0 (zero). Overall, more than three-quarters (77.49%) of all accused persons belonged to oppressed caste communities. The high representation of STs in this data set was expected to an extent because Scheduled Areas formed a big portion of the area covered by the Forest Department in its records. However, the area (districts and PAs)-wise number of PORs registered shows that the highest number of cases are from non-PAs — Balaghat (146 cases), Shahdol (128 cases), Jabalpur (115 cases), Chhattarpur (106 cases) and Gwalior (106 cases). Here, it must be noted that though the land adjoining the forests is largely occupied by forest-dwelling communities (as confirmed from our fieldwork), the fact that the cases from these areas constitute only 17.32% (245 total cases from all PAs) of total 1,414 cases shows that the disproportionately high representation of marginalised communities is independent of their high population around the PAs.

The top-five districts that have the highest SC population in the census — Ujjain, Datia, Tikamgarh, Shajapur and Chhattarpur, and top-five districts with ST population in the census — Alirajpur, Jhabua, Barwani, Dindori and Mandla account for only 13.57% (195 total cases from these districts) out of the total 1,414 cases registered by the Forest Department from 2016 to 2020. Among these Alirajpur and Shajapur did not have any case registered by the Forest Department during this period as Mandla alone had 108 cases out of the total 195 from these districts with high ST and SC population. This debunks the myth that high representation of ST and SC communities in the cases registered by the forest department is because of their higher population in these areas

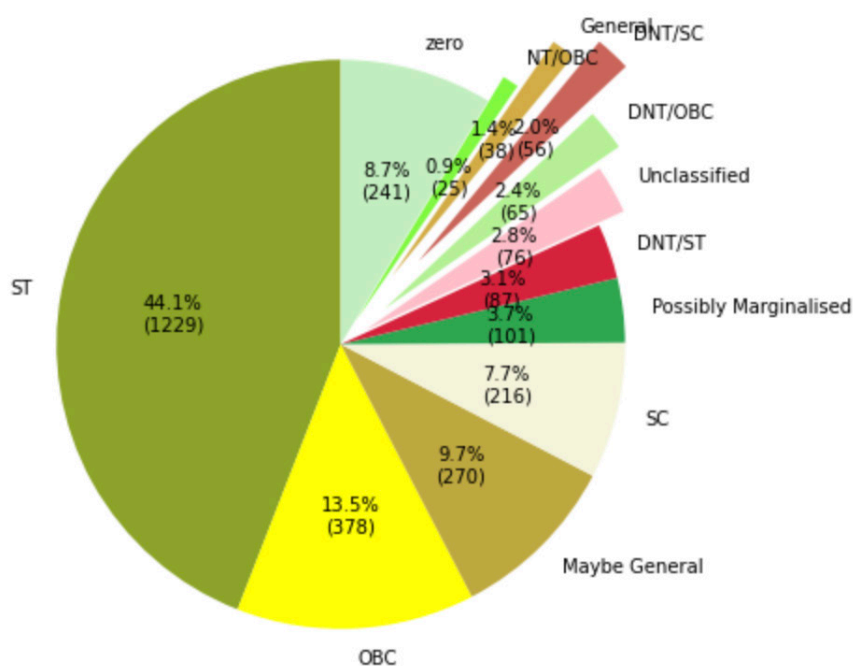


Figure 3.B Pie-chart showing disaggregation of communities reflected in the overall list of accused persons in 1,414 cases.

## II. HOW OFFENCES ARE CONSTRUCTED

### A. *Classifying the Offences*

This section explains the offences and combination of offences or provisions used by the forest department to register cases. It provides information on which provisions of the WPA are most commonly used and which provisions are most frequently used in combinations. It also reveals the patterns and gaps in Forest Department's practice of using WPA provisions to register cases without the required standard of application of mind.

In the 1,414 cases from 2016 to 2020, we found that in addition to the WPA, there were charges made under various provisions of the Biological Diversity Act, 2002 (two instances) and the IFA, 1927 (three instances). We did not analyse the usage of Acts other than the WPA because the D1 register has some vague entries in terms of the names of other Acts being used. For instance, Section 51 (provides penalties for the offences in breach of WPA provisions) is added in some cases while it is not added in several others without any clarification. Further, in 10 cases only Section 50 and 51 are mentioned, which provide for powers of entry, search, arrest and detention to the Forest Department officials and penalties respectively, without mentioning the section which provides the offence for which the case is registered. In 12 cases, only Section 2, which provides definitions, is mentioned without specifying the provision which entails the alleged offence. Similarly, in 10 cases either no provision is mentioned or incoherent information is mentioned without specifying any provision under which the case is made out. In two cases we found mention of Section '77' and '99', which do not exist under WPA. An analysis of the provisions for which the cases are registered reveals that the forest department attaches the provisions to the cases completely arbitrarily. The fact that such vagueness is represented in cases registered throughout the five-year period (2016 to 2020) shows that there are no accountability measures in place for the forest department to put checks on the arbitrary usage of WPA provisions to register cases.

Under the WPA, the most commonly used provisions were the combination of Section 9, 39 and 51, which together were found in 302 cases (21.35%) out of the 1,414 cases. Section 9 prohibits the hunting of wild animals specified in Schedule I, II, III and IV of the Act. Section 39 prohibits the possession of any remains of a hunted wild animal and declares it to be government property. It also declares that any weapon or tool used towards the commission of an offence shall be government property. It further prohibits the destruction of such government property without the permission of the Chief Wildlife Warden. Section 51 contains penalties for breach of any of the provisions of the WPA, ranging from sentence up to three years to seven years and fine from 10,000 rupees to up to 25,000 rupees. However, the offences involving the breach of the licence conditions or trade of wildlife have different penalties.

The next most frequently appearing combination of offences — 83 cases (5.87%) out of 1,414 — is of Section 2, 9, 39, 50 and 51 together. Section 2 provides the definitions of terms used in the Act, including the definitions of wildlife, wild animal, national park, hunting, forest produce, etc, which are often used in cases to establish the offences. Section 50 provides for the powers of entry, search, arrest and detention to the Forest Department officials for offences committed under the WPA. It also provides them an exemption from any law that may curtail such a power bestowed upon them in this Act by stating that these powers are 'notwithstanding anything contained in any other for the time being in force.'

The third most common — 70 cases (4.95%) out of 1,414 cases — is a combination of offences under Section 9, 39, 50 and 51. The fourth most common offence is the offence of hunting under Section 9, which is a standalone provision specified in 43 cases (3%) out of 1,414. And the fifth most common combination is Section 9 (prohibition on hunting) with Section 51 (penalties) in 37 cases. Among all sections of the WPA, most commonly used provisions for making offences were Section 2 (definition clause) and Section 9 (prohibition on hunting).

In 1,237 (88%) out of 1,414 cases, Section 9, which prohibits hunting, is mentioned as a provision that has allegedly been violated.

## **B. Method of hunting**

We analysed the information on methods of hunting given in the D1 register of the Forest Department for all 1,414 cases to find patterns of hunting and the Forest Department's practice of recording this information. It also includes information on which methods of hunting are found disproportionately in particular areas of the state.

Out of all 1,414 PORs, 331 (23.41%) did not have any details about the method of hunting. Further, 225 cases (18.03%) were recorded under the broad head of 'Other', without any details. The disproportionate number of cases recorded under both these heads of 'Unknown' and 'Other' were observed in all the districts studied for this report, except in the case of Satpura Reserve, which recorded only a single case where the method of hunting is not given and Bandhavgarh did not record any under either of these categories.

For cases where there was information available about the method of hunting, *phanda lagakar* (laying traps in self-defence) constituted the largest number of cases with 205 cases across all circles, or 14.5% of the cases. This was followed by death by electric shock by setting up live wires as snares, which constituted 167 or 11.81% of the cases across all the circles. Death by tools such as knives, spears, arrows and axes, was the next most common method and constituted 178 or 12.59% of all cases.

Other methods of hunting included shooting with guns (5.37%, with 76 cases overall), hunting down of animals by pet dogs (3.39%, with 48 cases overall), administering poison (2.83%, with 40 cases overall), and using *deshil bombs* (0.78%, with 11 cases overall). Among the circles, Gwalior circle recorded a disproportionately high and the largest number of cases (20 cases) where shooting with guns was the method of hunting. Killing by administering poison was also disproportionately high in Gwalior, with 13 such cases, followed by Kanha Rashtriya Udyan, which had 12 such cases.

In 37 cases (2.62%), animals had died in accidents with vehicles. In 19 cases (1.34%), animals were killed 'by villagers' (*grameeno dwara maarne se*). While among the total 1,414 PORs, one case recorded the death of an animal in conflict with a human, in the circles analysed there was no such case.

In a few cases, the hunting method was unknown and either the skin, bones or other body parts of the animal were retrieved (in 32 cases, comprising 2.62%)

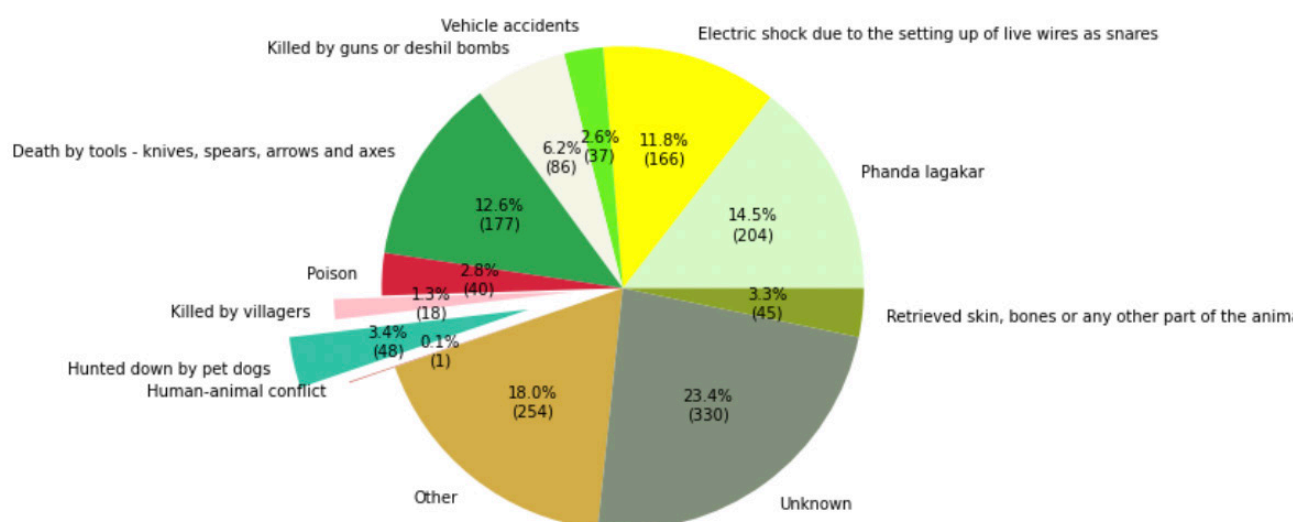


Figure 3.C: Pie chart showing the distribution of methods of hunting recorded in the 1,414 cases.

### C. Site of the offence

The site of an offence is important to understand the geographical context of the prosecutions under the WPA. The place where the offence is committed often reflects the background of the violation of wildlife laws. In this section we have analysed and categorised the number of offences by the circle or area they fall in and have also documented the Forest Department's practice of recording the place of offence.

The Forest Department divides forested areas into circle, sub-division, beat and sub-beat. Within this, compartment numbers are assigned to denote specific areas (the size of beat areas can change depending on the nature of forested areas — for core parts of the PAs, areas are much more patrolled and for reserved forests, the area for patrolling is much wider). However, apart from this administrative categorisation, for the offence to be registered, their register requires a field of '*ghatnasthal*' (or area of incident) to be marked. Across the data analysed, there was no standard practice in how the area where the offence is said to have occurred is marked out.

Descriptions of the site of the offence are mostly vaguely described. They can be as vague as noting just whether the offence occurred in a reserved, revenue forested area or simply mention that it occurred in revenue or forest villages. The most specific notation within the Forest Department administrative categories that was used was in regards to the compartment numbers (which offer no clarity to a layperson, or forest-dwelling communities themselves). Apart from this, there were a few instances where note was made of a village name, with no description of where the village was placed in relation to the forest (situated inside, at the boundaries of or away from the forest). Where specific indicators of the accused person's residence is alluded to, the description is merely referred to as *ghar* or *khet* of (one of) the accused person(s). Other descriptors that noted a particular local physical indicator were still only merely noted as *talaab*, *nadi*, *ghat*, or near the bridge, school or market.

This coupled with the fact that FOCRs do not record the narrative of how a crime has occurred (unlike an FIR), goes to show that there is no way to know where an offence is said to have occurred, unless you approach a range officer who has investigated a particular offence.

It is also observed from the analysis of site of occurring of alleged offences that a high number of offences are recorded in the areas surrounding the PAs: Only nine cases were registered from the Satpura reserve whereas 46 cases were recorded from Hoshangabad, which is adjoining the Satpura reserve, similarly, while 84 cases were recorded from the Kanha Rashtriya Udyan, its adjoining area of the Balaghat circle recorded 146 cases. This lack of standard procedure has opened the door for unaccountable policing within forests, placing reliance on whatever story is propagated by forest officials.

#### D. Weapons that were seized

We also studied the seizures made of the tools and weapons for the alleged hunting and other offences recorded by the forest department in its D1 register for all 1,414 cases. This section presents the patterns of Forest Department's practice of recording this information and the gaps that are revealed on a closer examination of this information for each case.

The weapons that are seized hold the key to establishing how an animal is hunted and to sustain a charge under the WPA. The Forest Department's manner of recording offences holds a separate categorisation of *Upyog vidhi*, which ascertains the reason for death of the animal (whether it be through a gun, bomb, or other weapons). It is clear from the section describing the method of hunting that in most cases investigated by the Forest Department, the methods are unclear (see above). However, regardless of the absence of certainty therein, 'weapons' are still regularly seized by range officers. In the data set, items of seizure consisted of traditional agricultural instruments such as sickles, spears, axes, sticks and wood and *khunti*, *gadasa*, *dagni*, *barchi*, and *chaku*. Other items seized in other cases were air gun, gun, balam, nets, and *bijli ke taar*. A few cases mentioned seizure with *bisfotak golas*, *patvaar*, *fanda* and a stone covered in blood.

In 725 cases out of the total 1,414 or in 51.27% cases out of the total number of cases, no recoveries were reported. Among these 725 cases with no reported recoveries, 164 cases or 22.62% are cases where the method of hunting is mentioned as 'Other' and 228 cases or 31.45% are cases with 'Unknown' method of hunting. However, in several cases where the method of hunting is such (for example, use of gun, tools, electric wire, vehicle accident, etc) that without the recovery/seizure of the weapon or tool used in hunting, a case should not have been made out, are nevertheless made without any recoveries. For instance, 9 cases where method of hunting mentions 'skin seized' do not have any recovery/seizure, 10 cases with method as 'killed by villagers, 19 cases with 'poison' as method, four cases of '*desi bomb*', 27 cases of 'hunted by pet dogs', 64 cases of '*fanda lagakar*', 16 cases where method mentions 'retrieved skin, bones or any other part of the animal's body', 31 cases of accident by vehicle, 62 cases of 'electric shock due to the setting up of live wires as snares' and 53 cases where the method of hunting is local tools, do not have any recoveries or seizures. It is shocking to note that the Forest Department is able to make a large number of cases without any recoveries or seizures on record, reflecting the quality of investigation in alleged incidents.

### III. ANIMALS HUNTED

In this section we have analysed the number of animals hunted with their respective schedules, geographical locations and the proportion of specific species of animals hunted as recorded by the Forest Department for the 1,414 cases from 2016 to 2020.



Overall, in the 1,414 cases, a total of 2,095 animals belonging to 54 different species were hunted. The most reported incidents of hunting took place in Shahdol circle — 339 of 2,095 animals (16.18%) were hunted there. Followed by Gwalior, which saw 195 animals hunted (9.30%). Kuno National Park saw the lowest number of animals hunted — 17 (0.81%), along with Satpura National Park — 19 (0.9%).

The most hunted animals were wild boar (*jungli suar*), parrot (*tota*), peacock (*mor*) and spotted deer (*cheetal*), comprising 17.47% (366 animals), 12% (265 birds), 9.26% (194 birds) and 8.50% (178 animals) of the total 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 spotted deer in Schedule I. Here, it is important to mention that fish (*machli*), which is the fifth most hunted (8.26%) animal in the 1,414 cases registered by the Forest Department, is not under any of the protected lists of animals under the WPA.

In our data, 83.02% of the parrots (220 of 265) were hunted in Shahdol circle itself in just two

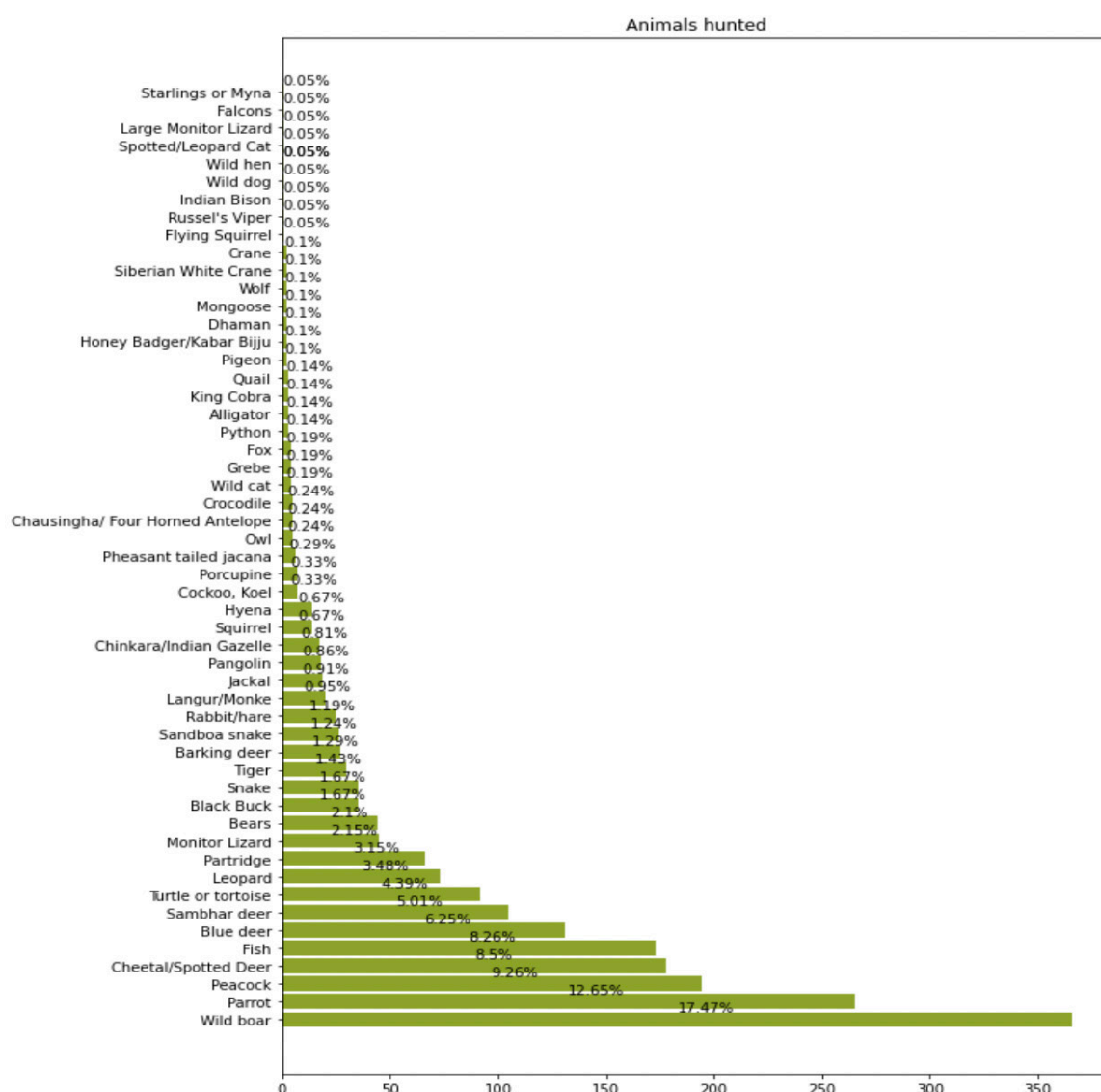


Figure 3.D: Graph showing the percentage-wise distribution of all animals hunted in total 1,414 cases.



cases involving the same accused person, and the remaining in Jabalpur. Similarly, 60.30% of the peacocks (117 of 194) were hunted in Gwalior followed by 12.88% in Bhopal (25 of 194) and the remaining distributed over other circles except Kanha National Park, Khandwa, Jabalpur, Madhav National Park, Satpura and Hoshangabad where no peacock was reported to be hunted in this

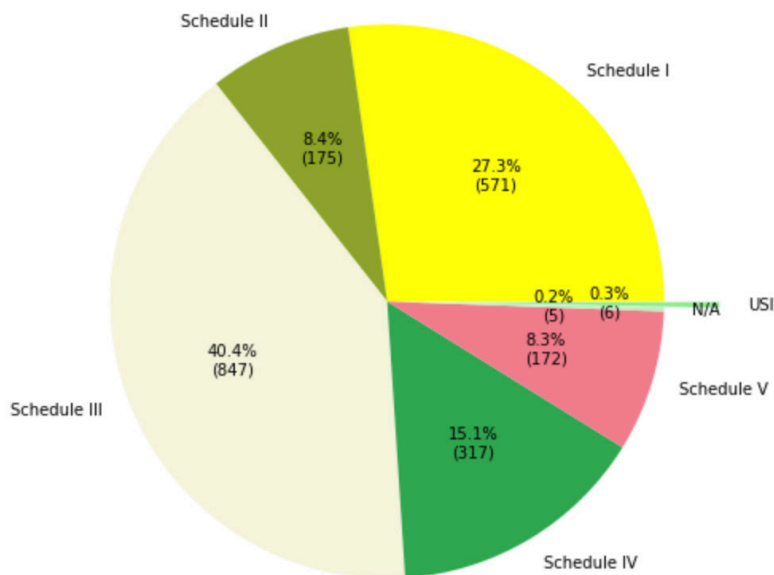


Figure 3.E: Pie chart of animals hunted falling under different schedules.

period. The most hunted, wild boar, and the fourth most hunted, fish, on the other hand were hunted evenly across all circles.

Among the Schedules, more than half (63.66% or 1,160 of 2,095) of all animals hunted were either a part of Schedule III, Schedule IV or Schedule V of the Act and 40% of animals came from Schedule III alone. There were a total of 69 cases of attempts to hunt where no animal was actually hunted.

### A. How animals are hunted across different schedules:

This section analyses the different methods of hunting reflected in the 1,414 cases. It also presents a correlation with the methods of hunting and the respective schedules of hunted animals.

Out of total 346 cases that involved the hunting of Schedule I animals, 78 cases had 'agyat/lagu nahi' and 71 cases had 'anya' recorded as a method of hunting, together making 43.06% of the total cases of Schedule I animals. After these the next most common hunting method for Schedule I animals was 'vidyut line bichkar' (53 cases of total 346) and 'fanda lagakar' (43 cases of

total 346). Among the total 56 cases of Schedule II animals, most common methods of hunting were '*anya*' (18 cases) and '*agyat/ lagu nahi*' (14 cases) followed by '*vidyut line bichkar*' and hunting by local tools both accounting for six cases each out of the total 56 cases.

Among the 65 cases of hunting Schedule IV animals, 26 cases or 40% of cases had method of hunting described as '*agyat/ lagu nahi*' followed by 33.8% (22 cases) as '*fanda lagakar*', 12.3% (8 cases) as '*anya*' and 99.2% (6 cases) as '*bandoock se*'. There were 49 cases of hunting Schedule V animals, where the most prominent methods of hunting were '*anya*' (34.7% or 17 cases of total 49) followed by '*fanda lagakar*' (32.7% or 16 cases) and '*agyat/ lagu nahi*' (20.4% or 10 cases) among other methods.

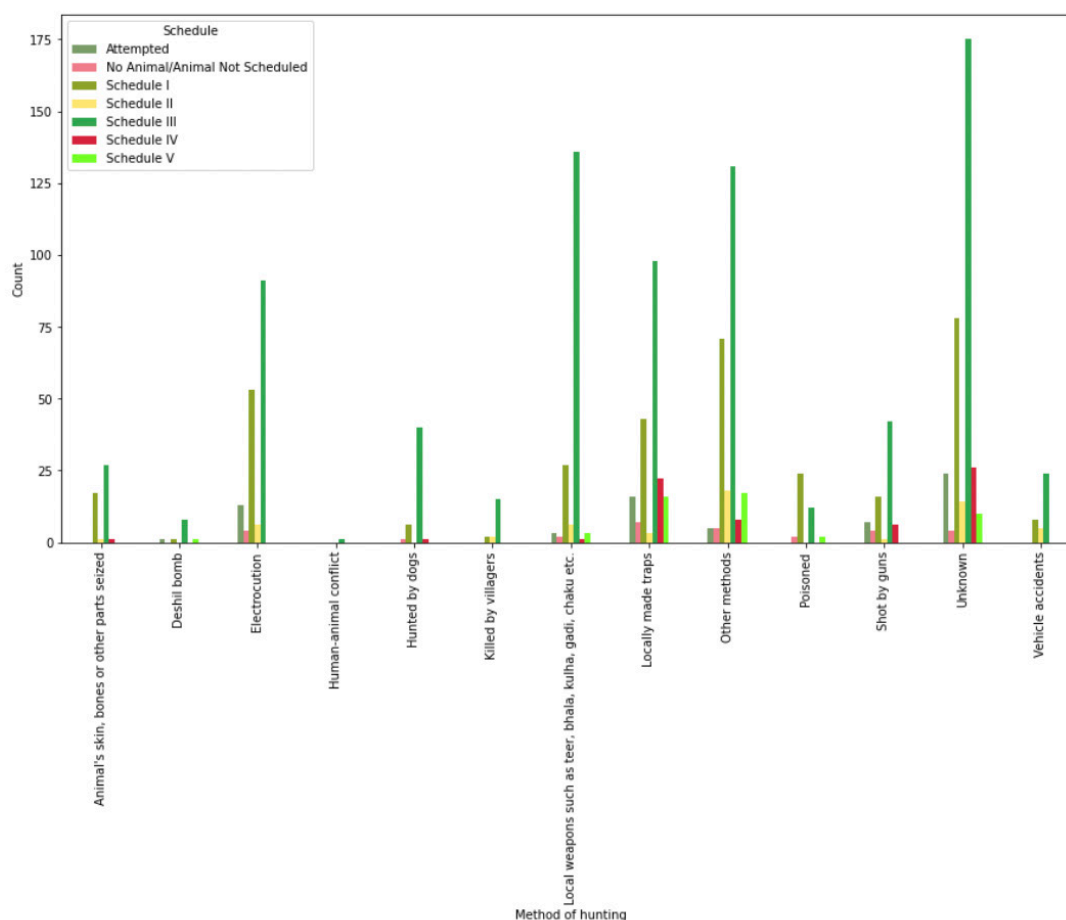


Figure 3.F: Bar graph with different methods of hunting animals on Y-axis and numbers of instances on X-axis.

Schedule III animals, which account for 800 cases (56.58%) of the total 1,414 cases, have 21.9% cases where method of hunting is recorded as '*agyat/ lagu nahi*', in 17% it is hunting by local tools, 16.4% cases as '*anya*' and 12.3% as '*fanda lagakar*'. From our field interviews we know that there are a lot of cases in which animals like wild pigs, which belong to Schedule III, destroy crops in the farms around the forest. These animals are usually hunted by placing a '*fanda*' around the farm, or by use of local tools in self-defence. This finding is substantiated by our quantitative data which shows that the same method is prominently used when it comes to Schedule III animals.

Our study also found that the greatest number of animals hunted (59.70%) were a part of Schedule III. A large number of animals listed under Schedule I (24.83%) were also recorded to have been hunted. Such a large number was not found for animals belonging to Schedule IV (3.40%), Schedule II (3.26%), or Schedule V (2.12%). Around 6.66% of the total animals hunted could not be recognised as belonging to any of these schedules.

On an analysis of which hunting method is most prominent for which schedule, we found that of all the cases of '*agyat/ lagu nahi*' and '*anya*' more than half (52.9% and 51.4% respectively) were of schedule III animals only. Second most prominent schedule in cases involving these two categories of hunting methods was Schedule I (23.6% and 27.8% respectively) with the rest being distributed between the remaining schedules.

Of all 14 cases of '*khal jabt*' or seizure of skin, half (7) were of Schedule I animals and the other half (7) of Schedule III animals. Fifteen out of total 19 cases with hunting method as 'killed by villagers' were of Schedule III animals and two each of Schedule I and II. 24 out of total 40 cases (60%) of killing by poison were of Schedule I animals and 12 (30%) were of Schedule III animals and the remaining two (5%) cases were of Schedule V animals. 83.3% cases (40 out of total 48 cases) of killing by pet dogs were of Schedule III animals.

Out of the total 205 cases of hunting method as '*fanda lagakar*', 98 cases (47.8%) were of Schedule III animals, 43 cases (21.1%) of Schedule I animals and the rest distributed between remaining schedules. Out of the total 167 cases of hunting by laying live electric wires, 91 cases (54.5%) were of Schedule III animals and 53 cases (31.7%) of Schedule I animals. Among 178 total cases of hunting by local tools such as spear, axe, etc, 136 cases (76.4%) were of Schedule III animals.

This analysis shows a distribution of cases between Schedule I and Schedule III in specific methods such as local tools, '*fanda lagakar*', hunting by pet dogs, etc, which are commonly used as self-defence measures against Schedule III animals like wild boars, etc. This substantiates our fieldwork observation that in a large number of cases Schedule I animals are killed unintentionally because of the people's self-defence measures against Schedule III animals which destroy their crops.

## V. STATUS OF CASES

In this section we have analysed all the 1,414 cases registered by the Forest Department from 2016 to 2020 in terms of their final status. It provides information on the proportion of cases which are pending, status of imprisonment, and fine, among other findings.

In our overall data set that comprised 1,414 cases registered between 2016 and 2020, more than

95% cases are still undecided; 727 of these cases (51%) were pending in court; and 627 cases (44.3%) were under departmental proceedings. The rate of compounding was 0.9%, i.e., only 13 cases were compounded in exercise of the power given to the Sub-Divisional Officer (SDO). 35 cases (2.4%) were marked as closed and nine cases (0.63%) were decided; however only 6 of these had recorded details of the decision.

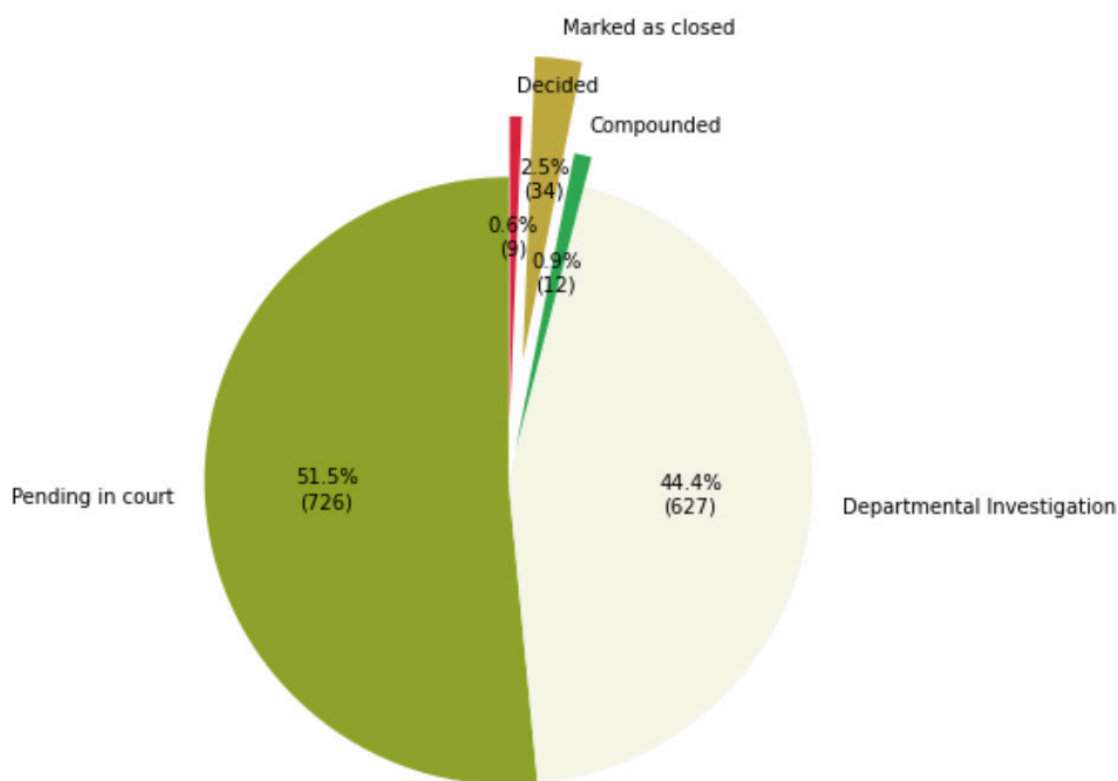


Figure 3.G: Distribution of cases as per their status

Thus, we note that there is a large-scale pendency problem and a very low rate of conviction for the huge number of cases registered.

From the details of these decided cases, we gathered that only four accused were found innocent.

## A. Imprisonment

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

## B. Fine

Only two accused were released after being asked to pay a fine. There was also a wide variation in the fine amount that five convicts were charged to pay. This ranged from ₹200 to ₹5 lakh, with one accused each asked to pay ₹200, ₹1,500, ₹2,000, ₹10,000, and ₹5,00,000 respectively.

However, it must be noted that the Forest Department does not regularly update information on case status, imprisonment and payment of fines in the publicly available online records.



Figure 3.H: Depiction of cases by final status.

## CONCLUSION

The Forest Department data of the 1,414 cases recorded between 2016 and 2020 in the state, reveals a gap in prosecution standards applicable to Forest Department officials as they are applicable to the police. The high volume of inconsistencies between reported methods of hunting and recoveries or seizures made, vagueness in recorded site of offence and the fact that accidental deaths of Schedule I animals caused in acts of defence against Schedule III animals like wild boars, which cause large-scale loss of livelihood and food to people, is also confirmed in our field interviews.

This analysis also reveals the tendency of the Forest Department to charge multiple people in a single case; in every four out of 10 cases, there are at least two to five people charged for it. Further, the classification of caste categories vis-à-vis the animals hunted shows that the STs are disproportionately charged under the WPA, accounting for 40% of the total animals hunted.

In the context of disproportionate targeting of marginalised communities and the inconsistencies in preparation of cases, it must be noted that more than 95% of the total 1,414 cases are pending without decision. Overall, the analysis of cases registered by the forest department under the

WPA reveals that as easy as it is to register a case under the WPA it is difficult for the persons charged under it to safeguard their liberty and get protection from criminalisation in the name of forest conservation.



8

## VAN VIBHAG RAJ

INSIGHTS FROM THE FIELD

This chapter discusses findings from interviews and discussions conducted with various stakeholders in Mandla and Balaghat. Interviewees included the 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. A total of **45 interviews** were conducted between March 2022 and September 2022. The chapter begins by providing the legal and political background in which wildlife law and the conservation approach embedded in the law operate and its implications in Mandla and Balaghat. The next section draws a picture of the criminal law in action in the PAs of Kanha National Park. This section also analyses the specific procedural aspects of law, including arrest, bail and the related costs borne by forest-dwelling communities. The last part of the chapter discusses the various stakeholders that mediate the interactions of communities and the Forest Department and shape the implementation of the law.

## I. CRIMINAL LAW, CONSERVATION AND WILDLIFE PROTECTION

The WPA was introduced within the existing context of colonial control of forests, to extend the protection afforded to forests (under the IFA 1927) to its animals and plants. It was fueled by the international impetus around the Stockholm Declaration to preserve the environment; and in part by the then Prime Minister Indira Gandhi's love for tigers.<sup>121</sup> With the consequent evolution of the principles of environmental law through concepts such as sustainable development and the public trust doctrine, among others, criminal law was also amped up to propagate the sentiment of environmentalism through the category of environmental crimes.

The IFA at the time already included certain forest offences, which criminalised acts such as cutting wood in protected or reserved forests, setting fire to forests or clearing land for cultivation. Wildlife offences, too, existed in earlier legislation that criminalised the hunting of certain species/birds in a particular time period without a licence. However, these provisions were modelled on the idea that the government owns forests, as seen in the IFA of 1855, on which the current law is based. The liability for crimes committed in the forest were affixed on individuals (whether forest-dwelling communities or not), and the State use of forests, for production or conservation, was deemed legitimate. Criminal law was therefore an instrument of colonisation that deemed the forest-dependent communities as criminals for causing the destruction of forests, but did not similarly criminalise the colonisers for the indiscriminate use of forests for production.

Wildlife law, too, is based on this foundation of the state domain over conservation and 'legitimate purpose'. Chapter 2 (Literature review) provides insights into the developments preceding and succeeding the WPA, questions of indigenous hunting practices that were criminalised and the

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<sup>121</sup> Mahesh Rangarajan, *India's Wildlife History* (1st edn, Permanent Black 2006).



ways in which resistance to forest governance has been shaped over the years. The ‘fortress conservation’ ideal proposed by the WPA has alienated communities from their forests, displaced them in the name of creating ‘inviolate’ hotspots for protection by deeming them ‘destructive for conservation.’<sup>122</sup> Tribal communities have been displaced into caste society, which is given to exploitation and discrimination, and have often been forced to find informal work to sustain themselves. This chapter draws on the experiences of those criminalities mediated by the Forest Department and seeks to question the role of criminal law in wildlife conservation. It traces the legitimacy of action in a PA through the Kanha National Park, one of the oldest tiger reserves in the country. Drawing on this empirical material, the chapter offers insights into the recent call for reform of this criminal law through the ‘decriminalisation’ of forest offences<sup>123</sup> and further bolstering of the WPA.<sup>124</sup>

### **A. Background to Kanha National Park**

Kanha Tiger Reserve is situated administratively in Mandla and Balaghat districts of MP<sup>125</sup> and consists of 161 villages in the buffer zone (area adjoining the core area of the tiger reserve). These villages are primarily inhabited by Gond and Baiga (who are classified as a Particularly Vulnerable Tribal Group (PVTG) families.<sup>126</sup>

There are two kinds of villages in and around Kanha — revenue villages and forest villages. Revenue villages fall within the State’s regular administrative system. Forest villages, on the other hand, are an administrative category created by the Forest Department where they alone hold the title on the land and the inhabitants are tenants at will. They were created to meet the demands of a large labour force for the Forest Department’s extractive activities such as logging.<sup>127</sup> At present, Mandla has 84 and Balaghat has 70 forest villages, of which 19 forest villages fall under Kanha territory.<sup>128</sup>

### **B. Forced relocation and ‘Due Process’**

The WPA lays down a procedure of settlement of rights and relocation/displacement of the people affected by the creation of PAs. The following section highlights how the ‘due process’ has been vitiated and PAs have been created at the cost of the rights of the forest-dwelling communities.

122 NP Broome and others, ‘Changing Paradigms in Wildlife Conservation in India’ in SM Lele and Ajit Menon (eds), *Democratizing Forest Governance in India* (OUP 2014) 181 <<https://kalpavriksh.org/wp-content/uploads/2018/07/ConservationandRightsinIndiaLeleetal.pdf>> accessed 6 December 2022.

123 The Indian Forest (Amendment) Ordinance [2017] LS 6/2017.

124 The Wildlife Protection (Amendment) Bill [2021] LS 159/2021.

125 They are Scheduled areas as per Schedule V of the Constitution of India. Ministry of Tribal Affairs - Government of India, *Annual Report 2021-2022* <<https://tribal.nic.in/downloads/Statistics/AnnualReport/AREnglish2122.pdf>> accessed 24 September 2022.

126 *ibid.*

127 Forest Department - Government of Madhya Pradesh, *Development of Forest Villages through forest Development Agencies Madhya Pradesh, 2008* <<https://mpforest.gov.in/hrd/trainingmodule/JFM/Development%20of%20Forest%20Villages.pdf>> accessed 27 November 2022.

128 *ibid.*

### *a. Settlement of rights under the WPA*

The WPA provides for settlements of rights for individuals who have inhabited an area prior to the demarcation of PAs. That is, before the final notification in the gazette declaring a PA, the collector in an area is meant to determine the 'existence,' 'nature' and 'extent' of the rights of persons living in the area sought to be marked.<sup>129</sup> Section 26A notes, however, that these rights do not have to be determined before being extinguished in cases where the land pertains to reserved forests. The collector in other cases (as under Section 22) is to reject or admit the claim before proceeding to the process of 'acquisition' of these rights under Section 24 of the WPA. In doing so, they can exclude the area from the limits of the PA, acquire the land and rights or allow the rights to be recognised in the PA. No time limit, reasoned order or guidelines for recognising the different kinds of traditional rights of forest-dwelling communities have to be taken into account by the collector, giving them unfettered power under the WPA.

Regardless, prior to 2006, notification of tiger reserves have mostly vitiated the process of settlements of rights and have not followed due procedure, as noted by Tushar Dash, one of the interviewees who is an activist based in Odisha.<sup>130</sup> Rights have been recognised in an uneven manner, and where they are accorded, they mainly pertain to individual forest rights. Dash also noted that there has been little clarity on the procedures that have been followed under the WPA in accordance with these rights.<sup>131</sup>

### *b. Settlement of rights post Forest Rights Act, 2006*

As has been highlighted in the literature reviewed, forest-dwelling communities have resisted this approach of forest governance and conservation. Resistance and struggle by these communities resulted in the passage of the Panchayat Extension to Scheduled Areas (PESA) Act in 1996 and the FRA in 2006. Both these laws, and particularly the FRA, acknowledge the 'historical injustice'<sup>132</sup> done to the forest-dwelling communities and recognises their right as primary custodians of the forests. The FRA has enumerated the rights of forest-dwelling communities in a detailed manner. Beyond recognising individual rights of depending on the land,<sup>133</sup> community rights to develop and conserve forests,<sup>134</sup> to intellectual property over traditional knowledge and rights in relation to developmental activities<sup>135</sup> have also been recognised in forest areas, including reserved forests. The gram sabha, rather than the collector, is appointed as a guardian to recognise the nature and extent of these rights,<sup>136</sup> overlapping the procedure under the WPA. In the following section, we show how despite these overlaps, the recognition of rights in PAs has stagnated.

<sup>129</sup> *The Wildlife (Protection) Act 1972*, s 19.

<sup>130</sup> Interview with Tushar Dash, Activist (Odisha, 15.6.2022).

<sup>131</sup> *ibid.*

<sup>132</sup> *Forest Rights Act 2006*, Preamble.

<sup>133</sup> *Forest Rights Act 2006*, s 3(1).

<sup>134</sup> *Forest Rights Act 2006*, s 3(1)(i).

<sup>135</sup> *Forest Rights Act 2006*, s 3(1)(k).

<sup>136</sup> *Forest Rights Act 2006*, s 4(2)(e).

The FRA creates an exception for the continuance of rights of forest dwellers in parts of PAs noted as 'critical wildlife habitats' in Sections 2(b) and 4(2). It notes that no resettlement or modification of rights from such inviolate areas is allowed until the full extent of rights have been recognised.<sup>137</sup> It calls on the respective state government to inquire whether the activities of rights holders are in a nature of causing irreversible damage to species and their habitats<sup>138</sup> and conclude whether co-existence is not reasonable.<sup>139</sup> In such a case, resettlement packages must be proposed and need to be accepted by the local gram sabha.<sup>140</sup> This stipulation has not been followed in any tiger reserves in the country where reasoned orders/notifications marking a critical wildlife habitat have been made public. Instead, it is the default understanding that inviolate areas must remain exactly that, despite the FRA.<sup>141,142</sup> In addition to this, in 2017, the National Tiger Conservation Authority (NTCA) sought to link the two settlement procedures under the WPA and FRA and issued an order denying forest rights in Critical Tiger Habitat (CTH) areas until appropriate guidelines were made.<sup>143</sup> In 2018, these guidelines were published without public consultation but detailed a process of demarcation of critical wildlife habitats through an expert committee, while providing no discussion on previous inviolate areas created as core areas of the PAs has subsisted.<sup>144</sup> These core areas continue to function as exclusive areas where even entry is prosecuted.<sup>145</sup> Interviews with lawyers in Balaghat have shown that these WPA cases are filed for the smallest of reasons despite there being no clear demarcation of the core and buffer areas. Venkat Ramanujam, a scholar with ATREE, notes that final notifications of many PAs have not yet been made public and interim notifications demarcating land were hastily drawn each time boundaries were sought to be made or extended. In such a case, where land is not clearly demarcated and rights have not been fully determined but people are pushed out of these areas through 'voluntary relocation' drives, can prosecution under the WPA be considered legitimate? Conservationists argue that there is no conflict of settlement procedures and rights between the FRA and the WPA. They also claim that there is ample clarity since the scope of the FRA is limited. Section 13 of the FRA notes that without express notification under the Act and PESA, the provisions of the Act will only supplement and not overrule any other laws already in force, such as the WPA. This means the WPA is applicable above the FRA. Lawyer Vijay Markam, who handles many of these cases of illegal entry in Balaghat, for instance, notes that the WPA offers a possibility of non-prosecution under Section 17A, where the picking of plants for bonafide

<sup>137</sup> Forest Rights Act 2006, s 4(2)(f).

<sup>138</sup> Forest Rights Act 2006, s 4(2)(b).

<sup>139</sup> Forest Rights Act 2006, s 4(2)(c).

<sup>140</sup> Forest Rights Act 2006, s 4(2)(d).

<sup>141</sup> KS Shrivastava, 'Tigers buffered' (Down To Earth, 31 May 2012) <<https://www.downtoearth.org.in/coverage/tigers-buffered-38169>> accessed 27 October 2022.

<sup>142</sup> Sharachchandra Lele and Ajit Menon (eds) *Democratizing Forest Governance in India* (OUP 2014).

<sup>143</sup> Shruti Agarwal and Soujanya Shrivastava, 'Community forest rights in critical tiger habitats under threat' (Down to Earth, 14 April 2017) <<https://www.downtoearth.org.in/news/forests/community-forest-rights-in-critical-habitats-face-hurdle-due-to-lack-of-legal-roadmap-57602>> accessed 27 October 2022.

<sup>144</sup> Guidelines for determination and notification of Critical Wildlife Habitats within National parks and Sanctuaries (4 January 2018) <<https://tribal.nic.in/downloads/FRA/Concerned%20Laws%20and%20Policies/Guidelines%20for%20Notification%20of%20Critical%20Wildlife%20Habitat,%202018.pdf>> accessed 27 October 2022.

<sup>145</sup> *ibid*.

purposes is allowed. However, while there is no settled legal position on this, prosecution has continued for years.

Tushar Dash also highlighted recent developments that offer security to forest-dwelling communities. In Odisha, Karnataka and Chhattigarh, community forest rights have been recognised in sanctuaries and national parks by the State Forest Departments, at least guaranteeing protection against eviction beyond individual rights that are limited to 4 hectares under the FRA. Vivek Pawar, a forest rights activist associated with Jan Sangharsh Morcha, said, however, that increasing the borders of sanctuaries and national parks every few years to allow more habitat for wildlife is a persistent concern and a challenge to rights.

### *c. The question of Displacement in Kanha*

The Kanha Tiger Reserve is one of India's largest PAs. It was declared a national park in three separate segments in 1955, 1964 and 1970, and a tiger reserve in 1973-74. At that time, 24 villages (around 650 families) were displaced outside the boundaries of the tiger reserve.<sup>146</sup>

During our field visit we visited two villages displaced because of the creation of a PA. But we could not access any documentation related to the displacement of these villages in our interaction with people in these villages. However, a social activist working in Bichchiya, Mandla, said that this Act has deeply affected the Baiga community. The Baiga community, the activist said, lived in what is classified as the core area of Kanha today and are more dependent on the forest compared to other communities. The WPA mandates that the rights of people inhabiting the PAs ought to be settled before demarcating and declaring it as such. The lawyers and social activists we interviewed in Mandla and Balaghat said that no such process has been followed when it comes to the resettlement of these villages. The following case, detailing the experiences of a Baiga family in one of these villages, shows that families are still struggling to have their rights recognised.

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<sup>146</sup> Antoine Lasgorceix and Ashish Kothari, 'Displacement and Relocation of Protected Areas: A Synthesis and Analysis of Case Studies' [2009] 44(49) EPW <<https://www.epw.in/journal/2009/49/special-articles/displacement-and-relocation-protected-areas-synthesis-and-analysis>> accessed 18 October 2022.

### Case study #3 WPA and displacement

*A\* is the only van gram (forest village) in the B\* panchayat of C\* Tehsil of Mandla. The people of this village were displaced from the core area of Kanha tiger reserve in the 1970s and resettled here. The names of the villages that were displaced were Mattegaon and Ottakata. However, the residents do not have any papers or documentation related to this displacement.*

*Suresh Baiga (name changed) and his family had 30 acres of land in the core area in which they practised shifting cultivation. During the displacement, they were given around 6.15 acres of land in this new village as compensation. Moreover, now the families in this village do not have access to other essential forest produce such as mahua, which is an important part of the lives and livelihood of the community. The situation of Baiga families (15 households in the village) is worse than those from other communities as Baigas are more dependent on the forest for their livelihood, but their claims — both individual and community forest rights — are not yet recognised.*

*Unlike other villages that were resettled later on and termed 'revenue villages,' Indravan continues to be a forest village. There is some ambiguity in their access to the full spectrum of forest rights as a forest village. The case of this village shows that hardly any procedure laid down in the WPA highlighted above has been followed.*

## II. LIFE OF THE LAW — OFFENCES AND LEGAL OUTCOMES

The WPA prohibits hunting — both in protected and non-protected forests — and also criminalises access to PAs for forest produce, with exceptions in certain cases. The following section talks about the kinds of cases we came across during our fieldwork and identifies certain trends that are areas of concern. The section also analyses issues related to arrest and bail under the WPA Act.

### A. Kinds of cases

As stated earlier, hunting is closely tied to the traditions, culture, and religious practices of the Gond and Baiga communities of the Maikal Hills. However, over a period of time, hunting activities have drastically reduced in the region. In our interactions with people from the village Pindrai Maal in Mandla district, we were told that the Baiga community has given up this traditional occupation because of limitations in access to the forests, the fear of forest officials and decreasing number of animals in the forests. The community now depends mainly on farming. Baigas traditionally eat *garra* meat, which is the meat left over from a tiger's prey. But the mere consumption of meat, even without killing the animal itself, is categorised as an offence under the WPA.

During our interactions with people from the community, they told us that they historically

sacrificed wild boar during some of their religious festivals.<sup>147</sup> Now, they claim, the Forest Department has weaponised the WPA to stop these practices.<sup>148</sup> In a village named Dhaba, the local Bibri festival involves sacrificing animals such as boar, goats or hen to the goddess.<sup>149</sup> During one such celebration, forest officials surrounded the villagers and accused them of sacrificing a deer. The villagers responded by challenging the officials to find evidence for hunting and threatened them that if no evidence of a deer was found, they would not be allowed to return to the area. This led the officials to retract their allegations.<sup>150</sup>

In our fieldwork, we observed that there are several kinds of cases registered under the WPA and also tried to understand the reasons behind 'hunting' in several cases, along with the methods used to hunt. In addition to hunting for trade, hunting under the definition laid down in the WPA also covers several activities that have been a part of forest-dwelling traditions and culture such as acts of self-preservation. Below, we enumerate some common forms of 'hunting' that have been criminalised under the WPA in these villages.

### *B. Protecting crops which may also lead to accidental killing*

Agricultural households in Mandla and Balaghat practise mainly rainfed agriculture and are largely dependent on a single kharif crop for their food and income. In the interviews, community members said that wild boars usually attack their farms at night and in a group. The loss of crop because of these boars ranges from 40-60% of the total produce according to the people interviewed.

From our interviews with accused persons, we understood that the act of protecting their farms from wildlife, particularly from wild boars, resulted in criminal action against them. To protect their farms they either set up a fanda (fence or trap) or stay awake at night to patrol their fields. We observed that these kinds of cases were common when the field/farm was close to the forest border. In the late 19th century and early 20th century, when bewar cultivation was still practised, people from the Baiga community used rope traps around their fields to protect their fields from animals like deer and boar.<sup>151</sup> In the summer, when there was no crop that needed protecting, they would use bow and arrows or a javelin for hunting.

These practices have led a lot of people to land in trouble over accidental killings — when a trap has been laid to protect the fields from particular animals and another kind of animal gets entrapped. For instance, in a village in Mandla, the people of the village had

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<sup>147</sup> Interview with Balwant Singh, Social Worker (Balaghat, March 2022).

<sup>148</sup> *ibid.*

<sup>149</sup> *ibid.*

<sup>150</sup> *ibid.*

<sup>151</sup> Venkat Ramanujan, 'Shifting Human-Nature Interactions in the Maikal Hills of Madhya Pradesh, Central India' (PhD thesis, Manipal Academy of Higher Education, 2021).



set up a trap to protect their crops from the chital and sambar deer. However, a tiger got caught in this trap and died. Fearing prosecution by the Forest Department, the villagers disposed of the tiger's body and threw its nails and teeth in a nearby canal. However, 11 people from the village were subsequently booked for the offence of hunting a tiger. Since, tiger is a Schedule I animal, this is considered a serious offence under the WPA. The choice between protecting their crops and the fear of accidental killing has to be made on a case-by-case basis.

### *C. False or Exaggerated Cases*

The culture and traditions of the Baiga and Gond communities have given liberty to the Forest Department to file false cases against them or exaggerate some. In one case from 2019, a group of domestic pigs had jumped into the village pond, and a small pig among them drowned. Seeing this, a group of seven young men, of which one was a minor, went after the pig and hunted it. When forest officials found out about this incident, they arrested them for hunting a wild boar. Though the men first insisted that they had not hunted a wild animal, they later ended up confessing to such a killing owing to custodial violence. In another similar case, a person was prosecuted for consuming a *jungli murgi* (wild hen) when in fact they had eaten a home-bred chicken. In another case, a person was travelling with an elderly man belonging to a ST community in his car. Along the way, they were stopped by a range officer. Nothing incriminating was found in their vehicle. However, the man belonging to a ST community was found to be carrying two small parts of a pangolin's body, which are traditionally used for medicinal purposes. Both people were then charged for travelling with 18 kg of pangolin. They had to spend 1.5 years in jail before they got bail from the high court.

### *D. Poaching*

According to conservationists and the Forest Department, poaching for commercial trade is the primary kind of hunting that the Act seeks to prohibit. However, we did not come across any such case. Forest Department and conservationists agree that tiger hunting is very uncommon in these parts and only takes place in rare cases on requests from outsiders (people who are not a part of these forest-dwelling communities). Hunting for commercial trade is quite rare in Kanha, a fact the Forest Department itself admitted. This is because these communities are not even allowed to go into the forest to collect datun (twigs for cleaning their teeth). The Forest Department patrols the weekly markets to see who is selling forest produce and extracts bribes from them. Yet, we see a high number of hunting cases in Kanha and irrespective of who is hunting in the forest, these cases are always registered against the Baigas and the Gonds.



Moreover, it is difficult to get compensation for the crop loss in such cases. Even though the Forest Department processes all other claims of loss of life or injuries, these claims are to be handled by the revenue department. Though this was not directly related to the scope of this research, we have recorded instances where people have complained about the inadequacy or difficulty in getting compensation.

### *E. Method of hunting:*

From our fieldwork, we learned that traditional hunting involves using knowledge of the forest layout. Forests have specific areas where the soil is salty, which are called salt licks. Sambar and chital usually come to such areas and lick the soil for essential nutrients. When communities would hunt such animals, they would stake out these areas.

With more ferocious animals such as wild boar, different tools such as axes are also used. In some cases, meat coated on *barood ka gola* (explosives) are also used to kill the animal. Also, to protect their fields from wild boar and other herbivores, electric traps are laid out. For fishing, the villagers use only their hands and sometimes they use a *jaal* (net).

### *F. Criminalisation of rights*

This section describes three major trends and the related legal issues that we identified as affecting a large population of forest-dwelling communities in Mandla and Balaghat.

#### *a. The wild boar problem*

As described in the previous section, the protection/defence of crops from wild boar, chital and sambar deer is criminalised under the WPA by the Forest Department. This finding is further supplemented by our quantitative data, which shows that 363 cases (over 17.49% of the total cases) registered under the WPA by the Forest Department are related to wild boar. A common trend that emerged from the interviews with all the stakeholders is that the population of wild boar in and around the forests of Mandla and Balaghat has increased considerably and has become a menace for the forest-dwelling agricultural households. In as many as nine out of 16 interviews with accused persons and their families, we found that their cases were directly related to the hunting of wild boar.

### **Case study #4 Wild Boar Problem**

*D\* is a revenue village situated in the E\* panchayat of F\* Tehsil of Mandla. This village has around 80-85 families, and almost all of them belong to the Gond community. An incident of 'hunting' took place in the khet (farm) of Ramesh Singh (name changed). This farm is situated at the boundary of the village, next to the forest. In our conversation with Singh and his family, they told us about the major losses caused by wild boar to paddy and other crops, and that they have to stay in the khet to take care of the crops at night as wild boar usually attack the farm in groups during this time. To protect their farm, they decided to set up a fanda (trap) using a GI live wire. One night, a wild boar got caught in this trap and was killed with an axe. Singh and his family said that the people living in the neighbouring house complained to the forest guard about this incident. The nakedar (forest guard) and deputy ranger came to their house the next morning and seized the leftover meat, bones and axe, and prepared a POR (Preliminary Offence Report) and arrested them. This case was registered in 2019 and a charge sheet has been filed by the forest officials, but no witnesses have been examined yet.*

This case highlights how farms situated near the forest area are especially at risk of attacks by animals. This phenomenon was also observed in other cases involving wild boar. In Singh's case and other similar cases involving wild boar, those accused stayed in custody for between 20 days and three months. All the cases related to wild boar in which we interviewed the accused persons and lawyers, are pending before the magistrate. In one case, the persons interviewed were not even directly involved in hunting, but had got the meat for personal consumption. Their case has been pending before the trial court for 12 years now. The quantitative data about the general trend of pendency in the WPA cases shows that 95% of the cases out of the total of 1,414 cases are pending. This substantiates our finding that even when it comes to animals belonging to Schedule III and IV, the trial takes a long time and the process in itself becomes the punishment for the accused persons.

From our interactions with the Forest Department officials, it became clear that the department is also keenly aware of the problems that people are facing with respect to the wild boar menace. In our interview with Raza Kazmi, a conservationist from Jharkhand, he said that 'the question of economic loss due to wild animals is absolutely valid and one that needs urgent attention and redressal through various stakeholder interventions.' However, while the law grants provision to physical self-defence under section 11(2), wherein a wild animal may be killed or wounded in 'good faith..in defence of oneself, the law as it stands today does not allow to kill or wound a wild animal for one's physical self-defence to be extended to killing or wounding a wild animal in the defence of one's property or crops unless the Chief Wildlife Warden passes an order in writing permitting so.' Even though the state government has the power to declare certain species as

vermin and allow their culling, this power has not been used yet. In the absence of any legal solution, the people of Gond and Baiga communities are being criminalised under the Act for protecting their own farms and crops.

### ***b. Criminalisation of fishing under the WPA***

The other important trend that became apparent during our fieldwork was that the Forest Department filed cases involving hunting/catching fish and crabs under the WPA. The department registered 57 cases of fishing under the WPA between 2016 and 2020 and field data revealed cases filed outside of this time period as well. It is important to note that fish has been part of the traditional livelihood and diet of the Gond and the Baiga communities. The FRA has recognised community rights of uses or entitlements such as fish and other products of local water bodies under Section 3(1)(d) of the Act. Therefore, such cases under the WPA are illegal, except cases related to the species of fishes mentioned in the schedules of WPA, as they criminalise already recognised rights of forest-dwelling communities.

#### ***Case study #5 Criminalization of rights - Part 1***

*According to the charge sheet filed in a case of fishing that took place on March 6, 2016, three accused persons were caught sleeping next to a bonfire inside the core area of the Kanha Tiger Reserve, while three vanrakshaks (forest guards) were on a night patrol with some labourers. The charge sheet in this case states that a mere 500g of fish was seized from them, but does not clarify whether it was seized from the accused or from the river nearby where three traps were found. Nor does the list of witnesses submitted by the Forest Department contain the names of the workers/labourers who accompanied the vanrakshaks.*

*Two of the three accused were said to have absconded from the scene and one of them allegedly tried to run away, but failed. All three of them, surprisingly, were arrested again by the next day and a medical examination was conducted after eight hours after taking them into custody, defeating the purpose of the medical examination. After being released on bail a few days after the arrest, a complaint was made by the accused to the district's police and judicial authorities that they were picked up by the forest officials from their home at midnight May 5, 2016, tortured in illegal custody and forced into confessions. In the complaints, the complainant claimed to possess evidence of the torture in the form of their clothes, which were drenched in blood*

The case highlights important aspects of the nature of criminalisation in such offences: the initial seizure from the accused, the lack of mention of the species of fish, the irregular arrest procedure and custodial violence, and the absence of witnesses to testify to the offence. It is important to note that barring a few species of fish, all other local fish are classified under Schedule V of the WPA and the hunting of species classified in this schedule is not an offence. In our interaction

with other accused persons we found that even though they received bail relatively earlier in these cases of fishing compared with hunting other animals, their cases have been pending for an average of 4-5 years.

The species of fish that are classified under Schedule I of the WPA (whale shark, shark and ray, seahorse, giant grouper) are not found in local waterbodies of Mandla and Balaghat. All the other species are considered vermin and therefore hunting them is not an offence. A conservationist we interviewed highlighted that the provision under Section 3(1)(d) does not specify the areas in which fishing is allowed and whether it included PAs or not, unlike other provisions of the Act that are more clear. Therefore, there is no legal clarity about fishing being an offence, and in the absence of the non-recognition of rights recognised under the FRA, the bonafide traditional livelihoods and food practices of these communities are being criminalised.

### *c. 'Bona fide' use of forest produce*

The other trend emerging from qualitative data is that cases are routinely registered for collecting forest produce (like bamboo and honey) or of 'illegal entry' in and around the PAs. The Gond and specifically the Baiga community have been historically dependent on the forest for fuel wood and other forest produce for food and income. The Baiga community used to practise shifting cultivation within these forest areas and are much more dependent on the forest. The FRA recognised this relationship of the communities with the forest and created a set of community and individual rights of usage and management for Scheduled Tribes and other traditional forest dwellers. However, this access and relationship with the forest has been altered because of the implementation of the WPA, especially in PAs such as the Kanha Tiger Reserve. Several villages have been displaced to areas where they do not have access to forest produce such as *mahua*, which is central to the lives of these communities. And apart from displacement, offences are also registered against people from these communities for accessing the forest for these needs.

### ***Case study #6 Criminalization of rights - Part 2***

*In one such case of 2012, the accused from C\* Tehsil of Mandla district was charged under Sections 2(15), 27, 31, 35(6) r/w 50,51 of the WPA as he was caught with an axe in his hand in the core area of Kanha Tiger Reserve. The parivad (charge sheet) mentions that the accused had entered the area with an 'intention' of illegal hunting and a single piece of dry dhawda lakdi was seized from him after he took the guards to the site of 'offence'. The parivad also mentions that by doing this*

*the accused has caused harm to 'the ecological and environmental security' of the country which cannot be measured. There are several inconsistencies in the panchnama prepared by the forest official which raise questions about the investigation altogether.*

The above-mentioned case is important as it highlights that mere entry in a forest area is considered illegal and charges of harming the wildlife habitat can be framed on the basis of suspicion alone. In another case in Balaghat, an offence was registered against a Gond person for collecting honey from the forest area of the tiger reserve. This case has been pending for the past 16 years and the person has to visit the court every month. We came across several such cases in both the districts where these communities who have been dependent on these forests for centuries are branded as 'trespassers' or 'illegal entrants.'

It is important at this point to discuss Section 17A of the WPA. The section creates a special right/exemption, subject to the provisions of Chapter IV of the Act, for people belonging to the Scheduled Tribes for accessing the forest and picking, collecting or possessing any specified plant or part or derivative thereof for their bonafide personal use. This section does not clarify the kind of forest area in which this right is recognised. In the absence of clarity, cases are registered against people belonging to ST and other forest dwelling communities, both in protected and territorial forest areas.

We also found that the provision of Community Forest Resource Rights ('CFRR') under the FRA has rarely been implemented in the protected and territorial forest areas in Mandla and Balaghat. The implementation of this provision is crucial for recognising the rights of people historically dependent on the forest.

As is clear from these cases and trends that the 'protectionist' policies and laws, such as the WPA, have put the indigenous communities in a 'catch-22'<sup>152</sup> situation, where they do not have the agency to self-determine and respond to the changing environment. The communities cannot escape the criminalisation that is imposed on them by the law. The failure of the law to provide an absolute right to self-defence against wild animals threatening their life and livelihood, while at the same time also criminalising their traditional relationship with the forests and wildlife and branding them 'encroachers' and 'trespassers' is a classic illustration of settler imperialism in which human populations, especially forest-dwelling communities, are believed to be incompatible with the goal of conservation. The post-independence Indian State has continued with the same legacy. And the State is aided and supported by the conservationists and researchers who, in the words of Abhay Xaxa, are 'brown imperialists' who have played a role

<sup>152</sup> Flora Lu Holt, 'The Catch-22 of Conservation: Indigenous Peoples, Biologists, and Cultural Change' [2005] 33 (2) Human Ecology <<http://faculty.washington.edu>> accessed 15 December 2022.

in the criminalisation of these communities.<sup>153</sup> This approach to conservation is also informed by 'Brahminical environmentalism,' as explained by Dr. Xaxa, in which forests are seen as 'pure' and pristine and are to be protected from the 'polluted'. Not only has this approach resulted in human-animal conflict raising questions about the 'scientific' nature of conservation, but more importantly this has led to the criminalisation of the rights of these communities.

## **G. Arrest**

The cases described above enter the criminal justice system with the initiation of the POR (Preliminary Offence Report). Alongside this, while seizure memos are prepared and an investigation is unfolding, a routine procedure of arrest is carried out.

A forest officer (referring to a range officer) is empowered to make an arrest under Section 50(1) (c) or 50(3) of the WPA. Section 50(3) allows for arrest when an officer sees the commission of an act under the WPA that requires a licence and when such a licence is not produced. Section 50(1)(c) empowers an officer to seize an animal, plant (or part of either) from the possession of a person and arrest such person without a warrant. However, both these clauses describe that if the name and address of the person in question is furnished, and if the person is trusted to appear before any summons or charge before him, arrest is not necessary. In the cases that were recorded and interviews with Forest Department officials, it was clear that arrest was the norm.

The Wildlife Crime Investigation Manual lists out various safeguards to be kept in mind during arrest. As this section suggests, these recommendations remain on paper alone.

### **a. Arrests as a routine exercise**

In four of the 15 cases that were reviewed in Mandla and Balaghat, accused persons were arrested on suspicion (either because of mukhbir information or a private complaint) from their homes. In four cases, they were arrested while consuming cooked meat on the suspicion of eating the meat of an animal that was hunted. In a few others, they were arrested several days after the incident of an animal's death.

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<sup>153</sup> Jamkar (n 33).

In one case from the Tumdibhat village of Balaghat, the Forest Department, upon learning that a wild boar had been hunted, came into the home of an accused person looking for evidence of cooked meat and arrested them upon finding some meat that the accused had bought and not hunted. Similarly, in another case from Garhi, Balaghat, the Forest Department arrested a person for hunting a *jungli murgi* (wild chicken) when in fact they had found him eating farm-raised chicken.

Often forest guards made arrests on the spot while on patrol. An accused from Sarhi, Mandla recalled his arrest for fishing in a nearby pond. He said that he had gone there to take a bath, but was arrested when the people who were actually fishing ran away at the sight of the forest guard. The following case highlights the irregularities in the procedure of arrest followed by the department.

### **Case Study #7 Irregular Arrests**

*In a case of hunting of wild boar, we studied the charge sheet and found that the accused were formally arrested the next day at noon, after keeping them in custody overnight. The accused also signed the confession statement in the morning hours before they were formally arrested. Further, the time of arrest on their arrest memos and panchnamas did not match in this case. Their medical examination noted 'swelling and tenderness on both buttocks' and a few other injuries.*

*In this case, the police caught two accused eating meat that was allegedly from a wild boar they had hunted. Police were acting on the information received from mukhbirs (informants). The charge sheet itself mentions two different stories about catching them: one, that they were caught eating meat and second, that they were caught while hunting wild boar in the buffer zone of the Kanha Tiger Reserve. According to the POR, the date the offence was committed is a day after the date of seizures mentioned in the seizure report. The seizure included equipment for hunting as well as the meat of the allegedly hunted wild boar. The agricultural land on which the accused were allegedly cooking meat belonged to a third person who is neither accused nor included as a witness. The entire prosecution story in this case is filled with gaps and contradictions about the arrest.*

### **b. Safeguards on arrest procedures**

The WPA provides a range of penalties for wildlife crimes — from up to six months to seven years. Only a second conviction is punishable with more than seven years<sup>154</sup> of imprisonment.<sup>155</sup> As such, all other offences, including other aggravated forms of hunting, fall within the scope

<sup>154</sup> The Wildlife (Protection) Act 1972, s 51(1).

<sup>155</sup> The Wild Life (Protection) Act 1972, s 51(1C).



of the Supreme Court's guidelines in *Arnesh Kumar v State of Bihar*<sup>156</sup> and therefore arrests in such cases are not mandatory. The *Arnesh Kumar judgment* stated that arrest had to be carried out after being satisfied that without arrest, an investigation would not be possible. It laid down several safeguards in relation to the time of the arrest, the manner of reasoning before arrest and the necessary satisfaction of a magistrate approving remand on the reasons. The investigation manual also states that the interrogation of accused persons after 6pm should be avoided, arrest should be made in presence of family or independent witnesses and that other guidelines of *DK Basu v State of West Bengal* should be followed.

The routine practices of arrest by the Forest Department continue a larger trend of violating the rights of fair trial. In the charge sheets we accessed, *it was clear that the arrest checklist in keeping with Section 41(1) of the Code of Criminal Procedure, 1972 (CrPC)* was a mere document filled without application of mind. Reasons for arrest simply say '*apradhi gambhir kism ka hai (accused is of a serious kind)*' or they involve a mechanical ticking of all the reasons that may compel arrest under Section 41(1).

### *c. Ignoring custodial violence*

When picked up by the Forest Department officially, these suspects are arrested and presented before the magistrate. Afterwards, their custody is transferred to the police for the remainder of their remand.<sup>157</sup> However, these persons were detained in custody for several days before being presented before a magistrate. In this duration, they were subjected to custodial violence. Of the 16 accused persons we spoke with, 11 stated that they were subject to physical violence at the hands of the Forest Department. According to the accused persons, they signed confessions to the crime and gave up the names of their accomplices as a result of such violence.

Neither the violation of *Arnesh Kumar guidelines* nor custodial violence are an exclusive practice of the Forest Department. The dominant view shared by public prosecutors, lawyers and police/Forest Department officials is that range officers and beat guards are not trained in the same way for investigative work as the police department and hence are prone to inefficiency. They attribute procedural lapses in the collection of relevant evidence, statements or poor conviction to this inefficiency to handle policing duties the same as other administrative management of forests (explored further in next section). However, the opacity in the functioning of the Forest Department and the immunity to its officials has prevented any accountability from existing safeguards that the police department can be pulled up on. This is noticed in one case of illegal fishing that was made out in Mandla. In the case, the beat guard and range officer in the area had detained four accused persons at the beat camp for two-three days and all the detained persons

<sup>156</sup> *Arnesh Kumar* (n 20).

<sup>157</sup> Interview with Range Officer (Mandla, March, 2022).

had sustained injuries. The subsequent medical examination records these injuries, but no action was taken by the Forest Department itself (they have internal procedures for misconduct under the IFA) or by the court, even on their lawyer's insistence.

## **H. Bail and the costs borne by accused persons**

An important aspect when it comes to the implementation of the WPA is bail. Section 51 of the Act prescribes penalties (terms of imprisonment and fines) for offences such as the hunting of animals under different schedules of the Act, the violation of any rule or order under the Act or a breach of any of the conditions of any licence or permit granted under this Act.

But under the WPA, the definition of bailable and non-bailable offences is not provided; instead several levels of examination determine whether a particular offence is bailable or not. In *Panjosh Pardhi v The State Of Madhya Pradesh*,<sup>158</sup> M.P High Court observed that, under the Act, if the punishment prescribed for an offence is not more than three years, it is considered bailable. Moreover, according to the classification in *Part II of Schedule I of the CrPC*,<sup>159</sup> an offence for which the punishment of imprisonment for a term of three to seven years is non-bailable. Further, in *Arjun Singh v State of Chhattisgarh*,<sup>160</sup> the Chhattisgarh High Court observed that the definition of bailable and non-bailable offences for offences under the WPA cannot be universally applied in a case when the hunting is carried out within a sanctuary or a national park.

### **a. Practices of Accessing Bail**

We found from our field visits that most arrests under the WPA are made for hunting animals such as wild boar, *chital*, *sambar* and animals classified under Schedule III and IV of the Act. The offence of hunting of animals under these schedules is bailable and punishable for less than three years as prescribed under Section 51 of the WPA. The procedure under the Act gives power to both the Forest Department and the police to make an arrest, but most of the arrests are made by the Forest Department since the 'offences' are committed in the forest. As has been highlighted in the section above, arrests made by the Forest Department do not take into consideration the rights of the accused and the undertrials guaranteed by the way of guidelines by the apex court of India and various other high courts. For instance, as has been noted above in *Arnesh Kumar v State of Bihar*,<sup>161</sup> the Supreme Court observed that for non-serious offences, arrest is not automatic and has to be made as per the requirements under Section 41 of the CrPC. However, the procedure of the trial for offences under the WPA does not have the space to incorporate such rights of the accused, but is different from that of a regular trial.

<sup>158</sup> *Panjosh Pardhi v State of Madhya Pradesh* (2020) SCC OnLine MP 1580.

<sup>159</sup> *The Code of Criminal Procedure 1973, Schedule I Part II.*

<sup>160</sup> *Arjun Singh v State of Chhattisgarh* (2015) SCC OnLine Chh 17.

<sup>161</sup> *Arnesh Kumar* (n 20).

### **Case Study #8 Accessing Bail under WPA**

*We met two men from the Gond community in G\* village, which is 2 km away from the border of the core area of Kanha. They have been accused with three others of hunting sambar from the forest. The incident is around three years old and the trial is still pending. One of the accused told us that they had to stay in Mandla jail for around three months and had to pay around 12,000-15,000 rupees each for bail. And before this, they were kept at the nakedar's (beat guard) office for two days and produced before the magistrate.*

*This is an important case to understand how under the WPA, the law laid down for arrest and bail is often overlooked. The animal allegedly hunted in this case is categorised under Schedule III entry no.16 and the maximum prescribed punishment on conviction is three years. Therefore, in this case, according to the law and Supreme Court and high court judgements highlighted above, arrest is not mandatory and bail is a matter of right for the accused. However, the facts of this case show that the rights of the accused are violated. Even in other cases where the animals involved belong to Schedule III and IV, our data shows that the law laid down is not followed.*

From interviews with accused persons and lawyers, we learned the prevailing trend when it comes to accessing bail from the subordinate and the high courts. This has very little to do with the provisions of law and the severity of the case. If the person accused is a first-time offender then they are likely to get bail from the lower court, depending on the animal allegedly hunted. If one has a previous history or record without being convicted, then the person has to invariably approach the high court. From analysing the cases, we understood that bail from the High Court means that the person has to spend a minimum of 2-3 months in jail and provide a minimum surety of 20,000 to 50,000 rupees. In one of the cases of hunting a tiger, this period of incarceration extended up to a year. This period of incarceration also comes with many other costs, including a bond amount, and a major financial burden in the form of lawyers' fees. Almost every person we interviewed incurred some debt, sold cattle or mortgaged jewellery to pay the lawyers' fees and for the bail amount.

#### ***b. Pendency of cases and mental distress***

From the data we analysed, it is well established that pendency in trials under the WPA is a serious problem. From our interviews with accused persons and lawyers, we understood that it takes approximately five years to complete a full trial. The average cost of bail is around 12000-15000 rupees. And, even after securing bail, the financial expenses don't go away. Every accused is expected to go for *peshi* (marking their presence) in the court every one

to three months. From our interviews, we understood that the accused persons incur a cost of 200-300 rupees on each *peshi*, which includes bribe to the court staff, lawyer's fees and travel fare they spend to go to the court. Also, a person commuting from their village to the court ends up spending their full day in court and this comes at the expense of their livelihood, as daily wage labourers or landless farmers have to lose their earnings for that day. From the interviews, we also understood that in several cases, lawyers misled the clients, causing them mental distress. People we interviewed complained about lawyers deliberately not filing exemption applications and delaying the trial because of the client's inability to pay their fees on time. Because of this, many clients, especially from the ST communities, rely on lawyers from their own community.

### III. LIFE OF THE LAW — POWER, GOVERNANCE AND ACTORS

This section looks at how the Forest Department and other actors exert power and shape the governance and implementation of the law.

#### A. *Mukhbirs under the WPA*

The use of informants as a source of criminal intelligence is a technique as ancient as policing itself.<sup>162</sup> In the recent years it has taken on a new significance as interest in developing effective policing strategies other than standard reactive responses to crime has grown. The police rely heavily on members of the public to offer information about crimes and anti-social behaviour, however the victim of a crime or another public-spirited citizen who provides information or a witness statement to the police is not classified or regarded as a police informant.<sup>163</sup> This definition is normally reserved for someone who either has access to or is in close proximity to criminal networks that are largely impermeable to the police, who typically supplies information in exchange for actual or perceived advantage, and whose cooperation with the police necessitates the hiding of their name.

The practice of using informants was widespread under the colonial regime, and helped administrators implement the CTA more efficiently across the country.<sup>164</sup> Many people, mostly men who were acknowledged as community leaders, were sought by the British officials to act as informers against their own tribes.<sup>165</sup> These informers or 'leading men' could advance their standing or gain economic benefits from this recognition by the British district officials. These 'leading men' would act as go-betweens and persuade their fellow 'tribesmen'. Relationships

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<sup>162</sup> C Paul and M Jon, 'Ethical Approaches for Police Officers When Working with Informants in the Development of Criminal Intelligence in the United Kingdom' [1997] 26(1) JSP <<https://www.cambridge.org/core/journals/journal-of-social-policy/article/abs/ethical-approaches-for-police-officers-when-working-with-informants-in-the-development-of-criminal-intelligence-in-the-united-kingdom/45D275923FB52BD8630E9184F8FEF9FA>> accessed 18 October 2022.

<sup>163</sup> *ibid.*

<sup>164</sup> Jessica Hinchy, 'Gender, Family, and the Policing of the 'Criminal Tribes' in Nineteenth-Century North India' [2020] 54(5) *Modern Asian Studies* <<https://www.cambridge.org/core/journals/modern-asian-studies/article/abs/gender-family-and-the-policing-of-the-criminal-tribes-in-nineteenth-century-north-india/9F9F6EA7FD37138ABB295C7FCF99164B>> accessed 18 October 2022.

<sup>165</sup> *ibid.*

with strong men in 'criminal tribe' societies, according to the British officials,<sup>166</sup> were also critical to gaining 'intimate personal understanding of and sympathy with' these groupings.<sup>167</sup> Although the British saw these as paternalistic relationships, 'leading men' attempted to exploit these links.<sup>168</sup> Being considered a 'leading man' enabled many to become village chiefs, flee the CTA, and even obtain government protection in some cases. Aside from 'leading men,' other registered men attempted to leverage the CTA regime by becoming police informants or finding employment with the police. Some women were also incorporated into the system of policing as informants.<sup>169</sup> This same practice of relying on informants has continued to date, and comes with the same benefits for the informants.

Now, even though there is no specified provision under the WPA with respect to mukhbirs (as informants are locally called), they play a very important role in wildlife governance. They provide crucial information to police or forest officials with regard to wildlife offences or illegal activities, along with information regarding who may be committing them. When it came to wildlife crimes, we observed that in most of the cases the forest guards and officials receive information from the *mukhbirs*. Out of the total FIRs analysed, the police received information from a *mukhbir* in 86% of the cases. Out of the 15 interviews we conducted, the Forest Department caught the accused persons while patrolling in five cases, while a *mukhbir* provided information regarding the offence in another five cases. In the remaining interviews, no such information was available to the accused persons.

From our interviews and observations, we found that there are several reasons why people opt to become *mukhbirs* for the department. First, to get rewards, as the Forest Department gives rewards of up to 50,000 rupees for information on the hunting of tigers. Second, for the symbolic power that comes with holding this kind of relationship with the State or forest administration, for which *mukhbirs* provide information regarding every minor activity of the village. The third reason is rooted in inter-community or individual clashes, fights or enmity. During field visits, we found one example where members of the Gond community engaged in *mukhbiri* against members of the Baiga community because their relationship in that village was adversarial.

The *mukhbirs* in many cases are from the same village from which the accused are arrested or suspected persons reside. In some cases, the accused persons and villagers also know who the mukhbir is if they are from their village. Even people who are part of the village *vansamitis*

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<sup>166</sup> Hinchy (n 164).

<sup>167</sup> Hinchy (n 164).

<sup>168</sup> Hinchy (n 164).

<sup>169</sup> Hinchy (n 164).

(eco-development committees), formed under the JFM policy, and which is controlled by the Forest Department, act as informants in some cases.

From the analysis of the FIRs and from interviews it is clear that the Forest Department heavily relies on *mukhbirs* for registering offences under the WPA. Therefore, as was pointed out in an interview with a forest guard, officials keep the *mukhbir* safe and protected and do not reveal the name of the person who does *mukhbiri* to the department. They provide rewards, funds for travelling and also money for the fuel.

## **B. Habitual Offender under WPA and Surveillance**

The concept of 'habituality' of crime, or even 'addiction' to crime, which was used to identify Criminal Tribes in India throughout the 1900s, sees crime as an infliction caused by birth (therefore caste), for which institutional rehabilitation is prescribed.<sup>170</sup> It contradicts traditional sociological concepts of crime, which broadly define crime as a social act that harms a society's collective conscience.<sup>171</sup> Because of this prevalent notion of habitual criminality, colonial authorities in the 18th century instituted 'Preventive Policing,' beginning with the registration and surveillance of those with non-normative vocations or those outside the settled agrarian lifestyle.<sup>172</sup> With the passage of the CTA in 1871, this classification was enlarged to include entire groups of individuals who were considered 'hereditary criminals.'<sup>173</sup> Preventive policing measures are primarily directed at petty crimes or blue-collar crime, as opposed to white-collar crime; hence, the people recorded in these databases are by default those least likely to belong to communities<sup>174</sup> with high social or economic capital. Furthermore, the subjects of surveillance are those who are particularly visible to the police owing to where their residence is, in this case people who belong to marginalised communities. Unfortunately, practices that link caste to criminality still prevail, not only within the Indian police systems, but as a pervasive component of wildlife governance in this country.

The CrPC authorises the police, with the approval of the Executive Magistrate, to take preventive action against 'hardened and habitual offenders' who are likely to commit certain offences based on their history, by requiring them to sign a bond of good behaviour.<sup>175</sup> However, the terms 'habitually' and 'habit' are not defined in the CrPC, leaving room for alternative interpretations.

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170 Shivangi Narayan, 'Guilty Until Proven Guilty: Policing Caste Through Preventive Policing Registers in India' [2021] 5(1) *Journal of Extreme Anthropology* <<https://doi.org/10.5617/jea.8797>> accessed 18 October 2022.

171 *ibid.*

172 Radhika Singha, 'Punished by Surveillance: Policing 'Dangerousness' in Colonial India, 1872-1918' [2015] 49 (2) *Modern Asian Studies* <<https://doi.org/10.1017/S0026749X13000462>> accessed 18 October 2022.

173 Narayan (n 170).

174 Narayan (n 170).

175 *The Criminal Procedure Code 1973*, s 110.



Section 110 also addresses numerous groups of offenders who have a pattern of perpetrating a specific type of offence, such as theft, kidnapping, abduction, extortion, and so on. While the clause relates to a variety of offences, it is unclear whether habitual commission requires a prior conviction or whether mere charge of such commission is sufficient. The section's ambiguity is heightened by adding a stipulation about anyone who is 'so desperate and dangerous as to constitute his being at large without security detrimental to the community' under its purview. These broad inclusions in the section's scheme allow for the selective exercise of power by authorities under this provision.<sup>176</sup> Furthermore, security measures can also be taken for ensuring 'good behaviour',<sup>177</sup> and under Rule 565 of the Madhya Pradesh Police Regulations, the habitual offenders can be ordered to be placed under police surveillance for a period extending up to five years in the event of their conviction for certain offences.

For wildlife crimes, such as hunting, destruction of wild habitats, or entering into a reserved area, both the police station concerned and the Forest Department with jurisdiction, maintain the records of those convicted of wildlife crimes. Antecedent verification is done on the basis of these records. The Wildlife Crime Control Bureau (WCCB) collects the name and details of the convicted person or habitual offenders.<sup>178</sup>

#### **Case study #9 Habitual offenders under WPA**

*In a case registered in Balaghat, two leopards were found dead in a revenue village outside the PA, allegedly killed by electrocution according to the charge sheet filed by the forest officials. The forest officials received information about the suspects from the mukhbir and were subsequently identified with the help of a dog squad. All five suspects who belong to the Gond community were booked under sections 2(1), (16), (20), 9, 39, 44, 50 and 51 of the WPA. We interviewed one of the accused, who said that he was arrested merely on the basis of suspicion as another case of hunting a wild boar is pending against him. He also said that he had to spend seven months in jail before getting bail. The lawyer of the accused person told us that they did not get bail from lower courts in this case because of the criminal antecedent and also given that the animal involved is a Schedule I animal. The accused was around 50 years old and told us that he was tortured and forced to confess to the crime.*

<sup>176</sup> Medha Deo and Ankita Sarkar, 'Masquerading violent discrimination as preventive action : an analysis of section 110 of the criminal procedure code' (The P39A Criminal Law Blog, 26th January) <<https://p39ablog.com/2021/01/masquerading-violent-discrimination-as-preventive-action-an-analysis-of-section-110-of-the-criminal-procedure-code/>> accessed 24 October 2022.

<sup>177</sup> The Criminal Procedure Code 1973, s 110.

<sup>178</sup> 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.



This case highlights two important problems with respect to 'habitual offenders.' The fact that a person has a trial pending against them increases the chances of them getting targeted for future crimes merely on the basis of suspicion. Moreover, there is no clarity about the definition of a habitual offender when it comes to the Act and rules. This gives vast and arbitrary discretion to the forest official, which is invariably used against oppressed caste communities. Second, accessing bail for a person who has been arbitrarily labelled a habitual offender becomes difficult.

In cases where a person is convicted, a history sheet of the accused will be prepared and maintained at the range and division level. When a history sheet is released from prison, their activities will be regularly monitored by the range officer concerned. An Intimation of Conviction is also given to the police station concerned and a copy of the history sheet is provided to them for surveillance. Activities of an accused who is out on bail or has been released from jail after the imprisonment period, are also regularly monitored. If they are not found at the given address for a long time, the respective police and Forest Department officials are alerted for preventive steps. The movement of a history sheet to a new location, especially near a wildlife habitat, even for a temporary period, is intimated to the jurisdictional district/divisional forest officer (DFO)/range forest officer (RFO)/station house officer (SHO) to keep watch over their activities. A photo database of convicts and habitual offenders is prepared at the divisional and state level, and shared with the WCCB and the NTCA for wider circulation in the country.

In our interviews, forest officials said that the compounding of offences where a habitual offender is involved is not possible. They also said that they maintain a register recording the history of arrest of accused persons, and update it every three or four months to keep track of registered habitual offenders. The level of surveillance varies depending on the nature of the forest area. These names can only be deleted when a person dies, or when they get to know that the person has permanently moved away from the particular region.

### **C. Non-compounding of offences**

Compoundable offences are covered by Section 320 of the CrPC, 1973. These are the types of offences in which the aggrieved party (the complainant) decides to dismiss the claims made against the accused. Section 54 of the WPA provides for the compounding of offences by an official of the rank of deputy conservator of forests or higher<sup>179</sup> through the payment of a sum of money not exceeding 25,000 rupees.

The Act prescribes that no offence for which a minimum period of imprisonment is more than three years under Section 51 of the WPA, shall be compounded. Therefore, offences involving

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<sup>179</sup> Other officials empowered are the Director of Wildlife Preservation or any other officer not below the rank of Assistant Director of Wildlife Preservation as notified by the Central Government and the Chief Wildlife Warden.

wild animals listed in Schedule I and Part II of Schedule II and hunting in the core area of the tiger reserve are not compoundable. Further, Section 60A of the Act provides that the officer compounding the offence may order a reward, as an incentive, to be paid to a person who renders assistance in the detection of the offence or the apprehension of the offenders.

The question of compounding becomes relevant after the POR is filed. Following the investigation, the investigating officer recommends compounding (wherever applicable). An SDO (at the rank of an Assistant Conservator of Forests under the law) decides if the matter should be compounded or not. If they accept, and send a compounding number, the matter gets compounded. The ranger can also appeal against the decision to the CCF/Field Director if they disagree with the decision of the SDO. Compounding is only a departmental proceeding under the WPA, it does not amount to acquittal as under Section 320 of the CrPC.

#### *D. Compounding of Offences*

The Wildlife Crime Investigation Manual states that each case should be assessed and evidence discussed in the compounding order. In cases where the accused is involved in hunting, illegal trade, and is a habitual offender, compounding should not be carried out. Thus, as was highlighted by a forest official in an interview '*vyakti ki sthiti, galti par khed*' (if it has been done by mistake) — these factors determine the fine amount. We also see if the person is a habitual offender. We check their history for the past five years — on the Forest Offences Management System (FOMS).

Despite the possibility of compounding offences where animals are categorised under lower schedules (III-V) and given lesser protection, offences are not compounded. Our fieldwork also supports the quantitative data that the Forest Department officials are unwilling to close proceedings with a small fine in order to maintain the continued fear of criminalisation for ST communities.

Despite such elaborate legal provisions, the compounding provisions are rarely applied. An officer we interviewed explained this phenomenon by saying '*Kyuki ye mamle sangeen hai, hum sare court me bhejte hai*' (because these matters are serious, we remand them all to the court.).

An environmental lawyer we interviewed, in discussing the approach of the Forest Department of MP, said that the state's 'proactive policy for no compounding' has played a significant role in contributing to its holding the highest conviction rate under the WPA in the country. She remarked, 'The reason criminal law is necessary for the WPA is because of the different reasons for hunting — whether for subsistence or not — they are on a sliding scale to the realm of illegal

trade, and a gradation of the crime may not be preferable either.’<sup>180</sup> Another lawyer from the Baihar district court speculated that this was done to promote deterrence, so that people know that they face jail time irrespective of the offence they commit. ‘*Court se sab darte hai, dar rakhne ke liye compound nahi karte.*’ (Everyone fears courts, to sustain this fear, they [the Forest Department] don’t compound offences.)

## E. Other aspects of the legal framework of wildlife protection

### a. Cardinal principle of criminal law: Presumption of innocence

Perhaps the most important rule of procedural fairness in criminal law is the presumption of innocence, which states that a defendant should be treated as innocent until and unless proven guilty.<sup>181</sup> This rule is considered fundamental because it is believed that allowing the guilty to go free is better than convicting the innocent.<sup>182</sup> This is done to protect the fundamental rights and human dignity of the accused in a criminal trial, which is a contest between two unequal parties, namely the State and the accused. By shielding the accused from the severe socio legal repercussions of a conviction until their guilt is proven conclusively, the rule protects the accused’s fundamental liberty and dignity.<sup>183</sup> However, despite the near sacred status of ‘presumption of innocence,’ specific statutes can explicitly reverse the burden of proof. By replacing ‘innocent until proven guilty’ with ‘guilty until proven innocent,’ these statutes completely undermine the tenet and turn the accused into a presumed guilty person who must establish their innocence.<sup>184</sup> The reverse onus clauses reduce the prosecution’s legal burden to the point where the prosecutor is only required to prove a bare minimum (also known as the fundamental or predicate fact), which is the *actus reus*. Based on the scant evidence presented, the accused’s guilt is presumed, and the burden of proving the absence of *mens rea* is moved to the accused. In such circumstances, the duty of the accused,<sup>185</sup> also known as the ‘persuasive burden,’ is ultimate or legal because the accused will be convicted if they fail to discharge this duty.<sup>186</sup>

In Section 57 of the WPA, a reverse onus clause has been inserted into the Act. This reverses the burden of proof or presumption when it is established that, ‘a person is in possession, custody or control of any captive animal, animal article, meat, trophy, uncured trophy, specified plant, or

<sup>180</sup> Interview with Shyama Kuriakose, Environmental Lawyer (Bhopal, 5 July 2022).

<sup>181</sup> Andrew Ashworth, *Principles of Criminal Law* (OUP 1991) 72.

<sup>182</sup> Victor Tadros & Stephen Tierney, *The Presumption of Innocence and the Human Rights Act*, [2004] 67(3) MLR <<https://www.jstor.org/stable/3699188>> accessed 18 October 2022.

<sup>183</sup> Byron M. Sheldrick, *Shifting Burdens and Required Inferences: The Constitutionality of Reverse Onus Clauses*, [1986] 44(2) U. TORONTO FAC. L. REV. <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/utflr44&div=14&iid=8&page=>>> accessed 18 October 2022.

<sup>184</sup> Juhi Gupta, ‘Interpretation of Reverse Onus Clauses’ [2012] 5(1) NUJS L Rev <<http://nujlawreview.org/wp-content/uploads/2016/12/juhi-gupta.pdf>> accessed 18 October 2022.

<sup>185</sup> Tadros et.al (n 173).

<sup>186</sup> *State of Tamil Nadu v. A. Vaidyanatha Iyer* [1958] AIR 1958 SC 61.

part or derivative thereof it shall be presumed, until the contrary is proved, the burden of proving which shall lie on the accused, that such person is in unlawful possession, custody or control of such captive animal, animal article, meat trophy, uncured trophy, specified plant, or part or derivative thereof.<sup>187</sup>

Several reasons can be forwarded to justify reverse burdens. The most frequent reason presented is the policy justification that combines public interest with the scope of the crime being fought against. This reasoning usually revolves around the nature of the crime, especially those that cause great injury to society and public welfare in general, as opposed to crimes that have an identifiable victim. Also, the government believes that certain offences, such as wildlife offences, must be dealt with a heavy hand,<sup>188</sup> thereby justifying the shift from the traditional prerequisites of criminal procedure in the country.<sup>189</sup> Another justification are the logistical challenges the prosecution faces while trying to collect evidence.<sup>190</sup> The reasoning provided is that it is challenging for the prosecution to introduce evidence regarding subjects that are solely or unusually known to the accused.<sup>191</sup> Since reverse burdens seem to facilitate quicker, simpler, and less expensive trials, this justification also takes into account the rationalisations of judicial economy and administrative convenience, saving valuable resources that would have otherwise been used to look into information that is only known to the accused.<sup>192</sup> These clauses are also seen to increase conviction rates compared to the strict standard of proof beyond a reasonable doubt, advancing the deterrence objective.<sup>193</sup>

However, this reversal of burden comes with its fair share of problems. The first is that prosecutors decide not only what charges to bring against the accused, but also how much evidence is needed to demonstrate the *actus reus*. Further, the process of introducing evidence favours the prosecution. As a result, asking the accused to prove that they lacked the necessary *mens rea* in response to the prosecution's case is a daunting task. In most circumstances, the prosecution has greater access to investigative resources than the accused and, as a result, is better positioned to demonstrate guilt than an accused attempting to establish innocence.<sup>194</sup> Secondly, the notion that the accused is privy to certain peculiar information about the crime is completely unrelated to their ability to prove a crucial fact.<sup>195</sup> The judicial economy justification, which asserts that only the accused can prove what they know exclusively, thereby saving time and money, is flawed. Even if someone believes they are innocent, they may not be able to show it on a balance of probability, and thus, the claimed association between knowledge of an element and ease of proving it is false.<sup>196</sup>

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<sup>187</sup> *The Wildlife (Protection) Act 1972*, s 57.

<sup>188</sup> Juhi Gupta (n 184).

<sup>189</sup> Juhi Gupta (n 175).

<sup>190</sup> Juhi Gupta (n 175).

<sup>191</sup> Paul Roberts, *Taking the Burden of Proof Seriously*, [1995] CLR 783, 785.

<sup>192</sup> Sheldrick (n 174) 204.

<sup>193</sup> *ibid*.

<sup>194</sup> Sheldrick (n 174).

<sup>195</sup> *ibid*.

<sup>196</sup> Roberts (n 191).

### *b. Admissibility of statement made before the DFO and SDO during the investigation*

Since the press has extensively covered the abuses of the khaki-clad police officers, few people today contest the establishment's dubious distinction. The tendency of the police officers to use excessive force to elicit a confession from the accused was a continuing problem even when Sir James Fitzjames Stephen was drafting the Indian Evidence Act (IEA) in the 1860s. To deal with this problem, Section 25 of the IEA was introduced, which rendered any confession made by an accused to a police officer inadmissible in a court of law.<sup>197</sup> At its core, this deviation from common law in Section 25 was intended to prevent the infliction of torture by the police in an attempt to extract confessions.<sup>198</sup>

Unfortunately, wildlife officials have not been brought under the ambit of this definition. As has been observed in the sections above, out of the 16 accused we interviewed, all of them complained about custodial torture, which was meted against them by wildlife officials, in order to elicit a confession.<sup>199</sup> This is a clear example of how necessary it is to provide the safeguards under the IEA to these accused, so that they are not coerced by forest officials to incriminate themselves.

India has enacted several special laws to ensure speedy and efficient disposal of cases applying to a special category of offence, of which the WPA is an example. Section 50(8) of the WPA states, 'Any officer not below the rank of an Assistant Director of Wildlife Preservation or 8 (an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf) shall have the powers, for purposes of making investigation into any offence.'<sup>200</sup> Forest officers are empowered to perform functions including receiving and recording evidence, issuing search warrants, compelling discovery and enforcing the attendance of witnesses, which in conventional criminal procedures are performed by judicial magistrates. The wildlife investigation manual states that evidence collected or a confession made before a forest officer is admissible. Section 50(8) of the WPA allows recording of confessions without adequate procedural safeguards, as provided under Section 24 of the IEA.

However, in *Thameem Ansari v State of Madhya Pradesh*<sup>201</sup> the applicant filed a section quashing proceedings against a complaint filed by the Deputy Conservator of Forest and In-Charge of Regional Tiger Strike Force Sagar (M.P.). The petition was rejected and one of the arguments was that under Section 50(8), the accused gave a statement and admitted the crime. On this, the court did not discuss Section 50(8) at large but dismissed the petition. Therefore, it would not be an exaggeration to say that the WPA does not provide fair procedure to deal with the

<sup>197</sup> Abhinav Sekhri, 'Confessions, Police Officers and 25 of the Indian Evidence Act, 1872' [2014] 7 NUJS L Rev 55.

<sup>198</sup> *ibid.*

<sup>199</sup> Field Notes.

<sup>200</sup> The Wildlife (Protection) Act 1972, s 50(8).

<sup>201</sup> *Thameem Ansari v State of Madhya Pradesh* (2020) 371 ELT 81.

accused during the investigation as the powers given to the forest officer are unchecked, unlike the safeguards in a regular criminal investigation and trial. The statement of the accused person made before the arresting agency or department of the arresting agency and its admissibility is a question that should be reconsidered.

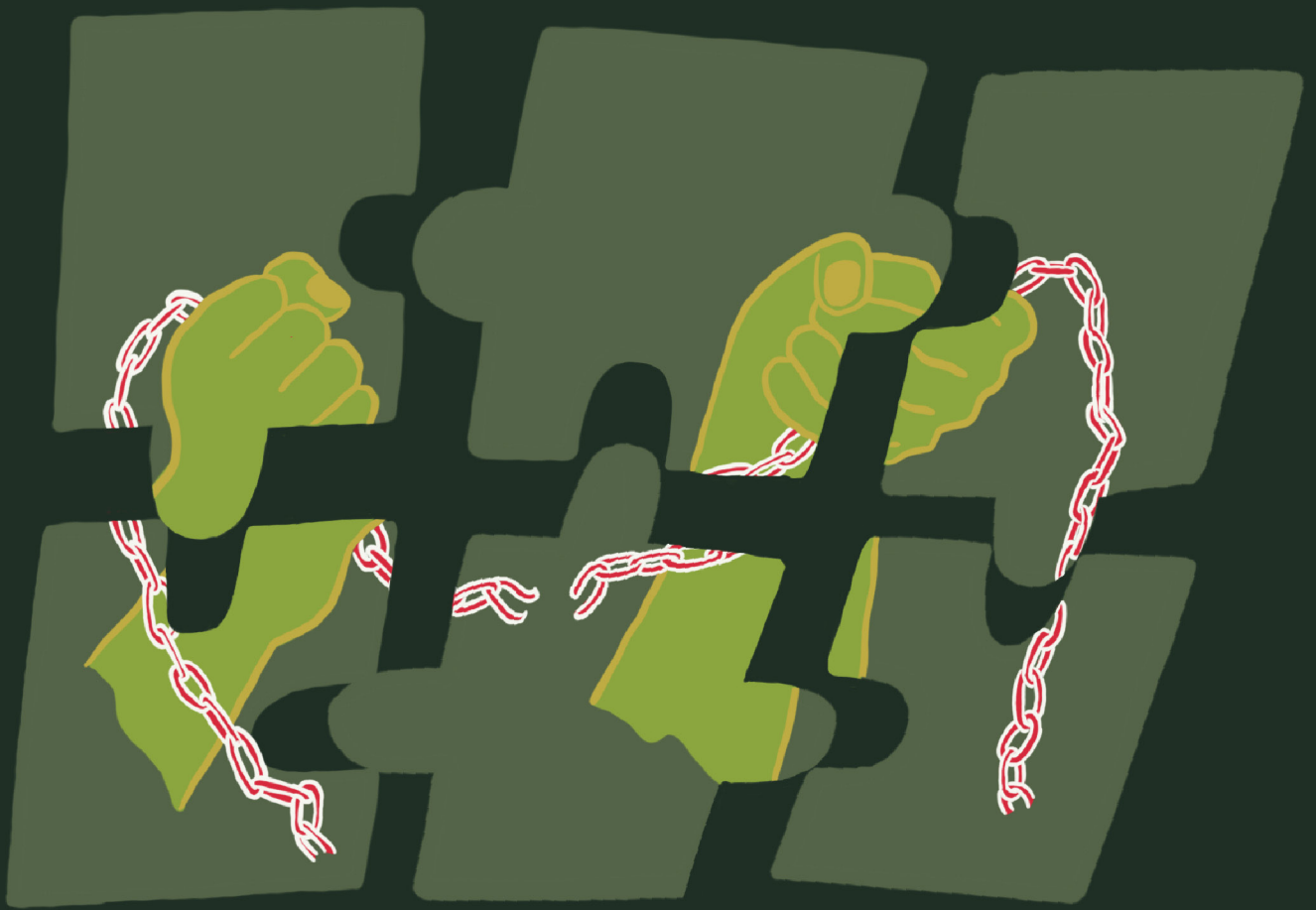
## CONCLUSION

The findings emerging from our fieldwork demonstrate the egregious criminalisation as part of the WPA framework set against the backdrop of struggle for State control over the forests. The findings of our fieldwork underscores the irregularities and abuse of procedure, excessive powers and discretion in the hands of forest officials and the various actors that shape and influence the implementation of law. We have shown how there is an over-reliance on *mukhbirs* for the detection of 'crimes', which thrives because of various incentives — a sense of power that stems from being associated with the State and internal conflicts within the forest-dwelling communities. Moreover, once a crime is detected, despite the majority of offences being bailable under the WPA, forest officials are prone to making arrests that are not mandatory according to the Supreme Court's guidelines. Several irregularities in the arrests made and noted that in almost every case, people complained about custodial violence. Securing bail from the lower judiciary under the WPA has been made difficult, even though most of the offences are bailable, because wildlife offences are more broadly seen as 'threatening the ecological and environmental security of the country.' The cost of accessing bail is also quite high, given the precarious economic condition of the forest-dwelling communities. Further, in order to create fear among the forest-dwelling communities, the department has consciously pushed for the non-implementation of compounding provisions, despite there being a possibility in several cases. The Forest Department under the WPA, like the policing authorities, maintains elaborate information in different registers for the surveillance of 'habitual offenders,' despite no clear definition of 'habitual offenders' and no accountability measures. Moreover, when it comes to trials, the burden of proof is reversed and the statements recorded by prescribed forest officials are deemed admissible.

The findings also show that in opposition to the popular perception that these arrests are made to protect wildlife and specifically 'charismatic species,' the qualitative data reveals that most of the offences being registered are related to Schedule III and IV animals and cases related to 'illegal entry' and the harvesting of forest produce. The wild boar problem, offences related to fishing, access to forest and accidental deaths of animals owing to human-animal conflict form the major chunk of wildlife offences being registered. As the forest officials admitted in our interviews, there are hardly any cases of commercial hunting in Mandla and Balaghat. Secondly, our interviews with village residents and forest rights activists have shown that the creation of PAs has led to waves of displacement, pushing forest-dwelling communities, specifically the Baiga community, into precarity. Rights over forestland, access to forest and forest produce, inadequate compensation and the threat of criminalisation are looming large on the people of these displaced villages. All of this is a result of the kind of conservation approach that is

embedded in the WPA. It is a continuation of the colonial policy in which certain tribes were criminalised because they were seen as a threat to the British colonial apparatus as groups who were fighting for the protection of their livelihood and the forests. Brahminical environmentalism thus forms the bedrock of the aforementioned fortress conservation approach, resulting in a grave crisis of livelihood and rights for the forest-dwelling communities.





## 9 CONCLUSION

The WPA has been repurposed as a tool for the regulation of game hunting to the creation of pristine forested areas, where notions of purity as upheld by the caste order have been extended to animals. As noted by Abhay Xaxa, forest governance frameworks are rife with Brahminical notions of environmentalism upheld by non-State actors. Wildlife conservation occupies a central position in the Savarna<sup>202</sup> imagination. The continuous spearheading of initiatives like Project Tiger<sup>203</sup> and Project Elephant<sup>204</sup> viewed as being distinct from recognising ST and other forest dwelling communities speaks to the Brahminical environmentalism driven fortress conservation. The WPA, as a tool, has served to create evidence of ST communities as 'encroachers'<sup>205</sup> and 'polluters' and has therefore sought to separate them from PAs where conservation can be successfully carried out. Instead, the creation of such PAs has additionally served as an area of tourism, which accounts for high revenue in the hands of the Forest Department.

## WPA POLICING LEADS TO THE CRIMINALISATION OF FOREST-DWELLING COMMUNITIES

Majority of the accused persons charged under the Act belong to marginalised communities, predominantly the STs and other communities dwelling in forests.

The analysis of the Forest Department's data shows that almost 64% percent of cases registered under WPA are related to animals under schedule III, IV, and V of the act. The fieldwork supplements this conclusion and shows that a bulk of these cases are also a result of the threat certain animals like *wild boar*, *Cheetal* (Axis Spotted Deer) and *Sambar* (Sambar Deer) pose to the livelihoods for forest dwelling communities. Moreover, the data shows that fishing, of species not protected under the scheme of WPA and which has been recognized as a community right, is also being criminalised in and around PAs. Forest produce which forms an essential part of the livelihood of these communities is also criminalised by registering cases of '*avaidh pravesha*' (illegal entry) in the forest and for collection of forest produce like honey, mushroom, timber and so on.

<sup>202</sup> In Hindu Varna System, there are two types of Caste Hindu. One is Savarna Hindu and other is Avarna Hindu. Savarna Hindu which further includes Class I and Class II. Class I includes High Caste—Dvijas Traivarnikas— Castes evolved out of the three varnas, Brahmins, Kshatriyas and Vaishyas and Class II includes Low Castes—Castes evolved out of the Shudra or fourth varna. Dr. B.R Ambedkar, 'Problem of Isolation' Vasant Moon, Dr. P. T. Borale Dr. B. D. Phadke Shri S. S. Rege Shri Daya Pawar (eds) Writings And Speeches Vol. 5, Ministry of Social Justice & Empowerment, Govt. of India (Dr. Ambedkar Foundation 2014).

<sup>203</sup> The Project Tiger, (MP Tiger Foundation 15 January 1997) <<https://www.mptigerfoundation.org/our-work/tiger-reserve>> accessed 19 December 2022.

<sup>204</sup> Project Elephant, (Wildlife Institute of India 31 August 2010)<[https://wii.gov.in/nwdc\\_elephantreserve](https://wii.gov.in/nwdc_elephantreserve)>accessed 19 December 2022.

<sup>205</sup> Arpitha Kodiveri 'Wildlife First, People Later ?' [2018] 9 Journal of Indian Law and Society<[https://www.academia.edu/43233570/Wildlife\\_First\\_People\\_Later](https://www.academia.edu/43233570/Wildlife_First_People_Later)> accessed 19 December 2022.

## **POLICING DISCRETION IS WIELDED WIDELY TO CRIMINALISE COMMUNITIES, EVEN IN THE CASE OF ACTIVITIES RELATED TO NON-ENDANGERED SPECIES**

The WPA bestows the police and forest officials with wide powers to criminalise large groups of people over hunting or even attempt to hunt charges. The power of search and seizure exercised arbitrarily by the forest department violates the dignity of forest dwelling communities in inviolate areas as a part of wildlife policing.

The findings on bail shows the difficulty of forest dwelling communities in getting bail from lower judiciary when booked under wildlife offences despite offences being bailable in nature. The difficulty is rooted in the perception of viewing wildlife offences as ecological threats. Bail is usually granted through High Court pushing communities to further economic hardships while incurring the cost of bail. The colonial idea of wildlife policing moves to the extent of categorising a person as habitual offender despite being any definition of the same. People charged on more than one instance are subjected to surveillance by the forest officials. In offences against species where the offence can be compounded, it is not compounded to create deterrence through fear among the forest dwelling communities.

This coupled with the reversal of burden of proof the general rule, presumption of innocence thus creating a further legal trap for the forest dwelling communities trapped under the provisions of WPA.

## **FOREST RIGHTS ARE SYSTEMATICALLY DILUTED: WPA CASES SEEK TO CREATE A CHILLING EFFECT AMONG FOREST-DWELLING COMMUNITIES**

The FRA was brought into existence to rectify the historical wrongs meted against the forest dwelling scheduled tribes and other traditional forest dwelling communities by providing them access to the forest resources in the forms of individual, community and habitat rights over the forest land. Contrary to what law prescribed, there is frequent dilution of FRA provisions done by displacing forest dwelling communities areas with no forest access in the name of wildlife conservation and establishment of protected areas.

Further, there is criminalisation of forest dwelling communities done over fishing activities in the protected areas of MP. While conducting the present research, we came across cases where fishing rights recognised under the FRA have been curtailed under the influence of WPA and cases have been made by the Forest Department on hunting of fishes which are not even covered

as protected species under the WPA. The study further looks into matters where forest dwelling communities are wrongfully framed for accidental killings of wild animals by the forest officials. The accidental killing of wild animals like that of wild boar due to electric wire fencing installed to protect crops from the attack of wild animals are criminalised by the forest officials despite such incidents being covered under section 11 (2) of the WPA. This is exacerbated by lack of compensation for the destruction of crops by animals. It is evident that wildlife policing leaves no scope or recourse for marginalised forest dwelling communities in their practice of fortress conservation.

This report serves as an evidentiary reminder of the longstanding dispossession of tribal and forest-dwelling communities, despite the enactment of the FRA. Recent attempts have been made by scholars and activists emphasising that communities be centred in the cause of wildlife conservation. However, any endeavour to safeguard or recognise the rights of forest dwelling communities needs to reckon with the pressing need to debrahminise the project of wildlife conservation.

# ANNEXURES

## Annexure 1: List of Figures

**Figure 1.A:** Total number of arrests from 2010 to 2020 under the Wild Life Protection Act in 38 districts of Madhya Pradesh.

**Figure 1.B:** Number of Arrests between 2010 to 2020 in Singrauli and Sidhi District.

**Figure 1.C:** Number of Arrests from 2010 to 2020 in 38 districts of MP.

**Figure 1.D:** Police Station wise arrests between 2010 to 2020 in Gadwa and Chitrangi district.

**Figure 1.E:** Count of Arrests in the above mentioned districts.

**Figure 1.F:** Pie chart depicting percentage of arrests under WPA only and percentage of arrest using WPA in combination with other acts.

**Figure 1.G:** Percentage wise date of the caste of arrested persons.

**Figure 2.A:** Percentage wise depiction of caste of persons against whom the FIR were registered.

**Figure 2.B:** Percentage wise division of source of information received for the offences related to hunting and trading.

**Figure 2.C:** Percentage wise division of source of information received for the offences related to Sand Mining.

**Figure 3.A:** Overall count showing the no. of accused persons caught in a single case (ranges of 0, 1, 2-5, 6-10, 11-15, 16+).

**Figure 3.B:** Pie-chart showing disaggregation of communities reflected in the overall list of accused persons in 1414 cases.

**Figure 3.C:** Pie chart showing the distribution of methods of hunting recorded in the 1414 cases.

**Figure 3.D:** Graph showing the percentage wise distribution of all animals hunted in total 1414 cases.

**Figure 3.E:** Pie chart of animals hunted falling under different Schedules.

## Annexure 2 : Stakeholder interview questionnaire.

### I. Interview framework for police officials

1. What challenges do you face in booking offences related to environment conservation?
  - a. What kind of offences do you usually carry out enforcement for?
  - b. What kind of wildlife offences do they encounter? How do you get information about such offences?
  - c. What are the challenges in booking wildlife offences? What challenges are there when poachers are violating wildlife laws?
  - d. How is it different when individuals are committing offences?
  - e. Are particular communities involved in the commission of wildlife offences?
  - f. On an average, and in comparison to other police work, how much time at your PS is dedicated to detection and investigation of wildlife offences? (We have heard in scoping interviews that offences occurring in forested areas are generally hard to investigate)
2. How does the police station work with the Forest Department when a wildlife offence occurs?
  - a. In which cases are offences transferred to be further investigated by the Forest Department?
  - b. What are the difficulties in working with another department to monitor offences?
  - c. What happens to powers of arrest, seizure, bail when the Forest Department is also involved in the investigation?
  - d. What are the challenges in taking a case to trial when the Forest Department is also involved?
3. At what stage do persons who are committing an offence get bail generally? (our FIR data shows that despite WPA having all bailable offences, bail is not given at the time of arrest/FIR)
4. Based on the background of offenders generally observed, what are the best policing practices for
  - a. seizure,
  - b. arrests
  - c. and bail?
  - d. Do you maintain a list of repeated offenders of wildlife offences?
5. Particularly, what policing strategies are deployed to enforce this law? How valuable or not is the network of mukhbirs in excise policing?

### II. Interview framework for Forest Department officials (lower ranked in hierarchy like beat officials, forest guards or even Range Officers)

1. How do you approach environmental conservation?
  - a. What happens when there is a human-animal conflict? When do you step in and what strategies

do you use to minimise it?

b. What do you think of WPA as a law? Is it effective in stopping poaching?

c. How does your functioning change between a sanctuary area and a community reserve? (if we are doing a field visit in an area with community reserves or in a tiger reserve area which has the strictest rules)

2. What is the procedure you follow when an animal is hunted? Given the vast area of the forest, how do you find out when an animal is hunted?

a. If most information is through mukhbirs or informants, how do they develop this relationship with them, given the remoteness of the area?

b. How difficult is it to prevent the offence from happening? What is the procedure followed in case the attempt has been stopped?

3. Who makes the Preliminary Offence Report and where is it forwarded? What action comes next?

a. Is there a register to track these offences?

b. Is there a list of repeat offenders?

4. How often are these cases compounded? What amounts are collected for different animals? In what circumstances, will a case not be compounded?

5. Who makes the challan for the offence and what kinds of provisions are used? How do you decide which crime it constitutes?

6. How do you exercise your power for search (with warrant or without) and seizure, arrests?

7. What kind of evidence is necessary to establish the crime?

8. What happens to the animal parts that are seized? What happens to other things- weapons or vehicles<sup>206</sup> that are seized?

9. How do persons who are arrested get bail?

10. What do Court proceedings entail once a challan is submitted?

11. How are licenses given for hunting and for what purposes? Do people get licenses for personal consumption, trophy hunting, trade?

12. What animals are most often hunted in the area, both illegally and with permission? How do you decide when hunting an animal, for example, a wild pig, is permitted? How do you register this?

13. What happens when an area is marked as a PA? What community consultation is there and

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<sup>206</sup> 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. If found guilty, it becomes property of the government.- WPA, State of UP v Ranveer singh, (in wildlife manual, need to see how much actually used).



how are rights of communities settled?

14. What are the challenges in interacting with the Police and working alongside them for detecting and investigating hunting offences?

### III For lawyers who represent accused persons

1. How long have you been practising for and what is the area you practice in?
2. How many cases do you handle in a year and how many of these are related to wildlife offences?
3. Is there a community or communities that you find your wildlife case clients disproportionately belong to? How many of such clients are from 1 community or 1 area and where are they from?
  - a. As a result of their hunting activities, or in addition to, do your clients also have other criminal cases against them? Are they accused in multiple wildlife offences cases?
  - b. Do you have clients who belong to the same families?
4. Who is prosecuting more offences in the wildlife cases you are handling- the police or the forest department?
  - a. What change do you notice in prosecution by the two different departments?
5. Are most of the wildlife cases you handle are for offences of hunting?
  - a. What animal do you see most often as hunted and under which Schedule? What animal part is usually found with your clients? What use is it for?
  - b. What is the quantity of animal parts that is recovered from your clients usually? What else is normally seized as part of recovery?
6. At what stage do your clients usually get bail? If you are tasked with getting bail, what arguments and strategies do you rely on for bail before the Magistrate?
  - a. Does this change if your client is from a particular community like Dalits, ST, DNT, Muslim? What other strategies do you involve then?
  - b. Is it easy to get bail in WPA cases? In how many cases have you had to go to an appellate court for bail?
  - c. What are reasons the for rejection of bail? Is it related to the quantity of animal meat or which animal it is?
7. In these cases when there is an arrest either by police or forest officers, have you come across instances of bribery, harassment during the arrest/ seizure, torture in custody? Is this higher for certain communities? Please elaborate.
8. During the bail hearings, have you ever come across the judge showing any instance of bias/ casteist slur against the community of the person they belong to (eg observation that the

community is criminal, that they are involved in the work, other stereotypes, stigmatisation): As an oral observation or explicitly mentioned in the order. (In case of yes, can you share the copy of the order)

9. How long do trials under WPA go on for? Do they mostly end in conviction/acquittal? Please share reasons for either.

- a. Is there a particular stage of a wildlife case where the most delay is likely to be caused?
- b. Do more people from particular communities get convicted?

#### IV. Interviews with persons charged under WPA for hunting and allied offences

1. What offences under WPA were you booked for?

- a. When was this?
- b. What was the accusation?
- c. What sections were you charged under?
- d. Were there any other Acts that you were booked for? Like IPC or Arms Act or EPA or IFA?

2. Who booked the offence against you? Was it the police or forest department?

3. What animal were you charged with for hunting?

- a. What was the quantity of the animal?
- b. What parts of the animal were there?

4. How did the police/forest officials find out about the offence?

- a. What position was the police/forest official at? Beat, Range officer, etc?
- b. How did you get caught for the offence?
- c. How many others were involved and in what way?
- d. Did the police/forest officials make any false claims against you in the FIRs/Preliminary Offence Report?
- e. Did they incorrectly record any facts?

5. Did the police seize anything?

- a. If so, what all did they seize and in how many quantities?
- b. Were there any witnesses to the seizure?

6. Was there violence involved during the police/forest's apprehension for the offence? Please ask them to elaborate on the injuries, the items damaged, what they said (particularly if any casteist slur), amount of money asked.

- a. Physical Violence against Body
- b. Destruction of material involved in the offence
- c. Destruction of other household goods
- d. Verbal abuse
- e. Extortion of money
- f. Other

7. Were you arrested?
  - a. If so, when were you arrested?
  - b. Who was a witness to the arrest? Was it the same person who was witness to the seizure?
  - c. Where were you taken after the arrest?
  - d. When were you produced in court after your arrest? How long after your arrest was this?
  - e. If you were arrested by a Range officer, were you taken before a DFO?
  - f. Did you have to pay any bribe to not be arrested?
  - g. Did you face any violence in custody/lock-up after you were arrested?
8. Were you given a copy of the Offence Report or FIR?
9. Were you given a copy of the arrest memo or the seizure memo?
10. Did you know the witnesses who were there for the offence, seizure or arrest? Do you know if these witnesses have been known to the police/forest guards before?
11. When did you get bail? Was it easy?
  - a. What hardships did you face in procuring bail?
  - b. Did a lawyer help you get bail? If so, how did you find the lawyer?
  - c. How much was the bail amount set at?
  - d. Which court did you get bail from? Magistrate/Sessions/High Court?
  - e. How long were you in lock-up before bail?
12. Were you given a copy of the challan once it was filed?
13. If the Forest department was involved, did they try to compound the case through a fine?
  - a. If so, was this after the challan was filed or after?
  - b. How long after the FIR/POR was filed did this happen?
  - c. Where did you go to have the case compounded? What did you have to sign?
  - d. How much did you have to pay and what else was required?
14. What is the current stage of the case?
  - a. If it was acquittal/conviction, how long did the Court take to finish the trial?
  - b. What happened to the items that were seized (if it was weapons/vehicles/chulha, etc)?
  - c. If you were convicted, what was the sentence you were given and how many months did you spend in jail as a result?
  - d. Do you have a lawyer? How accessible is he/she to you? Do they keep you informed and how helpful are they?
  - e. How many times do you have to visit the Court? How far is it from here and how do you go? travel cost

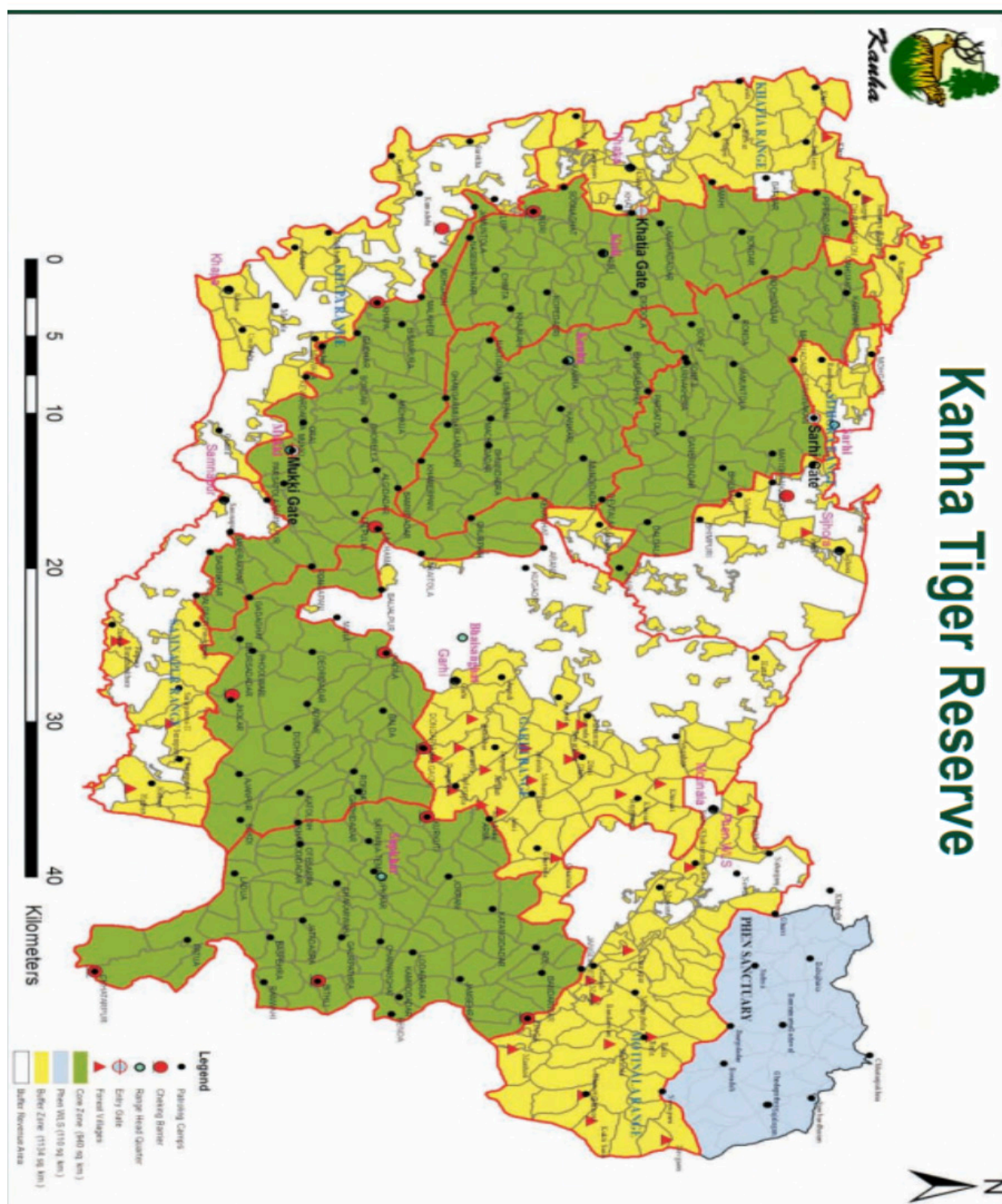
15. How much costs did you incur in the course of this case?
16. Did you have to take a loan to help pay for travel, lawyer, court, fine, etc? How much did you take the loan for and what is the interest rate?
17. How much bribe does a family have to pay annually, if any, to the forest department to avoid arrest?
18. What animals are you now allowed to hunt?

## V. Interviews with persons involved in forest conservation

1. What is the approach to forest conservation in India?
  - a. What is it motivated by?
  - b. Who is tasked with conservation?
  - c. What role do conservationist organisations play in these conservation efforts?
2. What is your approach to wildlife conservation?
  - a. How did you start?
  - b. How do you think the State should approach wildlife conservation?
  - c. What is the role of the Forest Department, NGOs, police, local communities in this?
3. What are some methods to ensure that wildlife is not depleting?
4. What are the reasons for which wildlife begins to deplete in an area?
  - a. Is animal migration a concern for wildlife in national parks and sanctuaries?
5. What happens when the population of a particular species of wildlife explodes?
  - a. Other than trans-location, what other measures can be used to control population?
6. What are the present dangers to wildlife in the area?
  - a. Is poaching a big concern? For what kinds of animals?
  - b. For smaller animals/less endangered?
  - c. Are there other dangers to wildlife except hunting/poaching? Mining and Loss of habitat because of diversion of forest for other purposes.
7. Who are the culprits of poaching? Elaborate on what chains of organized wildlife crime is like.
  - a. How do you identify if an animal has been hunted or killed to poach?
8. What do you think of the Forest Dept's manner of investigation and prosecution of an offence?
9. What do you think of the police's manner of investigation and prosecution of an offence?
10. What kind of inter-departmental coordination do you think there should be between the two?
11. What role can NGOs play in the detection and investigation of wildlife offences?  
Training that NGO's provide to the forest department.

12. What work do you do with local communities to mitigate wildlife crime?
13. What is your opinion of the WPA?
  - a. Does it help in wildlife conservation?
  - b. What do you think needs to be changed in this?
14. What is the relationship that local communities have with hunting? What are the leading reasons for their hunting practices in the present age?
15. Were they ever dependent on hunting as a primary source of income, food?
16. How has the relationship of local communities with the forest changed after the national park/sanctuary was built?
  - a. Are you aware of any consultation process in marking the critical wildlife habitat areas?
  - b. What do you think of the overlaps between FRA and WPA?
17. Why do you think criminal law is required to adjudicate issues related to wildlife?
18. How can wildlife conservation be carried out beyond a criminal legal framework?

### Annexure 3 : Map of Kanha National Park



Source: [https://www.mpforest.gov.in/img/files/Kanha\\_Book.pdf](https://www.mpforest.gov.in/img/files/Kanha_Book.pdf)



## Annexure 4: Important sections of the Wildlife Protection Act, 1972

### Section 9

#### CHAPTER III

##### HUNTING OF WILD ANIMALS

**[9. Prohibition of hunting.]**—No person shall hunt any wild animal specified in Schedules I, II, III and IV except as provided under section 11 and section 12.]

[10. *Maintenance of records of wild animals killed or captured.*]—*Omitted by the Wild Life (Protection) Amendment Act, 1991 (44 of 1991), s. 10 (w.e.f. 2-10-1991).*

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1. Subs. by Act 16 of 2003, s. 8, for “the Wild Life Advisory Board” (w.e.f. 1-4-2003).

2. Subs. by s. 8, *ibid.*, for clause (a) (w.e.f. 1-4-2003).

3. Subs. by Act 44 of 1991, s. 8, for clause (b) (w.e.f. 2-10-1991).

4. The word “and” omitted by s. 8, *ibid.* (w.e.f. 2-10-1991).

5. Ins. by s. 8, *ibid.* (w.e.f. 2-10-1991).

6. Subs. by s. 9, *ibid.*, for section 9 (w.e.f. 2-10-1991).

### Section 17 (a)

#### <sup>1</sup>[CHAPTER IIIA

##### PROTECTION OF SPECIFIED PLANTS

**17A. Prohibition of picking, uprooting, etc. of specified plant.**—Save as otherwise provided in this Chapter, no person shall—

(a) wilfully pick, uproot, damage, destroy, acquire or collect any specified plant from any forest land and any area specified, by notification, by the Central Government;

(b) posses, sell, offer for sale, or transfer by way of gift or otherwise, or transport any specified plant, whether alive or dead, or part or derivative thereof:

Provided that nothing in this section shall prevent a member of a scheduled tribe, subject to the provisions of Chapter IV, from picking, collecting or possessing in the district he resides any specified plant or part or derivative thereof for his *bona fide* personal use.



## Section 27

**27. Restriction on entry in sanctuary.**—(1) No person other than,—

- (a) a public servant on duty,
- (b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to reside within the limits of the sanctuary,
- (c) a person who has any right over immovable property within the limits of the sanctuary,
- (d) a person passing through the sanctuary along a public highway, and
- (e) the dependants of the person referred to in clause (a), clause (b) or clause (c), shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under section 28.

(2) Every person shall, so long, as he resides in the sanctuary, be bound—

- (a) to prevent the commission, in the sanctuary, of an offence against this Act;
- (b) where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;
- (c) to report the death of any wild animal and to safeguard its remains until the Chief Wild Life Warden or the authorised officer takes charge thereof;
- (d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and
- (e) to assist any forest officer, Chief Wild Life. Warden, Wild Life Warden or police officer demanding his aid for preventing the commission of any offence against this Act or in the investigation of any such offence.

1. Ins. by Act 44 of 1991, s. 18 (w.e.f. 2-10-1991).

2. Subs. by Act 16 of 2003, s. 14, for sub-section (3) (w.e.f. 1-4-2003).

## Section 39

### TRADE OR COMMERCE IN WILD ANIMALS, ANIMAL ARTICLES AND TROPHIES

**39. Wild animals, etc., to be Government property.**—(1) Every—

(a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or <sup>1</sup>[bred in captivity or hunted] in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed <sup>2\*\*\*</sup> or by mistake; and

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed,

<sup>3</sup>[(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed;

1. Subs. by Act 44 of 1991, s. 27, for “bred in captivity” (w.e.f. 2-10-1991).

2. The words “without a licence or” omitted by s. 27, *ibid.* (w.e.f. 2-10-1991).

3. Ins. by s. 27, *ibid.* (w.e.f. 2-10-1991).

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act.]

shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat <sup>1</sup>[derived from such animal or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government.

(2) Any person who obtains, by any means, the possession of Government property, shall, within forty-eight hours from obtaining such possession, make a report as to the obtaining of such possession to the, nearest police station or the authorised officer and shall, if so required, hand over such property to the officer-in-charge of such police station or such authorised officer, as the case may be.

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer—

- (a) acquire or keep in his possession, custody or control, or
- (b) transfer to any person, whether by way of gift, sale or otherwise, or
- (c) destroy or damage, such Government property.



## Section 51

**51. Penalties.**—(1) Any person who <sup>1</sup>[contravenes any provision of this Act <sup>2</sup>[(except Chapter VA and section 38J)]] or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to <sup>3</sup>[three years], or with fine which may extend to <sup>4</sup>[twenty-five thousand rupees], or with both:

<sup>5</sup>[Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees:

Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of the imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.]

<sup>6</sup>[(1A) Any person who contravenes any provisions of Chapter VA, shall be punishable with imprisonment for a term which shall not be less than <sup>7</sup>[three years] but which may extend to seven years and also with fine which shall not be less than <sup>8</sup>[ten thousand rupees].]

<sup>9</sup>[(1B) Any person who contravenes the provisions of section 38J, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that in the case of a second or subsequent offence the term of imprisonment may extend to one year or the fine may extend to five thousand rupees.]

(2) When any person is convicted of an offence against this Act, the Court trying the offence may order that any captive animal, wild animal, animal article, trophy, <sup>10</sup>[uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant, or part or derivative thereof] in respect of which the offence has been committed, and any trap, tool, vehicle, vessel or weapon, used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

(3) Such cancellation of licence or permit or such forfeiture shall be in addition to any other punishment that may be awarded for such offence.

(4) Where any person is convicted of an offence against this Act, the Court may direct that the licence, if any, granted to such person under the Arms Act, 1959 (54 of 1959), for possession of any arm with which an offence against this Act has been committed, shall be cancelled and that such person shall not be eligible for a licence under the Arms Act, 1959, for a period of five years from the date of conviction.

<sup>1</sup>[(5) Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age.]

**Annexure 5: Sample Chargesheet /Private complaint (Parivad Patra) filed by the forest department.**

दिनोंक [redacted] जारी कर वन अपराध पंजीबद्ध किया गया। आरोपी द्वारा [redacted] के [redacted] में क्षति पहुँचाते हुए "देश की पारिस्थितिकीय और पर्यावरणीय सुरक्षा" को अमूल्य क्षति पहुँचाई गई है, जिसका मूल्यांकन करना संभव नहीं है।

3. यह कि दिनोंक [redacted] को आरोपी द्वारा जॉचकर्ता अधिकारी को घटना स्थल पर ले गया, घटना स्थल दिखाया गया। उसके उपरांत [redacted] द्वारा मौका निरीक्षण कर नजरी नक्शा एवं पंचनामा बनाया गया।

4. यह कि आरोपी द्वारा अपनी स्वेच्छा से दिनोंक [redacted] को [redacted] क्षेत्र [redacted] परिक्षेत्र [redacted] के कक्ष क्र० [redacted] में [redacted] लेकर अवैध प्रवेश कर सूखा [redacted] वृक्ष काटने का अपराध स्वीकार करने पर दिनोंक [redacted] को गिरफ्तार कर माननीय न्यायालय [redacted] में पेश किया गया।

5. यह कि प्रकरण की सम्पूर्ण विवेचना मेरे निर्देशन में [redacted] द्वारा की गई है।

6. यह कि आरोपी द्वारा धारा [redacted] वन्यप्राणी (संरक्षण) अधिनियम, 1972 का अपराध कारित किया गया है। जिसका समुचित दंड आरोपी को दिया जाना न्यायोचित होगा।

**प्रार्थना**

अतः प्रार्थना है कि आरोपी को दण्डित किये जाने की कृपा की जाये।

दिनोंक :- [redacted] [redacted]

दिनोंक [REDACTED] जारी कर वन अपराध पंजीबद्ध किया गया। आरोपी द्वारा [REDACTED] के [REDACTED] में क्षति पहुँचाते हुए "देश की पारिस्थितिकीय और पर्यावरणीय सुरक्षा" को अमूल्य क्षति पहुँचाई गई है, जिसका मूल्यांकन करना संभव नहीं है।

3. यह कि दिनोंक [REDACTED] को आरोपी द्वारा जॉचकर्ता अधिकारी को घटना स्थल पर ले गया, घटना स्थल दिखाया गया। उसके उपरांत [REDACTED] द्वारा मौका निरीक्षण कर नजरी नक्शा एवं पंचनामा बनाया गया।
4. यह कि आरोपी द्वारा अपनी स्वेच्छा से दिनोंक [REDACTED] को [REDACTED] क्षेत्र [REDACTED] परिक्षेत्र [REDACTED] के कक्ष क्र० [REDACTED] में [REDACTED] लेकर अवैध प्रवेश कर सूखा [REDACTED] वृक्ष काटने का अपराध स्वीकार करने पर दिनोंक [REDACTED] को गिरफ्तार कर माननीय न्यायालय [REDACTED] में पेश किया गया।
5. यह कि प्रकरण की सम्पूर्ण विवेचना मेरे निर्देशन में [REDACTED] द्वारा की गई है।
6. यह कि आरोपी द्वारा धारा [REDACTED] वन्यप्राणी (संरक्षण) अधिनियम, 1972 का अपराध कारित किया गया है। जिसका समुचित दंड आरोपी को दिया जाना न्यायोचित होगा।

#### प्रार्थना

अतः प्रार्थना है कि आरोपी को दण्डित किये जाने की कृपा की जाये।

दिनोंक :- [REDACTED]





## Annexure 6: Sample FIR filed by the Police including sections under WPA

**12. First Information contents (प्रथम सूचना तथ्य):**

मैं.थाना [REDACTED] में [REDACTED] के पद पर कार्यरत हूँ आज दिनांक [REDACTED] को सै. [REDACTED]  
द्वारा [REDACTED] वाली धारा के ऊपर [REDACTED] पर ग्राम [REDACTED] उप [REDACTED] द्वारा [REDACTED]  
[REDACTED] धारा [REDACTED] ता.हि. [REDACTED] वन्य प्राणी संरक्षण अधि.1972 की [REDACTED]  
देकर रवाना कर असल नबरी अपराध कायमी हेतु भेजे हैं जो पेश किया।नकल [REDACTED]  
जेल है।थाना [REDACTED] जिला [REDACTED] अप.क्र. [REDACTED] धारा [REDACTED] ता.हि. [REDACTED] वन्य प्राणी  
संरक्षण अधि.1972 नाम [REDACTED] पिता [REDACTED] उम्र [REDACTED] वर्ष नि.ग्राम [REDACTED]  
दिनांक समय रिपोर्ट [REDACTED] के [REDACTED] बजे घटना दि.समय [REDACTED] के [REDACTED] बजे करीब  
सूचना का प्रकार लिखित घटना स्थल [REDACTED] वाली धारा के ऊपर [REDACTED] पर ग्राम [REDACTED] नाम [REDACTED]  
आरोपी [REDACTED] नि. [REDACTED] नि. [REDACTED] नि. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] विवरण प्रार्थी [REDACTED] ने एक लेखीय आवेदन  
पेश किया जो कि प्रथम द्रष्टया अपराध धारा [REDACTED] ता.हि. [REDACTED] वन्य प्राणी संरक्षण  
अधि.1972 का पाया जाने से अपराध पंजीबद्ध किया जाता है।आवेदन नकल [REDACTED] जेल है प्रति  
श्रीमान् थाना प्रभारी थाना [REDACTED] विषय [REDACTED] के द्वारा बताने पर थाने पर सूचना देने  
बावद महोदय मैं ग्राम [REDACTED] का रहने वाला हूँ दिनांक [REDACTED] को मैंने अपने भाई [REDACTED] के  
गुमने की रिपोर्ट थाने पर लिखाई थी आज दिनांक [REDACTED] को गांव का [REDACTED] ने  
बताया कि दिनांक [REDACTED] शाम [REDACTED] बजे को खेदा करने गांव के [REDACTED]  
[REDACTED]  
[REDACTED] सभी निवासी [REDACTED] एवं एक अ्य निवासी [REDACTED] सभी जंगली सूअर  
का शिकार करने के लिये जंगल [REDACTED] वाली धारा पर गये थे वहाँ पर [REDACTED] और  
[REDACTED] बन्दूक लेकर अलग अलग जगह झाडियों में छिपकर निशाना लगाये बैठे थे।बाकी सब लोग  
दूसरी तरफ से सुअर को हाकते हुये ला रहे थे तभी झाडियों में आवाज आे से सूअर समझकर  
गोली चला दी तब [REDACTED] ने बताया कि [REDACTED] की बन्दूक से [REDACTED] को गोली लग गई है।[REDACTED]  
ने बोला था कि ये बात गांव में मत बताना।तब हम सब लोग डरकर भाग गये थे।[REDACTED] की  
लाश वही जंगल में [REDACTED] वाली धारा के [REDACTED] पर पडी है।सो रिपोर्ट करता हूँ।कपा कर इन  
लोगो पर कार्यवाही करें।हस्ताक्षर हिन्दी [REDACTED] सूचना कर्ता के हस्ताक्षर [REDACTED]  
हस्ताक्षर अंग्रेजी मे अस्पष्ट दि. [REDACTED] ( [REDACTED] )थाना [REDACTED] हस्ताक्षर अस्पष्ट  
उपरोक्त [REDACTED] असल कायमी हेतु [REDACTED] सै. [REDACTED] के थाना भेजी जाती है  
हस्ताक्षर अंग्रेजी में अस्पष्ट दि. [REDACTED]।

