# The draconian face of Wildlife Protection Act, 1972

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*The provisions of the WLPA, although not unusual in criminal jurisprudence, are rather severe in their letter and operation. They create a framework of law that is abrupt and strict in punishing activities that may be completely normal for an Adivasi. The Leaflet reproduces excerpts from 'Criminalisation of Adivasis and the Indian legal system', with due permission from its publishers, Indigenous Peoples Rights International (IPRI), Geneva.*

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**1.3 A Narrative of Discrimination and of Mass Criminalisation: Design of the Report**

**STORIES**, experiences and accounts of Adivasi and forest dwelling communities recount discrimination at a multitude of levels. Despite constitutional protections, not only is this prejudice reflected in the normal course of operation, but occurs as a structural phenomenon, inherent to our systems of existence. Enmeshed with this discrimination are a range of colonial and post–colonial legislations which criminalise Adivasis and their socio-economic practices. Discrimination and criminalisation, therefore, have had a continuing connection, possibly one where discrimination resonates in criminal jurisprudence, and vice–versa. It is widely understood that such criminalisation over decades, even centuries, has further alienated and excluded Adivasis, creating a chasm between countervailing notions of legality and illegality, and indeed of justice and injustice itself. However, the exploration of the exact processes through which the legal system in India has proceeded to create these chasms, and the dimensions and contours of these chasms, has not been done. In the present exploratory study, it is proposed to examine the contours, dimensions and processes of criminalisation of Adivasis and forest dwelling communities in India, with the objective of mapping the problematic assumptions that have been woven into the fabric of law. The purpose of the study

is to create a base document, which can then provide the basis for further discussion, understanding, and strategic advocacy.

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**4.5.1 The Accused, the Offence and the Process of Prosecuting the Offence**

The Wildlife Protection Act, 1972 ('WLPA') is first among our list and also happens to be one of the most dangerous of the lot. It creates a frightening number of offences. Four different categories of offences can be discerned from the text of the Act, all of which are cognisable and non-bailable.

> ***If you belong to a community that has been residing inside a forest that now stands declared as a Protected Area under the Act, you would be an offender by mere residence.***

First, it creates a category of 'Protected Areas' under Chapter IV (Sanctuaries and National Parks) and criminalises any violation or breach of provisions in these areas. A wide range of activities are declared as offences: no person is allowed to alter, destroy or deface any boundary mark; set fire and use any explosive substances which can endanger any wild life; tease, molest any wild animal or even litter on the grounds of Protected Areas. Entering these Protected Areas without requisite permission; destroying, exploiting or removing any wild life including forest produce from the Protected Areas; destroying, damaging or diverting the habitat of any wild animal or such activities which are diverting, stopping or enhancing flow of water in the area; entering Protected Area with a weapon — all constitute offences. It is important to note that while permitted grazing or movement of livestock is allowed in a Sanctuary, it stands prohibited in a National Park. While making these declarations, the State government need not necessarily take into account any livelihood matters that may already exist in those areas. It is entirely left to the discretion of the government to make such a declaration. So, if you belong to a community that has been residing inside a forest that now stands declared as a Protected Area under the Act, you would be an offender by mere residence.

Second, the Act declares that any act of harming an animal listed in Schedule I or II or a plant listed in Schedule VI thereunder an offence. Activities such as picking, uprooting, damaging, possessing, selling such plants are prohibited. However, the Act allows a member of a Scheduled Tribe ('ST') to pick, collect and possess specified plants for personal use, but the prohibitions applicable in Protected Areas are to override this right available to members of STs.

> ***Regardless of what the facts of the case are or how they were presented to the court, if the case reaches a court, the presumption is that the accused is a convict. The cardinal idea of 'innocent until proven guilty' does not find any place in the normative framework of law that operates in forests.***

Third, there are offences related to trade and transportation of animals.

And fourth, the Act declares specific offences that can be committed inside a Tiger Reserve. Therefore, only a person who is living in such an area or who engages with animals at any level i.e., a member of a ST could be the potential accused under the Act.

To ensure prevention of these offences, Section 50, WLPA overrides all other provisions. It empowers several officers to ensure compliance who can stop people anywhere at any time, seize any goods, require for inspection, conduct any search or inquiry. Section 50(8) goes on further to empower officers to issue warrant and seek attendance of witnesses, again with an overriding effect.

The two provisions, although not unusual in criminal jurisprudence, are rather severe in their letter and operation. They create a framework of law that is abrupt and strict in punishing activities that may be completely normal for an Adivasi. Mere suspicion of something as minor as entering an area or even littering it, can invoke all of these powers of officers.

#### 4.5.2 Presuming Guilt of Accused, Burden of Proof and the Good Faith of Officers

Not only is there a bountiful of power with forest officers to search, seize, arrest and record evidence, there is also a presumption of guilt on mere invocation of these provisions. So regardless of what the facts of the case are or how they were presented to the court, if the case reaches a court, the presumption is that the accused is a convict. The cardinal idea of 'innocent until proven guilty' does not find any place in the normative framework of law that operates in forests. One can then only wonder how these provisions operate on ground. Re-harnessing the discussion on the WLPA, Section 57 thereunder states:

*"Section 57. Presumption to be made in certain cases: Where, in any prosecution for an offence against this Act, 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 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."*

In cases before the Indian courts where questions regarding presumption and burden of proof were raised, it has been said that if simple possession and recovery are proved by the prosecution, the burden of proof shifts upon the accused to prove that they were not in conscious possession of the article and were not aware of its existence.

> ***While these laws presume that an Adivasi is guilty of any and all offences that are charged against them, all public officers remain indemnified against any attempt of action against them. There is a classic case of the king can do no wrong and neither can his agents.***

While these laws presume that an Adivasi is guilty of any and all offences that are charged against them, all public officers remain indemnified against any attempt of action against them. There is a classic case of the king can do no wrong and neither can his agents. Indemnity to officers and employee of the Central and State government is granted against suit, prosecution or any other legal proceedings for acts or damages caused in good faith. It also states that no suit shall lie against chairperson, members, member-secretary, officers or other employees of National Tiger Conservation Authority or Central Zoo Authority for anything done in good faith. This indemnity to officers is in addition to the indemnity provided under Section 197 Cr.P.C.

The mechanism adopted for conservation drives have located immense power in the hands of officials. Success of the conservation of one-horned Rhinoceros in Assam's Kaziranga National Park has been credited to its "shoot at sight" policy. An investigative report from BBC highlighted that at the Kaziranga National Park, the State government has granted the guards extraordinary powers which give them considerable protection against prosecution if they shoot and kill people in the park. A notification by the Government of Assam provides legal immunity from criminal prosecution to the forest guards and forest officers for acts done in discharge of their official duty without prior sanction of the State government. Further, in a Detailed Report to the Hon'ble Gauhati High Court by the Director of the Kaziranga National Park, it has been submitted that to tackle the poaching of one-horned Rhinoceros and their protection in Kaziranga National Park, the practice of 'killing the unwanted' to enforce the law was premised on 'must obey or be killed.'

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One final aspect requires attention when examining the definition of wildlife offences under the WLPA. Under Section 27(2), a list of duties has been imposed on persons living inside Protected

Areas. This includes the duty to prevent the commission of a wildlife offence, to help in discovering the offender, to report the death of any wild animal, to extinguish any fire, and, in addition, to assist a wildlife officer to prevent or investigate any wildlife offence. Such a provision places an oppressive burden on forest dwelling communities who continue to live inside Protected Areas, which includes both those who are victims of faulty rights recognition processes and those who are permitted to do so under the order of final declaration itself. At all times, these communities must remain beholden to the forest bureaucracy to assist in preventing so called wildlife offences, apprehending offenders, providing information about possible offences and so on. For all practical purposes, the forest dwellers are compelled to become informers against their own people, as failure to 'cooperate' would itself be construed as a forest offence, invite severe penalties and lead to possible cesser of their own access to the forest and forest resources.

The WLPA also contains a sweeping power to remove encroachments from Protected Areas. Officers of the rank of Assistant Conservator of Forests and above are empowered to summarily evict any person from a Wildlife Sanctuary or National Park who "unauthorisedly occupies government land", remove and confiscate any unauthorised structures, and seize the tools and effects of such person from such land. It is clarified that such eviction is in addition to any other penalty for violation of the WLPA.

No guidance is provided for determination of whether such occupation is unauthorised, or indeed, what 'unauthorised occupation' means. We do not find any provisions resembling the detailed procedural protections under IFA when confiscation proceedings are undertaken, or the kind of hairsplitting applied to felling and transportation of timber. The only nod to procedural due process is a passing observation that an opportunity to be heard be provided to the affected person. The impact of such draconian provisions, when compounded with the criminal procedures laid down in the WLPA, are deeply oppressive and suffocating to the Adivasis and forest dwellers who have the misfortune to be caught inside these conservation fortresses.

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The analysis under this part has demonstrated that the range of criminality created through forest legislations has a wide spectrum. In addition to the tone of authority rooted in eminent domain,

these legislations pointedly criminalise Adivasi and forest dwelling populations in a design to control their regular functions, and discipline them into subordination to the state. Boundaries are drawn over geographical areas, between forest lands of different categories based upon their value and importance to the state, without any reference whatsoever to what these lands mean to the Adivasis who have lived in them for centuries. These legislative boundaries are then reinforced, not just through regulation of different forest activities but through criminalisation of activities in the more valuable forests, and provision of severe punishments for those who cross the line.

**Click here to view the full 'Criminalisation of Adivasis and the Indian legal system' report, and here to view *The Leaflet*'s report on its launch in April.**