Offences Under The Wild Life (Protection) Act, 1972

A Discussion based on Case Law

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Offences under the Wild Life Protection Act, 1972
– A Discussion based on Case law –

The Wild Life Protection Act (The "**Act**") was enacted in 1972 and has been amended six times since then, the last amendment taking place in 2006. With over forty years on the statute book, our interpretation and understanding of the Act has been enhanced by decisions of High Courts and the Supreme Court, yet there still remain unanswered questions and grey areas in the law. The Act is generally described as a strong legislation for wildlife protection. However, questions about its level of implementation remain. After a very brief introduction to the Act, this paper takes a look at some of the important judicial decisions which have a bearing on the offences under the Act and the enforcement of the Act.

Introduction to the Act

The Act aims to conserve protected species of wildlife through two primary mechanisms: 1) prohibiting the hunting of all protected species and providing for strict regulation of their possession, transport and trade; and 2) safeguarding wildlife habitat by providing for the creation and management of protected areas (sanctuaries, National Parks, conservation reserves and community reserves[1]).

The Act does not allow for hunting / capture of any animal species once included on any one of Schedules I-IV.[2] There are few exceptions to this rule in the nature of permits to hunt an animal which has become diseased or dangerous to human life or property[3] or for scientific research, etc.[4] The Act does not provide for a sustainable use model, whereby hunting (including capture) of a listed species is regulated / managed for subsistence or commercial use. Once a species is listed in Schedules I-IV, hunting (including capture) of such species is banned, and the possession and trade of such species (including derivatives in the form of trophies and articles) is strictly regulated.[5]

Broadly speaking, offences under the Act can be divided into three categories:

1) **Offence of Hunting (or Picking, Uprooting, etc., of Specified Plants)** – S. 9, 17A, and 2(16)

2) **Offences relating to Unauthorized Possession, Transport and Trade** - Sections 40, 42, 43, 44, 48, 48A, and 49, and Chapter V-A

3) **Offences relating to Protected Areas/Habitat Destruction** – Sections 27, 29, 30, 31, 32, 33-A, 34, 35(6), 35(7), 35(8), 36-A(2), 36-C(2), and 38-V(2).

[1] Section 2(24A)
[2] See Section 9 read with Section 2(16) of the Act. Section 17-A of the Act is the corresponding provision for plants listed under Schedule VI.
[3] See Section 11 of the Act.
[4] See Section 12 of the Act.
[5] See Sections 40, 42, 43, 44, 48, 48A, 49, and Chapter V-A of the Act.

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Discussion of the Act with Reference to Important Judicial Decisions

Definitions

The definitions section of the Act plays a part in setting out its scope in terms of the articles to which it applies. The Act's protection extends to wild animals and captive animals, both of which are defined as animals belonging to a species which is listed in Schedules I-IV of the Act.[6] The Act's provisions on trade, possession and transport of protected species relate not just to captive and wild animals, but also to the uncured trophies, trophies, animals articles, and meat derived from such animals.[7]

In ***Cottage Industries Exposition Limited and Another*** **v.** ***Union of India and Others*** 2007 (143) DLT 477, the Delhi High Court was dealing with a writ petition by a company carrying on a business in shahtoosh wool, which is made from the hair of the Tibetan antelope, a protected species listed in Schedule I of the Act. The petitioner argued that a shahtoosh shawl would not fall within the definition of "animal article" since the definition did not specifically include the word 'hair.' The court refused to accept this contention. After quoting a series of judgments that a statute must be construed so as to avoid absurdity and mischief, the court held that:

> *"In fact, the acceptance of the plea of the petitioner to the effect that the definition of 'animal article' would exclude 'hair' merely because of the definition of 'trophy' including 'hair' within its sweep would lead to an absurd result proscribed by the above judgments of the Hon'ble Supreme Court…… In our view, the definitions of 'uncured trophy', 'trophy' and 'Scheduled animal article' are not separate, distinct and exclusive compartments but are complementary to one another. Any other construction would defeat the object of the Act and the intention of the Legislature."*[8]

Accordingly, any and all parts of a captive or wild animal will either fall within the definitions of meat, uncured trophy (if it has not undergone a process of taxidermy or preservation), trophy (if it has undergone a process of preservation), or animal article (when it has undergone further processing to become an article, such as a shatoosh shawl).

In ***State of Tamil Nadu and Another*** **v.** ***Messrs Kaypee Industrial Chemicals Private Limited and Others*** 2005 AIR (Mad) 304, the Madras High Court allowed the collection of coral for commercial use in lime manufacture. It held that dead pieces or the outer skeleton of a protected marine living organism would not fall within the definition of animal article or wild animal and that therefore its collection was not banned. This judgment is contrary to the Delhi High Courts view in ***Cottage Industries Exposition Limited*** (*Supra*) since as per that view, the dead coral would fall within the definitions of trophy or uncured trophy and would therefore be protected. The judgment was appealed by the State to the Supreme Court where a stay was granted on such collection. Owing to the stay, the Madras High Court declined to allow collection of coral in ***C. Rathinavel*** **v.** ***State of Tamil Nadu and Others*** 2008 INDLAW MAD 1875.

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[6] See Section 2(5) & (36)

[7] Certain other specific items such as "musk of a musk deer", "horn of a rhinoceros', "ivory imported into India", etc., are also mentioned – See Sections 40, and 44.

[8] 2007 (143) DLT 477. The court also referred to the Supreme Court decision dated 22 November 2005 in ***Ashok Kumar*** **v.** ***State of J&K and Ors*** (SLP (Civil) No. 12434 of 2003) which upheld the ban on the shahtoosh trade.

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Hunting

Hunting is given a broad definition in Section 2(16) to cover all acts of killing, injuring, or capturing a captive or wild animal (or damaging or disturbing the eggs or nests of birds or reptiles) and every attempt to do so. Under Section 9, the hunting of all wild animals (i.e., those listed in Schedules I to IV) is prohibited.

Unlike the offence of illegal possession, offences in relation to hunting or illegal trade necessarily involve the prosecution proving the illegal act alleged to be committed by the accused in order to secure a conviction. In ***Rekhchand* v. *State of Madhya Pradesh*** 2008 (4) MPHT 464, the Madhya Pradesh High Court was dealing with a criminal revision petition in which the accused had been convicted for the crime of hunting a leopard. The evidence on record, however, only pointed to the fact that a leopard skin had been recovered from his possession. While discharging the accused, the court held that:

> "*Merely by finding a person in possession of a leather of wild animal, it cannot be presumed that he hunted or killed the animal, especially in the absence of the evidence that the leather was of a recently killed animal… In the absence of evidence establishing the fact of hunting or killing the wild animal by the accused, he cannot be held guilty u/s. 9 read with Section 49A of the Act… It is true that the possession of any animal article, without license or making declaration to Chief Wild Life Warden, is punishable u/s. 39 of the Act, but, unfortunately, no charge for that offence was framed by the Trial Court, therefore, in my opinion, it would not be just and proper to remand the case for fresh trial after about 12-13 years of the commission of the offence.*"[9]

In ***State of Rajasthan* v. *Salman Khan and Others*** 2012 INDLAW RAJ 608, the Rajasthan High Court held that unlawful assemblies formed for the purpose of committing crimes under the Act can be prosecuted under Section 141 of the Indian Penal Code, read with Sections 425 and 429 of the Indian Penal Code. The Court observed that:

> *"In the opinion of this Court, a damage caused to the wild life even if the same cannot be evaluated or calculated in terms of money is definitely a loss to the ecology and as a result thereof, it can be considered to be a loss to the public and society at large… It is the firm opinion of this Court that by the act of using fire arms for killing wild life, the accused committed the offence of mischief as defined in Sections 425 and 429 IPC. Since the Clause Thirdly of Section 141 IPC covers in its ambit, mischief, criminal trespass or other offence..., the provision of Section 141 IPC can very well be applied to an offence of mischief when committed in relation to a wild animal also. Accordingly, the term 'other offence' as mentioned in Section 141 covers in its ambit, an offence under Wild Life Protection Act. Therefore, every member of the unlawful assembly which participates in the act of hunting is definitely liable for being prosecuted for the offence under Section 51 of the Wild Life Protection Act with the aid of Section 149 IPC."*

One of the grey areas involving hunting is the case of accidental deaths of wild animals, or cases where there is an absence of *mens rea* to hunt. Despite the fact that such cases are often registered by State Forest Departments, it is unlikely that the offence under Section 9 applies to such cases and there does not appear to be any higher court judgment on this issue. Accordingly, there may be a need to include a separate offence in the Act with a lower punishment to deal with cases where wild animals are killed due to rash or negligent conduct.

[9] 2008 (4) MPHT 464

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Protected Areas

Chapter IV of the Act deals with the creation and protection of Protected Areas. Sections 27 to 33-A, and Section 34 set out the acts and omissions which are offences in relation to sanctuaries. Many of these provisions are applicable to National Parks as well by virtue of Section 35(8). Section 29 is a general provision prohibiting destruction or damage to wildlife or its habitat in sanctuaries. Section 35(6) is the corresponding provision for National Parks. For any departure from Sections 29 or 35, a permit is required from the Chief Wild Life Warden, which is only to be granted after authorization by the State Government. As per these provisions, such permit is to be authorized only after the State Government has consulted with the State Board for Wild Life (for sanctuaries) or the National Board for Wild Life (for National Parks). However, these statutory provisions have been added to by the Supreme Court, and as a result of its orders dated 9 May 2002 in ***Center for Environmental Law, WWF India* v. *Union of India*** (Writ Petition (Civil) No. 337 of 1995), and 4 December 2006 in ***Goa Foundation* v. *Union of India*** (Writ Petition (Civil) No. 460 of 2004), any non-forest activity falling within sanctuaries, National Parks, and 10 kilometers of their boundaries now requires prior consultation with the Standing Committee of the National Board for Wild Life.[10]

These provisions and the Supreme Courts orders on them have been used to prevent many destructive activities occurring within and around protected areas. In ***Satyapal Verma* v. *State of Jharkhand*** 2004 AIR (JHA) 69, the Jharkhand High Court upheld the Chief Wild Life Warden's order under Section 29 banning the movement of mineral loaded trucks through Betla Wild Life Sanctuary. In ***Kamla Kant Pandey* v. *State of Uttar Pradesh and Others*** 2006 AIR (All) 92, the Allahabad High Court upheld the cancellation of a mining lease falling within Kaimur Wild Life Sanctuary. In ***T.N. Godavarman Thirumalpad* v. *Union of India and Others*** 2006 AIR (SC) 1774, the Supreme Court upheld the Central Empowered Committee's recommendations for the destruction of all fishing tanks and bunds used for pisciculture within Kolleru Wild Life Sanctuary. In ***Maa Dasabhuja Furniture Unit* v. *State of Orissa and Others*** 2006 AIR (Ori) 63, the Orissa High Court, dismissed a petition for grant of a license to a saw mill that was located within 10 kilometers of Chandaka-Damapara Wild Life Sanctuary, as did the Uttarakhand High Court in ***Mohd. Hazi Rafeeq* v. *State of Uttaranchal and Others*** 2006 AIR (Utt) 18 for a saw mill license close to the boundary of Rajaji National Park.

Seizure, Confiscation, and Forfeiture of Property

This area of the Act has seen much litigation before higher courts, mostly by owners of vehicles which have been confiscated for their alleged use in offences under the Act. Under Section 50(1)(c) of the Act, certain officers are given the power to seize items, either in respect of which an offence has been committed (such as captive animals, animal articles etc.), or which have been used for the commission of an offence (such as traps, tools, vehicles, etc.). As per Section 50(4) of the Act, such things seized are to be taken forthwith before a magistrate to be dealt with according to law. Under Section 51(2) of the Act, while convicting a person of an offence under the Act, a court may order that any such item is forfeited to the State Government.

Some confusion is caused by Section 39(1) of the Act which states that certain items (such as captive animals, animal articles, etc.) in respect of which an offence has been committed under the Act, and certain other items (such as traps, tools, vehicles, etc.) which have been used for the commission of an offence under the Act, shall be the property of the State Government. Prior to

[10] See "Guidelines for Taking Non-Forest Activities in Wild Life Habitats", F.No. 6-10/2011 WL, dated December 2012, Government of India, Ministry of Environment and Forests.

the amendment of the Act in 1991, Section 50(2) (which was deleted) also gave certain forest officers the power to release any trap, tool, vehicle, vessel or weapon seized under Section 50(1)(c) to the owner pending trial of the offence. These two provisions led to a line of argument that upon seizure, the items listed in section 39(1) would become property of the State Government, and that a court had no power to order its interim release to its owner under Section 451 of the Code of Criminal Procedure ("**CrPC**").

This line of argument was rejected by decisions of the Madhya Pradesh, Orissa, Uttarakhand, Kerala, Allahabad, and Bombay High Courts which held that items such as traps, tools, vehicles, etc., would not become property of the State Government till there was an order of a competent court finding that the items had been used in the commission of an offence, and that a court may grant interim custody of the property as it sees fit under Section 451 CrPC.[11] The Supreme Court finally settled the debate through two decisions. In ***State of Uttar Pradesh and Another* v. *Lalloo Singh*** 2007 (7) SCC 334, while dealing with the application for the release of a tractor trolley, the court held that in view of the language of Section 50 of the Act, Section 457 of the CrPC had no application to it, but that Section 451 of the CrPC was applicable. The Court observed that:

> *"Mere seizure of the property without any material to show that the same has been used for committing an offence does not make the seized property, the property of the Government. At this juncture, it is also to be noted that under sub-s. (1) of S. 50 action can be taken if the concerned official has reasonable grounds for believing that any person has committed an offence under the Act. In other words, there has to be a reasonable ground for belief that an offence has been committed. When any person is detained, or things seized are taken before the magistrate, he has the power to deal with the same "in accordance with law"… While dealing with the application the Magistrate has to take into account the statutory mandate that the seized property becomes the property of the State Government when the same has been used for commission of an offence under the Act and has been seized. It appears that insertion in sub-s. (4) relating to the intimation to the Chief Wild Life officer or the officer authorized by him is intended to give concerned official an opportunity of placing relevant materials on record before the Magistrate passes any order relating to release or custody. In appropriate cases on consideration of materials placed before him, prayer for such release or custody can be rejected."*[12]

The above view was reiterated by the Supreme Court in ***State of Madhya Pradesh* v. *Madhukar Rao*** 2008 (14) SCC 624 where the court observed:

> *"We have, therefore, no doubt that the provisions of Section 50 of the Act and the amendments made thereunder do not in any way affect the Magistrate s power to make an order of interim release of the vehicle under Section 451 of the Code… Any attempt to operationalise Article 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations leveled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. In our opinion, the High Court has taken a perfectly correct view and the provisions of Section*

[11] See ***Baikuntha Bihari Mohapatra* v. *State of Orissa*** 2001 (107) CRLJ 4151 (although this case pertains to Section 457 CrPC, not Section 451), ***Sheikh Tausif* v. *State of Madhya Pradesh and Others*** 2002 (108) CRLJ 1581, ***Deevan Arjun Singh* v. *State and Another*** 2003 (109) CRLJ 3685, ***Raghuveer* v. *Superintendent and Project Officer, National Chambal Sanctuary and Others*** 2004 (1) MPLJ 258, ***Gurnam Singh and Another* v. *State of Uttaranchal and Another*** 2003 (2) UC 1414, ***Mathew* v. *Range Officer*** 2004 (110) CRLJ 3961, ***Arvind Kumar Dube* v. *State of Uttar Pradesh and Others*** 2005 (3) AWC 2970, and ***Ravindra* v. *State of Maharastra and Another*** 2007 All MR (Cr) 3108.

[12] 2007 (7) SCC 334

39(1)(d) cannot be used against exercise of the Magisterial power to release the vehicle during pendency of the trial."

Simply because a court has the power to order the interim release of property to its owner, does not mean that it is bound to do so. As observed by the Supreme Court in ***Lalloo Singh*** (*Supra*), a Magistrate dealing with an application for interim release must keep in mind the statutory mandate of the Act. Therefore, the aim of the prosecution in a given case is to show good reasons why the property in question should not be released to the owner, i.e., that it has been used for the commission of an offence, and/or that it may be used for further offences. An excellent example of this is the case of ***State of Maharashtra* v. *Gajanan D Jambhulkar*** 2002 (108) CRLJ 349. In this case, the Bombay High Court struck down the order of a Judicial Magistrate allowing release of a jeep to its owner, when it was alleged to have been used in the commission of an offence under the Act. The jeep in this case had a secret compartment, especially designed to conceal and carry weapons. The Court observed that:

"Casual and liberal approach in the matter of releasing the seized property or the vehicle by the Courts which is subject to forfeiture at the conclusion of the trial, is uncalled for as the release of the vehicle, according to us, is likely to frustrate the provisions of the Act. Before the Courts allow the application of the accused for releasing the vehicle on Supratnama, the Courts have to give sound reasons which justify such release of the vehicle, to prima facie exclude the possibility of such vehicle being liable for forfeiture as per S. 51 of the Wild Life Protection Act at the conclusion of the trial. If the material prima facie does indicate involvement of the vehicle in the commission of the offence under the Wild Life Protection Act, the Magistrate would not be justified in ordering the release of the vehicle as the said vehicle would be liable for forfeiture at the conclusion of the trial."[13]

In ***Princl. Chief Conservator of Forests and Another* v. *J.K. Johnson and Another*** 2011 (10) SCC 794, the Supreme Court considered the question of whether on composition of an offence under the Act, the compounding officer has the power to order the forfeiture of the property (a vehicle and weapons in this case) seized in connection with the offence. The court found that the effect of composition was not the same as a conviction or an admission of guilt. It was held that a compounding officer has no power to order the forfeiture of property seized, and that he would have to comply with Section 50(4) and present the property before a Magistrate to be dealt with according to law.

Despite all these judgments in respect of seized property under Section 39, there is still a conception that under the law, all wild animals are property of the State Government. In the recent case of ***Baburao* v. *State of Maharashtra and Others*** (Judgment dated 15 March 2012 in Writ Petition No. 5764 of 2011), the Bombay High Court was dealing with a petition claiming compensation for damage done to crops since the petitioner was unable to take care of his agricultural land due to the presence of tigers. While the High Court rightly held that the petitioner was eligible for compensation, one of the reasons it gave for the same was Section 39 of the Act. After quoting Section 39, the Court observed that:

"Though the provision declares that the wild animals are Government property, in the context of their protection from being hunted, we are of the view that the wild animals should be treated as Government property for all purposes."

[13] 2002 (108) CRLJ 349. Also see ***Atibai and Others* v. *State of Madhya Pradesh*** 2008 (2) M.P.H.T. 76, ***Ayyub* v. *State of Rajasthan*** 2003 (109) CRLJ 2954, and ***Riyasat Ali* v. *State of Uttar Pradesh and Another*** 2010 INDLAW ALL 606.

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Madhukar Rao (*Supra*) and the other judgments mentioned above have been rendered in respect of Section 39(1)(d) (dealing with traps, tools, vehicles, etc.) and not Section 39(1)(a) (dealing with wild animals). However, a reading of Section 39(1)(a) also seems to suggest that only wild animals which: 1) are hunted under a permit; or 2) in respect of which an offence has been committed; or 3) are found dead or killed by mistake; become property of the State Government. Therefore, the simple proposition that all wild animals (including live animals) are property of the State Government because of Section 39 may not be correct.

Possession and Trade of Protected Species

The regulatory regime for possession and trade of protected animal species can be summed up as follows:

For species listed in Schedule I and Part II of Schedule II (the "**Strictly Protected Species**") – These aspects are governed by Sections 40, 42, 43(1) and Chapter V-A of the Act. As a result of these provisions, no wild or captive animal (or animal article or trophy or uncured trophy derived from an animal) listed in Schedule I and Part II of Schedule II can be: a) possessed without an ownership certificate under Section 42; and b) transferred or acquired by any means other than inheritance. The only exceptions to this are the tail feather of the peacock, and captive elephants. The scope of the exception for captive elephants is however, not clear.[14]

For species listed in Part I of Schedule II, Schedule III and Schedule IV – These aspects are governed by Sections 44, 48, and 49 of the Act. Although no hunting of these species is allowed, Section 44 provides for the issue of licenses to taxidermists, eating houses, and dealers[15] in animal articles, trophies, uncured trophies, captive animals, and snake venom of the species listed in these schedules.

By way of an amendment in 1991, the legislature brought "ivory imported into India" within the purview of the Act, as a result of which there was a total ban on the trade of ivory. In ***Indian Handicrafts Emporium and Others* v. *Union of India and Others*** 2003 AIR (SC) 3240**,** the Supreme Court was called upon to decide on the constitutional validity of the ban. The Court upheld the constitutional validity of the Act observing that the restrictions imposed on the trade were reasonable. The Court pointed out that the reason for including "ivory imported into India" was to plug the loopholes in the Act whereby illegal ivory was laundered as legal ivory and traded, resulting in endangering Indian elephants. It held that this was squarely within the competence of the legislature. In ***Balram Kumawat* v. *Union of India and Others*** 2003 AIR (SC) 3268, the Supreme Court used the same reasoning to hold that the ban on ivory trade was applicable even to Mammoth ivory, even though the species is extinct.

The Act applies throughout the territory of India, and therefore the regulatory regime in respect of protected species applies as soon as any item (animal article, captive animal, etc.) lands in Indian Territory. The policy notes to the Export Import policy under the Customs Act, 1962 clearly state that the import and export of wild animals as defined in the Act is prohibited. This is fairly obvious as far as Strictly Protected Species are concerned, simply from the provisions of

[14] See the judgment of the Kerala High Court dated 18 August 2007 in ***Nakeri Vasudevan Namboodiri and Others* v. *Union of India and Others*** (Writ Petition (Civil) No. 30959 of 2003). By this writ petition, an association of captive elephant owners had challenged a ban on sale of captive elephants. The Central Government in this case had submitted that it would amend the law to permit the transfer or sale of captive elephants, and accordingly, the court had not considered the validity of the ban. No such amendment has since been passed, however.

[15] Section 2(11) of the Act defines 'dealer' to include any person who undertakes a sale/purchase in even a single transaction.

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the Act. To give an illustration, a person who buys a tiger skin from abroad and imports it into India will immediately have violated Section 40(2-A) of the Act since he will not have a certificate of ownership for it (the period for making declarations and acquiring certificates has already past). Similarly, a person owning a tiger skin for which he has a certificate of ownership cannot sell it and export it abroad because he would violate Sections 43(1) and Chapter V-A of the Act. The Courts however, have not been uniform in reaching this conclusion.

In ***Zavaray S. Poonawalla* v. *Union of India*** 2003 (159) ELT 44, the Bombay High Court allowed the import of a leopard skin (listed in Schedule I) finding that despite the prohibition in the Export Import Policy, the Regional Deputy Director (Wildlife) was not entitled to enforce it, and that there was no violation of the Act. In ***Commissioner of Customs* v. *Kishan Kumar Kejriwal*** 2011 (263) ELT 357, the Calcutta High Court allowed the import of the shells of Nautilus (listed in Schedule I) without looking at the provisions of the Act or the prohibition in the Export Import Policy.

In ***J.P. Samuel and Company* v. *Union of India*** 2002 (141) ELT 338, the Madras High Court upheld a ban on export of sea fans since they were clearly listed in Schedule I of the Act and fell within the definitions of wild life and wild animal. In ***Zen Clothing Company* v. *Commissioner of Customs ACC, Mumbai*** 2007 (219) ELT 403, the Customs Excise and Service Tax Appellate Tribunal upheld the confiscation and penalty imposed on the importers of python skins (listed in Schedule I) since it was prohibited under the Act. The best enunciation of the law on the subject has been given by the Delhi High Court in ***Samir Thapar* v. *Union of India and Others*** 2010 (171) DLT 33. Here the court was dealing with a petition for the import of a leopard (*Panthera Pardus*) trophy which had been hunted in Africa. The court held that:

> *"To protect certain species of wild fauna and flora and against every exploitation of species through Foreign International Trade, certain regulations were formulated. The import and export of items into India are governed by the provisions of Foreign Trade (Development and Regulation) Act, 1992, and the Foreign Trade Policy. As per Entry No. 4302/1940 of the Foreign Trade Policy, the import of tiger/cat skin is prohibited… Entry No. 4402/1990 is to be read alongwith import licensing note No. 6 read with Section 2(36) of Schedule (I) of the Wildlife (Protection) Act, 1972. As per Note 6, the wild animals include their parts and products, as defined in Wildlife (Protection) Act, 1972, and Schedules (I) to (IV) and the wild animals have been defined under Section 2(36) of Wildlife (Protection) Act, which means any animal specified in Schedules (I) to (IV) and found wild in nature. Perusal of the Schedule shows that Panthera Pardus is listed at Entry No. 16B of Schedule (I) of the Wildlife (Protection) Act, 1972. Thus, a conjoint reading of the Foreign Trade Policy, more particularly Entry No. 4302/1940 the Wildlife (Protection) Act, 1972, read with import licensing Note 6 leaves no room for doubt that there is an express bar in importing Panthera Pardus."*[16]

Given the clear prohibitions contained in the Act, there is little doubt that the law laid down in ***Samir Thapar*** (*Supra*) is the correct position at least in respect of the Strictly Protected Species.

Coming to licensing of dealers for species other than Strictly Protected Species, there is no publicly available data on how many, if any, of these licenses have been issued to such dealers, and for which species across India. This creates doubt about the legality of the trade in these species, where such trade is occurring. In ***Chief Forest Conservator (Wild Life) and Others* v. *Nisar Khan*** 2003 AIR (SC) 1867, the Supreme Court was dealing with a writ petition in the

[16] 2010 (171) DLT 33

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nature of mandamus for the grant of a license under Section 44 of the Act to the petitioner to deal in birds bred in captivity. The court looked at the Wild Life (Protection) Licensing (Additional Matters for Consideration) Rules, 1983 and held that:

> *"When hunting of the birds specified in Schedule IV is prohibited, there cannot be any doubt whatsoever that no person can be granted a license to deal in birds in captivity which are procured by hunting which, as indicated hereinbefore, would also include trapping. It is one thing to say that by reason of breeding of birds in captivity their population is raised, but it is another thing to say that the birds are trapped before they are made captive so as to enable the licensee to deal in them. The latter is clearly prohibited. Rule 3 of the 1983 Rules clearly postulates that the licensing authority is not only required to consider the source and the manner in which the supplies for the business concerned would be obtained but also is required to bestow serious consideration as regards implications which the grant of such license would have on the hunting or trade of the wild animals concerned. When the licensing authority arrives at a finding of fact having regard to the past transactions of a licensee that it cannot carry on any business by reason of breeding of captive birds but necessarily therefore he is to hunt, he would be justified in refusing to grant a license in terms of the provisions of the Act. Unless the provisions of the Act and the Rules are construed strictly and in the manner as observed hereinbefore, the very purpose for which the Act has been enacted would be lost."*

Investigation of Offences

Under Section 50(1) of the Act, certain Forest Officers and Police Officers are empowered to enter, and search any premises, vehicle or vessel without warrant, and may require any person to produce any animal, animal article etc, or any permit or other documentation required by the Act. Where it appears that that an offence has been committed, such officer may seize such animal, animal article, etc., together with any trap, tool, etc., used for committing such offence. Where the officer is not satisfied that a person will appear and answer any charge that may be made against him, he may arrest such person without warrant.

In ***Pu. C. Thangma* v. *State of Mizoram and Others*** 2004 (110) CRLJ 164, the Guahati High Court ordered the Chief Secretary of the Government of Mizoram to take appropriate steps for investigation of a matter in accordance with law when a writ petition revealed that prima facie some offence under the Act had been committed.

By a 2009 amendment to the CrPC, Section 41 now states that a police officer may arrest a person against whom reasonable suspicion exists of having committed a cognizable offence punishable with imprisonment of up to seven years only where he is satisfied that such arrest is necessary for certain reasons, such as to prevent the person from committing a further offence, for proper investigation, etc.[17] Except for a second offence of hunting or altering the boundaries of a tiger reserve, no other offence under the Act carries a maximum penalty of more than seven years imprisonment. In ***Tahawwar* v. *State of Uttar Pradesh and Others*** 2012 INDLAW ALL 2730, a case concerning hunting under the Act, the Allahabad High Court emphasized the importance of strict compliance with the newly amended provisions of the CrPC relating to arrest.

Forest Remand – Under Section 50(4), the accused, along with the things seized must be taken forthwith to a magistrate to be dealt with according to law. Since the Act does not provide for remand of an accused into forest custody for further investigation, a forest officer empowered to

[17] See Section 41 of the CrPC.

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investigate an offence under Section 50(1) of the Act, may apply to a magistrate under section 167 of the Code for further custody of the accused for a period of 15 days when the investigation cannot be completed within 24 hours. The Supreme Court has held, in the case of ***Directorate of Enforcement* v. *Deepak Mahajan and Another*** AIR 1994 SC 1775, that it is not only police officers who can apply for detention of the accused under Section 167 CrPC. Under Special Acts, such as the Act, an officer empowered under that Act may also apply for detention of the accused under Section 167 of the CrPC, when the Special Act does not provide for such detention, provided that the Magistrate is satisfied that:

> *"(1) the arresting officer is legally competent to make the arrest; (2) that the particulars of the offence or the accusation for which the person is arrested or other grounds for such arrest do exist and are well-founded; and (3) that the provisions of the special Act in regard to the arrest of the persons and the production of the arrestee serve the purpose of Section 167(1) of the Code."*[18]

Evidence in Wildlife Cases – Under Section 50(8) of the Act, the Assistant Director of Wildlife Preservation, and officers not below the rank of Assistant Conservator of Forests authorized by the State Government in this behalf are given certain powers akin to a court or tribunal for the purpose of investigation. This includes the power to receive and record evidence. Under Section 50(9) of the Act, such evidence is admissible in any subsequent trial provided it has been taken in the presence of the accused person.

In ***Forest Range Officer, Chungathara Ii Range* v. *Aboobacker and Another*** 1989 (95) CRLJ 2038, the Kerala High Court was dealing with a case of hunting and killing a bison. The High Court overturned the acquittal ordered by the Sessions Court and observed that:

> *"One of the arguments advanced by the learned for the respondents is that the evidence of Forest Officers alone cannot be made the basis of conviction without corroboration by independent witnesses. It is difficult to accept such a wide proposition. The rule of corroboration is a principle of prudence which should not be applied rigidly or punctiliously. If a crime is committed in such a manner that no other person could normally have been present in the vicinity, insistence on the rule of corroboration in such case would maul the cause of justice because such insistence would only help the perpetrator to go scot-free. It should not be forgotten that there is no rule of law that no evidence should be relied on unless there is corroboration. Facts and circumstances may warrant, sometimes, to act on such evidence even without corroboration. Forest is an area where human activities are scanty except the clandestine adventures of poachers. The invaders of forest and wild life usually take care that their poaching techniques go unnoticed by others including wild animals. They adopt devices to keep their movements undetected. Hence it would be pedantic to insist on the rule of corroboration by independent evidence in proof of offence relating to forests and wild life."*

Penalties

Section 51 of the Act sets out the penalties for the violation of its provisions. Penalties vary depending on: a) the Schedule of the animal(s) to which the offence relates; b) the area to which the offence relates (National Park, sanctuary, tiger reserve, core area of tiger reserve); c) the nature of the offence (hunting/altering the boundaries/ other offence); and d) whether the accused is a repeat offender.

[18] AIR 1994 SC 1775

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One issue of concern that needs to be highlighted in the context of penalties is that courts sometimes award less than the minimum punishment for the offence despite finding the accused guilty. As illustrations, in ***State of Uttarakhand* v. *Akbar Ali Ansari***, (Order dated 5 February 2007 of the Judicial Magistrate, Uddam Singh Nagar, in Criminal Case No. 195 of 2006), a case involving the seizure of five unlicensed leopard skins, the Magistrate convicted the accused for One year, three months imprisonment when the minimum sentence for the offence is three years. In ***State of Uttarakhand* v. *Rampal and Harish*** (Order dated 25 March 2006 of the Judicial Magistrate, Haldwani, in Criminal Case No. 1733 of 2004), a case involving the seizure of two unlicensed leopard skins, the Magistrate, convicted the accused for five months, and one and a half months imprisonment when the minimum sentence for the offence is three years. In ***Hikmat Singh Ghatal* v. *Divisional Forest Officer and Another*** 2011 INDLAW UTT 1504, a case involving the seizure of an unlicensed leopard skin, the Uttarakhand High Court reduced the sentence of the accused from three years to time already undergone (more than two years) when the minimum sentence for the offence is three years.

Attempts and Abetment

Under Section 52 of the Act, an attempt or an abetment of an offence under the Act is deemed to be equivalent to committing the offence itself. As was seen earlier, hunting is defined to also include an attempt to hunt. This is of particular relevance to preventing wildlife crime before it happens. It often occurs that poachers are caught with animal traps but are rarely prosecuted for it unless it occurs inside a protected area (since Sections 31 and 32 are specific offences that will cover this). There is a distinction between preparation to commit a crime and an attempt to commit a crime. While the former is not punishable, the latter is.

In ***Shaikh Ahmad Hussain and Another* v. *State of Maharashtra*** 1991 Cr LJ 2303, a case concerning cow slaughter, the Bombay High Court observes of the distinction between preparation and attempt that "in a situation where all necessary steps have been taken for the process of slaughter, the mere fact that the accused were stopped short of the actual commission would not, in my judgment, be sufficient to draw any such distinction."[19] The distinction between preparation and attempt is a thus a fine one that is to be applied on a case to case basis. In the right circumstances, if there is enough evidence available, it may be possible to successfully prosecute the possession of traps or weapons even outside protected areas as attempts to hunt. This is especially so since many protected species are found outside protected areas. It may not be necessary for a poacher or a hunter to actually enter a protected area and set a trap. Also of relevance to this issue is the Rajasthan High Court's judgment in ***Salman Khan and Others*** (Supra), which holds that Section 141 of the Indian Penal Code relating to unlawful assemblies is applicable to offences under the Act.

Compounding of Offences

Section 54 of the Act empowers certain officers to compound offences for which there is no minimum imprisonment term prescribed for up to a maximum amount of twenty five thousand rupees. In ***J.K. Johnson*** (Supra) the Supreme Court held that the effect of compounding was not the same as that of a conviction, and that any property seized in respect of the alleged offence must produced before the competent court to be dealt with according to law as per Section 50(4).

[19] 1991 Cr LJ 2303.

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Cognizance of Offences

A competent court is allowed to take cognizance of an offence under the Act only on the complaint being filed by certain authorized officers, or any person who has given such authorized officers at least sixty days notice of his intention to file a complaint. The procedure for the trial of the case is the same as that of a Magistrate taking cognizance of a complaint filed under Section 200 of the CrPC.

In ***Moti Lal* v. *Central Bureau of Investigation and Another*** 2002 AIR (SC) 1691, the Supreme Court was called upon to decide whether the Central Bureau of Investigation ("**CBI**") had the power to investigate an offence and file a complaint under the Act, when the Delhi Government had issued a notification empowering the CBI to investigate wildlife offences. The contention of the accused was that the Act was a self contained code and that therefore, the CBI had no power to file a complaint since they were not mentioned in Section 55. The Court observed the officers of the police were specifically empowered to investigate offences under Section 50(1) of the Act. It also held that the Act was not a self contained code, stating that:

> *"For trial of offences, Code of Criminal Procedure is required to be followed and for that there is no other specific provision to the contrary. Special procedure prescribed is limited for taking cognizance of the offence as well as powers are given to other officers mentioned in S. 50 for inspection, arrest, search and seizure as well of recording statement. The power to compound offences is also conferred under S. 54. Secton 51 provides for penalties which would indicate that certain offences are cognizable offences meaning thereby police officer can arrest without warrant. Sub-section (5) of S. 51 provides that nothing contained in S. 360 of the Code of Criminal Procedure or in the Probation of Offenders Act, 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 5-A unless such person is under 18 years of age. The aforesaid specific provisions are contrary to the provisions contained in Code of Criminal Procedure and that would prevail during the trial. However, from this, it cannot be said that operation of rest of the provisions of the Code of Criminal Procedure are excluded."*[20]

The provisions of the CrPC are thus generally applicable to the investigation and trial of wildlife offences unless specifically contradicted by the Act. This principle has been upheld again in ***Madhukar Rao*** (*Supra*) and ***J.K. Johnson*** (*Supra*).

It is to be noted in respect of filing complaints under Section 55, that the concerned officer/authority filing the complaint should be specifically authorized to do so by either the Central or State Governments. In ***Ashwini Kumar Bhardwaj* v. *State of Rajasthan*** 2002 (108) CRLJ 179, the Rajasthan High Court quashed proceedings in a case in which a challan had been filed by the Station House Officer of a Police Station, when such officers had not specifically been authorized to file complaints for wildlife offences. In ***S. Bylaiah* v. *State by Bannerghatta Police*** 2008 (4) KarLJ 40, the Karnataka High Court quashed proceedings in a case in which the complaint had been filed by the police, but not by an officer of the rank specified by the State Government notification. In ***Mahendra Panwar* v. *State of Uttarakhand and Another*** 2012 INDLAW UTT 318 an authorized police officer had filed both a chargesheet under the CrPC, as well as a complaint under the Act. The Court ordered that both shall stand merged, and that the trial would proceed on the basis of the complaint filed under the Act.

[20] 2002 AIR (SC) 1691

Police officers or any other officers not mentioned in Section 55 can thus file complaints under the Act, if they have been specifically authorized to do so by the State or Central Governments.

Reversal of the Burden of Proof

Under Section 57 of the Act, once the prosecution has proved that an accused is in possession of a captive animal, animal article, meat, trophy, uncured trophy, specified plant, or part or derivative thereof, the burden of proving that he is in legal possession of such item shifts on to him. As has been seen earlier, this reversal only applies to the offence of unauthorized possession, and the offences of hunting or illegal trade will have to be proven separately.

In ***Babu Lal and Another* v. *State and Others*** 1982 (88) CRLJ 41, the Delhi High Court was dealing with a case involving the seizure of six leopard skins and one leopard cat skin. The accused contended that in line with the reasoning of the Supreme Court in ***Pabitar Singh* v. *State of Bihar*** 1972 AIR (SC) 1899, in order to prove that the accused had a culpable state of mind in cases in which mere possession of an article is an offence, it is necessary to show that there was reason to believe that the accused was aware of the existence of the article. While agreeing with this, the court observed that in view of Section 57 of the Act, as long as simple possession and recovery are proved by the prosecution, the burden would shift upon the accused to prove that he was not in conscious possession of the article and was not aware of its existence. It found that accused had not been able to rebut the presumption, and dismissed their revision petitions.

Schedules to the Act

Since the Act is a penal legislation, it is important that the crimes that it defines are clear so that a person is not punished for something he did not know was a crime. One of the key areas for clarity *vis-a-vis* the Act are the species that are listed in its Schedules. Most of the items in the Schedules are named by both a common name for the animal, as well as a scientific name. The scientific name of a species (or a family or genus) is always clearer in its application than the common name will be. It is therefore important that Courts, while interpreting the items in the Schedules go by the scientific classification rather than the dictionary or common meaning. Good examples of this are the approach of the court in ***J.P. Samuel and Company*** (*Supra*) and ***Samir Thapar*** (*Supra*).

On the other hand, in the case of ***Mohd. Rahamatulla Hussain* v. *State of Andhra Pradesh*** 2006 INDLAW AP 466**,** the Andhra Pradesh High Court was dealing with a case where some persons were found to have hunted what were claimed to be rabbits. No species of wild rabbits are found in India, whereas hares are protected under Schedule IV of the Act. The Court looked at the encyclopedia meanings of hares and rabbits and held that the accused had not killed a protected species. Given the facts of the offence though (the accused were found out at night hunting), it appears improbable that the accused were hunting rabbits, since they are not found in the wild in India, whereas hares are. Although the mistake in this case appears to have been committed by the prosecution by averring that the accused had hunted a rabbit, it serves as good illustration as to why both the prosecution and the Court should insist on identifying a seized item by its scientific classification, rather than a common or dictionary name.

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