

Wild Life Act - Procedures

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First report

- In conventional crimes, investigation starts with registration of the case as First Information Report (FIR). Recovery of material evidence (stolen property, weapons, vehicles etc) takes place only after registration of the case. However, in wildlife crime cases, the seizure of the wildlife/ wildlife article or apprehension of the accused/suspect may take place before registration of the case.
- In other words, in wildlife offences, investigation may start with lodging of a seizure / **apprehension report or the offence report, in the jurisdictional** court, by an authorised officer, who makes such seizure or arrest. In different States this report is known by different names such as the **Preliminary Offence Report (POR), H-2 Case, Offence Report, First Information Report (FIR), Seizure Intimation etc.**
- However, it has been observed that some of the judicial officers who are new to wildlife crime cases doubt the legitimacy of such reports and insist on FIR/POR Wildlife Offence Report (WLOR). **The Wildlife Offence Report should be prepared under Section 50(4) of the Wild Life** (Protection) Act, 1972

Filing Complaint u/s 55 of Wild Life (Protection) Act, 1972:

- Competence of an officer to file the complaint under section 55 of Wild Life (Protection) Act, 1972, is a matter of prime importance. The complaint has to be filed primarily by the Director of Wildlife Preservation or by any officer authorised by the Central Government or by the Chief Wildlife Warden or by any other officer authorised by the State Government.
- Therefore, before filing the complaint, the officer filing the complaint should ensure that he is authorised to file the complaint as envisaged under section 55 of the Act.
- If the accused is in judicial custody, the complaint should be filed within 60 days from the date of arrest of the accused. In case of more than one accused, 60 days period starts from the date of arrest of the first accused.
- Statements of all the witnesses, including the official witnesses, recorded u/s 50(8) of the Act, as per the list of witnesses, confessional statements of the accused and statements recorded by the Magistrate u/s 164 Cr.P.C, if any, should be filed along with the complaint.
- No offence for which a minimum period of imprisonment has been prescribed in Section 51 of WLP Act 1972, shall be compounded.

Who can lodge FIR

- An Officer In charge of a Police Station is bound to lodge an FIR and investigate the case like any other cognizable offence.
- As per Section 50 of the Wild Life (Protection) Act, 1972, the Director of Wildlife Preservation or any other officer authorised by him in this behalf or the Chief Wildlife Warden or the authorised officer or any Forest Officer or any Police Officer not below the rank of Sub Inspector are empowered to enter into any place where the wildlife materials are suspected to be kept, conduct search for such wildlife materials and seize the same, arrest and detain the accused or the suspect. It is to be understood that all the actions together constitute investigation within the legal frame work of the Wild Life (Protection) Act, 1972.
- **However, courts shall take cognizance of any offence against the Act only on the complaint** submitted by any person specified under Section 55 of the Act. Therefore, if Police officers in the State concerned are not authorized to file complaints under Section 55 of the Act, the Police report is to be submitted in the Court as complaint through an authorized forest officer. (Director of WL Presrvation, Chief Wild Life Officer, other officer)
- Once a complaint is filed in court, no further investigation will be conducted without the direction of the Court.

Report contents

- Every WLOR should be assigned a serial number maintained year wise eg: WLOR No. 1/2012 of _____, dated _____, Forest Range, Division/TRs)
- Date and time of receipt of information at the Forest Range or detection of the offence should be mentioned in the WLOR.
- WLOR should be prepared only on the standard format. All columns in the WLOR should be duly filled. Correct Sections of law should be applied. Address, present and permanent, parentage, age, sex etc of all the known accused/ suspects are to be mentioned in the WLOR.
- If the accused/suspects are not known, the same should be mentioned in the WLOR.
- In case of involvement of unknown accused, the words “and other unknown accused” should be mentioned after the list of the known accused.
- Information part of the WLOR should be in simple language and without any ambiguity. It should provide sufficient grounds for proceeding against the accused.
- Details of the wildlife involved, both common name and scientific name, Schedule under which the animal is listed in the WL (Protection) Act, quantum of punishment for the offence etc., should be incorporated in the information part. Name and rank of the Investigating Officer, officer who made the seizure and the officer who wrote the WLOR should be mentioned in the WLOR.
- Delay in lodging of the WLOR should be avoided. In exceptional circumstances, if delay occurs, reasons for the same should be explained in the WLOR.
- Copy of the WLOR should be sent to the immediate supervisory officer and CWLW or officer authorised by him, without delay

Search & seizure guidelines

- Search and seizure should be made as per the provisions of Section 50 of Wild Life (Protection) Act, 1972. Although the Wild Life (Protection) Act, 1972, gives the power of entry, search, arrest & detention to the authorized officer **but procedure prescribed under Section 100 (Cr.PC) 103 - BNSS**, like conducting the search in the presence of two **independent witnesses**, preparing **a list of things seized during the search**, **conducting the search of women occupants using women officials**, **handing over copy of the Search list to the occupant of the place searched etc.** should be followed strictly.
- Every fact and event related to the search and seizure, right from the time of receipt of relevant information/intelligence, should be reduced into writing in Search and Seizure Memo.
- The Search and **Seizure Memo should be prepared at the scene of crime/scene of occurrence.**
- Search should be conducted in the presence **of independent witnesses**. For this, **services of government servants can also be obtained**. If government servants are not available, two respectable persons from the **locality should be associated as independent witness.**

Checklist

- A preliminary **statement of the accused should be recorded immediately after the search, in presence of independent witnesses.**
- All physical parameters of the **articles like colour, texture, size, (length & breadth) odour/smell, and general condition of the articles,** should be incorporated in the Search and Seizure Memo.
- In case of skins, thorough visual **examination with regard to presence of traces of any preservatives, cuts, bullet entry points etc should be conducted and observations made should be incorporated in the Search and Seizure Memo.**
- Search and Seizure Memo is an important piece of evidence which needs to be - It should be prepared in **simple language without any ambiguity.** Care should be taken to **avoid over writings, alteration etc.**
- All the **Forest Range Offices should maintain a Diary** wherein receipt of all such information should be recorded with the time of receipt, details of the information etc.
- Under the provisions contained in section 72 of the Indian Forest Act 1927, the authorized forest officer can enquire into the offences, call witnesses, record statements etc.. Hence all such forest officers can also enquire into the offence related to Wild Life.

Police and CBI to enquire

- In a case CBI v/s Moti Lal (2001), Supreme Court interpreting the opening words of section 50 (1) “notwithstanding any thing contained in any other law for the time being in force”, has held that **CBI and Police Officers can also enquire into the wild life offences. It clearly implies that the officers authorized under Indian Forest Act can also enquire into the offences under Wild Life (Protection) Act and use of provisions under Indian Forest Act for enquiry is in no way illegal or beyond jurisdiction.**
- On commission of an offence, the aim of the enquiry officer should be that the culprit gets maximum punishment and for it he should use provisions contained in relevant sections of various prevalent laws and Acts. **It has to be borne in mind that a special Act for wild life, does not forbid or restrict the use of provisions of the other Acts.**
- Any evidence recorded under Section 50(1)(d) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in this presence of the accused person.
- Under the powers vested vide **section 72 of the Indian Forest Act statement if recorded in presence of the accused person and with** chance given to him for due crossexamination, are important evidence in a **criminal case and can be used before** the Magistrate. (Law Journal 1960-comments Sahjan Singh v/s State of Madhya Pradesh).

Search - Law

- When a search is to be conducted? Sub Section (1) of Section 50 of the Wild Life (Protection) Act states that: “Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wildlife Warden or the authorised officer or any forest officer or any police officer not below the rank of a Sub - Inspector may, if he has reasonable grounds for believing that any person has committed an offence against this Act.....”
- Therefore, any Forest Officer or Police Officer/authorised officer, conducting a search should have reasonable grounds to believe that the person whose body or residence/office or vehicle is to be searched has committed an offence under Wild Life (Protection) Act, 1972. In other words, reasonable grounds to believe an offence under this Act has been committed are a prerequisite for conducting a search. Importance of this provision is to be understood in the light of Section 53 of the Act, wherein punishment for wrongful seizure is provided. Therefore, utmost care should be taken while preparing the Search and Seizure Memo to explain the reasons for conducting search.
- Production of all seized materials, vehicles, traps, tools, weapons etc in the jurisdictional court along with the WLOR as provided under section 50(4) of WLP Act 1972

Interrogation

- Skillful interrogation of the accused/suspect is essential for any successful criminal investigation. In order to get further leads, preliminary interrogation of the accused should be conducted at the seizure site. He should be interrogated further, in detail subsequently, and his statement should be recorded by an authorised officer. Such statement of an accused recorded by a forest officer will be extra - judicial confession of the accused.
- As provided in Section 50(9) of Wild Life (Protection) Act, 1972, the evidence recorded by the authorised officer under Section 50(8) (d), in the presence of the accused, is admissible as evidence.
- As far as possible the confession should be recorded in same language and exact words told by the accused. Once it is recorded, the statement should be read over to the accused in the language in which it was made and explained.
- Interrogation of the accused/suspect should be done at the time of search and information revealed by him should be recorded in the Search and Seizure Memo. Interrogation should include details about source of procurement, mode of transportation, details of payments, details of prospective buyers, brokers or intermediaries involved in the trade, previous transactions made by him, mobile phone numbers of the accused and his contacts, his involvement in other criminal cases, other wildlife articles hidden elsewhere either by him or others and valid documents for possession of the wildlife or articles, if any

Witness examination

- Subsequent **search if required during the further course of investigation** should be conducted only with a Search Warrant as may be issued by the authorised officer mentioned in **Section 50(8)** of the Wild Life (Protection) Act, 1972 - **Assistant Director of Wild Life Preservation or Wild Life Warden** shall have the powers, for purposes of making investigation into any offence against any provision of this Act,
 - (a) to issue a search warrant;
 - (b) to enforce the attendance of witnesses;
 - (c) to compel the discovery and production of documents and material objects; and
 - (d) to receive and record evidence
- Section 50(9) states that any evidence recorded as above shall be admissible in any subsequent trial before a **Magistrate provided that it has been taken in the presence of the accused person.** The expression **“shall be”** makes it a binding clause on the subsequent trial to be conducted by **the Magistrate having jurisdiction, helps court to frame charge.**

Collection of documentary evidence:

- **Section 50(8) (c)** of WLP Act empowers the authorised officers to compel the **discovery and production of document and material objects**.
- However, collection of documentary evidence is often not given due importance in the investigation of wildlife crimes. Investigation about the Bank account of the accused should be done in every case where the accused is having Bank accounts.

Best evidence

- Section 25 of the Indian Evidence Act provides that the statement and admittance of offence before the police will not be admissible in the court. As a forest officer is not a police officer, hence provision of section 25 of Indian Evidence Act will not apply in his case.
- Dr. Enrico D" Suja V/s State 1995 FTL 72 (Bom) High Court decreed that the confession statement given by the accused before the Range officer, will be admissible in the court because as the Range Officers is not a Police Officer, the provisions of section 25 and 30 of the Evidence will not be applicable on his case.
- State V/s Banku Lal Goku Lal Shah 1955 NUC (Bom) 4492- High Court ruled that a forest officer is competent to record statement as per section 72 of the Indian Forest Act, and those are admissible in any sequent trial before the Magistrate. Hence the confession statement given by the accused before a forest officer will be admissible before the court.

Indian Forest Act, WB Amendment - 1988

- Section 41 – Of the Control of trade, possession and transit of timber and other forest produce
- Section 52A – Penalty for forcibly opposing to seizure
- Section 58 - ... if the opinion of the officer is such that Magistrate could not be informed then – sale and deposit in govt treasury and send report
- Section 59A – (30 days) Confiscation by forest officer of forest produce in case of forest offence - Forest-officer or the Police-officer seizing the timber or other forest-produce under sub-section (1) of section 52 shall, without any unreasonable delay, produce the same, together with all tools, ropes chains, boats, vehicles and cattle used in committing the offence, before an officer of a rank not inferior to that of an Assistant Conservator of Forests, authorised by the State Government..
- (3) - Where any timber or other forest-produce which is the property of the State Government is produced before an authorised officer under subsection (1) and the authorised officer is satisfied that a forest-offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence.
- 59B – Issue of Notice to owner to ask for objections
- 59C – Revision – Conservator of forests
- 59D – Appeal – District Judge

Offences

- Hunting of Wild Animals (Included in Schedule 1 to 4) Section 9
- Illicit entry into sanctuary. Section 27
- Destroying or damaging the wild life, forest produce, habited and stopping or diverting of water flow in sanctuary – section 29
- Causing fire in sanctuary - 30
- Entry into sanctuary with weapons – section 31
- Teasing, molesting, injuring or feeding in a zoo - section 38 (5)
- Cook or serve meat of wild animal in any hotel or eating house – section 44 (8)
- Trade or commerce of trophies, animal articles derived from scheduled animals (animal listed in schedule 1 or part II of schedule 2 – section 49 (A)
- Destroying, exploiting or removal of any wild life including forest produce or destroying or damaging habited of any wild life or stopping or diverting flow in any national park - section 35(8)
- Illicit grazing in national Park – section 35 (3)

3. PENALTY IN WILD LIFE OFFENCES

Section 57 of Wild Life (Protection) Act 1972 prescribes penalties for various offences under that Act. They are as under-

S. No.	Offence	Penalty	As per section 468 of Cr.P.C. time limit for prosecution
1.	(a) contravening any provision of the Act (except chapter V-A and section. 38J) or Rule or order made there under	Imprisonment up to 3 year or fine up to Rs. 25,000.00 or both.	3 Years.
	But (b) It the offence pertains to schedule 1 or part II of schedule 2. Or Pertains to hunting in national park or sanctuary. Or Pertains to changing the boundary of national park or sanctuary.	Imprisonment minimum 3 years maximum 7 years and also fine not less than Rs. 10000.00 Offence Non- Bailable	No time Limit.
	(c) It the offence mentioned in (b) above is done second time or is repeated.	Imprisonment minimum 3 years maximum 7 years and also fine not less than Rs. 25000.00 Offence Non - Bailable	No time limit.
2.	Offence pertaining to chapter V-A and animals or trophies pertaining to schedule I or Schedule 2 part II	Imprisonment minimum 3 years maximum 7 years and fine not less than Rs. 10,000.00 Offence Non- Bailable	No time limit.

		Non- Bailable	
3.	Offence pertaining to section, 38J (harassing animals in zoo).	Imprisonment up to 6 months or fine up to Rs. 2000.00 or both Offence Bailable	One Year.
4.	Any offence in core area of tiger reserve or hunting in tiger reserve or changing the boundary of the tiger reserve.	Imprisonment minimum 3 years maximum 7 years and fine minimum Rs. 50,000.00 or maximum Rs. 200,000.00 Offence Non- Bailable	No time Limit.
5.	On Proving of the offence mentioned above in (4) for the second time or on further repetition.	Imprisonment minimum 7 years and fine minimum Rs. 5.00 Lakh and maximum Rs. 50.00 lakh. Offence Non- Bailable	No time limit
6.	By abetting or contravening in offences mentioned above in(4) and (5)	Punishment equal to the offender Offence Non- Bailable	No time Limit.