

Frequently Asked Questions (FAQ)

from the

Wildlife Legal Help Centre

Freeland India

A compilation of wildlife law questions and answers by legal experts, handled by the Wildlife Legal Help Centre of Freeland India.

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Abbreviations

WLPA – Wild Life (Protection) Act, 1972

CrPC – Criminal Procedure Code, 1973

Jurisdiction

Q1 Do forest officers have jurisdiction to raid revenue towns?

A Only territorial forest officers have jurisdiction over revenue towns. If an officer of the Wildlife Division wants to raid a house or arrest a person in a revenue town, then the officer has to submit a written report regarding it to the police station having jurisdiction over the area and must then be accompanied by the police officers.

Q2 Do forest officers have jurisdiction under the Arms Act, 1959?

A No, the Forest Officers do not have jurisdiction under the Arms Act, 1959. They can seize the weapon but cannot file a complaint under the Act.

Q3 Do forest officers have jurisdiction under the Indian Penal Code?

A No, forest officers do not have jurisdiction under the Indian Penal Code. In the rare case that a person is arrested for an offence that attracts punishment under the Indian Penal Code, but not under WLPA, that person must be handed over to the police station having jurisdiction.

Arrest and Detention

Q4 Who can make an arrest?

A Under Section 50 of the WLPA, the Director, the Chief Wild Life Warden or any officer authorized by them, or any forest officer or any police officer of or above the rank of a sub – inspector, can arrest without warrant and detain a person

- i) if they have reasonable grounds for believing that the person has committed an offence against this Act and there is reason to believe that the person will abscond, or
- ii) if the person is doing an act for which a license or permit is required under WLPA, and the person fails to produce it, unless the person produces his name and address and satisfies the officer that s/he will answer any summons or other proceedings which may be taken against him/her.

The offender then has to be taken before a Magistrate to be dealt with according to law.

Under Section 43 of the CrPC, any private person can arrest any other person who commits a non-bailable and cognizable offence in his/her presence, or is a proclaimed offender. The offender must then be handed over to a police officer or must be taken to the nearest police station.

Q5 Can an arrest be made by a private person?

A Under Section 43 of the CrPC, any private person can arrest any other person who commits a non-bailable and cognizable offence in his/her presence, or is a proclaimed offender. The offender must then be handed over to a police officer or must be taken to the nearest police station.

Q6 What is the difference between 'arrest' and 'detention'?

A In **detention**, a person can be taken into custody without any criminal charges against him/her if there is reasonable grounds to believe that s/he might be a threat or s/he may abscond if let go.

Section 50 of the Wild Life Protection Act grants the Director, the Chief Wild Life Warden or any officer authorized by them, or any forest officer or police officer of or above the rank of a sub – inspector to detain a person if they have reasonable grounds for believing that the person has committed an offence against this Act. Under sub – section 4, such person has to be taken before a Magistrate to be dealt with according to law.

Article 22 of the Constitution provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of arrest, excluding the time necessary for the journey from the place of arrest to the Magistrate's court, and cannot be detained beyond that period without the authority of the Magistrate.

For a person to be **arrested**, s/he has to be charged with a specific crime. Once arrested s/he can be kept in custody to investigate the criminal charge against him/her.

Section 57 of the CrPC provides that a person who has been arrested without a warrant must not be detained for a period of more than 24 hours, unless by a special order of a Magistrate, and must be brought before a Magistrate within that period (exclusive of the time necessary for journey from the place of arrest to the Magistrate's court).

Q7 What must be done if the accused is a foreign national?

A The arrest of a foreign national must be intimated to the consulate of his/her country.

Q8 Can a person be booked for hunting if he is found holding a snare within the protected area?

A Yes, Section 2(16) of the WLPA 1972 defines 'hunting' and includes an attempt to capture, kill, poison, snare or trap a wild animal within its definition. Therefore, if a person is caught within the protected area and found in possession of a snare, s/he can be booked under the Act.

Q9 If there is conflict in provisions under the Criminal Procedure Code, 1973 and the Wild Life (Protection) Act, 1972 in matters of arrest, etc., which would be binding?

A Being a special Act, the provisions of the WLPA, will hold precedence over the CrPC in matters relating to arrests etc. Section 50 of the WLPA, which deals with power of entry, search, arrest and detention, also reads as "notwithstanding anything contained in any other law for the time being in force".

Q10 How do you calculate the period of 24 hours within which the detained/arrested person has to be produced before a Magistrate?

A According to Section 57 of CrPC, a person who has been arrested without a warrant must not be detained for a period of more than 24 hours, unless by a special order of a Magistrate, and must be brought before a Magistrate within that period (exclusive of the time necessary for journey from the place of arrest to the Magistrate's court).

Seizures

Q11 What needs to be done to prove that the gun was in working condition when seized from the accused?

A The gun should be taken to the district armory. The armorer report should include all the details – whether the gun was in working condition or not, its serial number, manufacturer, whether the gun was used and how etc., and the trigger sealed. This report is presented as part of the ballistics report before the court.

Q12 Can vehicles confiscated by the Forest Department be considered government property, and can the department refuse to release them?

A Under Section 39 of the WLPA, any vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provision of this Act becomes the property of the State Government.

In every forest and wildlife offence the burden to prove is always on the accused. Therefore, the material/vehicle once seized need not be released. If at all it is released it has to be for a very valid reason and in exceptional cases. All that the forest officer has to do is to seize the material and refuse to release it. Let the accused go to court and get a court order which, if at all, is obtained, can be challenged at a higher court.

(See State of Karnataka vs. K. Krishnan, Supreme Court of India, 2000)

Q13 On whom does the burden of proof lie as to ownership of a vehicle used in the commission of the offence if the owner alleges that the vehicle is stolen property?

A According to Section 110 of the Indian Evidence Act, if the owner alleges that the vehicle in question had been stolen from him, s/he has to provide proof of the same i.e. a copy of the FIR s/he has filed before the police station reporting the theft of his/her car.

Q14 Can a wild animal meat be identified once it has been boiled and where can it be tested?

A It is always better to collect other evidence such as animal hooves, hair, other body parts, blood and other samples etc. along with the meat. They can then be sent to the nearest recognized forensic lab for testing.

Q15 Do forest officers hold any immunity for acts committed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989?

A No, an officer who has committed an offence under the Act cannot be protected. For example, no officer can wrongfully dispossess a member of the SC/ST of their land, or premises (Section 3.1(v)); intentionally insult or intimidate with intent to humiliate a member of SC/ST (Section 3.1(x)); assault or use force to any woman belonging to SC/ ST with intent to dishonour or outrage her modesty (Section 3.1(xi)); or force a member of SC/ST to leave his house, village or place of residence (Section 3.1(xv)).

Advisory: During any raid, it is always advisable to take uncut video footage of the whole process of search and seizure. The video must be started before entering the house.

*Also see Q31

Electronic Evidence

Q16 What is electronic evidence?

A Electronic evidence is any evidence or document in an electronic form, such as e-mail, sms, multimedia message etc. The Indian Evidence Act, 1872 and Information Technology Act, 2000 grant legal recognition to electronic records and evidence submitted in the form of electronic records. They further lay down a blanket permission for records not to be denied legal effect if they are in electronic form as long as they are accessible for future reference.

Q17 What is a communication device?

A According to Section 2(ha) of The Information Technology Amendment Act, 2008, "communication device" means cell phones, personal digital assistance (PDA) or combination of both or any other device used to communicate, send or transmit any text, video, audio or image.

Q18 Is electronic evidence admissible in court?

A Yes. The Evidence Act has amended the definition of 'Evidence' in Section 3 to state that "*Evidence' means and includes... documents including electronic records produced for the inspection of the Court*"

Further, Section 4 of the the IT Act 2000 provides for the legal recognition of electronic records and states that "*Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-*

- a) rendered made available in an electronic form; and*
- b) accessible so as to be usable for a subsequent reference."*

Q19 How useful is electronic evidence for any prosecution?

A The evidentiary value of an electronic record totally depends upon its quality. The Indian Evidence Act has widely dealt with the evidentiary value of the electronic records under sections 65A and 65B. Also, according to Section 3 of the Act, "evidence" means and includes all documents including electronic records produced for the inspection of the court and such documents are called documentary evidence. Thus, the section clarifies that documentary evidence can be in the form of electronic record.

Q20 Does Electronic evidence need expert verification?

A When evidence of an electronic record is to be given, a certificate containing the particulars prescribed by 65B of The Evidence Act, and signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities, would be sufficient evidence of the matters stated in the certificate.

Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such nature that it is not easily movable. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Indian Evidence Act.

Q21 What is the recognition granted to SMS, MMS, emails etc by the courts?

A The position of electronic documents in the form of SMS, MMS and E-mail in India is well demonstrated under the law and the interpretation provided in various cases. In *State of Delhi v. Mohd. Afzal & Others*, it was held that electronic records are admissible as evidence. If someone challenges the accuracy of a computer evidence or electronic record on the grounds of misuse of system or operating failure or interpolation, then the person challenging it must prove the same beyond reasonable doubt. The court observed that mere theoretical and general apprehensions cannot make clear evidence defective and inadmissible.

Confession and Statement

Q22 What is the difference between a judicial confession and an extra-judicial confession?

A A judicial confession is one given before a Magistrate. Under Section 50 (8) and (9) of the WLPA, forest officers of the rank Assistant Conservator of Forests (ACF) and above are allowed to record evidence, and this evidence is admissible in court. A confession is a type of evidence. Hence a confession made before a Forest Officer of ACF or higher rank is admissible as evidence in court. In case of police officers, a confession must be made in the presence of a magistrate to be admissible in court.

(See *Forest Range Officer vs. Aboobacker and Anr*, Kerala High Court, 14 Mar 1989)

Q23 How should the statement of the witness be recorded?

A

1. If a statement is given orally then it must be recorded in writing.
2. The statement must be recorded in first person.
3. It must have all the details that will be helpful for prosecution.
4. It should not be in the form of Questions and Answers.
5. If the witness is hearing or speech impaired, then the forest officer must get it in writing and the witness will be examined with the help of sign language.
6. Eye witnesses and material witnesses must be examined.
7. If the witness is not available, the witness cannot be examined for non – availability.
8. Delay should be avoided.
9. The witness should not be threatened or induced.
10. The witness should be allowed to engage a lawyer.

Q24 Can a conviction be given based on only the confession statement?

A Only if the confession is made before a Magistrate will it be enough to get a conviction, if not, then there has to be other corroborating evidence to prove his guilt, i.e. sufficient oral and documentary evidence on record to prove the guilt of the accused beyond reasonable doubt.

(See *Sansar Chand vs. State of Rajasthan*, Supreme Court of India, 2010)

Q25 Can the statements of the accused be used to implicate the middleman and the poaching ring head?

A It must be kept in mind that in many cases related to illegal wildlife trade/animal trafficking, it is not easy to get direct evidence particularly against the leader of the gang. If, along with the statements, there is enough corroborating evidence, i.e. sufficient oral and documentary evidence on record to prove the guilt of the poaching ring head/ other members of the gang, beyond reasonable doubt, they can be convicted.

(See *Forest Officer, Garhwal Forest Division vs. Smt Rani*, 2012 and *Sansar Chand vs. State of Rajasthan*, Supreme Court of India, 2010)

Investigation

Q26 Who can issue a search warrant?

A Under the Section 50(8) WLPA, only an Assistant Conservator of Forest or an officer above the rank can issue a search warrant.

Q27 Who is an Investigation Officer? Who can investigate a case?

A Under Section 156 of CrPC, an officer in charge of a police station can investigate any cognizable case without the order of the Magistrate.

Under Section 50(8) of the WLPA, 1972, an Assistant Director of Wildlife Preservation or Assistant Conservator of Forests, and all officers above these ranks have the power to make an investigation into any offence under the WLPA.

Q28 When does an investigation start?

A The first information given by wireless or any other means to the Assistant Conservator of Forest (ACF) about an offence is the starting point of an investigation. If the investigation is not conducted by the ACF, then he/she has to delegate, and record it in the Case Diary for it to be accepted before the court.

Q29 Can an investigation be conducted only on working days?

A Investigation can be carried out any day, even during public holidays. There are no restrictions.

Q30 How many days do you get to finish an investigation?

A Section 167 of the CrPC states that if an investigation cannot be completed within **24 hours** (fixed by Section 57), and if there is reason to believe that the accusation or information is well founded, the investigation officer (not below the rank of sub – inspector) has to send a copy of the case diaries and the accused to the nearest Judicial Magistrate. The Magistrate may authorize the detention of the accused for a maximum of **fifteen days**.

If a Judicial Magistrate is not available, the officer can approach the nearest Executive Magistrate (on whom the power of a Judicial Magistrate or Metropolitan Magistrate has been conferred) and the Executive Magistrate may, in writing, authorize the detention of the accused person for a maximum of **seven days**. The accused person may be released on bail after this period.

If the Magistrate authorizes the detention of the accused person beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, the total period shall not exceed - **“ninety days**, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

sixty days, where the investigation relates to any other offence, and on the expiry of this period, the accused may be released on bail.”

Q31 During house raids, what precautions should be taken by the forest department in order to avoid being charged with assault, especially while arresting women?

A In order to avoid being falsely charged with sections like assault, molestation, outraging the modesty of women, rape, attempt to rape, atrocities, criminal intimidation, etc. it is always advisable to take a video of the whole process of search, seizure and starting from the point before they enter the house. The video must be taken without breaks (i.e. switching off and on or pauses).

Complaints and FIR

Q32 What is the difference between an FIR and a complaint? Can a forest officer file an FIR?

A An **FIR** is the information given to a police officer in charge of the nearest police station and can be done by anyone either orally or in writing.

A **complaint**, on the other hand, is any allegation made orally or in writing to a Magistrate, that a person has committed an offence, but does not include a police report (Section 2(d) of CrPC).

Forest officers cannot file an FIR; they can only file a complaint before the magistrate.

Q33 Who can file a complaint before the Magistrate?

A According to Section 55 of the WLPA, a complaint to the Magistrate under this Act can be filed by -
(1) the **Director of Wildlife Preservation** or any officer authorized in this behalf by the Central Government

(2) the **Member-Secretary, Central Zoo Authority** in matters relating to violation of the provisions of Chapter IV A

(3) Member-Secretary, Tiger Conservation Authority

(4) the **Chief Wild Life Warden, or any officer authorized in this behalf by the State Government** (subject to such conditions as may be specified by that Government)

(5) the **officer-in-charge of the zoo** in respect of violations of provisions of section 38

(6) **any person who has given notice of at least sixty days**, in the prescribed manner, of the alleged offence and of his/her intention to make a complaint to the Central or State Government, or the officer authorized as aforesaid.

Q34 Can an Investigation Officer file a complaint?

A Yes, according to Section 55 of the WLPA, an Investigation Officer can file a complaint, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence.

Q35 If the names of the accused are not known while filing an FIR/chargesheet, how can they be included later on?

A This can be done by submitting a written application to the court through the appointed public prosecutor with necessary supporting documents like voluntary statements, case diary extracts etc.

Q36 Can a case diary be used as evidence?

A According to Section 172 of CrPC, every officer making an investigation must maintain a diary recording all his proceedings in it, such as the time at which information reached him, the places visited by him, statement of witnesses, and a statement of the facts ascertained by him.

Forest officers are allowed to refer to the case diaries during the course of the trial in the process of giving evidence. The sole purpose of allowing such reference of case diaries is to refresh their memories. By itself, the case diaries hold no evidentiary value.

Also, a Criminal Court may send for these diaries to be used not as evidence, but to aid the court in its inquiry or trial. The Court may use the diary to enable the police officer to refresh his memory, or to contradict the officer, or even to trace the investigation as it has proceeded. It can also use the diaries to discover sources and lines of inquiry and names of persons who can provide material evidence. If the Court finds any important fact, date etc in the diary, it has to first establish it through evidence before admitting it.

Miscellaneous

Q37 Where can the forest acts, rules and guidelines be found?

A They can be found at the Principle Chief Conservator of Forests' office. They can also be found on the website of Ministry of Environment, Forests and Climate Change (MoEF), at the following link <http://envfor.nic.in>.

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