



**Indian Forest Act, 1927
&
Forest Conservation Act, 1980-
Analysis & legal tips for implementation**

INDIAN FOREST ACT, 1927

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The Indian Forest Act, 1927

Enacted on 21st September, 1927

Preamble (aims and objective)

To consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce.

Section 1 – Short title and Extent

- i) The act is called Indian Forest Act, 1927
- ii) Extends to whole of India except the territories which, immediately before the 1st November, 1956 were comprised in part B states.
- iii) It applies to territories which, immediately before the 1st November, 1956 were comprised in the states of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal but the Government of any state may by notification in the official gazette bring this Act into force in the whole or any specified part of the state to which this Act extends and where it is not in force.

Applicability of the Act- Preamble and other provisions of the Act is intended to cover all categories of forests.

Extent of Act- Act extends to whole of territories specified in first schedule of constitution and such other territories as may be acquired.

Section 2

Interpretation Clause:-

- (1) 'Cattle' includes elephant camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.
- (2) Forest officer-Forest officer means any person whom the State Government or any officer empowered by the State Government in this behalf, may appoint to carry out any purpose of the Act.
- (3) Forest offence – Offence punishable under this Act or rule made there under.
- (4) **Forest Produce-** includes:-
 - a. The following whether found in or brought from a forest or not i.e. timber, charcoal, caoutchoue, catechu, wood-oil, resin, natural warnish, bark, lac, mahua flowers, mahua seeds, kuth and mayrobalans.

- b. The following when found in a brought from forest, that is to say
- i. Trees and leaves flowers and fruits and all other parts or produce of trees.
 - ii. Plants not being trees (including grass, creepers, needs and moss) and all parts & produce of such plants.
 - iii. Wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts a produce of animals and
 - iv. Peat, surface soil, rock and minerals (including limestone, late rite, mineral oils, and all products of mines or quarries.
- (4A) “owner” includes a court of wards in respect of a property under superintendence or charge of such court.
- (5) “river”- includes any stream, canal, creek, or other channels, natural or artificial.
- (6) “timber” – includes trees, when they have fallen, or have been felled and all wood whether cut up or fashioned or hollowed out for any purpose or not; and
- (7) “tree” – includes palms, bamboos, stumps, brushwood and canes.

Explanation-

- (1) Though term “forest” has not been defined in IFA, 1927, it has recently been defined in Thirumalpad Vs Union of India & others case (writ petition no. 202 of 1995, in the judgement dt. 12.12.96 of the H’ble Supreme Court of India, wherein it has been said that “Forest” shall be understood by its dictionary meaning).

N.B. In the ‘Oxford Dictionary’ of English language word forest has been defined as

- a. A large area covered with trees and undergrowth
- b. The trees growing in it.

CHAPTER II (of Reserved Forests)

Section (3) Powers to reserve Forests

State Government may constitute any forest land or wasteland which is the property of Government or over which the Government has

proprietary rights or to the whole or any part of the forest produce of which the Government is entitled, a reserved forest in the manner provided in the Act. (viz sect. 4 to 20)

Section (4) Notification by State Government

- (i) Notification by State Government for constituting any land as reserved forest.
 - a) Declaring intention to constitute such land as reserved forest.
 - b) Specifies limits of lands to be notified as RF
 - c) Appoints Forest Settlement Officer (FSO) to inquire and determine any right by any individual over such land or over any forest produce
- (ii) Officer appointed as FSO shall originally be a person not holding any forest officer except that of Forest settlement officer.
- (iii) No. of FSO appointed shall be decided by State Government but should not exceed three.

Explanation of this section

FSO is under obligation to inquire into claims preferred under sect. (6) and also into existence of any right as mentioned under sect (4)

FSO is legally obliged to pursue Government records and must settle claim by an individual if it exists on Government records.

H'ble Supreme Court has held that claims can not be rejected merely on the ground that objections was not filed in writing.

Section (20) Notification declaring forest reserved

When the following events have occurred namely:-

- (1) The period fixed under section 6 for preferring claims has elapsed, and all claims, if any, made under that section or section 9 have been disposed of by the Forest settlement officer;
- (2) If any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and

- all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and
- (3) All lands (if any) to be included in the proposed forest, which the Forest Settlement Officer has, under section 11, elected to acquire under Land Acquisition Act, 1894, have become vested in the Government under section 16 of the Act.
 - (4) Until the conditions mentioned in sec. (20) of IFA have been fulfilled a forest can not be deemed to be a RF. The date of notification is taken as deemed date for an area as RF under Sec. 20 (2) of IFA.
 - (5) In Janu Khan Vs State AIR 1960, Supreme court held that notification issued by central government or state government or by a department of government is a public document, and a certified copy of it may be produced in court for proof is a secondary evidence under sec. 65 of Indian Evidence Act and is taken as relevant document under sec. 78 of IEA 1872.

In Ratan Singh Vs State of UP (1979) and Jang Bhadur Vs State:-

The Supreme Court held that State government could only issue a notification as provided under sec. (4) of IFA about land described under sec. (3) of IFA (Viz. forest land and waste land which in the property of government and government has proprietary right) and the land notified under section 4 in the said cases does not fall in this category. Therefore the state government has no power to declare this land as a forest land. Thus Civil court certainly has jurisdiction to try the suit whether Collector can de-reserve or lease out site in RF under Sec.(2) of Forest Conservation Act, 1980?

In Union of India Vs Kamath Holiday Resorts Pvt. Ltd. (AIR 1996):-

Supreme Court held that Collector has no power [In this case Collector of Daman leased out site in RF for 5 years for snack bar for promoting tourism. CF objected and opined that it is illegal. The respondent moved to Bombay High Court on the ground that FC Act will apply to State Government and not U.T. as they are governed by centre, the High Court on this basis erroneously approved the action of Collector. Supreme Court held that order of collector is wrong and prior permission has to be obtained from Central Government for leasing RF land under FC Act]

1. The State Government shall publish a notification in the official Gazette, specifying definitely, according to boundary marks, erected or otherwise the limits of the forest which is to be reserved and

declaring the same to be reserved from a date fixed by the notification.

2. From the date so fixed such forest shall be deemed to be a reserved forest.

Scope of Section (20)

- (1) Date of notification is the date on which area deemed to be reserved forests.
- (2) The procedure laid down in IFA must be followed and then area is notified under sect. 20(2) to become RF.
- (3) The FSO has same powers as a civil court in determination of rights in the trial of suits and his orders are subject to appeal.

Sections (25) Power to stop ways and water courses in RF

The Forest Officer may, with the previous sanction of the State Government or of any officer duly authorized by it in this behalf stop any public or private way or water – course in reserved forest, provided that a substitute for the way or water-course so stopped, which the state Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest Officer in lieu thereof.

Scope of Section

- (1) Forest roads are not public highway.
- (2) No person has unrestricted right to the use of forest roads.
- (3) State Government / Conservator / person authorized have the power to impose restriction.
- (4) Forest roads are the property of Forest deptt. of the State,
- (5) Anand Transport Company Pvt. Ltd. Vs. DFO, south Raipur (AIR 1959) SC held imposition of a reasonable fee for user of a forest road is neither illegal nor is contraction of Article 265 of the constitution.

Article (265) of the constitution

“No tax shall be levied or collected except by authority of law”.

Tata Iron and Steel Co. Ltd. Vs State of Bihar (AIR 1991)

Court held that **cess** imposed under an Act, having been imposed by way of compulsory exaction of money under the statute by public authority for public purpose can not be but a tax.

Section (26) Act prohibited in such Forests

- (1) Any person who –
- a. Makes any fresh clearing prohibited by section 5, or
 - b. Sets fire to a reserved forest, or in contravention of any rules made by the State Government in this behalf kindles any fire, or leaves any fire burning in such manner as to endanger such a forest;
Or who, in a reserved forest:-
 - c. Kindles, keeps or carries any fire except at such seasons as the forest-officer may notify in this behalf
 - d. Trespasses or pastures cattle, or permits cattle to trespass;
 - e. Cause any damage by negligence in felling any tree or cutting or dragging any timber;
 - f. Fells, girdles lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages the same.
 - g. Quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest – produce;
 - h. Clears or breaks up any land for cultivation or any other purpose.
 - i. In contravention of any rules made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares; or
 - j. In any area in which the Elephants’ Preservation Act, 1879, is not in force kills or catches elephants in contravention of any rules so made;

Shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both in addition to such compensation for damage done to the forest as the convicting court may direct to be paid.

Similar State Provision:-

Bihar Sec.(26)

Offence is cognizable punishable with imprisonment for a maximum term of six months which may extend 24 years or with fine upto 5000/- or both + compensation.

Gujarat :-

Sec (26) Similar provision of IFA.

Haryana:-

Sec (26) punishment upto 1 year or with fine upto 1000/-

Himachal Pradesh:-

Sec (26) punishment upto two years and fine upto 5000/-

Madhya Pradesh & West Bengal:-

Sec. (26) punishment upto 1 years or with fine upto 2000.

Uttar Pradesh:-

Sec. (26) maximum imprisonment of 2 years or a fine of Rs. 5000/- or both for violation of sect. (26) (b), (h) (i) (j) and if the same offence is committed second time and subsequently, imprisonment upto 2years or fine upto Rs. 20,000 but not less than Rs. 5000/- or both. For violation other clauses of Sec. (26) imprisonment upto six month or a fine upto Rs. 1000/- or both is provided and for second and subsequent violation of these subsections is punishable by imprisonment upto six month or a fine upto Rs. 2000/- or both.

Scope of Section (26)

- (1) Specifies various acts prohibited in RF
- (2) It lays down punishment
 - a. S.C. held in 1987 that bamboo would certainly fall within the definition of forest produce but supdas, topl as and palas made out of bamboo chips would not fall within the definition of forest produce.

(Fateh Singh Gimba Vaswa Vs. State of Gujarat, 1987)

- b. If there is any power of confiscation of cattle used in committing forest offence under section (26)?

The powers includes power to confiscate cattle unauthorisedly trespassing into RF and damaging forest produce like plants & grass under sec. 26(1) (a) &(f) (Karna Gawli Vs State of Maharashtra, 1990 Bombay High Court)

- c. Whether fresh clearing would amount to an offence?
 In State of Tripura Vs Surender Sangma (SC 1964) the Apex Court held that Tripura administration has notified area under Section (4). When once such a notification has been issued under section (4), section (5) would prohibit any fresh clearing in the said forest and any fresh clearing in the said forest is an offence under Section 26(1)(a).
- d. When confiscation proceedings are taken under Forest Act, order directing return of property under section 452 & 457 of CrPC held illegal.
 In state of Maharashtra Vs Salam Mohammad Lamba (1992-Bombay High Court) case, the Bombay High Court held that when confiscation proceedings are taken out under IFA, then, in that event provisions of sec. 452 & 457 of CrPC are not applicable to such proceedings. In the said case bullock cart was confiscated under IFA by Forest officer. The HC held that trial court was crony in passing an order to the effect to return property under section 452 of CrPC and set aside order.
 (452 CrPC-Trial Court may make order for disposal by delivery to person claiming to be entitled to possession of property).
 457 CrPC- Police Officer seized property and not produced before criminal court during Trial, Magistrate may return property to person claiming possession.
- e. In Union of India Vs Abdul Jalil case, 1965, the Supreme Court held that it is a common ground that in order to constitute an offence under sec. 26(1), the act specified in the clause of section should be committed in an area which is a RF under the Act.
- f. Exemption of Forest Guard from being examined for lodging a complaint to Magistrate in respect of offence under Forest Act in discharge of duty under section 200(a) of CrPC.
 In Shyam Bihari Lal Vs Forest Deptt. Court held that Forest Guard is a public officer and filing of complaint under Forest Act is discharge of his duties as forest guards are appointed to keep watch and to check offences concerned with Forest Act. Hence Forest Guard is exempted under section 200(a) of CrPC.
- g. Failure of the accused to explain satisfactorily does not relieve the prosecution to prove illegal removal of timber.
- h. SC held in Yashwant Stone Works Vs State of UP case (AIR 1988), that “forest land” includes all types of forest and not only RF and Forest Conservation Act 1980 applies in all such cases and until and unless permission / approval of Central Government has been granted,

- the State Government have no power to grant any lease or permission under UP minor minerals (Concession) Rules, 1963.
- i. In State of Maharashtra Vs. Rajendra Hilal Patil case (Bombay HC 1989) the Bombay High Court held that offences punishable under sec. 26(g) of IFA is serious offence and deterrent punishment should be awarded.

Section (27) Power to declare forest no longer reserved

- (1) The State Government by notification in the official Gazette, direct that from a date fixed by such notification, any forest or any forest or any portion there of reserved under this Act shall cease to be a reserved forest.
- (2) From the date so fixed, such forest or portion shall cease to be a reserved; but the rights (in any) which have been extinguished therein shall not revive in consequence of such cessation.

Scope of section

Empowers State Government to declare RF as no longer reserved by notification But the Parliament in 1980 passed Forest Conservation Act, 1980 which under section (2) of the Act deals with restriction on de-reservation of forest or use of forest land for non forest purposes. Hence, State Government needs prior approval of central Government for de-reservation of RF.

Section (28) Village Forests – Formation of Village Forests

- (1) The State Government may assign to any village – community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignments. All forest so assigned shall be called village- forests.
- (2) The State Government may make rules for regulating the management of village-forest, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest – produce or pasture and their duties for the protection and improvement of such forest.
- (3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village forest.

Scope of section

- (1) Empowers the State Government to assign any village community the right of government to or over any land which has been constituted as a RF.
- (2) Empowers State Government to make rules for regulating management of such forests.

Whether Forest Range Officer is competent to permit any settlement in Village Forests?

In U. Khastia Vs Range Officer case (1958) Supreme Court held that only State Governments are empowered. The State Government of Manipur had not given any authority to grant settlement to Ranger. Hence action of Ranger is illegal.

Section (29) Protected Forests

- (1) The State Government may by notification in the Official Gazette declare the provisions of this Chapter applicable to any Forest – land or wasteland which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest – produce which the Government is entitled.
- (2) The forest – land and wastelands comprised in any such notification shall be called a “protected forest”.
- (3) No such notification shall be made unless the nature and extent of rights of Government and of private persons in or over the forest land or wasteland comprised therein have been inquired into and recorded at a survey or settlement or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved.

Provided that, if in the case of any forest land or waste land, the Government thinks that such inquiry and record are necessary, but that will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record declare, such land to be a protected forest, but so as

not to abridge or affect any existing rights of individuals or communities.

Scope of Section (29)

1. Empowers State Government to declare any Forest land or wasteland as a protected forests.
2. State Government is empowered to constitute any land other than RF as protected forests and government is further empowered to make rules to regulate cutting, sawing conversion or removal of trees in the protected area declared.
3. Notification declaring certain land as forests or wasteland-validity could not be questioned after several decades.

(Bhuvneshwar Pandit Vs State of Bihar-1995 Patna High Court)

Area was notified protected forest by Bihar Government under sec.(29) on 29th December 1952. The petitioner filed claim after 40 years and court rejected.

Section (30) Power to issue notification reserving trees etc.

The State Government may, by notification in the official Gazette:-

- (a) declare any trees or class in a protected forests to be reserved from a date fixed by the notification.
- (b) Declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such term, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed; or
- (c) Prohibit from a date fixed as aforesaid, the quarrying of stone or the burning of lime or charcoal or the collection or subjection to any manufacturing process or removal of any forest produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.

Scope of section

- 1) Section (30) empowers the State Government to issue notification declaring tree in a protected forests as reserved or prohibiting the burning of lime charcoal etc.
- 2) In Moslem Sirkar Vs Empower case, notification issued fixes no date reserving any class of trees is held invalid.
- 3) In Savran Singh Vs. DFO Sagar (SC, 1991) case. The Supreme Court directed CF Bhopal to examine rehabilitation measures for appellants and recommend to State Government as they were residing in forest villages and they have constricted houses 21 years back

Section (32) Power to make rules for Protected Forests

The State Government may make rules to regulate the following matters-

- (a) The cutting, sawing, conversion and removal of trees and timber and removal of forest produce from protected forests;
- (b) The granting of licences to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest produce for their own use, and the production and return of such licences by such persons;
- (c) The granting of licences to persons felling or removing trees, timber or other forest produce from such forests for the purposes of trade, and the production and return of such licences by such persons-
- (d) The payments, if any, to be made by the persons mentioned in clause(b) and (c) for permission to cut such trees or to collect or remove such timber or other forest – produce.
- (e) The other payments, if any, to be made by the them in respect of such trees, timber and produce, and the places where such payments shall be made.
- (f) The examination of forest – produce passing out of such forests.
- (g) The clearing and breaking up of land for cultivation or other purposes in such forests;
- (h) The protection from fire of timber lying in such forests and of trees reserved under section 30;
- (i) The cutting of grass and pasturing of cattle in such forests.

- (j) Hunting, shooting, fishing, poisoning water and setting traps or snares in such forests and killing or catching of elephants in such forests in areas in which the
- (k) Elephants Preservation Act, 1879, is not in force.
- (l) The protection and management of any portion of a forest closed under section 30, and
- (m) The exercise of rights referred to in section; 29

Analysis of section (32)

(1) CF being public authority required to act in a reasonable manner

1. Section (32) confers power on State Government to frame statutory rules for regulating cutting / felling / removal etc. Even executive order should satisfy the test of reasonableness to ensure equality. The CF who is a public authority, acting on behalf of government is required to act in a reasonable manner while exercising his powers under standing order in matter relating to grant of extension of period of license, he can not act arbitrarily at his own sweet will like a private individual, instead he must act in conformity with the constitution.

Arbitrary means violative of Article (14) of constitution) [Daya Shankar Singh Vs Conservator of Forests (Southern Zone) UP, SC 1984]

2. Validity of levy of selective higher grazing rates

(Laxman Vs State of MP, 1983 SC) – Under Sec. 32(c) MP. Government to regulate influx of cattle from other states, fixes higher grazing fees for foreign cattle (cattle of other States). The H'ble Supreme Court held that there is no justification what so ever for charging higher grazing rates for cattle belonging to person from other State. Hence order was struck down

3. Monopoly in favour of one trader to the exclusion of all other trader amount to discrimination: Under sec.32(2) permit granted to one trader to the exclusion of all other trader was declared Ultra-virus by the Apex Court [SC, 1963 S.C. Das Vs Tripura case]
4. Total prohibition on the use of part of Government land for grazing purpose is violative of Articles 14, 19 & 301 of constitution (Kishan Vs State of Maharashtra 1990 and Lakshman Vs State of MP, 1983)

Supreme Court observed that “That ban on grazing is impugned policy decision, is violative of Article 14, 19 & 301 of the constitution.

Section (33) Penalty for acts on contravention of notification under sec. (30) or rules under sec.(32)

- (1) Any person who commits any of the following offences, namely-
- a. Fells, girdles, lops, taps or burns any tree reserved under section 30, or strips off the bark or leaves from, or otherwise damages any such tree;
 - b. Contrary to any prohibition under section 30, quarries any stone, or burns any line or charcoal, or collects, subjects to any manufacturing process, or removes any forest – produce.
 - c. Contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forests;
 - d. Sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to any closed portion of such forest;
 - e. Leaves burning any fire kindled by him in the vicinity of any such tree or closed portion;
 - f. Fells any tree or drags any timber so as to damage any tree reserved as aforesaid.
 - g. Permits cattle to damage any such tree.
 - h. Infringes any rule made under section 32.
- Shall be punishable with imprisonment for a term which may extend to five hundred rupees, or with both.
- (2) Whenever fire is caused willfully or by gross negligence in a protected forest, the State Government may, notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest – produce shall be suspended for such period as it thinks fit.

Bihar:-

Section (33) imprisonment minimum six months, maximum 2 years fine minimum Rs. 1000/- maximum Rs. 5000/- imprisonment + fine both.

Haryana:-

Sec (33) Imprisonment upto 1 year or with fine upto Rs. 1000/-.

Madhya Pradesh:-

Sec. (33) Upto 1 year or with fine upto Rs. 1000/-.

Maharashtra :-

Sec. (33) upto 1 year or with fine upto Rs. 2000/-

West Bengal:-

Sec. (33) upto 1 years or with fine upto Rs. 1000/-

Uttar Pradesh

Maximum imprisonment of two years or fine upto Rs. 5000/- or both and for second and subsequent violation maximum term of 2 years or fine upto Rs. 10,000/-.

Analysis of section (33)

(1) Prosecution failing to connect the accused with the crime:

In State of HP Vs Dilmi Ram case (HP High Court, 1992), the accused was charged under section 33 of IFA for cutting deodar, class 1-A from jungle. On damaged report prepared by FG (Forest Guard), the accused thumb impression on back of iqbalnama was obtained. The FG was not clear in his version against the accused. The High Court held thumb marked as extrajudicial confession and prosecution has failed to prove in accordance with law. In his explanation under sec. 313 of CrPC (313-Power to examine the accused) accused denied allegation and prosecution failed to establish case against accused under sec. 31 IFA.

(2) Conviction of accused under sec (33):

In State of HP Vs Tangin Durja 1989, case, the Shimla High Court held that there can not be any conviction under section (33) of IFA unless and until prosecution proves that forest in question has been declared Protected forest under sec. (29) of and trees are declared reserved under sec. (30) of IFA and notification in this regard in vernacular under sec (31) of IFA published.

(3) Disposal of case property seized from protected forests

In Amar Nath Vs State of HP case (1990) Shimla High Court held that the petitioner has been primarily acquitted because of limitation of time of taking cognizant of offence under sec. 468(2) of CrPC. Simply because the accused has been acquitted, for any reason whatsoever, the property even if seized from him, need not be returned to him in view

of the evidence to the contrary on this aspect. The “Katha” which was returned to petitioner under sec.452 of CrPC by trial Magistrate was held improper by High Court, Shimla.

(4) Accused failed to pay compensation for offence punishable under section 33, prosecution was launched and Trial Magistrate acquitted but High Court of Shimla convicted him under sec. 33 of IFA, (State of HP Vs. Amin Chand case High Court Shimla 1990).

(5) Section 167(2) CrPC applicable to case related to offense under sec. 33, 41 & 42 of IFA.

167(2) CrPC: Authorise detention of accused in custody for term not exceeding 15 days in whole. In Babu Lal Yadav Vs State of Bihar case (HC Patna) the court held that if petition for bail is filed, it would be disposed according to law keeping in mind that sec. 167(2) CrPC would apply.

(6) Court on its own motion taking cognizance under sec. (33) of IFA after expiry of limitation of sec 468 CrPC.

In Court on its own motion Vs Shankaroo (Shimla High Court, 1992) High Court, Shimla, observed that after putting Challan the forest officials connived and they sleep over challans and let the period of limitations expire and ensure acquittal. The limitation for cases under sec (33) IFA is one year as per 468 (2) CrPC as the cases under sec (33) IFA are punishable with imprisonment which may extend six month. In this case court passed adverse remarks on CJM also.

(7) Whether appeal by State are incompetent in cases of Forest Act (IFA 33) under section 377 of CrPC ?

State of Maharashtra Vs Malupati Krishna Inga vole and also in Eknath S. Makkawar Vs State of Maharashtra (1977) cases, the Supreme Court held that High Court was not right in holding that the appeals by the State are in competent under sec. 377 (1) & (2) of CrPC.

CrPC Sec 377

(1) The State Government in case of conviction in a trial held by any court other than a High Court, direct the Public prosecution to present

- an appeal to the High Court against the sentence the ground of its inadequacy.
- (2) If such conviction is in a case in which the offence has been investigated by Delhi Special Police Establishment or by any other agency empowered to make investigation into offence under any control act other than this code.
 - (3) When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to accused reasonable opportunity.

Scope of section (377) CrPC

- (1) Empowers State Government to file appeal through Public prosecutor to High Court against the sentence imposed on the ground of inadequacy of sentence.
- (2) Appeal by State under sec. (377) must be filed within the period of 60 days.
- (3) The prosecution can only urge the inadequacy of sentence. It can not ask for conviction for a different offence with higher punishment.
- (4) The accused should be given reasonable opportunity of show cause against enhancement of sentence.
- (5) Central and State Government are empowered to prefer appeal against inadequate sentence under sec. 377 (1) CrPC.

Section (34) Nothing in this chapter to prohibit act done in certain cases

Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest – Officer, or in accordance with rules made under section 32, or, except as regards any rights the exercise of which has been suspended under section 33, in the exercise of any right recorded under section. 29.

Control over Forest and Wasteland Not Being The Property of Government (35-38)

Section (35) Protection of Forest for special purposes

- (1) The State Government may, by notification in the Official Gazette, regulate or prohibit in any forest or wasteland.
 - a. The breaking up or clearing of land for cultivation;
 - b. The pasturing of cattle; or
 - c. The firing or clearing of the vegetation

When such regulation or prohibition appears necessary for any of the following purposes:-

- (i) for protection against storms, winds, rolling stones, floods, and avalanches;
 - (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of land slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel.
 - (iii) For the maintenance of a water-supply in springs, rivers and tanks;
 - (iv) For the protection of roads, bridges, railways and other lines of communication
 - (v) For preservation of the public health.
- (2) The State Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.
 - (3) No notification shall be made under sub-section(1) nor shall any work be begun under sub-section(2), until after the issue of a notice to the owner of such forest or land calling him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same have been heard by an officer duly appointed in that behalf and have been considered by the State Government

Scope of section (35)

- (1) The provisions of chapter V of IFA deal with control over forest and lands not being the property of Government.
- (2) The provisions of the chapter show that the Forest Act. Is intended to be a piece of legislation not only in respect of government forest but also in respect of forests and land not belonging to government.

(Kanshi Prasad Sahu Vs. State of Orissa, 1963, Supreme Court)

Section (41) Power to make rules to regulate transit of forest produce

- (1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest produce in transit by land or water, is vested in the State Government, and it may make rules to regulate the transit of all timber and other forest produce.
- (2) In particular and without prejudice to the generality of the foregoing power such rules may:-
 - a. Prescribe the routes by which alone timber or other forest produce may be imported, exported or moved into, from or within [the State];
 - b. Prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass.
 - c. Provide for the issue, production and return of such passes and for the payment of fees thereof;
 - d. Provide for the stoppage, reporting examination and marking of timber or other forest produce in transit, in respect of which there is reason to believe that any money is payable to the Government on account of price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark.
 - e. Provide for establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money or in order that such marks may be affixed to it; and the conditions under which such timber or other produce shall be brought to, stored at and removed from such deposit;
 - f. Prohibit the closing up or obstructing of the channel or banks of any river used for transit of timber or other forest produce, and the throwing of grass, bnishwood, branches of leaves into any such river or any act which may cause such river to be closed or obstructed.

- g. Provide for the prevention or removal of any obstruction of the channel or banks of any such prevention or removal from the person whose acts or negligence necessitated the same;
- h. Prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting burning, concealing or marking of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber.
- i. Regulate the use of property marks for timber and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person; and provide for the levy of fees for such registration.
- j. The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest produce or to any specified local area.

Analysis of section (41)

- (1) Power to grant or refuse permit – whether it violates freedom guaranteed under Article 19(1) of the constitution? In T.V. Balakrishna Vs State of Tamil Nadu (Civil appeal No.4871/84 judgement in 1992), Supreme Court held that Timber Transit Rules are regulatory in nature and not prohibitive. Hence it does not violate freedom given under Article 19(1)(g) of constitution. It does not violate Article 301&304 of constitution.
- (2) Power of State Government to make rules regulating the transit of all timber even private timber?
State of Tripura Vs Shashimohan Malakar (1977 or LJ) Court held that State Government is competent to make rule.
- (3) What is the meaning of “Transit” in sec (41)?
In Ranchi Timber Traders Association Vs State of Bihar case (1968), the Supreme Court held that under section (41) timber and forest Produce which are being conveyed from one place to another is in transit. Once that timber or forest produce ends its journey, finally reaches a depot, an establishment dealing with its sale, timber or forest produce can not be said to be in transit.
- (4) Courts on its motion Vs. Mast Ram Tanta (1992, HP High Court): In this case transit permit under 41/42 IFA was forged and wood has been

moved through Dhalli area. Deputy IG of Police (Vigilance) to come out with facts. It appears that son and son-in-law of CM Himachal Pradesh was involved and whole effort was to bury the case. No. reason has been advanced why the court should not direct the registration of a case relating to a cognizable offence after the court has come to know of it. The case may be investigated by independent agency like CBI for fairness as DIG (Vigilance) who is under State Government control has suppressed the case. One can not forget that trees and forest are natural heritage and no one should be spared if he is found guilty irrespective of his position.

Section (41(A) Power of Central Government as to movement of timber across the custom frontiers (inserted by amendment in 1937)

Notwithstanding anything in section 41, the Central Government may make rules to prescribe the route by which timber or other forest produce may be imported, exported or moved into or from [the territories to which the act extends] across any customs frontier as defined by Central Government and rules made under section 41 shall have effect subject to rules mad under this section.

Scope of the section

Empowers Central Government to make rules prescribing route by which alone timber / other forest produce may be imported; exported or moved into or across any custom frontiers.

Section (42) Penalty for breach of rules made under section 41

- (1) The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees or both.
- (2) Such rules may provide that penalties which are double of those mentioned in sub-section(1) may be inflicted in cases where the offence is committed after sunset and before sunrise or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

Similar Penalty under state Act.

Sl. No.	State Act	Section	Penalty prescribed
1.	Bihar	(42) Bihar Forest Act	Minimum six months maximum 2 years or with fine, minimum Rs. 1000/- maximum Rs. 5000/-
2.	Goa	Sec. (42)	Upto 2 years and fine upto Rs. 5000/-
3.	Maharashtra	Sec. (42)	Upto 1 years or with fine upto Rs. 2000/-
4.	U.P.	Sec. (42)	Upto 2 years or fine upto Rs. 5000/- or both.
5.	Assam	Sec. (42)	Upto six months or fine upto Rs. 500/-.
6.	Tamil Nadu	Sec. (36)	Upto 1 years and fine upto Rs. 10,000/-

Scope of section

- 1) Establishment, maintenance / running saw mill or depot without previously obtaining licence has been made penal.
- 2) Transport of timber / other forest produce without licence has been made penal.
- 3) Can we confiscate truck in violation of sec.(41)?

Yes, various State Forest Amendment Acts like Gujarat Forest (Amendment) Act 1993 empowers authorized officer i.e. DFO to confiscate trucks used in illegal transport of timber a other forest produce under sec. 64 of Gujarat Forest Amendment Act.

Inderjeet Singh Vs State of Maharashtra (1990) case, Bombay High Court held that, in principle truck can be confiscated.

Section (43) Government and Forest Officer not liable for damage to forest produce at depot:

The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest produce while at a

depot established under a rule made under sec. 41, or while detained elsewhere, for the purposes of this Act, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

Section (44) All persons bound to aid in case of accident at depot.

In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the Government or by any private person, shall render assistance to any Forest Officer or Police Officer demanding his aid in averting such danger or securing such property from damage or loss.

Scope of section

Every person employed at depot whether by Government or by private person is duty bound to assist forest officer or police officer in case of accident or emergency involving danger to property at the depot.

Penalties and Procedure (Section 52-69)

Sec (52) Seizure of property liable to confiscation

1. When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, any be seized by any Forest Officer or Police Officer.
2. Every Officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes as soon as may be, report of circumstances to his official superior.

State	Provision of Confiscation	Officer empowered to confiscate	Appeal	Revision Petition	Power of entry search and seizure
Bihar	Sec. (52)	Not below the rank of DFO	Sec. 52 (A) by appeal or Suo Moto Distt. Magistrate within 30 days	Sec. 52 (C) Secretary E & F within 30 days order is final	Sec. 52 (D) not below Ranger or in case of police not below Sub-Inspector.
Goa	Sec. (61) of Goa Act. 1989	Authorised Officer	Govt.		
Gujarat	Sec.(61)	Authorised officer Sec. (61-A)	CF	Sessions Court Session Court's order final	
Himachal Pradesh	Sec. (52)	Sec. 52 (A) Authorized officer not below ACF			
Madhya Pradesh	Sec (52)	Not below extra ACF	Sec. 52 (A) appeal before CF within 30 days of order or suo moto by CF	Sec. 52 (B) Sessions Court within 30 days for revision Session order final	
Maharashtra	Sec (52)/(61)	61 (A) authorized officer			
Tamil Nadu	Sec. 49	Sec. 49 (A) not below ACF	CF on his own motion sec. 49 (C)	Session Court within 30 days order is final	
Uttar Pradesh	Sec. (52)A	Authorised officer not below DFO	State Govt. Sec. 52 B within 30 days order final		

Analysis of Section (52)

1. Empowers Forest or Police Officer to seize forest produce together with tools, etc. used in committing a forest offence.
2. Provisions of confiscation :- Validity of confiscation

- In DFOVs VGC Sudhakar Rao (1986) case, the Supreme Court held that penal provisions regarding search seizure and prosecution are subject to provisions regarding confiscation and where the proceeding for confiscation has been initiated as per provision of AP Forest Act, the Criminal Court has no jurisdiction to pass any order of release of seized goods. There can not be any doubt, that confiscation and prosecution are two distinct matter.
3. Confiscation of vehicle permissible only when its involvement in commission of forest offence made out.

Land mark case, Kailash Chand Vs State of MP (MP High Court, Civil Petition NO. 490 of 1984 decided on 19/4/1994)

The truck used for removing forest produce contrary to law have been seized by forest officer and confiscation proceedings have been initiated as per sec. 52.

Challenged before M.P. High Court on following grounds:-

1. Sec (52) (3) of IFA as amended in M.P. is unjust and unfair and arbitrary and violates Article (14) of constitution.
2. Power of confiscation given to authorized officer is arbitrary. He is made judge in his own cause which violates principle of natural justice. There is violation of Article 14, 19(1) (g) and Article 21 of constitution.
3. Sec 52-C of said act which bars jurisdiction of courts in regards disposal of property is arbitrary and violates Article 14, 19(1) (g) and Article 21 of constitution.

Analysis

1. Broad principle of confiscation under sec. (52) is to secure punishment of offender at the hands of criminal court. Power of confiscation is ancillary to conviction. The amended provision of sec. 52 by MP State partially separates the process of confiscation from the process of prosecution and authorized officer initiates the process of confiscation.
2. Forest offences are cognizable as per definition given in sec 2 (c) of CrPC. As per sec 4 (2) of CrPC the offences other than 1 PC can be inquired by other forces subject to any enactment. Section 52 (2) of IFA amended MP Act refers about sending of intimation about

confiscation to jurisdictional magistrate (like complaint under sec. 190 CrPC)

Court Observation

1. Criminal prosecution is not alternative to confiscation. Two proceedings are parallel, each having a distinct purpose (confiscation proceedings + criminal proceedings). The object of confiscation proceedings is speedy and effective adjudication with regards to forest produce and means used for committing offence. The object of criminal proceedings is to punish offender. Thus the contention that two proceedings are prescribed for same punishment and two cover same area, is not tenable.
2. There is provision for safe guarding interest of affected person by way of show cause inviting his representation and then opportunity of appeal before CF and revision before session. The existence of these sustained safe guards negatives any possibility of demial of natural justice as observed in sharad Kumar Vs state of Orissa case, 1992).
3. The court observed that it can not be presumed that A.O. will act in favour of department. A.O. is extra ACF rank and above, who is a senior officer and A.O. office order is subject to appeal before CF and revision before sessions. Therefore in this case the court rejects the contention that the provision of confiscation is violation of natural justice and Article 19(1)(g) and Article 21 of constitution.
4. Court observed that authorized officer's power is coupled with public duty and therefore, officer has to have regard to policy and provision of Act to consider before giving order of confiscation in given case.
5. Order of confiscation is not mandatory in all cases. The A.O. to decide confiscation on merit of case.
6. Confiscation is a quasi-judicial proceeding and not a criminal proceeding. Proof beyond reasonable doubt and proof of mens – rea are foreign to the scope of confiscation of forest offence. This of course does not mean that innocent owner of vehicle will be subject to unjust action.
7. Power of confiscation given to authorized officer encroaches into

Judicial power of Magistrate and is our constitutional ?

The petitioner council said that provision of 52-C of Act encroaches upon the power of Magistrate under section 451 and 457 of CrPC. The Court observed that sec. (5) of CrPC states that nothing contained in the code shall in absence of specific provision to the contrary, affect any special law or local law for the time being in force or any special form of procedure

prescribed by any other law for time being in force. The Forest Act is certainly a special law within the meaning of sec (5) of CrPC. It certainly follows that section 451 and 457 of CrPC can have no application in the face of impugned provision of the Act, except to the extent permitted under those provisions.

1. The A.O. has jurisdiction to initiate confiscation proceeding, when confiscation proceedings is initiated, it is the A.O. who has legal seizing of property. It must follow that he has incidental and ancillary power of passing an order of temporary custody or possession of property. Where no confiscation proceedings is initiated, the Magistrate himself can exercise the power vested on him under CrPC. Thus the jurisdiction of Magistrate to pass order regarding temporary custody or disposal of property is taken away in case where confiscation proceedings is initiated, followed by intimation. The ban on jurisdiction is partial and not total or absolute.

The same opinion was given by Supreme Court in D.S. Ranta Lakshmi Vs State of Tamil Nadu AIR 1983 eandmark judgement.

2. It is settled now that merely because other forum is manned judicially by an executive officer, instead of judicial officer, it can not be said that it result in violation of Article (14) of constitution. (This view was given in landmark judgement of Supreme Court in Ashok Marketing Ltd. Case (AIR 1991). Therefore, empowering forest officer for confiscation under sec 52 of IFA, there is no violation of Article 14, 19(1)(g) or 21 of constitution.
3. The scheme of Act providing for a separate confiscation procedure has substantial public purpose to serve and is in tune with Article 48-A and 51 (A) (g) of the constitution.

(2) Power of Forest officer

Power has been conferred on forest officer to arrest without warrant. Thus offence under Forest Act is cognizable offence as per sec 2 (c) of CrPC.

- (3) Forest produce can be seized under sec (52) IFA only when there is some material to indicate connection of forest offence. (State of UP VS Ram Baboo Kesari, Allahabad HC, 1990).
- (4) The word “tool” includes machines used in a saw mill for cutting timber:

Kantital Patel Vs State of Maharashtra, Bombay High Court 1987, High Court held that logs of illicit wood can be converted into timber only with use of various machines in saw mill, therefore, there is no hesitation to hold that the word “tool” in sec (52) of IFA includes machinery required for cutting wood in saw mill.

- (5) Owner of the vehicle carrying forbidden goods can not be absolved of the liability even if he may not have presence.

In State of Maharashtra Vs Vinayak Dagadu Jadhav 1955 CrLJ789 and Kamlesh Vs State of Maharashtra 1997 CrLJ 1399 cases, Bombay High Court held that driver and cleaner of the canter at the time interrupted were containing forbidden goods were servants employed by owner of vehicle and the argument advanced that master has no knowledge is not sustainable, can not be accepted.

- (6) Jurisdiction of Magistrate to release the property

In Babulal Vs State of MP (1987) case, Division bench of MP High Court held that when property is seized by Ranger under sec 52, the Magistrate has no jurisdiction to release the property.

In Rishi Nath Singh Vs State of MP (1992 case the MP High Court held that when truck is not seized by Police but by Forest Officer and it has not been produced before Magistrate and sec 52-C IFA & MP Act is attracted, the magistrate jurisdiction with regard to making interim custody of truck is ousted.

- (7) The Magistrate has no power to release the vehicle, when confiscation proceedings initiated under sec 52 IFA or State Act. (Mohd. Akhtar Vs State of Bihar Patna High Court 1996)

Sec (53) Power to release property seized under sec (52)

Any Forest Officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle under sec. 52, may release the same on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Analysis of Sec 53

1. In sec (53), the power of release conferred on Forest Officer is not with respect to forest produce but is confined to tools, boats, carts, cattle, seized with Forest produce (Rajkumar Mishra Vs State of Bihar 1995- Patna High Court).
2. Confiscation power is given to authorized officer of a particular rank by Amendment of se. 53 by State and similarly for release also.

Sec (54) Procedure there upon

Upon the receipt of any such report the Magistrate shall, with all convenient dispatch, take such measures as may be necessary for the arrest and trial of offender and the disposal of the property according to law.

Analysis of section

- (1) Magistrate's power of confiscation in respect of timber and forest produce.
In Mohammand Akhtar Vs State of Bihar 1995 – Patna High Court observed that where by State amendment in sec 52 IFA authorized officer are empowered to confiscate and jurisdiction of criminal court to release vehicle during the pendency of confiscation proceedings is barred the vehicle should not be released by Magistrate.
- (2) The Magistrate can give interim custody of property (vehicle etc.) under 457 CrPC under proper bond Where confiscation proceedings has not been initiated.
- (3) Compounding of offence Compounding of offence can be done when it is provided in the provisions and offender agrees. (DFO Vs L.P. Ray 1991, Andhra High Court)

Sec (55) Forest Produce; tool etc. When liable to confiscation

- (1) All timber or forest produce which is not the property of Government and in respect of which a forest offence has been committed shall, if it is the property of Government or has been confiscated, be taken

charge of by a Forest Officer and in any other case, may be disposed of in such manner as the Court may direct.

- (2) Such confiscation may be in addition to any other punishment prescribed for such offence.

Analysis of Section

- (1) Confiscation is in addition to any other punishment prescribed for such offence.
- (2) In majority of state amendment cart includes vehicles.
- (3) What is the meaning of word “shall be liable for confiscation” used in sec. 55 (1) IFA?

In Mehta Brothers Vs state of HP (1980) case, The High Court clarified that “shall be liable for confiscation” does not mean that the property stands automatically confiscation. On the contrary it is presupposed an opportunity is to be given to the person affected before the property is actually ordered be confiscated.

Sec (56) Disposal on concession of trial for Forest offence, of produce, in respect of which it was committed

When the trial of any forest offence is concluded, any forest produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, and, in any other case, may be disposed of in such manner as the court may direct.

Sec (57) Procedure when offender not known, or can not be found

When the offender is not known or can not be found, the Magistrate may if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest Officer, or to be made over to the person whom the Magistrate deems to be entitled to the same.

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person,

if any, claiming any right there to, and the evidence, if any, which he may produce in support of his claim.

Sec (58) Procedure as to perishable property seized under sec (52)

The Magistrate may, notwithstanding anything herein before contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had been sold.

Is there any provision in CrPC for sale of perishable property?

Yes, Sec (459) CrPC

Sec (59) Appeal from order under Sec. (55), (56) or Sec (57)

The officer who made the seizure under section 52 or any of his official superiors, or any person claiming to be interested in the property so seized, may within one month from the date of any order passed under sec. 55, section 56 or section 57, appeal there from to the court to which order made by such Magistrate are ordinarily appealable and the order passed on such appeal shall be final.

Analysis

(1) **West Bengal amended sec (59) of IFA** and 59(A), 59(B), 59(C), 59(D), 59(E), 59(F), 59(G) were added.

59(A) : Confiscation by Forest Officer (not inferior to ACF authorized by state notification in gazette) of forest produce in the case of forest offence believed to have been committed.

59(B) : Issue of notice before confiscation to registered owner and considering his objection.

59(C) : Revision not inferior to CF specially empowered by government, may suo moto or on application examine confiscation order issued under 59(A) and pass order as he deems for within 30 days.

59(D) : Appeal against the order under sec. 59 (A) or 59 (C) within 30 days to Distt. Judge and order is final.

- 59(E) :** Award of punishment under other provisions of the Act.
59(F) : Confiscated property and proceeds of sale to vest in govt.
59(G) : Bar of Jurisdiction to other court, tribunal or authority.

(2) Court of appeal has power of remand under

59(D) W.B. Amendment (Ashok Rana State of W.B. 1997 Calcutta H.C).

(3) Discretion of authorized officer to an order of confiscation:-

Authorised officer has discretion but it must be based on reasonableness (R. Chandra Singh Vs. State of W.B. 1997 Calcutta H.C.) Power of confiscation is not mandatory but discretionary based on merit of the case.

(4) Exemption from confiscation:-

(Md. Yasin Vs. Authorised officer Jalpaiguri 1994) – Calcutta High Court emphasized that owner must satisfy authorized officer that he has no knowledge and taken reasonable and necessary precaution against the misuse of the vehicle by his agent or driver, then only he can get exemption from confiscation under sec. 59 (A) IFA West Bengal Amendment Act.

(5) Principle of natural justice must apply:-

Mehta Brothers Vs. State of H.P. (1980 Shimla High Court) High Court observed that “No bar has been created under sec.(59) IFA that no person should be entitled to prefer an appeal who has not extended his claim before a Magistrate. Before confiscation / forfeiture opportunity must be given whose property intended to be forfeited.”

Sec (60) Property when to vest in government

When an order for the confiscation of any property has been passed under section 55 or section 57, as the case may be and the period limited by section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, the appellate court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all encumbrances.

Sec (61) Saving of Power to release property seized

Nothing herein before contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized under section 52.

State Amendment

Uttar Pradesh

61-A: Summary eviction of persons convicted of certain offences-

1. Where a Court convicts any person of an offence under clause (a), clause (d) or clause (h) of sub – section (1) of section 26 or clause (c) or clause (h) of sub-section (1) of section 33, it may, when passing judgement direct the eviction of such person from any land in respect of which the offence has been committed.
2. Any court of appeal or revision may direct any order under sub-section (1), passed by court sub-ordinate thereto be stayed pending consideration by former court, and may modify, alter or annul such order.

61-B Summary eviction of unauthorized occupants:-

1. If a Forest Officer, not below the rank of a Divisional Forest Officer, is of the opinion that any person is in unauthorized occupation of any land in areas constituted as a reserved or protected forest under sec.(20) or (29) as the case may be, and that he should be evicted, the Forest Officer shall issue a notice in writing calling upon the person concerned to show cause on or before such date as is specified in the notice, why an order of eviction should not be made.
2. If after considering the cause, if any, shown in pursuance of a notice under this section, the Forest Officer is satisfied that the said land is in unauthorized occupation, he may make an order of eviction for reasons to be recorded therein, directing that said land shall be vacated by such date, as may be specified in the order, by the person concerned, which shall not be less than ten days from the date of order.
3. If any person refuses or fails to comply with the order of eviction by the date specified in the order, the Forest Officer who made the order under sub-section (2) or any other Forest Officer, duly authorized by him in this behalf, may evict that person from and take possession of the said land and may, for this purpose, use such force as may be necessary.

4. Any person aggrieved by an order of the Forest Officer under sub-section (2) may, within such period and in such manner as may be prescribed, appeal against such order to Conservator of Forests of the circle or to such officer as may be authorized by the State Government in this behalf and the order of the Forest Officer shall, subject to decision in such appeal be final.

61-C-Disposal of property left on land by unauthorized

occupant:-

1. Where any person has been evicted from any land under section 61-B, the Forest Officer may, after giving not less than ten days notice to the person from whom possession of land has been taken, remove or cause to be removed or disposed of by public auction, any property remaining on such land including any material of a demolished building or standing crop.
2. Where any property is sold under sub-section (1) the sale proceeds thereof shall, after deducting the expense of the sale and the expenses necessary to restore the land to its original, condition, be paid to the person concerned.

Comment

- (1) Power of confiscation and release of any property seized. Under sec 52 are with Forest Officer under amendment to IFA or through similar provisions under state Act in the states of Goa, Gujarat, Maharashtra, Karnataka, T.N., H.P. & J & K. Generally this power is given to ACF/DCF.
- (2) Right of being heard before confiscation of vehicle is available to the owner of vehicle (Navin K. Chawla Vs Forest Range Officer, Gujarat High Court 1993).
- (3) Even if Sec (53) IFA does not empower authorized officer to release vehicle but under sec (61) IFA, the competent officer can direct at any time release of any property seized under sec (52) as per his discretion in accordance with law (Magbool Ansari Vs State of Bihar, Patna High Court, 1995)

Section (62) Punishment for wrongful seizure

Any Forest Officer or Police Officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to

confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both.

Sec (63) Penalty for counter feiting or defacing mark in trees and timber and for altering boundary mark

Whoever, with intent to cause damage or injury to the public, or to any person, or to cause wrongful gain, as defined in the Indian Penal Code:-

- (a) Knowingly counter feits upon any timber or standing tree a mark used by Forest Officer to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some persons; or
- (b) Alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest officer, or
- (c) Alters, move, destroys or defaces any boundary mark of any forest or wasteland to which the provisions of this Act are applied.

Shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Analysis of Section

(1) Wrongful loss and wrongful gain has been defined in sec (23) of IPC.

Wrongful gain- sec (23) IPC- is gain by unlawful means of property to which the person gaining is not legally entitled.

Wrongful loss- sec (23) IPC- is loss by unlawful means of property to which the person losing it is legally entitled.

In wrongful gain two things are essential :-

- a) use of unlawful means and
- b) unlawful acquisition

In case of K. N. Mehra Vs State of Rajasthan (1957) the Supreme Court observed that for wrongful gain dishonest intention is a must as per sec (24) of IPC.

Wrongful loss is antithesis of wrongful gain but it would not have been otherwise (Supreme Court observed in Lal Mohammed case)

Sec (64) Power to Arrest without Warrant

1. Any Forest Officer or Police Officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest offence punishable with imprisonment for one month or upwards.
2. Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.
3. Nothing in this section shall be deemed to authorize such arrest for any act which is an offence under chapter IV unless such acts has been prohibited under clause (c) of section 30.

Sec (65) Power to release on a bond a person arrested

Any Forest Officer of a rank not inferior to that of a Ranger, who or whose subordinate, has arrested any person under the provisions of section 64, may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer in-charge of the nearest police station.

U.P. Act No. 1 of 2001

65-A: Certain Offences to be non-bailable:-

1. Notwithstanding anything contained in this Act or in that code of Criminal Procedure, 1973 any offence punishable under sec. (26) or section (33) or section (42) or section (63) shall be non-bailable.
2. No person accused of any offence as aforesaid shall, if in custody, be released on applicable for release on bail or on his own bond unless:-
 - a. The prosecution has been given an opportunity to oppose the application for such release, and

- b. Where the prosecution opposes the application as aforesaid the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.

Sec (66) Power to prevent commission of offence

Every Forest Officer and Police Officer shall prevent and may interfere for the purpose of preventing the commission of any forest offence.

State Amendment

U.P. Act. No. 12001:-

66-A Penalty for not preventing commission of forest offence:-

Whoever, being a Forest Officer or Police Officer, bound under section 66 to prevent commission of any forest offence, intentionally or knowingly, neglects or omits to prevent or abets, the commission of such offence, shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

Sec (67) Power to try offence summarily

The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government may try summarily under the Code of Criminal Procedure 1898, any forest offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

Sec (68) Power to compound offences

- 1) The State Government may, by notification in the Official Gazette, empower a Forest Officer,
 - a. To accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in section 62 or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

- b. When any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.
2. On the payment of such sum of money, or such value, or both, as the case may, to such officer, the suspected person if in custody, shall be discharge, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.
3. A Forest Officer shall not be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.

Analysis of Section:-

- 1) State of HP Vs Devisaran (1990 Shimla High Court)- The High Court Shimla Observed that the amount determined by forest officer under sec (68) IFA as compensation is not paid by accused. Hence case is bad in law and can not claim that case is close.
- 2) Who is empowered to compound offence?
Not below the rank of FRO / State Government may empower a forest officer for compounding forest offence.

Section (69) Presumption that Forest Produce belongs to Government:-

When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Government such produce shall be presumed to be the property of the Government until the contrary is proved.

Case Law

Meena Ram Vs State HP (Shimla High Court, 1990)- Petitioner cut the tree without permission of Government against the provision of IFA 1927. The trial court acquitted on the ground of inadequate evidence. The HC reversed the order by stating that petitioner has not claimed ownership of the property and even during examination under sec (313) CrPC (Sec 313-power to examine accused during trial by court), the accused has not

explained that property belonged to him. Thus it does not mean that tree have not been cut from Government and neither has claimed ownership. Hence under section (69) IFA property belongs to Government

Section (72) State Government may invest Forest Officer with Certain powers

- 1) The State Government may invest any Forest Officer with all or any of the following powers, that is to say:-
 1. Power to enter upon any land and to survey, demarcate and make a map of the same.
 2. The powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
 3. Power to issue a search warrant under the code of Criminal Procedure, 1898, and
 4. Power to hold an inquiry into forest offences, and, in the course of such inquiry, to receive and record evidence.
5. Any evidence recorded under clause (d) of sub section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

Scope of section (72)

- 1) Power to enter upon any land.
- 2) Power to issue search warrant.

Section (73) Forest Officer deemed to be public servant

All Forest Officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Analysis of Public Servant

- 1) Public Servant – Sec (21) of IPC
- 2) Test to determine whether a person is a public servant?

- a. Whether he is in the service or pay of the Government and
- b. Whether he is entrusted with the performance of any public duty (State of Rajasthan Vs Shivji Lal, (AIR 1979 SC)
M. Karaunanidhi Vs Union of India (AIR 1979) SC – Chief Minister is a public servant within the meaning of section 21(12)IPC.

Protection under CrPC –being a public servant

1. Section (197) CrPC – Prior sanction is required for prosecuting public servant for an offence committed by him while acting or purporting to act in discharge of his official duty.
2. Sec 200 (a) CrPC – If complainant is a public servant, he need not be examined by Magistrate.

Section (74) Indemnity for act done in good faith

No suit shall lie against any public servant for anything done by him in good faith under this Act.

Section (75) Forest Officer not to trade

Except with the permission in writing of the State Government, no Forest Officer shall, as principal or agent, trade in timber or other forest produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside [the territories to which this Act extends].

Scope of Section (76)

1. State Governments are empowered to make rules for regulating the provision of this Act eg. for regulating the movement and trade of timber (Timber Transit Rule).
2. The rules made under this Act shall be laid to before each house of State legislature and house may pass or modify, annual the rule.

Section (77) Penalties for Breach of Rules

Any person contravening any rules under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

Section (78) Rules when to have force of law

All rules made by State Government under this Act shall be published in the official Gazette, and shall thereupon, so far as they are consistent with this Act, have effect as if enacted therein.

Section (79) Persons bound to assist Forest Officers and Police Officers

- 1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest produce from, or to cut and remove timber or to pasture cattle in such forest, and every person who is employed by any such person in such forest, and
Every person in any village contiguous to such forest who is employed by the Government or who receives emoluments from the Government for services to be performed to the community,
Shall be bound to furnish without unnecessary delay to the nearest Forest Officer or Police Officer any information he may possess respecting the commission of, or intention to commit, any forest offence, and shall further take steps, whether so required by any Forest Officer or Police Officer or not,
 - a) To extinguish, any forest fire in such forest of which he has knowledge or information,
 - b) To prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest, and shall assist any Forest Officer or Police Officer demanding his aid.
 - c) In preventing the commission in such forest of any forest-offence, and
 - d) When there is reason to believe that any such offence has been committed in such forest in discovering and arresting the offender.

- 2) Any person who, being bound so to do, without lawful excuse (the burden of proving which shall be upon such person) fails-
- a) To furnish without unnecessary delay to the nearest Forest-Officer or Police Officer any information required by subsection (1)
 - b) To take steps, as required by sub-section (1), to extinguish any forest fire in a reserved or protected forest;
 - c) To prevent as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest, or
 - d) To assist any Forest Officer or Police Officer demanding his aid in preventing the commission in such forest of any forest-offence, or, when there is reason to believe that such offence has been committed in such forest, in discovering and arresting the offender.
- Shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Analysis of Section (79)

1. What is the meaning of word “Person” used in section 79?
In V. K. Joseph Vs State of Tamil Nadu (AIR 1985) the Madras High Court observed that the word “Person” has been used to make it clear in order to exercise the power of controller, under the Act, the statutory functionary has to be duly appointed by the government and that he is a persona designate (designated person).
2. Article 299 of constitution applicable to all contracts made in exercise of executive power of union or state must be executed on behalf of President / Governor or by authorized persons:-
In Abdul Rahiman Vs Divisional Forest Officer (AIR 1989), Kerala High Court observed that person assisting Police/Forest Officer under Sec. (79) IFA is not in contract made in exercise of executive power. Hence Article 299 of constitution will not apply. The duty assigned to person to assist forest or police officer under sec. (79) IFA are statutory in nature.

Judicial process related to Forest Offence : Useful tips

- A. Types of Law - Criminal Law is of three types:-
1. General Law - Jurisdiction over whole country like CrPC, IPC, etc.
 2. Special Laws - Enacted for dealing special subjects like IFA, 1927, FC(A), 1980 Wildlife (Protection) Act, 1972 etc.
 3. Local Laws - Jurisdiction over local areas, territories like Municipal law, Local Body Act. Etc.

According to section (5) of CrPC, in case of conflict between General Law and Special Law, Special Law shall prevail for eg. if an authorize officer has initiated confiscation proceedings under sec. 52 of IFA, 1927, then the trial Magistrate can not release the vehicle involved in offence under section 457 of CrPC (Kailash Chand Vs State of MP 19/4/94 FLT page 94)

B. Legal proceedings

On the basis of laws legal proceedings may be.

1. Judicial proceedings

In this type of proceedings, the evidence preferred must be proved beyond reasonable doubt. For eg. proceedings of all courts constituted under CrPC – eg. Court of Judicial Magistrate Ist Class, Court of Chief Judicial Magistrate or Sessions Court etc.

2. Quasi Judicial Proceedings

The basis in such proceedings is pre-ponderance of probability. For eg. confiscation proceedings under Sec (52) of IFA, 1927 and proceedings under sec. (39) of wildlife (Protection) Act, 1972.

C. Forest Officer Vs Police Officer, who is more effective under Indian Evidence Act.:-

Forest Officers must refer to sec. 25 and sec. 26 of Indian Evidence Act. A statement recorded by a Police officer under sec. 25 of Indian Evidence Act, is not admissible by a court of Law until and unless proved beyond reasonable doubt by the prosecution authority. If there is a doubt in this, benefit of doubt will be given to the accused not to prosecution. It is note worthy that in an important judgement in the case of Aboobaker Vs. State of Kerala, Kerala High Court observed that “Forest Officer is not a Police Officer under section 25 of Indian Evidence Act and confessional statement recorded by a Forest Officer is valid in court of Law and for this eye witness is not required.

D. Cognizable and Non cognizable offences:-

According to sec (2) of IPC if an offence is Punishable for a term of imprisonment extending to more than 3 years it is cognizable offence. In cognizable offence, a police office can arrest the accused without warrant. If we analyze IFA, 1927, it is clear that under no section of IFA, 1927 a punishment of imprisonment for a term extending to three or more than 3 yrs. is prescribed. But under sec. (64) of IFA, 1927, it is clearly provided that ‘Forest Officer/ Police Officer can arrest an offender without a warrant from Magistrate, if the offender has committed an offence punishment for which may extend to a term of imprisonment for 1 month or upwards. Thus it is apparent that decidedly IFA, 1927 is a special law, if seen with reference to sec (5) of CrPC. Therefore if a person commits an offence against IFA, 1927 or wildlife protection (Act), 1972 warranting a punishment of imprisonment for a term extending to 1 month or upwards, arresting the offender without taking a warrant from Court / Magistrate by a forest officer is legally justified.

E. How to Produce the offender in Court.

Under Sec. 177 CRPC, it is provided that filing of case in a court of law shall depend on

- a. Place of occurrence of offence
- b. Section under which offence is charged.

For eg. if an offender commits offence in Dehradun and the offence is related to wild animals kept in schedule -1 or schedule-2 part-2 and he is booked under section 51 of Wildlife (Protection) Act, 1972 then the case should be filed in Court of Chief Judicial Magistrate. But in a special law, if

it is provided that for violation of a certain provision, the case can be heard in only a particular court of law, case should be filed accordingly. For eg. if a case is booked under S.C. ST Act., it should be filed in Sessions Court as provided in SC ST Act.,

F. **Difference between Custody and Arrest**

Please refer sec 41 to 57 of CrPC where this subject is dealt with. Mainly on arrest the arrested person should be told by touching with hand that he has committed such offence under such section of such Act. For arresting an offender not only touching his body with hand but telling him reasons of arrest is also must. Whereas in custody it is not required to touch the body of offender / accused by hand. Any arrested person is required to be produced before Magistrate under section 57 of CrPC and Article 22 of Constitution within 24 hours of arrest. If it is violated, then the offender his family members or relatives can file a case in High Court or Supreme Court for illegal custody using their fundamental rights. It is to be noted that under constitution of India Fundamental Right of citizen (Article 14 to 32 of the constitution) are held supreme.

If forest officer arrests a female offender care should be taken as provided in sec. 51 CrPC; where it is provided that if a female is to be searched, it should be done by a lady keeping all decency in mind. Therefore a male forest officer can not search a female offender. If there is no female forest Guard / Forest Ranger in local forest office / Deptt., any lady from that village may be requested to search the female offender.

If in or near that village, a lady teacher or lady Government employee of a Government Deptt. is posted, her help can also be taken by the forest officers.

G. **Search & Seizure**

Provided in sec. (93) to (100) of CrPC. Following should be taken care of during search

- a) From only after getting a search warrant from a competent forest officer (ACF / DFO), search should be carried out.

- b) Place of search like field, house, barnyard etc. should be clearly mentioned in the search warrant.
- c) Care should be taken of sec. (100) of CrPC during search.
- d) All articles seized during search should be inventoried and the list should be got signed by the house owner (in whose house search is being carried out) and a copy be given to him. If he refuses to sign. Their two other persons from the same village may be requested to sign.

H. **Difference between Summon & Warrant.**

Summon is dealt in sec (61) CrPC and warrant in sec (70) CrPC. Summon is issued to a person to appear in court or to produce a document or an article in the court, whereas Warrant is issued to arrest a person.

I. **Time Frame for taking cognizance of offences under IFA, 1927 and wildlife (Protection) Act, 1972.**

Provided in sec. (468) of CrPC wherein offences are kept in three classes

- a. Offences punishable with fine only cognizance may be taken by Court within six months from the commission of offence.
- b. Offences punishable by a term of imprisonment upto 1 year court can take cognizance within a year of commission of offence.
- c. Offences punishable with a term of imprisonment extending more than a year and upto 3 yrs. Cognizance by court within 3yrs. of commission of offence.

If punishment is for more than 3yrs. of imprisonment for an offence, there is no time limit for taking cognizance by court. For eg. offences related to wild animals under to schedule-1 and schedule -1 part –II of W.L.(P) Act, 1972 which are booked under sec. 51 of W.L.(Protection) Act, 1972.

J. **How to file charge Sheet in a Court of Law?**

Special care should be taken of following while filing charge sheet in a court of law by the forest officer.

1. Name the charge as detailed / given in the Act and make a special mention of the concerned section(s) / clauses. For eg. in case of poaching of tiger pl. mention sec (9) read with sec. (51) of Wildlife (Protection Act, 1972. In addition if the offence is committed in a Protected Area (NP/Sanctuary), Please make a mention of this, so that at least 3yrs imprisonment is ensured (as per 2002 amendment in W.L. (Pro)Act. 1972.
2. Name of offender, father's name, his village, thana distt. Age are to be mentioned. Because if the offender is under 18 yrs. of age, then in case of offence being proved, he shall be sent to Juvenile home by the Court.
3. Please enclose / attach confessional statement of the offender recorded by the forest officer alongwith the charge sheet.
4. Fact of case should be described in the charge sheet in such a way as to make the provisions of concerned sections of the Act clear.
5. If the offender had committed an offence for which he was convicted in past / being tried, please mention the same also in the charge sheet and enclose seizure memo with the charge sheet.

(Please refer sec (211) to (216) of CrPC which provides regarding charge Sheets.)

FOREST OFFENCES AND PERPARATION OF OFFENCE REPORTS

Forest offences have increased manifold with the ever widening demand-supply gap of various forest produces especially timber and fuel wood due to rapidly increasing human population. Since time immemorial, forests have been diverted for settlement, agriculture, tea/coffee plantations, industries, development projects and such other human activities. Whatever forests remained to be seen today, are also subjected to heavy exploitation (despite provision of working plans) by the Government agencies, the public at large, and the organized forest mafia and smugglers. The present scenario is very dismal and disappointing and needs apt handling and effective implementation of various legal provisions to reverse the trend of deterioration and degradation of the forests. The Government pressure on the forests is the least today, but on the other hand the total demand has only increased. Taking advantage of the inadequately armed Forest Departments (in matters of legal power, staff strength, and infrastructure), and price gradient in the markets, forest mafias and smugglers have played havoc with the forest resources.

There are two classes of forest offenders that one comes across. The weaker and poor sections of society who are compelled to break the forest laws/rules in order to earn a livelihood or to simply encroach forests for seasonal / permanent cultivation of agricultural crops to keep their hearths burning, in the absence of any other alternative source of livelihood. The Forests Acts / Rules are replete with instances as to how the law-makers have tried to take care of their bona fide needs. Newer and innovative ways and means could be worked out within the existing legal framework and the present circumstances, to provide a better quality of life to those who are directly dependent on the forests, which would ensure a harmonious relationship between people and law enforcing agencies of the Government which may in the longer run make the people realize the importance of protection of conservation of forests together with meeting the genuine needs and aspirations of the people especially the forests dwellers and the population inhabiting the fringe areas.

The other class of forest offenders are mafias / organized gang of smugglers exploiting the forests for valuable forest produces including timber and wildlife by indulging in to commission of various forest offences mainly illicit felling and transportation of trees and poaching of wildlife for illegal trade in wildlife and wildlife products. Forest to them is an open treasury of green gold that they cut smuggle and exchange for money / drugs / arms or any other criminal or anti-national activities, or even out of sheer greed or other nefarious goals. Such criminals / forest offenders / poachers lures in innocent and poor villagers / tribals who fell the trees / poach wild animals for petty monetary benefits.

A an stringent punishment in law alone is not enough but to punish an offender careful and comprehensive implementation of all relevant legal provisions to book an offender / accused / abettor. Therefore, a thorough knowledge of various legal provisions available on statute book and their legal interpretation with reference to court orders. Even the definitions and interpretation clauses mentioned in the Acts are to be referred to, for they, in one way, outline the scope of law. The main aim while prosecuting a forest offender should be to provide sufficient reasons/grounds for the Court to inflict maximum punishment on the accused. A forest offence, unless truly trivial in nature, should never be compounded; and forest produce which is Government property should in no circumstances be released to the accused. Not only because he is not entitled to get it, but also such an act would, otherwise, encourage crime and criminal tendencies.

For the benefit of the participants / trainees, a Table of Offences has been given below:-

TABLE OF OFFENCES

Section	Offence	Penalty	Cognizable ?	Bailable ?
<u>Indian Forest Act, 1927</u>				
26	Commission of acts prohibited in R.F. areas	Impr. 6 m - fine Rs.500/-	Yes	NB
33	Contravention of notification under section .10,32	Ditto	Yes	NB
42	Contravention of Rules under Section 41	Ditto	Ditto	Ditto
51 (2)	Contravention of Rules under section 51(1)	6 month	Cog.	NB
62	Punishment for wrongful seizure	6 month	Cog.	NB
63	Counterfeiting mark on timber	Impr. 2yrs. fine	Cog.	NB
71	Cattle Trespass	Fine	Non Cog.	Bailable
<u>Indian Penal Code, 1860</u>				
109	Abetment of forest offences	Impr. 6m fine Rs 500/-	Cog.	NB
120(B) (2)	Criminal conspiracy	Impr. 6m Fine	Non Cog.	Bailable
172 etc.	Contempt of lawful authority of Public servants	Simple impr. fine	Non Cog.	Bailable
79	Theft	Impr.3yrs fine	Yes	No
406	Criminal breach of trust	Ditto	Ditto	Ditto
403	Counterfeiting property mark	Impr. 2 yrs.	No	Yes

Note:-

1. Readers are advised to read the provisions of section (64) of IFA, 1927 where it says that forest officers are empowered to arrest without warrant, hence all the forest offences having punishable with an imprisonment of one month upwards, are cognizable offences because Indian Forest Act, 1927 being a special Act overrides provisions of IPC or CRPC both being general Acts as in case of contradictions in special and general Acts, the general Act shall prevail. (Please see Land mark judgement in case of Kailash Chand Vs State of MP (MP High Court, Civil Petition No. 490 of 1984 decided on 19.4.1994 wherein the Court has observed that sec. (5) of CRPC states that nothing contained in the code shall in absence of specific provision to the contrary, affect any special form of procedure prescribed by any other law for time being in force, **The Forest Act is certainly a special law within the meaning of Sec. (5) of CRPC**).

Thus, in view of the limitations of law, a forest officer needs to exercise extra caution while dealing with forest offenders. Every care should be taken to see that the offence report is complete and speaking.

Any property not being the property of the Government, used in commission of the offence must be seized, and explicit prayer be made to the trying Magistrate for its confiscation to the State. If the same property has been used previously in commission of an offence, the same should be clearly indicated in the report giving all possible details and necessary references.

As per the provisions of section 211 Cr .P.C., the offence report should be prepared keeping the law in mind. The report should contain such particulars as time, date and place of occurrence of the offence. The offence of which the person is accused, should be clearly indicated, ensuring that all the legal requirements of the offence have been met with case of two or more offenders, their offences if different, should also be unambiguously stated separately. The charges brought forward against the accused if, not properly stated, or if not in accordance with law, may not stand legal scrutiny can be null and void.

Model case – 1

A was found defacing /super marking sawn-timber bearing property mark of B, kept in a railway yard C, a forest officer on duty to

check govt. timber kept at the yard, arrested A and produced him before the Magistrate accusing A of having committed a forest offence u/s 63 I.F.A. Here, section 63 does not come into picture at all as the timber in question bore private property mark alone. A had not tampered with a mark duly placed by a forest officer on timber. Therefore all the conditions required u/s 63 are not fulfilled in the present case.

The circumstances of the commission of the offence, its detection, and subsequent course of action taken under law should clearly be mentioned. The knowledge of complete situation would invariably assist the trying Magistrate in realizing the gravity of offence on one hand, and allowing him leverage to prescribe maximum punishment as well. Even a simple forest offence may made to appear grave.

Model case – 2

A was found inside a reserved forest B, forest officer on duty, arrested him and produced before the Magistrate accusing A of having committed trespass. Here, B must be able to prove trespass as defined u/s 26(d) of I.F.A. i.e. that accused was found well within the boundaries (Compartment No. x, Block No. y) of the reserved forest Z duly constituted vide Govt. notification No. xxx Dt. yyy. That there was no right of way, or pasture etc. (as the case may be) in the said patch of the R.F. / whole R.F. That the accused had not been granted / was not carrying any valid pass/permit from an authority so empowered to allow the same. The concerned Rules and notification, duly certified by a superior forest officer, along with a sketch of the relevant area / scene of occurrence (if possible signed by the accused), enclosed for the perusal of the Court. Here, again if the stress is laid on the fact that the trespass was made with ulterior motives to cause damage to the valuable standing public property worth Rs. xxxxxx.xx, as indicated by time of occurrence (say after sunset), place of occurrence (say valuable mature talk plantation), and on search of the accused, seizure was made of tools and implements from his person, or hidden by him in a convenient place, the trying Magistrate would not hesitate to inflict maximum penalty if the accused is found guilty on examination.

In normal course of practice, forest officers exercise the power of seizure too often. It is good to remember that section 52 I.F.A. warrants seizure of forest produce, along with connected tools, implements etc., if a forest offence is believed to be committed in respect of the forest produce, but not all forest offences are committed in respect of a forest produce alone.

Model case -3

A, forest officer on duty, seized an illegally constructed fishery of B, a forest villager. The matter came before the trial Court. The defense lawyer cross-examined A. A set of questions was put before A in the Court room. 1. How did you seize a fishery in the first place? 2. Did you affix any mark upon it after seizure? 3. Did you seize water, or fish, or earth or what? 4. How you determined that the fishery was illegal as B was a forest villager, and he constructed the same on his allotted land? A could not answer any of the questions satisfactorily, though he had done every thing within jurisdiction according to him. Here, A appears to have discharged his duties negligently. He failed to exercise his power to enter upon any land and survey, demarcate and make map of the same u/s 72 (a) prior to seizure of the fishery. Secondly, if any fish was found during the seizure, the same should have been recorded and (it being a perishable property), put to spot auction, the value realized should have been deposited in the treasury, and the matter informed to the Magistrate.

The circumstances of every case are bound to be different, suggesting different courses of action according to merit. Out-rightly proceeding under section 52 may not be advisable in every case. The forest officers must, of course, utilize the powers conferred upon them u/s 72 (l) (a) to (d), to proceed in a forest offence case, All the proceeding undertaken, evidence/statement recorded, materials searched, should be produced before the trying Magistrate. If the inquiry is not complete, the court may be intimated of the same, and time be sought for postponing the hearing. If the forest officer thinks that police can investigate the case in a better way, the court may be requested to issue directions accordingly u/s 210 Cr, P.C. The forest offence report submitted before a trying Magistrate is equivalent to

the charge report of police officers (if not of the same status u/s 173 Cr .P.C.).

The onus of proof for anything stated in the report also lies with the prosecution (u/s 101 I.EA.) Hence, it becomes mandatory for the officer who draws the offence report to furnish the same based on facts, documents, and evidence alone. All the evidence, including names of the witnesses, must be duly enclosed along with the offence report. The offence report must also clearly pray for the punishment that the accused be inflicted upon in the interest of justice, along with any other prayer such as compensation damages caused forest/wildlife/habitat (value in terms of money based on rationale), damages of environment I public health etc. (See section 35(1) I.F .A.).

Model case – 4

A, along with B and C was apprehended outside a reserved forest loading teak logs in a truck, by a forest officer, x, on duty. X on advancing further inside the forest apprehended D and E carrying logs. On further advancing, he found several freshly cut stumps. On inquiry, it was revealed that A,B,C,.D,E, and F, the owner of the truck, made the plans together to remove logs and supply to G, a timber smuggler who also financed the whole activity. In the instant case, the accused have committed separate offences. Moreover, Offences of F and G are not forest offences. While A, B ,C, D, and E have committed various offences under I.F .A.,1927 they are also punishable u/s 120(B)(2) I.P.C., whereas F is only punishable Ills 120(B)(2) and u/s 109 I.P.C. G is punishable u/s 109 I.P.C. The matter mayor may not have been referred to police for investigation, but the fact remains that in the complaint case before the trying Magistrate all the accused shall be brought. Hence, the offence report must clearly indicate their respective offences, and pray for maximum punishment as per law. If records show that some of the accused were booked earlier in another offence, its detail must follow along With a prayer to enhance the punishment in respect of them. In addition to this, the offence report may pray for compensation of damages to valuable teak (that would have yielded to the State Rs. xxxxxxxx;xx revenue in course of time but for the willful criminal activities of the accused) that were raised at a cost of Rs xxxxx.xx (as per cash book/plantation journal entries certified and enclosed) as

well as damages to environment, animal habitat that amount to Rs. xxXX.1:\:xx.x.\: as a social cost of the crime. The offence report must pray for confiscation of the truck and other implements seized, to the State. The offence report must also pray for release, sale and disposal of the timber which is a Govt. property, by the Forest Department as per existing provision of law.

Few guidelines in general are given below. They are however, meant as advice alone. Care should be taken as circumstance of cases differ by a wide margin.

Always plan out a major offensive/raid/crack-down/eviction (as secretly as possible). Go through all the pros and cons of the situation that may unfold before you in course of action. Always consult the major criminal acts i.e. the Cr. P.C., 1.1'.C., and the I.E.A. The provisions of the minor acts such I.F.A., Wildlife (Protection) Act, must be read with the relevant sections of the major acts in case of any doubt.

Once a person has been arrested/caused to be arrested, ensure that under safe custody. Any custodial accident/death of the accused may come heavily upon you. It is advisable to go for a medical check up of the accused in case of any doubt of injury fill health of the accused.

Any work of enumeration, survey, demarcation connected with an offence must be properly entered in field books / log measurement book / register etc.

If any property seized is perishable within a short time, arrange for its spot disposal and deposit the proceeds in the treasury. The facts of the circumstances, however, must be intimated to the trying Magistrate at, the earliest. All the documents of the spot auction must accompany the offence report. If the accused is present: his witness may also be recorded without fait.

In executing search warrants, make sure all provisions under law are followed to the extent possible and practicable. Take respectable members of the area/locality, along with a section of the local police (if they are willing to co-operate) .

Never fail to make a map/sketch of the scene of crime, showing the relevant details such as distance from R.F, or location inside the R.F., or details of the premises as the case may be, along with the witness of the accused, if available, or other witnesses who can testify in the Court.

Always refer to the offence register kept in the Beat/Range/Divisional office to verify whether the accused was apprehended earlier in any forest offence. If so, give details. A point to remember:- if the accused has compounded any offence in the past, the same should also be mentioned. In no case, a second compounding should be allowed. Compounding of offence is tantamount to conviction (as if the forest officer acted as a Criminal Court), the difference being that the accused is let away with a fine and is removed of the burden of Court appearances. A person who compounded. In offence is as guilty in the eye of the law as another who was convicted and fined by Court.

Never hesitate to bring forth any corroborating evidence, even during trial. The offender should not be allowed to go scot-free on benefit of doubt. The stronger the evidence, the stronger the case. For example, satellite imagery is a wonderful tool to establish date of an encroachment (of a minimum size, of course). The same pertaining to the relevant period should be produced before the court. Activities causing large scale destruction of forest (in terms of hectares or more) can also be corroborated using satellite maps.

In matters of killing, trapping, poisoning of wildlife, evidence in form of scientific/forensic analysis, post-mortem and examination report of viscera should invariably be produced. Viscera examination should be caused at the earliest, as it decomposes fast. If the true cause of death is not established, the case would not stand much ground.

Often plea of ignorance is taken by offenders, especially in cases of executive orders which never become public. Therefore, any executive order that may relate to any penal provisions should be widely publicized through local newspapers, notice boards, signs displayed at appropriate places. If violation in respect of any such order has taken place, fact of wide publicity to the said provision ought to be made in the offence report.

Limitation for taking cognizance of offences is defined 467-473 Cr. P.C. In general, the limitation for forest offence is one year from the date of commission/detection. Therefore, Care should be taken so that offender does, not get the benefit of doubt/limitation.

Model case -5

A Range Forest Officer C, along with his staff intercepts and seizes a truck carrying illicitly cut / felled khair trees from the reserved forests, just out side its boundary, on the road; the driver of the truck alongwith cleaner who were boarding the truck at the time of interception, were also arrested. The offence case was booked under section 26 (1), (f), (d), and sec. (52) of IFA 1927, read with relevant section of State Forest Amendment Act. authorizing the DFO to hear the case for confiscation proceedings as authorized officer for confiscation of the truck alongwith illicitly cut forest produce, as the driver / cleaner of the truck was not having any valid permit / pass to enter into the reserved forests and carry out felling operations of khair trees and as such there is a reasonable suspicion that the forest produced in the truck is a Govt. property.

Brief the APP or PP about details of the case in all respect so that he is well prepared to defend the prosecution case in the court.

CONCLUSION

Seeing the limitations of Law, a forest officer needs to exercise utmost caution while dealing with forest offender and take extra care to prepare offence report / charge sheet which should be complete and speaking and must be prepared keeping law in mind. The main aim while prosecuting a forest offender should be to provide sufficient reasons / grounds for the Court to inflict maximum punishment on the accused / offender.

Forest Conservation Act, 1980- Analysis & legal tips

An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

Be it enacted by Parliament in the Thirty-first year of the Republic of India as follows:-

Short title, extent and commencement:-

- ☞ This Act may be called the Forest Conservation Act, 1980.
- ☞ It extends to the whole of India except the State of Jammu and Kashmir.
- ☞ It shall be deemed to have come into force on the 25th day of October, 1980.

Comment:-

Environmental degradation and ecological imbalances due to large scale deforestation should be prevented, that is the essence of the preamble of the Forest Conservation Act, 1980. This has been emphasized by the Supreme Court of India in the following two cases:-

- In *Tribhuban Prakash Narayan Vs. Union of India* (AIR 1970) Supreme Court held that preamble is key to open the mind of legislature.
- *Ambica Quarry Works Vs. State of Gujarat* (AIR 1987) SC held that FC Act was in recognition of the awareness that deforestation and ecological imbalances are as a result of deforestation. The court held that renewal of lease is in essence an application for grant of a lease for a fresh period.
- *Yashwant Stone Works Vs. State of UP* (AIR 1988) SC held that application for renewal of lease under Sec (2) to be treated as fresh lease.

Section -2 - Restriction on the de-reservation of forests or use of forest land for non-forest purpose:-

Notwithstanding anything contained in any other law for the being in force in a State, No State Government or other authority shall make, except with the prior approval of the Central Government, any order directing:-

- ☞ **That any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in**

force in that State) or any portion thereof, shall cease to be reserved;

- ☞ That any forest land or any portion thereof may be used for any non-forest purpose;

Section -2 - Restriction on the de-reservation of forests or use of forest land for non-forest purpose:-

- ☞ That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government.
 - ☞ That any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.
- **Vinay Verma Vs. State of Bihar** (1996) Patna HC observed that respondent (viz State of Bihar) has rejected the case at his level under rule (2), petitioner has right that his application for approval should be considered by Central Government. Hence as per Rule (4) of FC Rules, respondent shall send his application to Central Government with her remark/comments. **The rejection or grant of approval will be by the Central Government.**
 - The provisions of FC Act shall prevail over the provisions of mineral concession (**N.K. Pradeep Kumar Vs. State of Bihar 1994 Patna HC**)
 - Forest Land – **State of Bihar Vs. Indian Aluminium Company** (1997) SC held that Sec (3) of IFA gives some clue about the meaning of Reserved Forest. RF can comprise of forest land as well as wasteland. This means that on de-reservation of RF, the land would be forest land depending upon its nature at the time when it was declared as reserved forests.

Explanation:-

For the purpose of this section, “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for:-

- ☞ **The cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;**

- ☞ Any purpose other than re-afforestation;

Explanation:-

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

Sec.-3- Constitution of Advisory Committee:-

The Central Government may constitute a Committee consisting of such number of persons as it may deem fit to advise that Government with regard to :-

- ☞ The grant of approval under section 2; and
- ☞ Any other matter concerned with the conservation of forests which may be referred to it by the Central Government.

Sec.-3.A Penalty for Contravention of the provisions of the Act.

Whoever contravenes or abets the contravention of any of the provisions of Section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days .

Sec.-3.B Offences by authorities and Government departments:-

- ☞ Where any offence under this Act has been committed:-
 - ☞ By any department of Government, the head of the department; or
 - ☞ By any authority, every person who, at the time the offence was committed, was directly in charges of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority;

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

- ☞ **Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if it is proved that the offence was committed with out his knowledge or that he exercised all due diligence to prevent the commission of such offence.**
- ☞ Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of Government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the persons, referred to in clause (b) of sub-section (1), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Analysis of Section (3)

- Empowers Central Government to constitute a committee for advising government for grant of approval and matter connected with conservation of forests.

Sec.- 4. Power to make rules:-

- ☞ **The Central Government may, by notification in the Official Gazette, makes rules for carrying out the provisions of this Act.**
- ☞ **Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or**

Sec.-4-Power to make rules:-

- ☞ the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
- **Analysis of Section (4)**
- **Power of framing Rules – In Ram Avtar Santosh Kumar Vs. State of Bihar (AIR 1987 Patna HC) held that general power of framing rules for effectuating the purposes of Act would plainly authorize and sanctify the framing of such a rule.**
- **Power of making rule lies with Central Government.**

Sec. -5- Repeal and saving:-

- ☞ **The Forest (Conservation) Ordinance, 1980 is hereby repealed.**
- ☞ **Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.**

C O N C L U S I O N

The Forest Conservation Act, 1980 is a very important legal tool in the hands of forest department to help it ensure the conservation of the precious forests of the country and check the indiscriminate and unnecessary diversion of forest land for non-forestry purposes. The forest officers concerned should always apply the relevant sections of Forest Conservation Act, 1980 as and when deemed fit.