

A CONSERVATION BILL THAT ENDANGERS FOREST RIGHTS

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In Kandhamal district, Odisha | Photo Credit: BISWARANJAN ROUT

The expeditious [passage](#) of the [Wild Life \(Protection\) Amendment Bill, 2021](#) in the Rajya Sabha this winter session — this followed its passing in the Lok Sabha during the monsoon session — needs comment. The Wildlife Protection Act (WPA), 1972 has safeguarded numerous species of wild animals and plants by prohibiting all forms of hunting and, more importantly, creating inviolate areas where wildlife conservation may be carried out. The amendment further invests in this conception of protected areas and species by bringing in newer species to be protected, augmenting the penal repercussions. While the aspects of protecting species from the wildlife trade, in line with international standards, have received thoughtful scrutiny by civil society, Members of Parliament and the Parliamentary Standing Committee, the impact of the criminal legal framework adopted by the WPA is less known.

The need for criminal laws to assist wildlife conservation has remained unchallenged since its conception. From regulated hunting to complete prohibition and the creation of 'Protected Areas (PA)' where conservation can be undertaken without the interference of local forest-dwelling communities, State and Forest Department control over forests and the casteist underpinnings of conservation would not have been possible without criminal law. In this context, pitting wildlife species against communities as human-animal conflict has eluded the true cost of criminalisation under the WPA.

The recent move to increase penalties by four times for general violations (from 25,000 to 1,00,000) and from 10,000 to 25,000 for animals receiving the most protection should raise questions about the nature of policing that the WPA engenders.

A study by the [Criminal Justice and Police Accountability Project](#) (the CPA Project examined arrest records, first information reports (FIRs), offence records of the police and Forest Department in Madhya Pradesh) found that persons from oppressed caste communities such as Scheduled Tribes and other forest-dwelling communities form the majority of accused persons in wildlife-related crimes. The Forest Department was found to use the threat of criminalisation to force cooperation, apart from devising a system of using community members as informants and

drawing on their loyalty by employing them on a daily wage basis. Cases that were filed under the WPA did not pertain solely to the comparatively serious offence of hunting; collecting wood, honey, and even mushrooms formed the bulk of prosecution in PAs. Over 95% of the cases filed by the Forest Department are still pending.

Hunting offences that were primarily filed against Schedule III and IV animals (wild boars) which have lesser protection than tigers and elephants formed over 17.47% of the animals 'hunted' between 2016-20. Among the animals hunted the highest, only one in top five belonged to Schedule I (peacock). Surprisingly, fish (only certain species relegated to Schedule I) formed over 8% of the cases filed. A whopping 133 cases pertaining to fishing (incorrectly classified as Schedule V species) were filed in the last decade in Madhya Pradesh.

Forest rights, individual and collective, as part of the Forest Rights Act (FRA) were put in place to correct the injustice meted out by forest governance laws in recognising forest-dependent livelihoods. The natural overlap of recognising forest rights in intended-as-inviolable PAs was quickly resolved by making the FRA subservient to the WPA, thereby impeding its implementation.

In the field work carried out, it was noticed that while individual forest rights in buffer zones of the Kanha National Park of Madhya Pradesh were recognised, the same cannot be said of collective rights over usage of forest resources, fishing, and protecting forest resources. Fishing, which forms an important part of subsistence for tribal communities, has come to be regularly criminalised as part of the WPA. In cases recorded by the Forest Department, as noted above, the very fact that these occurred in PAs led to the offence becoming punishable by three to seven years.

In a case from 2016 documented by the CPA Project, five men were apprehended by a range officer and beat guards as they sat across a fire with fish they had caught from the river nearby. The catch weighed less than 500 grams, yet the accused were charged with causing damage to a wildlife habitat under a host of WPA provisions. The case continues to remain pending in trial court.

Criminal cases filed by the department are rarely compounded since they are meant to create a 'deterrent effect' by instilling fear in communities. Fear is a crucial way in which the department mediates governance in protected areas, and its officials are rarely checked for their power. Unchecked discretionary policing allowed by the WPA and other forest legislations have stunted the emancipatory potential of the FRA. Any further amendments must take stock of wrongful cases (as in the case of fishing) and resultant criminalisation of rights and lives of forest dwelling communities.

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