

APPLICATION OF INDIAN PENAL CODE IN FOREST OFFENCE CASES

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ABSTRACT

The imperial forest department was established in 1864 by the British. Immediately after this the Forest Act, 1865 was passed. This Act had some inherent contradictions. Therefore this Act was modified and new Indian Forest Act, 1878 was passed. After few amendments the final version came to be known as the Indian Forest Act, 1927. This was applicable in many states of country. However, some states like Assam had their own Forest Act. The framers of the Forest Act had visualized that routine forest offences should be prosecuted under the Forest Act while serious offences relating to forest estates should necessarily be prosecuted under the Indian Penal Code, 1860. B.H. Baden Powell (1840-1901), the chief architect of the imperial forest act had elaborated this aspect in his famous book written for the training of the members of Imperial Forest Service. Baden Powell was also the architect of the land revenue system in British India.

Forest offence cases are mostly dealt under the provisions of the Indian Forest Act, 1927 or under the State Forest Acts. But it was always intended that certain grave cases should be punishable under the (usually severer) provisions of the Indian Penal Code. This was envisaged by B.H. Baden Powell (1840-1901), the chief architect of the Indian Forest legislation. This article is based on his book written for the training of the members of the Imperial Forest Service.

We have three classes to think of:-

- I. Cases where the Forest law only can be applied to; as with specially "Forest" offences.
- II. Cases whether either the Forest Act or the Indian Penal Code can be followed
- III. Cases where the I.P. Code alone is applicable. And in II and III the application of the I.P. Code may be -

- a) To cases directly concerning the forests.
- b) To cases indirectly concerning the forests but connected with the forest service and administrative business of the department.

As regards class I, it is stated that this falls within the purview of the Assam Forest Regulation 1891 with which forest officials are supposed to be thorough.

As regards class II, it is obvious that every act of mischief and injury to trees or clandestine removal of timber or produce would clearly (and without any refined argument or stretching of terms) come both within the terms of the Forest Act and rules and also of the I.P. Code. It is then for the prosecution to consider which law it is best to proceed under according to the circumstances of the particular case. If prosecution under the Act and rules will result in a sufficient punishment, there is this advan-

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tage, that the offence is provided with a direct penalty, suited to its immediate aspect as a forest case, and further the trial can be with that shorter and simple form of record as enjoined under the "summary trial". For all offences where a sufficient punishment can be given under the Act & Rules, the prosecution will naturally be under them.

Even cases of "marking" or cutting up timber, which in themselves are always more criminal and better known to be offences than forest trespass, are often quite as well treated under the rules. We know that offences connected with timber in transit, provide for double penalties if the offence was committed at night, or after preparation for resistance, or there had been a previous conviction.

But where there is a grave case, and full penalty is called for, it should be a matter for a regular criminal trial under the I.P. Code.

A serious forest fire willfully caused may demand the penalty of seven years' imprisonment and fine under sec 435 of I.P. Code.

A slighter act, or a merely negligent one, would be dealt with under sec. 25 or 35 of the Forest Act.

An aggravated case of timber theft or extensive cutting of trees should be charged and tried under the I.P. Code, as a rule. Because, the Forest Act regards such acts rather from the point of view of mischief to the forest growth or interference with the course of control than as infringements of the rights of property.

The framers of the Forest Act always contemplated that cases in which a distinct intention to steal and to cause wrongful loss to one party or wrongful gain to another, should be prosecuted as offences against the provisions of the Indian Penal Code.

III. There are some cases, where a prosecution is evidently possible and yet can only be under the I.P. Code. For instance no notice of "abetment" is taken in the Forest Act; this clearly implies that as abetment of any offence is punishable under the I.P. Code, the code would be resorted to in any case where it was requisite for the ends of justice to prosecute.

"Attempts" where they are punishable at all, come under the same rule. And so the breach of a duty to give aid or information, or other breach of duty where no special penalty is imposed by the Forest Act, must be dealt with under the code.

It is hardly necessary, to add that there may be offences committed in lands not regularly under the Forest Act, and that in such cases, and unless some local rules or special provisions exist having the force of law the prosecution can only be under the ordinary criminal law i.e. under the I.P. Code.

- Theft or criminal misappropriation
- Receiving stolen property
- Mischief
- Criminal trespass
- Abetment of offences
- Attempts to commit offences.
- Omission to give information aid etc.

As regards theft (I.P.C. sec. 378) its nature has been explained in the code. It is only necessary here to repeat that the property (in a case of theft), is moveable, and is, at the time, in the possession of the person wrongfully deprived. Trees in a forest, demarcated and declared, are, at any rate, "constructively" in possession of the Forest Officer of the Government who is owner, and though they are "immovable" while still standing, they become moveable by severance, and the Act of severance would involve a "moving" which is suffi-

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cient to complete the theft.

If the property is not at the time in possession of anyone as if a log is lying on a river bank of island or a bundle of grass by the roadside, then the offence is not theft but criminal misappropriation. (Sec. 403) The "explanation" attached to this section in the Code to this offence should be remembered. In the first place, a dishonest misappropriation or conversion to a man's own use for a time only may be an offence. Supposing, for instance, a person having salvaged a log of teak should keep it in his yard and make no attempt to inform the Forest Officer, or to find the owner, this might be, according to the circumstances, a misappropriation punishable under sec.403. It would be a question of fact whether the detention was for such a length of time as was not natural or necessary, supposing the accused person to have had an honest intention of finding the owner or applying to a Forest Officer. This example also includes the 2nd explanation to sec. 403, which is that it is not misappropriation in the first instance to take possession of property for the purpose of protecting and restoring it to its owners; but it becomes an offence as just stated, if within a reasonable time, steps are not taken to give notice, or discover the owner.

It is not necessary that the finder of property should know who the owner is, or that any particular person is owner: he misappropriates it if does not believe it to be his own (and yet makes no attempt to discover the owner).

In some cases, when no owner can be found, there cannot be a misappropriation, because then the thing really becomes "res nullius" i.e. on-owned objects. Under the Forest law, however, as regards timber in transit, this excuse would rarely avail, since Government is declared by law to be prima facie owner of all unmarked, and drift timber, within certain limits (sec. 43). A man could not, for example, pick up a sleeper lying on a sand bank, and say, "I

may take this because it is so exactly like thousands of other sleepers that it is impossible for me to find an owner;" for the prima facie owner is, by law, the Government.

Cases of breach of trust (sec. 405-6) can hardly occur except in cases of contract to remove timber; but this is not really a direct forest offence.

Closely connected with theft is the offence of "receiving or retaining" stolen property, knowing or having reason to believe that the property is stolen. This is an offence which, not being specifically mentioned in the Forest Act, must be prosecuted under the I.P. Code. Any property, the possession of which has been transferred by theft, extortion, or robbery, or which has been criminally misappropriated, or in respect of which a criminal breach of trust has been committed, is "stolen property." (Sec. 410.) "Dishonestly" receiving or retaining this is punishable under sect. 411. And there are other sections following, which may also be applicable; for example, the habitual dealing in such property is punished under sec. 413; and assisting in the concealment under sec. 414. Anyone of these offences is likely to occur in connection with timber thefts.

To sustain a charge of "receiving" it is necessary to show (1) that the receipt or detention was dishonest (i.e., with intention of causing wrongful loss or wrongful gain; this fact is usually to be inferred from the circumstances of the case; (2) that the offender either knew or had reason to believe, that the property was stolen, or obtained by misappropriation. This is also usually to be established by the circumstances such as the time and means of getting possession (whether at night in secrecy, taking it at very much below its value, and the way in which he dealt with the property afterwards (such as burying or concealing it. These matters afford indication of guilty knowledge. Especially important is the common case

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where the accused cannot or will not say how he obtained the property which has recently come into his possession.

Mischief is an offence defined by sec. 425, Indian Penal Code. To constitute it, there must be an intention to cause or knowledge that it is likely to cause, wrongful loss or damage to the public or to any person. It is obvious that mischief may be of various classes and so be of different degrees of criminality, according to the means employed in producing it, according to the value of the property injured or destroyed, and according to the nature or public utility of the property damaged. Mischief relates to property (including animals), not to men.

Mischief in general, is punished by sec. 426. Recourse in forest cases would not be had to this section, because the minor forms of mischief (adequately punishable with fine or with imprisonment up to six months) are all specified in the Forest Act itself.

Mischief where the damage amounts in value to 50 rupees and more comes under sec. 427; and mischief by fire with intent (or guilty knowledge) of causing damage to the extent of 100 rupees value or upwards is punishable (the imprisonment may extend to seven years with fine also) under sec. 437. This section would be resorted to in grave cases of mischief by setting fire to a forest.

Mischief to irrigation works or water-supply works (of any kind and for any purpose) and mischief to roads, bridges, and navigable channels come under sec. 430-1 and mischief to cattle (according to value) under sec. 428-9.

Criminal trespass may be just mentioned but it is not likely to be applied to forest cases because the specific acts of trespass on forest property are provided against in the Forest Act as to trespass under the Code and the criminal intention which is necessary to consti-

tute the offence.

The subject of "Attempts" has been dealt. It is only an offence punishable under the Indian Penal Code the attempt to commit which is punishable. "Attempts," therefore, in the case of lesser forest trespass and mischief could not be prosecuted. It is only where an offence connected with the forest or with timber in transit is serious, and would be punishable under the Indian Penal Code, that a case of "attempt" could be successfully prosecuted.

"Abetment" may occur in forest cases, because the Indian Penal Code (sec. 108) speaks of abetment of an "offence," and the term here is explained (by sec. 40 of the Code) to include all offences whether punishable under the Code or under a special law, and irrespective of the amount of sentence to which they are liable. As a matter of practice abetment would not be taken notice of in merely petty cases. It is immaterial to the existence of the offence of abetment whether the principal offence is actually committed in consequence of the abetment or not (I.P.C., sec. 108, explanation II.), but this result is very material to the question of amount of punishment. The circumstances which constitute an "abetment" punishable under the Code have been described.

There is a duty laid on certain persons to give information of offences or render assistance in forest fires. Omission to render the assistance required (sec. 42, 73 AFR) would be prosecuted under sec. 187.

A person legally bound, and intentionally omitting to give information would be punishable under sec. 176, I.P. Code. He would come under sec. 177 if the information given were such as he knew, or had reason to believe, were false.

In the case of the duty imposed by sec. 73 of the AFR no penalty was mentioned be-

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cause the moment the duty is legally declared, the general criminal law provision against the breach of such a duty applies. Sec. 176, 177 refer to information legally required on any subject, or to information about an intention to commit some offence or to giving false information (which is merely another form of the same dereliction of duty). Sec. 202, 203 refer, similarly, to the case of information about an offence actually committed. The I.P. Code has introduced a difference in these sections, as to the meaning of the term "offence." Thus, in sec. 176 "offence" means one under the I.P. Code or under a special law if punishable with six months' imprisonment and upwards and so in sec. 177 and sec. 202. In sec. 203 it is any offence. If, therefore, a case of omission to inform about an intention to commit an offence were prosecuted, the first clause of sec. 176 would alone be applicable, unless the offence were of the graver description, when the 2nd clause could also be applied. If the information not given related to an offence actually committed (sec. 202), the same remark holds good.

Under sec. 201, I.P. Code, if any person, knowing, or having reason to believe, that an offence under the Indian penal Code (or may be under the Forest law if punishable with six months' imprisonment or more) has been committed, causes any evidence to disappear, or gives false information, in order to screen the offender, he is liable to punishment, which varies according to the gravity of the offence concealed (see also sec. 206).

Of the offences under the Indian Penal Code, indirectly connected with forest administration, i.e., likely to occur or to come within the range of a Forest Officer's practice it is worthwhile to discuss the principle.

An "unlawful assembly" may possibly occur in connection with some disputed boundary or question of right in land. Here it may be necessary to refer to the Criminal Procedure

Code as to the action of the magistrate in dispersing an unlawful assembly; and as to action taken to maintain existing possession and prevent a "riot".

Giving false evidence (sec. 191 to 195) is an offence which is unfortunately likely to occur in forest cases; but inasmuch as on such an occurrence in a forest trial, the Magistrate or Court would take action, it is only necessary to refer to the Forest Officer to the sections of the Code.

The harbouring or concealing offenders, as a step calculated to defeat the ends of public justice, is an offence under the I. P. Code, sec. 212. The "offender" must, however, have committed, or been charged with, an offence under the Indian Penal Code, or under any special law punishable with imprisonment for six months or upwards.

As regards breach of trust (sec. 405), a case under this head sometimes occurs, when a contractor has been employed in the forest to saw up the trees felled, and launch them in certain scantling forms, into the river. It may happen that it pays him well to remove the lighter scantling which is conveniently situated, but larger pieces at a distance from the river may be expensive and troublesome to move. He is then tempted to conceal, burn, or otherwise destroy this timber, so as to avoid the duty of launching it. Here, it will be observed, the offender does not convert the timber to his own use (sec. 405), but he does offend against the further clause of the same section, namely, he violates the express or implied terms of the contract under which the timber was made over to his charge. He can then be prosecuted for breach of trust, to say nothing of a further charge of mischief.

These will be found to be the principal offences likely to come up in the course of a Forest Officer's business, which will require ref-

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erence to the Penal Code.

Certain offences by Forest Officers can be more appropriately found to the chapter on Forest Officers and their duty under the Assam Forest Regulation, 1891.

Another point which needs to be clarified here is that the Indian Forest Act, 1927 is not applicable in Arunachal Pradesh. This is because the original act namely the Indian Forest Act, 1878 was extended to the then province of Assam, but by Regulation 7 of 1891

(commonly called the Assam Forest Regulation, 1891) the Indian Forest Act, 1878 was replaced as far as it relates to Assam. The extent clause of the Indian Forest Act, 1927 therefore omits Assam from the extent clause.

PREFERENCES

Baden-Powell, BH. (1893): *Forest Law- A course of Lectures* 8, 9, & 10
Bradbury, Agnew and Co. , Ltd.,
Bouverie steel, London.