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Section 62 of WLP, 1972: When the Custodian becomes the Killer?

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'Declaration of certain wild animals to be Vermin'. The central govt. by notification declare any wild animal other than those specified in schedule I and part II of schedule II to be "VERMIN" for any area for such period as may be specified therein and so long as such notification is in force, Such wild animal shall be deemed to have been included in schedule V Vivek Kumar Singh, Principal Secretary of Bihar for Environment and Forest sent a proposal for declaring "Vermin" to Blue Bull (Nilgai) and Wild Boar (Jangli Suar) as the animals of these two species are damaging the crops of farmers in 31 District of Bihar. As a result, the Ministry of Environment Forest and climate change – by a Notification on December 1, 2015 – Declared the Nilgai (Blue Bull) and Wild Boar "VERMIN" in some districts of Bihar, for one year till December 2016. And the most devastating conditions aroused when the forest dept. of Bihar despite going for Translocation or Sterilization of the animals declared "Vermin" hired the shooter named Shafat Ali Khan, age 52, Hyderabad and to kill the Nilgais in Buxar, Mokama, and Vaishali District of Bihar and more than 200 Nilgai were killed, shot dead in just 4 days and the cruelty to them did not stop here. In Vaishali, an injured nilgai was buried alive. This section is just like "Custodian becomes the killer". How can we so, called civilized people can do this? We cannot create any species or any individual organism, so how can we kill them? We cannot become God "nor creator nor destroyer". This section 62 of WLP, 1972 may have very devastating effects in the future. So, this is the call of the hour or the right time to review this and make proper amendments to save our wildlife and our natural habitat and environment for the benefit of human civilization.

Keywords: *vermin, nilgai (blue bull), culling, ecology, forest management, wildlife.*

INTRODUCTION

ॐ सर्वेभवन्तुसुखिनः। सर्वेसन्तुनिरामयाः।

सर्वेभद्राणिपश्यन्तु। माकश्चिद्दुःखभाग्भवेत्॥

ॐ शान्तिः शान्तिः शान्तिः॥

English translation of the above Shlok:

May all sentient beings be at peace, may no one suffer from illness,

May all see what is auspicious, and may no one suffer.

Om peace, peace, peace.

Nonetheless, such an altruistic shlok from our ancestors, who prays for all living beings or living creatures to live a healthy and happy life on this mother earth. But section 62 of the Wildlife Protection Act goes just opposite to these beautiful lines above.

LEGAL TRUTH - UNDERSTANDING OF Sec.62 OF WILDLIFE PROTECTION ACT 1972

Section 62¹ - Declaration of certain wild animals to be Vermin. The central govt. by notification declare any wild animal other than those specified in schedule I² and part II of schedule II³ to be "VERMIN" for any area for such period as may be specified therein and so long as such notification is in force, Such wild animal shall be deemed to have been included in schedule V⁴.

HOW AND WHY TO DECLARE ANY ANIMAL SPECIES "VERMIN"

Under the provision of sec 62 of WLPA, 1972.

¹ Wildlife Protection Act 1972, s 62

² Wildlife Protection Act 1972, sched I

³ Wildlife Protection Act 1972, sched II, part II

⁴ Wildlife Protection Act 1972, sched V

The state govt. – send proposal – to central govt. – to declare any animal species as “Vermin”, if that particular species is damaging the natural habitat or doing a lot of harm to the humans inhabiting that area or locality. But if species is declared “Vermin”, there are 3 options –

- Translocation of the animals of that species to any other area.
- Sterilization of the male of that species to keep a check on the population of that species.
- Culling to kill the animals of that species.

CASE STUDY

Vivek Kumar Singh, Principal Secretary of Bihar for Environment and Forest sent a proposal for declaring “Vermin” to Blue Bull (Nilgai) and Wild Boar (Jangli Suar) as the animals of these two species are damaging the crops of farmers in 31 District of Bihar. As a result, the Ministry of Environment Forest and climate change – by a Notification on December 1, 2015 – Declared the Nilgai (Blue Bull) and Wild Boar “VERMIN” in some districts of Bihar, for one year till December 2016.

Nilgai in India comes under schedule III of WLPA, 1972 and as per Sec. 62 of WLPA1972⁵ – Central govt. May by notification declare any wild animal other than those specified in Schedule and part II of schedule II to be Vermin for any area and such period as may be specified therein and so long as such notification is in force, such wild animals shall be deemed to have been included in Schedule V And the most devastating conditions aroused when the forest dept. The Bihar despite going for Translocation or Sterilization of the animals declared “Vermin” hired the shooter named Shafat Ali Khan, age 52, Hyderabad and to kill the Nilgais in Buxar, Mokama, and Vaishali District of Bihar and more than 200 Nilgai were killed, shot dead in just 4 days and the cruelty to them did not stop here. In Vaishali, an injured nilgai was buried alive.

The Culling sparked controversy on 9th June – when Union Minister for Women and child welfare Maneka Gandhi Condemned the Environment Ministry’s “lust for killing animals” and also blasted Nitish Kumar’s government’s “Brutal Killers”. Environment Minister, Mr. Prakash

⁵ Wildlife Protection Act 1972, s 62

Javdekar stated that culling was only due to damage to the crops of farmers. In the same way – West Bengal is allowed to cull Elephants; Goa – Peacocks and Himachal Pradesh – Monkeys.

On June 15th – MOEF Notifications have been challenged in a petition filed in Supreme Court – wildlife officials however say it's all eyewash. "The law gives the power to allow hunting. Thus, seeking centres permission is just Abdicating responsibility, fearing a political Backlash". Says H.S. Pablo former Chief Wildlife Warden, M.P.

FACT CHECK

Nilgai is a species that is found only in India. They form the main step in any food chain or food web. They come into the farmlands, damaging the crops because –

- Deforestation;
- Mining in forest areas;
- Breaking of corridors for wild animals;
- Increasing the field's total area;
- Decreasing population of predators due to deforestation;
- The disturbed ecological balance in various ecosystems

Along with this, no scientific and systematic study regarding the population study dynamics of Nilgai or any other animal declared 'Vermin' has been carried out by professional Ecologists. Ecologists may evaluate the carrying capacity of any species – whether flora or fauna in any specific area – and only after that the proper Forest Management plans can be implemented. Another Havoc – "I am not a trigger-happy hunter... I hate killing animals. I am a conservationist doing this as a last resort" – This statement was given by Shaft Ali Khan, a former national-level shooter from a Royal family in Hyderabad.

DEVASTATING EFFECTS

6 months ago, the forest department of Madhya Pradesh, India sent a draft of changing the name of Nilgai (Blue Bull) to 'Rojda' because Indians sympathise with the name 'gai' in Nilgai. Later, a new amendment bill was presented in the assembly for declaring Nilgai as 'Vermin'

permitting to cull of these animals within 8 days of application. Permission will be given to any person holding a license of Arms. Any person holding an arms licence and permission to hunt can go to any place also to kill these animals. There should be no dispute if any animals were shot on private land but killed in Jungle. Nonetheless, all the power to permit culling will be given to the collector (local administration) and S.D.O of the Forest Department.

Not only in Madhya Pradesh, but many other States such as Himachal Pradesh, Goa, Maharashtra, and West Bengal have periodically written to the central government to declare certain animals as 'Vermin', such as Wild Boar, Blue Bull, Rhesus Macaque, and even Peacock which is the National Bird of our Country and Elephant which is an endangered species and worshipped by Hindus and have great importance in Hindu Mythology. Although, the Indian Judiciary has refused several times to stay the government Notifications – Permitting the culling of Blue Bulls and Wild Boars, which challenged the atrocities committed against these animals under the excuse of these notifications and the condemned by the Animal Welfare Board, animal activists and environmentalist at large.

CONCERNS

My concern is– The soul of the 'Wildlife Protection Act 1972' is to protect and preserve the rich wildlife of our country. However, declaring some species as "Vermin" and giving permission to kill them, Hunters – *defeats the intention and spirit of the legislation* itself.

Being the custodian of wildlife as a resource heritage of our country, these steps by the Central government are self-contradictory to the legislation. Moreover, killing by declaring even a single individual animal of any species as 'Vermin' unless that species has become man-eater or severely life-threatening for Humans is inappropriate. The future can be way worse if the power to kill these animals by declaring a "Vermin"; will be given to local administrations like collectors at the district level and S.D.Os of the forest department. At the sub-divisional level, I strongly condemn this situation as it will increase the killing of these animals and the whole ecosystem will be disturbed and does not offer a sustainable ecological solution to treat the problem at hand.

CONSTITUTIONAL VALIDITY

The question has been raised before the Supreme Court challenging the constitutional validity of sec of WLPA1972. For the above-mentioned reasons, it is a violation of Articles 14, 21 and various principles of Directive principles of state Policy read with the Fundamental Duties Enshrined in the constitution of India, which require the state to be extremely cautious while exacting the laws for animals, wildlife and environment. The provisions of Article 14⁶ fail because Sec 62 permits the killing of all animals except those that fall under Schedule I and II, without stating the rationale behind it.

For the provisions of Article 21,⁷ a highly criticized decision of the apex court – where the scope of the Right to live applies to animals also just like humans, was subsequently furthered by the High Courts of Uttarakhand, Punjab, and Haryana to expressly declare all members of the animal kingdom as legal entities having rights similar to any living person. However, this cannot be done by the due process of law. DPSP Article – 48A⁸ of the Indian constitution states that “The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”

Fundamental duties – Article 51(A)(g)⁹

- “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures.”
- The Supreme Court has laid down that while deciding the ecological issues the court should bear in mind specifically Art.48A & 51(A)(g), and hence the State and its executing Machinery have mandatory obligations to protect and conserve natural environment including wildlife. However, when an order of such culling is pursued by the state, it fails to perform its constitutional duty.

⁶ Constitution of India, art. 14

⁷ Constitution of India, art. 21

⁸ Constitution of India, art. 48A

⁹ Constitution of India, art. 51(A)(g)

SUGGESTIONS

A harmonious relationship between Humans and Animals must be developed to maintain self-sustainable ecosystems; we must have an alternative and humane approach to mitigate these problems. For this: Stopping Deforestation and looking forward to increasing the forest cover; clearing illegally and forcefully occupied forest land by dwellers, by invading forests so that the wild animals can thrive in their natural habitat; stopping the mining activities in the forest area, maintaining the corridors between the forests so that movement of wild animals from one area to other local forests can be ensured. Moreover, increasing awareness about the importance of every species in the wild also creates awareness of the masses residing in the peripheries of forest lands and also teaches them about the behaviour of wild animals so that they can survive harmoniously. If a forest is destroyed the supreme predators such as Lions, Tigers, and Leopards will become extinct increasing the population of herbivores.

To mitigate all such problems, there should be a proper Scientific and Systematic Forest management system that should be developed after high-level Scientific Research and surveys by expert Ecologists, and only after studying all the population dynamics of every species and the carrying capacity of each ecosystem which depends upon the specific locations.

1. If any species is declared Vermin, the government can focus on other options despite culling such as:
 - Relocation – As in WLPA 1972;
 - Sterilization;
 - Keeping the animals declared Vermin in big fenced areas.
2. The government despite using its funds on the culling can use this fund –
 - To organise awareness camps to aware masses of the importance of every species in ecosystems.
 - The government can use the funds in fencing the fields of the farmers in the adjoining areas of the forest lands or creating physical barriers by using scientific

methods like solar/electric fencing to prevent animals from venturing into private areas and the farmlands, which have been successfully implemented in certain states.

CONCLUSION

In the end, I want to state that animals are an important part of our ecological system and not just another pointer to be used in political speeches. Humans have intervened enough with Mother Nature and become the reason why many important species of life have gone extinct. Giving more power to make killing animals easy and to take decisions regarding the culling of any of the species unless it becomes a man-eater can backfire and break down entire food chains. Upon an academic and rational analysis of the wording in Sec.62 of WLPA1972; it can be inferred that said section was enacted to minimize the loss caused to man and most importantly his life, his settlement due to increased attacks by wild animals. This is strongly condemned and should be stopped immediately otherwise it can create a huge ecological problem – leading to disaster for the self-sustainable ecosystem, where humans and all the flora and fauna coexist together on our beautiful planet Earth. It leads to a question of the sensitive relationship between Man and Nature and challenges our fundamental Human values of compassion, empathy, and respect towards other life forms.