

Implications of invoking Section 62 of the Wildlife (Protection) Act, 1972 for resolving Human-Wildlife Conflict*

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1. Introduction

1.1. Section 62 (S.62) of the Wildlife (Protection) Act, 1972 (WPA-1972) authorises the Central Government to declare by notification any wild animal, other than those specified in Sch. I and part II of Sch. II, to be included in Sch. V (vermin) for any area and for such period as may be specified.

1.2. The Ministry of Environment, Forest and Climate Change (MoEFCC) has issued an advisory vide F.N. 1-52/2014 WL-I dated 24.12.2014 to the Chief Wildlife Wardens (CWLWs) of states and UTs in which they have been advised, *inter alia*, to submit proposals, after objective assessment, for declaration of wild animals indulging in human-wildlife conflict (HWC) as vermin under S.62.

1.3. It is understood that some states have submitted proposals to the MoEFCC for declaration of blue bulls, wild boars and rhesus monkeys as vermin in response to the aforesaid advisory and many other proposals are in the pipeline.

1.4. Categorisation of wild animals as 'Vermin' is an outdated concept in the wildlife management. The modern concept is to accept the ecological significance of each and every species and conserve it as a part of biodiversity and natural resource.

1.5. The MoEFCC's advisory for use of S.62 as a tool for managing HWC is fraught with many negative implications for wildlife management in the country which must be examined carefully before actually invoking S.62.

2. Anomalies in the advisory

2.1. Although the advisory has recorded that the Wildlife Institute of India (WII) and the TSR Subramaniam Committee have indicated that declaration of wild animals as vermin would serve 'no purpose', yet it seeks to examine this option 'objectively'—a term which has not been spelt out clearly. The CWLWs have also been advised to base their proposals on 'objective assessment'—a term again left undefined. There are some basic considerations which should form the basis of any objective assessment but are generally not complied with by the State Forest Departments (SFDs).

1) For example, most of the SFDs do not possess authentic estimates about numbers, demographic structure and growth rate of problem species like blue bulls, wild boars and rhesus monkeys which are essential for assessing the impact of culling that is expected to take place once these species are notified as vermin.

2) Most of the SFDs also do not possess any quantitative data about the crop damaged by wild animals (e.g. number of farmers, types of crops, area, quantity, season, distance from forests, etc.)

required for prioritising the problem areas for the purpose of invoking S.62 and evaluating its efficacy.

3) The objective assessment should also include a query whether the SFDs have made optimum use of the legal tools available under S.11 and S.12 of the WPA-1972 and fully explored other technical and administrative options such as habitat management, wildlife barriers, community guarding, alternative agricultural practices, precautionary measures, ex gratia relief, etc. before seeking to invoke S.62, the ultimate step. Apparently, most of the SFDs are yet to apply the legal, technical and administrative options which are available as alternatives to S.62. The MoEFCC has also noted in its advisory that not many SFDs have submitted proposals for mitigation of HWC under the CSS-Integrated Development of Wildlife Habitats-Protection of Wildlife outside PAs.

2.2. This advisory is against the spirit of the joint advisory issued by the Ministry of Agriculture (MOA) and the MoEFCC vide MOA's notification CPS 7-1/2009-NFSM dated 7.3.2012 which recommends a package of strategies for management of blue bulls in the agricultural landscapes while rejecting the option of declaring them as vermin.

3. Past Experience with the management of Vermins in India

3.1. It was a common practice in India during the British period and the early years of Independence to declare problem wild animals as 'pests' and to permit the public at large to hunt them by whatever means. The pest animals included even tigers indulging in cattle lifting and elephants destroying crops. The wild dogs were treated as pests as they were considered harmful to the game animals. In many states, the district administration or the Forest Department used to reward the people for killing the pest animals. The threatened status of many wild animals in the country today can be traced back to the persecution suffered by them as pests in the past.

3.2. The original WPA-1972 contained as many as 7 entries in the Sch. V (Vermin), viz. Common Crow, Common Fox, Fruit Bats, Jackal, Mice, Rats and Voles. In the mid- 1970s, large scale killing of jackal and fox for hides and fur were reported from Rajasthan and other parts of the country and it was feared that the two animals might become extinct. The Government of Rajasthan responded to the crisis by transferring both the animals to Sch. I. The Central Government shifted Common Fox and Jackal first to Schedule IV vide notification dated 5.10.1977 and then to Sch. II (Part II) vide notification dated

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24.11.1986. The voles were shifted to Sch. IV on 2.10.1980.

3.3. Concerns about the lack of legal protection to species categorised as Vermin have been expressed by various experts in different meetings and workshop since the late 1990s. Two of the fruit bats, viz. *Otomops wroughtonii* and *Latidens salimalii* were transferred from Sch. V to Sch. I vide Central Government's notification dated 30.9.2002. As a follow up to the discussions during the National Workshop on Wildlife at Chennai on 30 June-1 July 2003, the Additional DGF (Wildlife) initiated a process for reviewing Sch.V and entrusted the task to the IGF (Project Elephant). Accordingly, a proposal was prepared which stipulated transfer of all species of fruit bats, mice and rats from Sch. V to other schedules except 18 species of the family Muridae specifically recognised by the agricultural scientists as pests. However, no decision was taken on the proposal. As a consequence, Common Crow, Fruit Bats (remaining species), Mice and Rats continue to be on Sch. V.

3.4. In the original WPA-1972, the power to declare certain wild animals as vermin under S.62 was given exclusively to the State Governments. However, some cases of misuse of this power were reported in the 1980s. For example, Government of Punjab shifted hares to Sch. V—purportedly for the purpose of promoting tourism in the state. On the recommendation of the Indian Board for Wildlife (now known as the National Board for Wildlife), the Central Government amended S.62 in 1991 and assumed the exclusive power to notify wild animals as vermin. In the subsequent years, the Central Government has refrained from invoking S.62 despite receiving proposals from the state governments.

4. Implications of invoking S. 62 on the implementation of the WPA-1972

4.1. The preamble of the WPA-1972 states that it is an Act to provide for protection of 'wild animals', birds and plants. But, as defined under S.2 (36), the term 'wild animal' covers only the animals listed in Schedules I to IV. Thus, the direct implication of declaring any wild animal as vermin under S.62 is to preclude it from the definition of wild animal and, consequently, remove it from the ambit of the WPA-1972 and the jurisdiction of the CWLW and other authorities prescribed under the said Act.^a

4.2. S.62 is not in itself a HWC-mitigation tool and does not put any person or authority under any legal obligation to undertake hunting (killing / capturing) of the animals involved in HWC. It simply exempts the public at large from seeking permission from the CWLW or the authorised officer (AO) before undertaking hunting of the animal notified as vermin. The advisory dated 24.12.2014 is based on the assumption that such an exemption would stimulate the people suffering on account of HWC to undertake culling of the problem animals. But, in practice, the affected people in many areas may not have the resources (e.g. weapon and ammunition) or the will

to undertake this exercise. On the contrary, there are good chances that the professional hunters and traders would come forward to take advantage of the relaxation given under S.62 motivated by pure commercial interests rather than a genuine desire for mitigating HWC and helping the suffering people.

4.3. As soon as a wild animal is notified as vermin, it is no longer subject to the prohibition on hunting/injuring /capturing imposed by S.9 and restrictions on hunting /injuring / capturing imposed by S.11 and S.12. A person would be free to hunt / injure / capture a vermin by any method including poisoning, snaring and electrocution; hunt / injure /capture a vermin in any numbers without any regard to sex, age or breeding season; and he won't be liable to submit any report / return to the CWLW or the AO. Obviously, use of S.62 for mitigating HWC is not a scientific method and is fraught with serious consequences for the future survival of the species in question. As stated in Para 3, vermins have been persecuted in the past and history may repeat itself once again.

4.4. A live vermin, after its capture, or an animal article / trophy / meat derived from a vermin, after killing it, ceases to be a government property as defined under S.39 and the hunter / trapper would be free to dispose of the animal in question or its derivatives in any manner that he likes. For example, a person will be eligible to carry out trade without a licence required under S.44 in respect of rhesus monkeys captured from areas where these are notified as vermin. Similarly, a person will be able to serve in any hotel / dhaba the meat obtained from wild boars and blue bulls killed in areas where these are notified as vermin without requiring a licence under S.44. It may be mentioned that most of the SFDs in India follow a 'no trade' policy in respect of wild animals but it won't be possible for them to follow a similar policy in respect of a species notified as vermin.

4.5. In general, the WPA-1972 follows a policy of discouraging hunting and culling of wild animals in the country. The Act banned game hunting in India in 1991 by amending S.9 and deleting S.10 and S. 13-17. The Act permits hunting of wild animals involved in HWC under S.11 but with many riders and only under the control of the CWLW and the AOs. While permitting hunting for the purpose of population management under S.12, the Act specifically prohibits killing, poisoning or destroying of wild animals. It is evident that use of S.62 is against the aforesaid policy of the WPA-1972.

4.6. It follows that invoking S.62 as a tool for mitigating HWC is tantamount to a step by the Central Government and the State Government to absolve themselves of their constitutional obligations in respect of the animal in question and to pass over the buck to the public at large. Whether such an

^aHowever, vermins are still covered by the term 'wildlife' as defined under S.2(37) and, therefore, eligible for protection in a sanctuary under S. 29 and in a National Park under S.35(6).

action is justified from the constitutional, ethical and scientific points of view is a question that needs serious attention.

5. Implications of invoking S. 62 on the Foreign Trade Policy

The Foreign Trade Policy issued by the Central Government prohibits the commercial import and export of all wild animals covered by the WPA-1972 and their derivatives. As stated in the Para 4, notification of any species as vermin under S.62 precludes it from the definition of a wild animal and, consequently, exempts it from the prohibition on export under the Foreign Trade Policy. In particular, rhesus monkeys, captured from the areas where they are notified as vermin, will be eligible for export despite the 'anti-export' policy for wild animals followed by the Central Government.

6. S.62 vis-a-vis the animal welfare issues

6.1. There are good chances that the notifications for declaring wild animals as vermin under S.62 will be opposed by the animal right activists and challenged in the courts of law.

6.2. It may be mentioned that destruction of a wild animal under the authority of S.11, S.12, S.29 and S. 35(6) of the WPA-1972 has the sanction of S.11(3) (c) of the Prevention of Cruelty to Animals Act, 1960 (PCA-1960). But culling of animals notified as vermins under S.62 of the WPA-1972 does not get a similar sanction and may be challenged as a violation of the PCA-1960.

6.3. As stated in Para 4, a person is free to hunt / injure /capture a vermin by any method including poisoning, snaring and electrocution and the CWLW would have no control on hunting with regard to bag limit, sex, age or breeding season. There are, therefore, good chances that hunting / capturing of problem animals notified as vermin might violate the provisions of the PCA-1960 and the rules made thereunder.

6.4. It may be recalled that the issue of managing HWC by shooting of the problem animals was examined by the HP High Court in the two PILs, viz. CWP Nos. 8149 / 2010 and 8284 / 2010, filed by the animal right activists. The High Court, in its interim order issued on 6.1.2011, stayed the operation of the permits issued by the HP Forest Department (HPFD) under S.11(1)(b) for shooting of rhesus monkeys indulging in crop-depredation and asked the HPFD to experiment with non-lethal methods for mitigation of the conflict. The High Court commented that: "If tackling the problem is by annihilating the problematic monkeys, we are afraid that the State has not understood and applied its mind to its constitutional obligation, fundamental duties and the statutory intent behind the Wildlife (Protection) Act." The courts are likely to take a similar stand in respect of notifications issued under S.62.

7. Alternatives to S.62

7.1. It is possible to manage all cases of HWC with proper and effective applications of S.11 and S.12 supported by barriers, repellents, community guarding and ex-gratia relief.

7.2. It may be recalled that S.11(1)(b) of the WPA-1972 was amended w.e.f. 1.4.2003 and extended to "group of animals in a specified area" specifically with a view to deal with problem animals like blue bulls, rhesus monkeys and wild boars who create problem in groups and it has made the use of S.62 redundant.

7.3. The Forest Department of Bihar has been carrying out controlled hunting of blue bulls under S. 11(1)(b) since February 2013 by engaging expert hunters working under the direct control of the CWLW. This model can be emulated by the other SFDs also as a substitute for invoking S.62.

7.4. It is also desirable to give a fair trial to the package of strategies for management of blue bulls in the agricultural landscapes contained in the joint advisory issued by the MOA and the MoEFCC on 7.3.2012 instead of invoking S.62.

7.5. The WII has also recommended the use of reproduction control measures for mitigating HWC with various wild animals including blue bulls and rhesus monkeys. This is definitely a better and safer option than invoking S.62.

8. Conclusion

8.1. The use of S.62 is against the current policies of the Central and State Governments which seek to discourage hunting, commercial trade and export of wild animals. As explained in Paragraphs 4 and 5, the notifications issued under S.62 are likely to be misused by the commercial lobby.

8.2. As the past experience shows, vermins have been persecuted and pushed to the threshold of extinction.

8.3. The use of S.62 may result in severe criticism by the animal right activists and lead to a spate of PILs. The courts are unlikely to support uncontrolled culling of problem animals declared as vermin.

8.4. Declaring a wild animal as vermin under S.62 is a drastic measure as it withdraws all legal protection to the animal in question (except inside a National Park / Sanctuary) and gives a blanket permit to the public at large to destroy the animal—absolving the Central Government and the State Government of any responsibility to supervise the operation and prevent its misuse. This does not seem to be an ideal way of managing HWC.

8.5. Effective and safer alternatives to the use of S.62 are available for mitigation of HWC.