CONCEPT OF GOVERNMENT PROPERTY IN THE WILDLIFE (PROTECTION) ACT, 1972

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Introduction

The Wildlife (Protection) Act, 1972 (hereinafter referred to as 'the Act') is the principal legal instrument in India for protection of wild fauna and flora. It is applicable all over India except in the State of Jammu & Kashmir which has a separate Act known as the Jammu & Kashmir Wildlife (Protection) Act, 1978. The term 'Government Property' finds frequent mention in the Act. However, it has a specific connotation in the Act different from what a layman would understand it to be. This term holds the key to a complete understanding of many important provisions of the Act - particularly those relating to seizure of animals and other items involved in offences (Section 51) and composition of offences (Section 54). Erroneous decisions are sometimes taken by the wildlife authorities while dealing with offences under the Act owing to a misunderstanding of the term. The author has a personal knowledge of many cases in different parts of India of seized wildlife items (bear bile, frog legs, partridge meat etc.) being released by the wildlife authorities after compounding the case in utter violation of sub-section 54(2) of the Act which prohibits the release of Government Property. There are also instances of individuals, zoos and scientific institutions having been permitted to hunt or collect wild animals from Protected Areas under sub-sections 29(1) or 35(6) and take away the same overlooking the fact that these formed Government Property.

This paper seeks to analyse the concept of Government Property as envisaged in the original Act of 1972, bring out its strong points as well as anomalies and describe the attempt made through the Wildlife (Protection) Amendment Act of 1991 to rectify some of these anomalies.

Legal Provisions Relating to Government Property

A number of restrictions have been imposed in the Act upon individuals as well as enforcement authorities in respect of Government property.

1. According to sub-section 11(3) of the Act, any wild animal killed or wounded in defence of any person shall be Government Property. (This sub-section appears to be redundant in view of the more exhaustive provisions of sub-section 39(1) of the Act as discussed later)

2. According to sub-section 39(2) of the Act, any person, who by any means obtains the possession of Government Property, should within 48 hours from obtaining such possession, report the fact to and hand over such property to

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the nearest police station or the authorized officials.

3. According to sub-section 39(3) of the Act, no person shall acquire or possess or transfer or gift or sell or destroy or damage any Government Property without previous permission in writing of the Chief Wildlife Warden (CWLW) or the authorized officials.

4. Prior to the 1991 amendment in the Act, clause (c) of sub-section 50(1) stipulated that an enforcement authority could seize any captive animal, wild animal, animal article, trophy or uncured trophy in possession of any person if the same appeared to him to be Government Property. As a corollary, he could not seize any of the animals or products in question if the same was not Government Property - and if he did so, he was liable to be prosecuted and punished under section 53 (Punishment for wrongful seizure). Sub-section 50(1) was, however, amendment in 1991 and made somewhat flexible for the reasons mentioned later in this paper.

5. Sub-section 50(6) (amendment) of the Act authorizes the enforcement authorities to arrange for sale of any meat or uncured trophy, specified plant or part or derivative thereof, that has been seized, and if it is proved that the seized items are not Government Property, the proceeds to the sale shall be returned to the owner.

6. Clause (b) of sub-section 54(1) of the Act permits a competent authority, while compounding an offence under the Act, to release any seized property on realization of estimated value of the same, but sub-section 54(2) makes it clear that the Government Property shall not be released.

Criteria for Government Property in the Original Act

Before the 1991 amendment, the Act defined Government Property as "any property referred to in section 39" (Ref. sub-section 2(14) of the original Act). Hence, as far as the Act was concerned, the definition of Government Property was linked with the interpretation of section 39. The sub-section 39(1) of the original Act, which is particularly relevant, states as follows :

"Every-

(a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or bred in captivity in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed without a licence or by mistake; and

(b) animal article; trophy or uncured trophy or meat *derived from any wild animal referred to in clause (a)* in respect of which any offence against this Act or any rule or order made thereunder has been committed, shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat derived from such animal, shall be the property of the Central Government" (emphasis added).

Criteria for Live Animals : According to clause (a) above, the following categories of

wild animals only would qualify to be Government Property :

Category A - Wild animals (excluding vermin) hunted for causing damage to human life, crop or property or hunted in defence of oneself or any other person (Ref. section 11).

Category B - Wild animals (excluding vermin) hunted in a sanctuary for special purpose with the permission of the CWLW (Ref. proviso to sub-section 29(1) before amendment).

Category C - Wild animals (excluding vermin) hunted in a National Park with the previous permission of the State Government for the improvement and better management of the wildlife therein (Ref. sub-section 35(6)).

Category D - Wild animals (excluding vermin) kept or bred in captivity in contravention of the Act or any rule or order made thereunder (e.g. an animal covered under schedule-I or part II of schedule II kept without a certificate of ownership required under section 40 read with section 42, or an animal not declared by a licenced dealer under sub-section 44(2) read with section 48(a)).

Category E - Wild animals (excluding vermin) killed without a special, big or small game hunting licence (Ref. section 9 before amendment) or killed in a game reserve without a licence from a CWLW (Ref. sub-section 36(2) before amendment).

Category F - Wild animals (excluding vermin) found dead.

Category G - Wild animals (excluding vermin) killed by mistake.

Criteria for Animal Parts and Products : A careful study of clause (b) of sub-section 39(1) quoted above (particularly the italicized portion) would suggest that not every animal article, trophy or uncured trophy or meat would constitute Government Property but only that which has been derived from any wild animal referred to in clause (a) of the said sub-section and also in respect of which any offence under the Act or any rule or order made thereunder has been committed. In view of the interpretation of the clause (a) above, it can be concluded that an animal article, trophy or uncured trophy or meat would qualify to be Government Property if and only if it meets the following conditions :

Conditions I - It has been derived from a wild animal (excluding vermin) covered under any of the aforesaid categories from A to B; and

Conditions II - It has been subjected to any offence under the Act or any rule or order made thereunder.

Implications of the Concept of Government Property

The definition of the term Government Property emerging from the analysis of sub-section 39(1) as presented in the foregoing paragraphs, leads us to a number of inferences about the nature of Government Property as envisaged in the original Act of 1972. Some of the inferences are nothing but anomalies presenting difficulties in effective implementation of the Act. While some of the anomalies have since been set right by means of the

amendment in 1991, the others continue till date as described below.

1. The term Government Property in the original Act included only the animals (wild or captive) or the parts and products derived from them. Hence, plants, their parts and derivatives including timber and non-timber forest products (NTFPs) could not be considered to be Government Property even if collected from a Sanctuary or a National Park. The position has been slightly improved in 1991 when certain specified plants (viz. those included in schedule VI of the Act) and their parts and derivatives were brought under the definition of Government property by adding section 17H to the Act.

2. It can be seen that the term Government Property applies only to such wild animals, including their parts and products, as have been subjected to the acts of hunting, killing or confinement in captivity. Hence, technically speaking, live and freely moving wild animals and their parts and products can not be deemed to be Government Property under the Act ! As a corollary, feathers shed by a peacock and antlers shed by a deer would also not form Government Property. Same remark will apply if an Elephant breaks its tusks during crop-raiding and leaves the same behind in an agricultural field.

3. The vermin (i.e., the wild animals included in schedule V of the Act), their parts and products do not come under the definition of Government Property - even though the hunting of vermin in a Sanctuary or a National Park is a non-compoundable offence (Ref. sub-sections 29(1) and 35(6) read with first proviso to sub-section 51(1) and proviso to section 54) and some of the fruit bats (vermin) are commercially important and covered under the provisions of CITES (Convention on International Trade in Endangered Species of wild fauna and flora).

4. All species of fish (Pisces), which are not considered to be wild animal under the Act (Ref. sub-sections (1) and (36) of section 2), and their derivatives do not qualify to be Government Property under the Act even when collected from a Sanctuary or a National Park.

5. There is no suggestion in sub-section 39(1) that its provisions apply only to the wild animals listed in the schedules of the Act. In fact, it is possible that an indigenous non-scheduled species of wild animal may fall under any of the categories viz. B, C, F and G described earlier and such animal and its parts or products may also qualify to be Government Property. Here, it may be recalled that most of the birds and snakes were outside the schedules of the original Act and added to the schedules in August 1977, October 1977 and October 1980 through notifications issued by the Central Government under sub-section 61(1). Many a species of turtles and amphibians are still not included in any of the schedules.

6. It is obvious that wild animals hunted for the purpose of education, research, scientific research and population management under section 12 of the Act do not come under any of the categories from A to G of Government Property described earlier. Scope of section 12 has been enlarged in 1991 to cover the cases relating to collection of specimens for recognised zoos and museums and collection of snake-venom for manufacturing life saving drugs. Similarly, wild animals hunted in a game reserve with a permit issued by the CWLW under sub-section 36(2) (deleted in 1991) did not qualify to become Government Property.

7. Section 11 of the Act authorizes a CWLW to permit any person to hunt a wild animal that has become dangerous to human life or property. Services of expert hunters are usually requisitioned for killing man-eating tigers or leopards and rogue elephants. These hunters are often permitted to retain the tusks, legs, skin or any other trophy from the animal so killed by way of reward or memento. Such a practice is not in conformity with the provisions of the Act which stipulates that wild animals hunted under section 11 are Government Property. There is no provision in the Act which authorizes a CWLW or a State Government to hand over such Government Property to any one by way of reward of gift.

8. As stated earlier, prior to the 1991 amendment, enforcement authorities could seize a wildlife item (live or dead) involved in an offence against the Act only if it appeared to be Government Property in view of clause (c) of sub-section 50(1). This created a serious handicap for the enforcement authorities in those cases where the items involved did not meet the criteria for Government Property as laid down in sub-section 39(1). The following examples would illustrate the gravity of the problem.

(A) It may be recalled that sub-section 40(1) of the Act made it obligatory for every person to declare, within 30 days from the commencement of the Act to the wildlife authorities, any captive animal specified in schedule I or part II of schedule II or certain parts or products from such animals. Sub-section 40(2) read with section 42 makes it illegal for a person to possess and acquire such animals or articles without a 'Certificate of Ownership' issued by a CWLW. It is a known fact that a large number of persons in India possess wild animals and wildlife items without an ownership certificate. The authorities had a dilemma prior to the 1991 amendment when they came across such animals or articles. There was no problem in seizing captive animals as they were included in the Category D described earlier and hence, Government Property. But the problem was somewhat tricky when it came to wildlife articles. For example, a person who possessed a Tiger skin, which he procured prior to the commencement of the Act and failed to declare the same and to obtain a certificate of ownership, did commit an offence under the Act. But, to become Government Property, the Tiger skin in question should satisfy the conditions I and II described earlier. The condition II was obviously fulfilled, but the condition I (i.e. the Tiger in question should fall in any one of the categories from A to G) did not apply to the animals hunted prior to the commencement of the Act. The Tiger skin did not, therefore, become Government Property and the enforcement authorities (prior to the 1991 amendment) legally had no option but to start the prosecution without seizing the Tiger skin.

It is obvious that the Condition I, which is a consequence of the use of the phrase *"derived from any wild animal referred to in clause (a)"* in clause (b) of sub-section 31(1), is totally unnecessary and has been the source of the problem in the aforesaid case as well as in the examples that follow.

(B) It may also be recalled that a major amendment was carried out in the Act in 1986 - primarily for the purpose of prohibiting trade in respect of wild

animals covered in schedule I and Part II. Immediate impact of the amendment was on the trade in Fur and Reptile-skin items derived from wild animals like Fox, Jackal, Jungle Cat, Civets, Cobra, Rat Snake etc. which were transferred from schedule IV to schedule I or Part II of schedule II in November, 1986. The licence held by the concerned dealers, manufacturers and taxidermists ceased to be valid after two months from the commencement of the amendment Act. Sub-section 49C(7) of the amended Act made the possession of the aforesaid items by the traders illegal. But, how to deal with the illegally held stocks became quite a complex problem for the enforcement authorities in view of the following reason :

Prior to October 1977, many of the species in question were either vermin (e.g., Fox and Jackal) or not covered in any of the schedules of the Act (e.g., Rat Snake, Cobra, King Cobra etc.) and they could be hunted outside the Protected Areas or kept in captivity without violating the Act. Hence, unless it could be proved that the existing stocks relating to these species held by a trader came from wild animals hunted after October 1977, it was difficult to fulfill the condition I essential for the purpose of Government Property as described earlier and thus to seize the same. Hence, a paradoxical situation arose when the wildlife authorities could not seize many of the wildlife items from the traders who were not permitted to possess the same under the law!

(C) The amendment Act of 1986 also introduced a sub-clause (1a) to clause (a) of sub-section 41(1) prohibiting dealers and manufacturers from dealing in the ivory imported in to India without a licence from a CWLW. As the ivory was imported from Africa, the amended Act, in effect, sought to regulate trade in ivory obtained from the African Elephant (*Loxodonta africana*). At the same time section 48B of the amended Act put a total ban in respect of the ivory derived from the Asian Elephant (*Elephas maximus*) which is in schedule I of the Act. Problem arose when the enforcement authorities ran in to stocks of the African ivory being traded without a licence. As the African Elephant did not fall under any of the categories from A to G mentioned earlier, the African ivory did not fulfill the criteria for Government Property and thus, could not be seized. In some cases, the authorities seized the ivory in question on the assumption that it came from the Asian Elephant - obviously not a satisfactory way of fighting legal battles in a court of law.

Impact of the 1991 Amendment

The Wildlife (Protection) Amendment Act, 1991 has largely revised the concept of 'Government Property' and also affected some of the legal provisions relating to Government Property with a view to tackle the problems referred to in the foregoing paragraphs. The amendment section 2(14) defines Government Property as "any property referred to in section 39 or section 17H". The amended sub-section 39(1) now reads as follows :

"Every-

(a) Wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or bred in captivity or hunted in contravention of any provision

of this Act or any rule or order made thereunder, or found dead or killed by mistake;

(b) Animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed;

(c) Ivory imported into India and an article made from such ivory in respect of which any offence under this Act or any rule or order made thereunder has been committed;

(d) Vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act,

shall be the property of the State Government and, where such animal is hunted in a Sanctuary of National Park declared by the Central Government, such animal, trophy, uncured trophy or meat derived from such animal or any vehicle, vessel, weapon, trap, or tool used in such hunting, shall be the property of Central Government."

The newly added sub-section 17H(1) of the Act reads as follows :

"Every specified plant or part or derivative thereof, in respect of which any offence against this Act or any rule or order made thereunder has been committed, shall be the property of the State Government, and, where such plant or part or derivative thereof has been collected of acquired from a Sanctuary or National Park declared by the Central Government, such plant or part or derivative thereof shall be the property of the Central Government."

Implications of the Amended Concept of Government Property

1. The scope of the term Government Property has been greatly increased. It now encompasses wild animals and their parts or products, specified plants (i.e., plants included in schedule VI) and their parts or derivatives, ivory imported into India and articles made thereof, and vehicle, vessel, weapon, trap or tool used for committing an offence under the Act.

2. It can be seen from the clause (d) of sub-section 39(1) as quoted above that any vehicle, weapon, trap or tool used for committing an offence would qualify to become Government Property only if the same has been seized.

3. Clause (b) of the sub-section 31(1) remains unchanged and so remain the conditions I and II mentioned earlier which determine the eligibility of parts and products from wild animals to become Government Property. The problems associated with the seizure of wildlife articles which are not Government Property but involved in an offence under the Act, have been solved by amending clause (c) of sub-section 51(1). The reference to Government Property in the original clause has been omitted enabling enforcement authorities to seize any "captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof" as well as any "trap, tool, vehicle, vessel or weapon" involved in an offence against the Act. The amended clause is now also adequate to deal with the seizure of the African ivory which has been included in the new definition of the term 'animal

article' (Ref. sub-section 2(2) as amended).

4. In view of what has been stated in the previous paragraph, an enforcement authority can now seize any wildlife item, whether Government Property or not, in respect of which an offence under the Act has been committed. But it is still essential for the enforcement authorities to make sure whether or not the seized item is Government Property because of the following reasons :

- Any item which is not a Government Property, can be released by a competent authority if the offence is compounded (Ref. sub-section 54(2)).

- The amended sub-section 50(6) stipulates that a competent authority may arrange for the sale of any meat, uncured trophy, specified plant or part or derivative thereof, which has been seized under the Act and if it is proved that the items in question are not Government Property, the proceeds to the sale shall be returned to the owner.

5. Question arises whether a Magistrate can release Government Property during a trial. The following provisions of law need a special attention:

- Sub-section 50(4) of the Act makes it obligatory for enforcement authorities to produce every-thing seized (whether Government Property or not) before a Magistrate to be dealt with according to law.

- According to the amendment sub-section 51(2), when any person is convicted of an offence against this Act, the Magistrate may order that any

  - 'Captive animal, wild animal, imported ivory items, any specified plant or part or derivative thereof' in respect of which the offence has been committed (all Government Property as per sub-section 39(1)),

  - 'Animal article, trophy, uncured trophy and meat' in respect of which the offence has been committed (Government Property only if the conditions I and II described earlier are met with); and

  - 'Trap, tool, vehicle, vessel, or weapon' used in the commission of the said offence (Government Property only after seizure- as per clause (d) of sub-section 39(1)

  be forfeited to the State Government.

Apparently, a Magistrate has discretionary power to forfeit or release any property including Government Property. However, in the L.P.A. No. 152/1996 (State of Madhya Pradesh through the Director, Madhav National Park, Shivpuri v/s Assad Amin), the Hon'ble High Court of Madhya Pradesh has held that any seized Government Property can not be released by a Court of Law. The Hon'ble High Court observed as follows : "Section 2(14) of the Act defines the Government Property which means a property referred to in section 39. Therefore, Magistrate before whom seized property is produced has to deal with according to law. Since under section 39, the property has become Government Property, he looses jurisdiction to deliver the property. No other meaning can be drawn from the phraseology 'according to law... When the intention of the legislature is to bar releasing of the property seized under the provision of section 39 of the Wildlife (Protection) Act, the property can

not be released. The order of the learned single judge, therefore deserves to be set aside as it has not assigned any reason for releasing the property. To our mind, the bar created by section 39, the Wildlife (Protection) Act, 1972 does not empower the court to release the property."

Need for Rationalization

It looks odd that section 39 - which plays a key role in defining the concept of Government Property, has been included in chapter V of the Act dealing with trade and commerce in wildlife items. But the concept of Government Property is much more than a tool for regulating trade and commerce. Major objective for introducing the concept of Government Property in the Act, as it appears from the foregoing discussion, is to provide enforcement authorities with a legal basis for seizing and disposing of wild animals and plants with their parts, products and derivatives involved in an offence under the Act. It is useful to see as to how other Acts deal with similar problem.

1. Jammu & Kashmir Wildlife (Protection) Act, 1978 defines Government Property as any property in respect of which any offence under the Act or any rule or order made thereunder has been committed (Ref. Sub-section 2(12)). Clause (c) of sub-section 50(1) empowers the enforcement authorities to seize any wildlife item which forms Government Property.

2. Code of Criminal Procedure, 1973 does not define Government Property. Sub-section 102(1) empowers a police officer to seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

3. Customs Act, 1962 also does not define Government Property. Section 110 empowers a customs official to seize any property imported or exported illegally.

4. Indian Forest Act, 1927 defines the term 'Forest Produce' which includes wild animals and skins, tusks, horns, bones etc. (Ref. Sub-section 2(4)). Sub-section 52(1) empowers a forest officer or a police officer to seize any forest produce in respect of which an offence under the Act has taken place including all tools, boats, carts or cattle used in committing any such offence. Section 69 stipulates that any forest produce involved in any proceedings taken under this Act, shall be presumed to be the property of the Government unless the contrary is proved.

It is obvious that Jammu & Kashmir Wildlife (Protection) Act provides a simpler definition of Government Property whereas the Code of Criminal Procedure, the Customs Act and the Indian Forest Act provide a more efficient way of dealing with the problem relating to seizure than that provided in the Act. The concept of Government Property in the Act in its present form is not only complicated but also plagued with a number of anomalies as pointed out in this paper. There is, thus, enough scope for rationalization of this important concept in the Act.

SUMMARY

One of the salient features of the Wildlife (Protection) Act, 1972 is the concept of 'Government Property'. This term has a specific connotation in the Act different from what a layman would understand it to be. This term holds the key to a complete understanding of many important provisions of the Act - particularly those relating to seizure of animals and other items involved in offences (Section 51) and composition of offences (Section 54). Erroneous decisions are sometimes taken by the wildlife authorities while dealing with offences against the Act owing to a misunderstanding of the term. The concept of Government Property as envisaged in the original Act of 1972 led to a number of anomalies and problems in the enforcement of the Act as described in this paper. Some of these anomalies and problems have since been rectified through the Wildlife (Protection) Amendment Act of 1991, but there is still a scope for rationalization of the whole concept of Government Property.

वन्य प्राणि (संरक्षण) अधिनियम, 1972 में सरकारी संपत्ति की अवधारणा

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सारांश

वन्य प्राणि (संरक्षण) अधिनियम, 1972 की मुख्य बातों में से एक है सरकारी सम्पत्ति की अवधारणा । इस अधिनियम में इस पारिभाषिक का एक विशिष्ट अर्थ है जो उस अर्थ से भिन्न है, जो सामान्य व्यक्ति इससे ग्रहण करेगा । इसी पारिभाषिक में इस अधिनियम के बहुत सारे प्रावधानों को पूरी तरह से समझने की कुंजी है- विशेषतः उन प्रावधानों को जिनका संबन्ध अपराधों में आने वाले पशुओं और अन्य वस्तुओं को पकड़ने (धारा 51) और अपराधों को अभिसंधान करने (धारा 54) से है । इस अधिनियम के अन्तर्गत आने वाले अपराधों पर विचार करते समय इस पारिभाषिक को ठीक प्रकार से न समझने के कारण कभी-कभार वन्य प्राणि अधिकारियों द्वारा गलत निर्णय ले लिए जाते हैं । 1972 के मूल अधिनियम में आई हुई सरकारी संपत्ति की अवधारणा के कारण ही इस अधिनियम को लागू कराते समय कई असंगतियाँ और समस्याएँ उठी हैं जिनका वर्णन इस अभिपत्र में किया गया है । ऐसी कुछ असंगतियों और समस्याओं को वन्य प्राणि (संरक्षण) संशोधन अधिनियम, 1991, द्वारा दूर किया जा चुका है किंतु सरकारी संपत्ति की संपूर्ण अवधारणा के तर्कसंगतिकरण के लिए अब भी कुछ क्षेत्र बचा हुआ है ।

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