



**Captive Elephants Life & Rehabilitation Plan
Violation of the Constitution and Laws**

**Presentation to the Honorable Chief Justice
Madras High Court**

by

Elsa Foundation

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Classification of Elephants in Wildlife Protection Act 1972

Elephants are classified as highly endangered **Schedule-I animals** in “Wildlife Protection Act” receiving the highest form of protection (similar to a Tiger).

Even the elephants under custody of temples and private persons receive the same protection.

Section 39 in The Wild Life (Protection) Act, 1972

Wild animals, etc., to be Government property.—

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer—

(a) acquire or keep in his possession, custody or control, or

(b) transfer to any person, whether by way of gift, sale or otherwise, or

(c) destroy or damage, such Government property.

Section 43 in The Wild Life (Protection) Act (Prohibits commercial sale)

Regulation of transfer of animal, etc.—[\(1\)](#) No person having in his possession captive animal, animal article, trophy or uncured trophy in respect of which he has a certificate of ownership shall transfer by way of sale or offer for sale or by any other mode of consideration of commercial nature, such animal or article or trophy or uncured trophy.

Section 49 in The Wild Life (Protection) Act (Prohibits illegal purchase)

Purchase of captive animal, etc., by a person other than a licensee.—No person shall purchase, receive or acquire any captive animal, wild animal, other than vermin, or any animal article, trophy, uncured trophy or meat derived there from otherwise than from a dealer or from a person authorised to sell or otherwise transfer the same under this Act:
1[Provided that nothing in this section shall apply to a recognised zoo subject to the provisions of section 38-I or to public museum.]

Section 11 in The Wild Life (Protection) Act, 1972

Hunting of wild animals to be permitted in certain cases.—

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV,—(a) the Chief Wild Life Warden may, if he is satisfied that any wild animal specified in Schedule I has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted

Provided that no wild animal shall be ordered to be killed unless the Chief Wild Life Warden is satisfied that such animal cannot be captured, tranquilised or translocated:

Provided further that no such captured animal shall be kept in captivity unless the Chief Wild Life Warden is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same are recorded in writing. Explanation.—For the purposes of clause (a), the process of capture or translocation, as the case may be, of such animal shall be made in such manner as to cause minimum trauma to the said animal.]

Violation of Prevention of Cruelty to Animals Act 1960

Section 11. Treating animals cruelly:

Has multiple sub sections explaining various types of cruelties inflicted on animals

Section 3 - Duties of persons having charge of animals

It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.

Article 51A (g) in The Constitution Of India 1949

Fundamental duties

It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures

Article 48A in The Constitution Of India 1949

Protection and improvement of environment and safeguarding of forests and wild life

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country

Article 21 in The Constitution of India 1949

Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law

**Application of Article 21 of the Constitution, to Animals
Supreme Court Final Judgment in May 2014 in
Jallikattu (Tamil Nadu Bull Taming) Case**

RIGHT TO LIFE:

Para 62. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. **Article 21 of the Constitution**, while safeguarding the rights of humans, protects life and the word life has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of **Article 21 of the Constitution**.

So far as animals are concerned, in our view, life means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity. Animals well-being and welfare have been statutorily recognised under Sections 3 and 11 of the PCA Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with **Article 51A(g) of the Constitution**.

**Application of Article 21 of the Constitution, to Animals
Supreme Court Final Judgment in May 2014 in
Jallikattu (Tamil Nadu Bull Taming) case continues.....**

Continued from previous page.....

Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over-ridder, over-loading is also a right recognized by Section 11 read with Section 3 of the PCA Act. **Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering.**

Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, **hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.**

Illegal Sale done by Tamil Nadu FD in Violation of Wildlife Protection Act 1972

WPA Section 39: Wild animals, etc., to be Government property

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Tamil Nadu Forest Department Report (2002) by forest vet Dr. Krishnamurthy:

Among the captive born calves, 22 nos, mostly female calves were given to various temples in Tamilnadu. Several Calves mostly bulls were sold to private owners in Kerala. Three calves were donated abroad by the GOI, as a goodwill gesture. More than 7 calves were sent abroad through the Arignar Anna Zoological Park for getting as exchange other species of animals.

Tamil Nadu Forest Department Report (1993) by forest vet Dr. Krishnamurthy:

1) Hiring of elephants:

When the animals do not have work, can be hired. There is demand for elephants for temple processions, for dragging timber and for Movie films.

Illegal Sale done by Tamil Nadu FD in Violation of Wildlife Protection Act 1972

Tamil Nadu Forest Department Report (1993) by forest vet Dr. Krishnamurthy

Fixing of Fair Price:

The fixing of fair price for the elephants intended to be disposed off by negotiated sale, should be done in consultation with the Forest Veterinary Officer, as he is the competent authority for the annual valuation of the Departmental elephants. The book value is only the intrinsic value of the animal, and is for write off purposes in the event of death of the animal or transfer to other departments.

The market value is not constant. It depends upon the current demand. Since most of the elephants are sold to temples or to other countries or for exchange for other animals, I wish to suggest the following guideline for fixing the fair price.

In our department, we had been acquiring many animals by capture from wild. Of late most of our animals are captive born.

Illegal Sale in Violation of Wildlife Protection Act 1972 Snippets From “Wildlife Crime Control Bureau” Report

Study on illegal sale and transfer of live elephants from Assam

Chaturbhuja Behera, IFS

Regional Dy. Director, Wildlife Crime Control Bureau, Kolkata

Abstract:

Assam has a glorious history of its association with elephants, of taming wild elephants for domestication and harbouring maximum number of wild and captive elephants. Abrupt fall in the forestry activities since 1996 and subsequent deterioration in economic conditions of the elephant owners have spurred sale of captive elephants from the state in the face of public outcry, administrative and legal restrictions, and have created inter-state nexus for smuggling.

To study the cause and process of smuggling, the dynamics of demand and supply in the

Involvement of Assam Forest Officials, South Indian Temples and Private Parties in Illegal Wild Elephant Trade, in Violation of Wildlife Protection Act 1972.
Snippets From “Wildlife Crime Control Bureau” Report

5.5. Gangs and network of elephant trafficking:

Some of the business men of Bihar and UP settled in Assam have developed links with the local agents in Assam for facilitating the transfer of elephants. Some of the elephant smuggler groups are dealer in coal, timber and auctioned vehicles. They engage locals to mediate with the elephant-owners and settle the negotiations for transactions after paying advance. **The official formalities of getting NOC, health certificate, DNA testing, transport permit etc. are done by the local agents with the help of the Government officials. The agents have developed close links with the officers dealing with the relevant jobs, which ensure the sale without any impediment.** The business-men are quite conversant with the transporters, the buyers in Bihar & UP and know how to evade or circumvent checks on the forest check posts at the Assam-WB border. **Temples, religious organizations and political parties place their demand through messengers and sometimes directly through Government officials.**

Delhi High Court Landmark Judgment About Elephants

In a landmark Delhi High decision dated court 20th January 2020 in Saddam v UoI, the court rejected a habeas claim by a Mahout to repossess a captive elephant Lakshmi, by recognising the inherent connection the elephant has to its natural habitat.

The Court stated:

“Keeping in view the aforesaid principle and the fact that an elephant, by virtue of its natural characteristics, requires sufficient water, large area for housing as well as for walking and grazing, this Court is of the opinion that Jungle is the natural habitat of an elephant and the presence of elephant Laxmi in Elephant Rehabilitation Centre (respondent no.4) cannot be termed as illegal or unauthorised. ...

Even if the Mahout is able to establish ownership, it would not be a ground to treat the elephant as his “slave” and move elephant-Laxmi to an uncomfortable environment against her rights and interests.

Consequently, the interest of elephant-Laxmi is best served in a forest rather than in a congested city with a Mahout.”

🕒 Aug 24, 2021 10:08 UTC | Updated: Aug 24, 2021 at 10:08 UTC

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NEWS: Karnataka HC says Elephants Belong to Forest, Not Temple

By Legal Wires

3 Minutes Read

The Karnataka High Court has sought a response from the State Government on a plea challenging direction to hand over an elephant in the temple to the forest department.

The Bench comprising of Chief Justice Abhay Shreeniwas Oka and Justice NS Sanjay Gowda observed that elephants do not belong to temples but rather to forests.

The court remarked "*Elephant belongs in the forest and not in the temple*"

The petitioner contended that the elephant was used for the purpose of pooja and nothing other than that.

The court observed that the elephant is meant to be in the company of other animals hence keeping it away from its natural habitat is cruelty.

Cancelling “Ownership Certificates” of all the elephants

All the elephants at temples and in private custody in the state have been procured through illegal mode, violating various sections of Wildlife Protection Act.

The appalling living conditions of elephants and barbaric cruelty inflicted on the elephants, on a daily basis, are serious violations of PCA Act.

The above aspects also violate Articles 51A (g), 48A and 21 of the Constitution.

Considering such serious violations of the laws the “Ownership Certificates” of all the private and temple elephants needs to be cancelled immediately and the elephants need to be permanently shifted to a “rehabilitation centre” developed by forest department.

Section 50 of WPA gives powers to officers to seize the wild animals kept illegally.

CONCLUSION

Elephants are very sensitive, highly intelligent animals with well developed cognitive abilities equal to a human

They are key-stone species directly responsible for survival of many other species in the wild.

Such magnificent animals should not be kept in captivity, as captivity cannot be justified in any perspective listed here

***Biological**

***Ethical**

***Legal**

Captivity not only destroys the species of elephants but also has a huge negative impact on biodiversity.

Captivity teaches a wrong lesson to the future generation that “it is fine to have any wild animal in captivity completely ignoring its welfare”

Considering the facts presented and legal aspects, these suffering elephants needs to be rehabilitated in a natural environment immediately

END