

URGENT APPEAL

Wild Life (Protection) Amendment Bill, 2022

30 November 2022

Subject: Proposed amendments to strengthen the Wild Life (Protection) Amendment Bill, 2022, including the prohibition of the commercial use of elephants

Respected Member of Parliament:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) India and our more than 2 million members and supporters to request that during the winter session of the Parliament, when the Wild Life (Protection) Amendment Bill, 2022, is taken up for deliberation and voting, you please propose amendments as listed in **Annexure A** (attached) and send this bill back to the Lok Sabha for reconsideration. These proposed amendments aim to further strengthen the provisions of the Wild Life (Protection) Act (WPA), 1972, and protect our national heritage animal, elephants, who are listed under Schedule I of the WPA, from abuse and commercial exploitation, which is imperative in light of the reasons listed below:

1. Even though Asian elephants are listed as endangered in the International Union for Conservation of Nature's (IUCN) Red List of Threatened Species, 2019, they are allowed to be "owned" by private individuals in India.
2. Section 43(1) of the WPA, 1972, places an embargo on any sale, including by any mode of commercial nature, of Schedule-I captive animals – which covers live elephants. It is well known that to circumvent this embargo, captive elephants are transferred commercially under the guise of gifts, donations, leases, and so on. This is allowed since Section 40(2) of the WPA, 1972, enables such transfer with the permission of the concerned chief wildlife warden.
3. The sale of captive elephants under the guise of gift or by any other means is contrary to the spirit of the WPA, 1972, and yet, the Wild Life (Protection) Amendment Bill, 2022, in its present form does not seek to address this loophole. The current legal provisions are blatantly misused to carry out the commercial trade of captive elephants and to exploit them.
4. The permission granted by law to "own" elephants leads to their commercial exploitation, including for use for rides and begging, and for use in films, circuses, exhibitions, and processions. This demand encourages a steady supply of elephants through their illegal capture from the wild, thereby further endangering the species. The cruel treatment of these privately owned elephants by the owners, mahouts, and handlers is common and well known. The animals are controlled through beatings, tethered with short heavy chains, and typically denied all of the five fundamental freedoms (freedom from hunger and thirst; freedom from discomfort; freedom from pain, injury, and

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disease; freedom to express normal and natural behavior; and freedom from fear and distress) guaranteed by our Honourable Supreme Court of India in its 7 July 2014 judgement in *Animal Welfare Board of India v A Nagaraja*. The use of physically or psychologically unfit and tortured elephants for social events and performances often results in frustrated elephants attacking or killing mahouts, tourists, and other humans around them.

Therefore, adding a provision explicitly prohibiting the grant of ownership certificates and the transfer of elephants through any means, including gift, power of attorney, lease, and donation, to private individuals and religious institutions is necessary. The provisions that currently allow the transfer of captive elephants ought to be limited to cases in which the transfer needs to be made to a state government or to a recognised rescue centre for the purposes of providing the animal with lifetime care and rehabilitation and for no other reason.

Article 51-A (g) of the Constitution of India says, “It shall be 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.”

Today, owning an elephant in India is easier than owning a car. Elephants are endangered wild animals and need your compassion and protection. We sincerely hope that during the upcoming winter session of the Parliament, you propose the amendments as listed in **Annexure A** (attached) and send the Wild Life (Protection) Amendment Bill, 2022 back to the Lok Sabha for reconsideration. We urge you to demand that the amended law include specific provisions to end the private ownership of elephants to truly serve the spirit of the WPA, 1972, and our country’s Constitution.

I would be happy to support your good office in case you need any further assistance in this regard. I can be contacted on 9910397382 or at KhushbooG@petaindia.com.

Thank you for your time and consideration of this important matter.

Yours sincerely,



Khushboo Gupta
Director of Advocacy Projects

ANNEXURE A

S No	PROPOSED AMENDMENT	RATIONALE
1.	<p>The following proviso after sub-section 2B of section 40 in the Wild Life (Protection) Act (WPA), 1972, is proposed to be deleted:</p> <p>“Provided that nothing in sub-sections (2A) and (2B) shall apply to the live elephant.”</p>	<p>Subsection 2A of section 40 of the WPA, 1972, states the following:</p> <p>“No person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 acquire, receive, keep in his control, custody or possession any captive animal, animal article, trophy or uncured trophy specified in Schedule I or Part II of Schedule II, except by way of inheritance.”</p> <p>Under this provision, Schedule I animals can only be transferred or acquired by way of inheritance. However, the proviso below sub-section (2B) of section 40 exempts elephants from this provision, which means that live elephants can be acquired or kept in custody by other means as well.</p> <p>Deleting this proviso would ensure that elephants are afforded equal protection as other Schedule I animals. This would prevent the practice of rampant transfer of privately held elephants for commercial gain and the acquisition of new captive elephants by private owners.</p> <p>This would also lead to the phasing out of private ownership of captive elephants and address the issue of wild elephants being captured to be kept under private ownership by individuals and institutions.</p>
2.	<p>Section 40A of the WPA, 1972, which deals with the power of the central government to grant immunity in certain cases, is proposed to be deleted.</p>	<p>This provision allows the government to offer an amnesty scheme to private individuals keeping illegal custody of wild animals and articles to legalise this ownership. This provision of the WPA, 1972, defeats the very intent of the law to protect wild animals in their natural habitat, since such schemes encourage the illegal capture and trade of wild animals.</p>
3.	<p>The following proviso after the first proviso of section 42 of the WPA, 1972, is proposed to be inserted:</p> <p>“Provided that no ownership certificate will be issued in respect of any captive elephant not declared in terms of section 40.”</p>	<p>This provision is essential to stop the current practice of obtaining new ownership certificates for new elephants captured from the wild and misusing legal provisions to legitimise such ownership.</p>

4.	<p>The following proposed proviso in subsection 2 of section 43 of the Wild Life (Protection) Amendment Bill, 2022, is proposed to be deleted:</p> <p>“Provided that the transfer or transport of a captive elephant for a religious or any other purpose by a person having a valid certificate of ownership shall be subject to such terms and conditions as may be prescribed by the Central Government.”</p>	<p>Such transfer would abet the current practice of commercial transfer of privately held captive elephants under the guise of gift or lease deed.</p> <p>This proposed amendment ought to be deleted.</p>
5.	<p>The following provisos are proposed to be inserted in subsection (2) of section 43 of the WPA, 1972:</p> <p>“Provided that the transfer or transport of a captive elephant by a private person or an institution having a certificate of ownership shall only be for the purposes of medical treatment of that elephant or for the purposes of lifelong rehabilitation of that elephant in a recognized rescue center and for no other purposes.</p> <p>Provided further that transfer of privately held captive elephant to any another private person or institution by way of a lease deed or a gift deed or by any other arrangement for religious or for any other use or purpose shall be prohibited.”</p>	<p>The proposed insertions would ensure that the transport or transfer of elephants is done strictly for the purposes of treatment or to get them life-long care and rehabilitation.</p>
6.	<p>The following sections 2(34) and 62, which grant power to the central government to declare certain wild animals to be vermin, of the WPA, 1972, are proposed to be deleted.</p>	<p>The power given to the central government to declare certain wild animals to be “vermin” in order to kill them in areas of human-wild animal conflict under Section 62 of the WPA, 1972, presents an archaic and colonial concept that violates articles 14, 21, 51- A(g) and 48A of the Constitution of India. The proposed amendment would add more wild animals to the list of animals who could be declared “vermin”. Provisions that allow wild animals to be killed can easily be misused and can contribute to the illegal wildlife trade. Instead, it is recommended that the government implements already established effective humane and scientific alternative methods for preventing and mitigating human-animal conflicts.</p>